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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

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### FATHER'S ARRANGEMENT

Mr. Sander had a side business driving people. One day, Mr. Blum called. "I need a ride to the airport this evening," he said.

"I'm not available," said Mr. Sander.

"There's no way you can do it?" asked Mr. Blum. "You always give me a very good rate."

"My son Chaim is home," Mr. Sander said. "Maybe he can take you. I'll see."

"Can you drive Mr. Blum to the airport tonight?" Mr. Sander asked. "I'll tell him how much to pay."

"All right," agreed Chaim.

Mr. Sander called back Mr. Blum. "Chaim can take you," he said. "Give him \$30; that's enough for him."

When they arrived at the airport, Mr. Blum thanked Chaim. "I appreciate your taking me," he said. He gave Chaim \$30.

"That's all?" asked Chaim. "A car service to the airport costs about \$60. The cheapest you can get is \$40."

"Thirty dollars is what I arranged with your father," replied Mr. Blum. "He always gives me a discount."

"That's fine if he drives," said Chaim. "But if I drive, I have to agree to the discount! You can't expect me to drive you and not even pay the minimum fare."

"The discount is between you and your father," argued Mr. Blum. "I arranged with your father \$30, so that's what I'm paying."

"I'm not going to say anything to my father," said Chaim. "It's not respectful. But I expect you to pay fairly for the service you received."

"In my book," replied Mr. Blum, "fair is whatever amount was agreed upon."

"You need to get to your flight," said Chaim. "I don't want to delay you. When you return, though, I would like to take up the issue with Rabbi Dayan."

"That's fine with me," said Mr. Blum. "I'll be back in two weeks."

When Mr. Blum returned, he went with Chaim to Rabbi Dayan. "My father arranged that I should drive Mr. Blum to the airport," Chaim said. "He arranged a very low fare, below the accepted rate. Am I bound by my father's arrangement?"

"Rashba addresses a similar case," replied Rabbi Dayan. "A father arranged that his son work as an apprentice for a set amount each year. After two months,



## BHI HOTLINE

### LOST LUGGAGE, PART II

**Q:** Last week, we discussed the case of a person who agreed to transport someone's item overseas and placed it in his luggage that went into the baggage hold, and that item was lost en route. We determined that if the airline reimburses him for it, he must remit that payment to the owner.

What remains to be determined is how much of that payment he must remit. The airline does not attempt to evaluate how much the used item was worth; they reimburse the traveler for the full amount it would cost to replace it with a new one. May the traveler reimburse the owner only for the value of the used item that he lost and keep the rest, or must he remit the entire payment from the airline to the owner?

**A:** The airline reimburses the traveler for lost items because they take responsibility for the items in the baggage hold. If an item is lost, they pay for the full value of a new item, either because they cannot estimate the value of the used item, or because they must enable the traveler to replace the item and cannot guarantee that he will find a used one. The entire payment is for their having been negligent as *shomrim*, and it therefore belongs to the owner of the item, not to the traveler.

We find a similar *halachah* in the case of someone who sent a *shaliach* (agent) to buy something for him, and the store owner deliberately sent more than he ordered. Who keeps the additional merchandise? The *halachah* is that if the product has a set price, and the store owner decided to add on more as a gift, then the addition is split between the sender and the *shaliach*

### DID YOU KNOW?

**Did you know that signing a service contract that includes a late fee that accrues monthly is a Ribbis violation?**

 **STORY LINE**

the son decided not to continue, and the question arose whether he is bound by his father's arrangement. In his answer, Rashba also addresses the question of the salary for the past" (Responsa attributed to Ramban #105).

"What does Rashba say?" asked Mr. Blum.

"He cites the *Gemara* (B.M. 12a-b) that says that a father is entitled to the findings of a child who is financially dependent on him as a household member," replied Rabbi Dayan. "There is a dispute among the *Rishonim* regarding whether the father is also legally entitled to his child's earnings" (*Machaneh Ephraim, Hil. Zechiyah U'matanah* #3).

"Rashba concludes that even if the child is not financially dependent on his father, the arrangement is valid for past work," continued Rabbi Dayan. "Since the child knew that his father made the arrangement and he began working without protest, he willingly accepts his father's arrangement. Rema cites this ruling" (C.M. 333:8).

"What if someone else made the arrangement?" asked Chaim.

"*Shach* (333:45) writes that Rashba's logic — that the son knew — applies also if someone else made the arrangement," said Rabbi Dayan. "He further writes that even if the son didn't know the details of the arrangement of his father or other person, he willingly accepted it.

"*Nesivos* (333:17), however, maintains that Rashba speaks only about a son," continued Rabbi Dayan. "He explains that the father agreed to a very low sum. Had another person, even an agent, arranged an unfair sum, it would be void and the son would be entitled to the going rate. However, since a son relies and willingly accepts his father's arrangement, it is binding."

"Therefore," concluded Rabbi Dayan, "Mr. Blum does not have to pay more than \$30."

 **MONEY MATTERS**  
(Based on writings of Harav Chaim Kohn, shlita)

**DINA D'MALCHUSA**  
**DINA #18**  
**Legal Rulings**

**Q:** Are rulings issued by civil courts, such as Supreme Court decisions, included in *dina d'malchusa*?

**A:** *Dina d'malchusa* applies to laws and rules established by the king or legislative body of the government. However, laws and rules advanced by civil courts are not included in *dina d'malchusa*, even if the law requires following their rulings. Civil judicial rulings do not have authority to usurp Torah law for dealings between Jews (*Sma* 369:21).

Moreover, even if the ruling is the court's interpretation of the law, when this interpretation is unclear and subject to the judge's personal understanding, especially if guided by worldviews contrary to Torah perspective, *dina d'malchusa* does not apply (*Tzitz Eliezer* 16:49).

Thus, even a Supreme Court ruling, which is not based on a clear reading of the law as intended by the lawmakers, does not carry the status of *dina d'malchusa*. Nonetheless, on contractual issues, the rulings can form a common commercial practice if they become entrenched and are accepted in practice among Jews as well (*Responsa Rashba* 3:109, 6:149).

 **BHI HOTLINE**

(as explained in detail in *Business Weekly*, issues 381-383).

If there is no set price, however, and the store owner varies the amount he charges for each sale, then we assume that the addition the *shaliach* received was part of the sale, not a separate gift, and it belongs entirely to the sender (*Shulchan Aruch* 183:6, with *Sma* 20). Some say that even if the store owner specified that he is adding on more for the *shaliach*, since there is no set price for this product, it is still considered part of the sale and it belongs to the sender (See *ibid.*; *Nesivos, Chiddushim* 13, but *Minchas Pitim* disagrees.)

Similarly, since an airline's payment is one lump sum for lost objects, and is not comprised of payment for the lost object plus a gift, it all belongs to the owner of the lost item (*Shimru Mishpat* 3:48).

However, this is true only if the airline reimburses the traveler for the full value of *all* the items that were lost.

If the airline caps the reimbursement, and the total is not enough to cover the traveler's own lost items and the item he took as a favor for his friend, the traveler may keep the reimbursement for himself. He is required to remit payment to his friend only if there is money left over after he has recovered payment for his own items.

If it is unclear whether the airline added money to the total of the reimbursement because of the item his friend sent, the traveler is entitled to keep the full reimbursement because of the rule of *hamotzi mechaveiro alav haraayah*, which requires the plaintiff to prove that the money is his (see *Rema* in 292:10).

For questions on monetary matters, Arbitrations, Legal documents, Wills, Ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com

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