

Ramifications of a Broken Kinyan : Reneging on an Agreement Part II

By: Rabbi

Yosef Greenwald

*Did a broken kinyan
work in the first place?*

Breaking

a *kinyan kesef*, an agreement where *kesef* was paid or a down payment was made on an item or on *m'taltalim* that are being sold, carries with it the *klala* of *mi shepara*. Once a person reneges on a completed *kinyan*, there is a discussion among the *poskim* if it was considered a viable *kinyan* in the first place. In addition to the *tayna* against the person, there is a disagreement of who the money belongs to.

The

Tur in *Choshen Mishpot*,
siman 198,

quotes two opinions. The Ramban and the Tur hold that if a potential buyer and a seller have completed a *kinyan*, and the buyer goes back on the agreement, the money belongs to the seller. The Rif and the Rambam disagree.

For

example, Reuven and his wife went out shopping for a piece of jewelry for their anniversary. At the jewelry store, they picked out the perfect watch. The owner said, "This watch in the display case is faulty. I have another one downstairs in the storage room that is perfect. I can't get it right now, because I have no one else to watch the store." The owner asked for a down payment, and told

Reuven to come back tomorrow to pick up the watch and pay for it in full. Reuven gave the jeweler a 25% down payment for the watch and the couple went home.

In

the meantime, Reuven found out about a sale at a different jewelry store. At the second store, Reuven and his wife find the identical watch which they picked out earlier, on sale for a cheaper price. They call up the first jewelry store owner and say that they apologize, but they have changed their mind about the watch.

The *kinyan* was already complete, because they gave money for the down payment. But according to Halacha, they do have the right to be *chozer*. They can tell the first jewelry store owner, "We are very sorry but we found the watch for

a
cheaper price and we are being *mevatel* the *mechira*.” Reuven hasn’t actually done *meshicha*, because the watch he was going to buy was still in the storage room. He decided to go back the next day to pick up the down payment.

Who Owns the Down

Payment?

Later that night, the first jewelry store had a robbery, and all the money in the register was stolen. Reuven’s 25% down payment for the watch was also stolen. The next day, when Reuven and his wife came to pick up their down payment, the *mocher* said, “The watch is not yours because you were *mevatel* the *mechira*. The money I was holding for you is gone, because it was stolen with the rest of my money.” Reuven argued that the fact they didn’t want the watch meant they would be *mevatel* the *mechira* once they got the money back. But until that point, the money was given to the *mocher*. If Reuven had not been *mevatel* the sale, the money would have belonged to the *mocher*. The jewelry store owner lost his money and the 25% payment, but Reuven and his wife can still get the watch by only paying the remaining 75%.

The Tur says that this is a *machlokes* between the Ramban and the Tur against the Rif and the Rambam. According to the Ramban and the Tur, the money was given to the *mocher* and it is considered the *mocher*’s money.

The *Machene Ephraim* says that this means the *mocher* has the right to use the money, even after the customer had called up to be *mevatel* the sale.

The Tur and Ramban say that until the *lokeach* gets back the money, the money belongs to the *mocher*, and it is considered a *halvaah*. The *mocher* was *koneh* the money from the *lokeach*. The next day, the *mocher* will return the money in exchange for the broken contract. But until then, the money belongs to the *mocher*. The *mocher* can take the money, put it in his cash register and use it as change with the next customer. Even after the *lokeach* called up to be *mevatel* the *mechira*, the money still belongs to the *mocher*. It was given to him, and it rightfully became his. On the following day, the *lokeach* is in the right. The

mocher had his cash register cleaned out and he may not be very happy about it, but he'll have to give other money to the *lokeach*.

However,

the Rif and the Rambam do not hold this way. The Rif and the Rambam *pasken* that the money belongs to the *lokeach*.

So when Reuven and his wife called up the owner of the first jewelry store to be *mevatel* the sale of the

watch, the money now reverts back to the original owner. The money sitting in the cash register

belongs to Reuven and his wife. He can choose to pick it up right away, or wait

until the next day.

The *mocher* has no more responsibility for the

money in the register that as a *shomer chinam*. The money was stolen from Reuven's possession, not from the owner of the store's possession.

Therefore, the loss would be incurred by the

customer, and the *mocher* would be *potur* from giving back anything to the *lokeach*.

This is the way we *pasken* in *C.M. Shulchan Aruch*, 199, and this is the halacha *l'maasa*.