

Choshen Mishpat Review Bechinah

Hilchot Bitul Mekach (232-240)

Directions

Answer each question in a paragraph or more, citing the relevant Gemaras, Rishonim, Shulchan Aruch, Nosei Kelim, and Shu"tim; not everything will immediately seem related if you haven't learned some contemporary Acharonim.

Rabbi Bleich sometimes asks questions that are not immediately on the page of the limud to see how you would think about it given what you know. Even if you never learned about the specific circumstances the question is asking about, you can most probably intuit the two tzedadim of the case and suggest what the Halacha would be according to either side based on the relevant information from our limud. Sometimes, a specific source in Acharonim is provided to facilitate further research.

Other than from my own learning, the questions and answers below come also from various websites such as BusinessHalacha.com, Yorucha.com, and Mi Yodea. Due to lack of time, the answers are brief, but that does not absolve any of us from knowing all the details that were omitted and having them ready for this Bechinah or the final in Shamayim.

Questions & Answers

Siman 232 – Mekach Taut and Mum

1. Someone bought ten bottles of soda at your store, but it seems that the cashier only scanned nine of them. Can you get the rest of your money from him? What if the cashier accidentally scanned the bottle eleven times, can the buyer get his money back? Why is this different from Ona'ah? (232:1)
2. You bought a 3000 sq. ft. home for a nice \$1.8M and spend a rainy day measuring the square footage by yourself. Turns out it's actually 2500 sq. ft. Can you get your money back? (232:1)

See Rishonim in the Beit Yosef

3. You ordered seven orders of garlic knots at the pizza store, each “order” consisting of three garlic knots, but it seems like you were given 23. What do you have to do if anything? (232:2)

Lichaorah, the extra two were presents, because they weren't multiples of three that you should argue they were given to you by accident. However, garlic knots aren't necessarily “picked up” in multiples of three that 232:2 should be relevant, so most likely, it was just a mistake and you should ask the guy behind the counter. It could've been an honest mistake given how many you bought, but it could also be the end of the day and they're just getting rid of the stock.

4. The Brisker Rav lent a hundred rubles to the poor man who asked about being yotze arba kosot with milk. Does the poor man have to pay him back if the Brisker Rav never asks him to?

This would depend on the Machloket between R' Yerucham and the Hagahot Mordechai about extra payment that one can assume was given to him as a gift. The Shiltei HaGibborim holds like the former that if the buyer comes later and says that money was not a gift, he can get his money back, against the Hagahot Mordechai who says he can't. Based on the same line of reasoning, the Shiltei HaGibborim says that the borrower can assume that the loan was really a gift, since no one was tovea him. If the lender is tovea him, though, the bubble that is his assumption has been popped, and he has to pay. (Shach 232:2)

5. Eli ordered a dragon statue from Amazon a year ago and didn't remember where he had put the package until he found it in his garage today. Turns out that the doll was missing a head and hands. Can he still get his money back? (232:3)

Al pi din, yes, it should be fine, but the Amazon return policy is a tenai shebemammon, so its return window will trump the halacha.

6. Avi wants to buy Ephie's old Chevy. Instead of taking it for a test ride and to a mechanic to have it assessed for possible repairs, he hands Ephie a cashier's check and drives the car home. Later he finds out that the wheels are so eroded that they need immediate replacement, an issue Ephie claims he never knew about. Can Avi get his money back?

See the long discussion in the Pitchei Teshuvah 232:1 about whether or not we accept the Maggid Mishneh's point that if one had the opportunity to look at something before purchase but didn't it's like he's mochel.

7. Adam's old Macbook broke while he was working on a very time sensitive project, so he bought a new one that day and kept working, only to discover that there was a crack in the screen. By then, the store was closed for him to exchange it, and his project was due that night. Can he keep working for now and still exchange it tomorrow? (232:3)
8. Does the umdena of *אם השתמש מחל* always apply? (PT 232:1 at the end)
9. Ben Gevir manages to buy the last high-end Tesla that the dealer had in stock by calling incessantly every day on the way to high school to make sure he was still on top of the wait list. When he drives out into the sunset, he realizes there's a crack in one of the camera lenses that is preventing him from turning on the auto drive feature. He calls up the dealer and says he wants a partial refund, but the dealer says he'd rather take it back, as there are plenty of buyers who will still pay full price. What's the din? (232:4)
10. B. of B&H realizes that he accidentally sold someone a broken drone and he would rather donate it as spare parts for the war effort. Can he call up the buyer and get it back? (SMA 232:12)
11. You finally made the purchase of your tefillos. That standalone luxury home in Israel is finally yours... except the day before it goes to closing it's hit by a rocket. The windows are all shattered, the floor needs a new painting, one of the walls has a hole in it, etc. You're afraid your mazal is not in this house, but the seller is not willing to let you off. Do you have to go through with the purchase? (232:5)
12. Until the repairs of the previous question are complete, you've swapped homes for three months with somebody in Israel, as you couldn't delay your Aliyah, still own your home in Teaneck, and this guy wants to see if the dollars are greener across the pond. After davening hard for rains, you really feel the shefa min hashamayim when it pours into the living room via the holes in the roof. You give up and say you could get this living in America and want to go back, but the owner who swapped with you says he told you to bring a repair man to fix the roof, although you have no recollection. Can you make yeridah? (232:5)
13. What counts as a mum? (232:6)
14. What if the store return policy says returns are not accepted? (232:7)
15. Bobby Baratz buys a development site in Manhattan and then applies for permits to build a skyscraper, but the city tells him the project would violate the neighbors air rights. Now Bobby can't build. Can he get his money back? (232:7)

16. A shadchan calls you up and says she has the best boy for your daughter: he's a lamdan, a baal middos, yareh shamayim, meyuchas, a kohen, six feet tall, and jet black hair. You farther the boy when he comes to pick up your daughter and it turns out he's six feet tall, jet black hair, and a kohen, but the rest doesn't really show. By the time you're getting ready for the wedding, it becomes apparent that none of the other details are true. Does the shadchan still get shadchanus? (232:8, 9)

Machloket SMA and Shach on Seif 9, but also have to apply the halacha of brokerage.

17. It turns out the new science teacher in yeshiva previously ran a night club for a living. Can they break contract and fire him? Can they get the money they paid him already back? (232:10)
18. The new madrich in yeshiva gives inspiring drashos and is a great role model for the Talmidim, but the hanhala was just shocked to find out he spent the past zman living with his girlfriend. Can they break contract and fire him? Can they get the money they paid him already back? (232:10)
19. You bought ten cows from the local Jewish ranch, shecht them bechaburah, and find that three of them are treif. Can you get your money back? What if you didn't pay yet? (232:11-12)
20. You bought ten cows from the local Jewish ranch, shecht them for a potential buyer, and find that they're all chalak/glatt/perfect, but nobody will buy them from you because you don't have a beard or learn chassidus every day. Can you get your money back? (232:12)
21. You buy an apartment and start doing construction without a permit. When the authorities get wind of things, you get hit with two fines, one for your construction and one for the previous owners construction that must now be knocked down. Can you give the house back? Can you get the seller to cover the fines and fix the situation? Is it too late? (232:5, 7, 13-14)
22. Ezra Sofer buys new tefillin batim from the batim macher and starts opening them up and putting parshios inside, only to discover that the batim were not formed properly and are pasul. Can he get his money back even though he opened them up and started working with them? (232:14)
23. On the third day of your week long hotel rental, it rains through the ceiling. Can you get all your money back? (232:15)
24. [sma vs. shach] (232:16)
25. If he didn't pay yet (232:17)
26. Bought used Car, broke and needs to be sold for parts (232:18)

27. Bought a gold plated ring from amazon and sold it to a guy about to get engaged. He thought it was gold and found out funnily that it's not. What if it turns out it really was gold? (232:18)

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29. I bought a washing machine in Brooklyn and had it shipped up to the mountains for my wife to use in the bungalow colony. Unfortunately, the machine was defective and did not work properly. I called the store in Brooklyn to have them come pick up their machine, but they claimed that bringing the washer back from upstate is not their responsibility and they would only reimburse me if I brought the machine back to them. Who is responsible to arrange and pay for the return of the machine? What if the washing machine was stolen or damaged by vandals before it could be returned? Who is responsible for that loss? (232:20-21)

<https://baishavaad.org/who-pays-the-shipping-costs-to-return-a-mekach-taos/>

The answer to this can be split into 3 categories.

Seller Knows Where It Is Being Shipped: *If he knew that the buyer was taking the washing machine upstate, he would be responsible to pay the costs to have the machine returned to him.*

Seller Doesn't Know Where It Is Being Shipped: *If the seller did not know about those plans, he would not have to pay any return shipping fees and would not have to refund the money until the buyer returns the washer to him.*

Seller Sells It With Malicious Intent: *The halacha would be different if the seller was aware of the deficiency and maliciously sold the item anyway. In such a case, the seller has the status of an indirect mazik - falling under the category of garmi - and he would be obligated to pay for the damage he caused by paying the return shipping fees, whether he knew about the buyer's plans or not.*

The Poskim discuss whether the buyer has the status of a shomer on the object as long as it is still on his property. In any case, if it was stolen or

*vandalized, he cannot be held responsible for that damage. If it was damaged due to his negligence, he would be considered a *poshea* and he would be responsible for the damage.*

*If he would decide to leave the merchandise outside his house, not even bothering to bring it inside and it would be damaged by the elements, he would be considered a *mazik* as the damage was caused by his act of neglect. Of course, he is not permitted to damage the merchandise in any way regardless of whether he is a *shomer*, and he would need to pay for the loss he caused.*

30. I ordered an expensive kitchen from a salesman, and I paid a carpenter a few thousand dollars to install it. After a few months, the exterior of the cabinets started to peel. I called the salesman, and he told me that the manufacturer just informed him that they knew that they had sold a faulty batch of kitchens, and they would send a new one as a replacement. The problem is that I will now have to pay the installer to rip out the old one and install the new one. Am I entitled to demand that the seller compensate me for the money I wasted on the first installation? (232:20-21)

31. [see r reiss mareh mekomot]

Siman 233 – Wrong Min or Quality

1. Holy Wholesalers LLC carries a range of grades of grocery items. Reuven Retailer buys ten cases of U.S. Fancy apples (level 2/4) and received U.S. Very Fancy ones (level 1/4) instead for the same price. Can Holy Wholesalers request it be returned and exchanged for the correct grade? What if they were U.S. utility grade (level 4/4)? (233:1)
2. Isidor Istenis orders groceries from Whole Foods via Insta-Agalah, but, due to efficiency calculations, his order was fulfilled via Key Foods instead. He wanted organic Grade A grapes but instead received regular Grade A grapes. Now, he wants his money back for the grapes. Who wins? (233:1)
3. Tzioni Dati hot dogs are made from very fatty meats of various cuts in order to keep a consistent taste and consistency. If the slaughter house sends them extra lean cuts, can Tzioni Dati return them? (233:1)

Siman 234 – Sold Prohibited Items

1. Bisra Butcher sends an email to all its customers that unfortunately their supplier sent them *nevelah* meat instead of shechted meat, and everybody should throw out any meat purchased from the past week and come in for a 50% reimbursement. What do you do? (234:1)
2. You're getting lunch at Bisra Burger Shop and notice the mashgiach walking in as you're leaving. Turns out he just arrived for the day. You ask him who turns on the ovens and grills today, and he turns red and goes quiet... Enrique the chef pops his head out and says he turned them on, of course, like every day! You turn white hot and want your money back. What's the din? Why? (234:3)
3. After the previous din torah with Bisra Burgers is settled and you come back to pick up a tray of burgers for the shul chaburah weekly dinner, you ask Enrique how he makes such unbelievable burgers, and he shows you a bottle of Ken's dairy ranch dressing. You bang your head against the wall and dial the Beit Din's number again. What's the din? (234:4)
4. Allegations emerge that Weiner's Wines had non-Jewish employees a little too involved in the bottling of their wines and that all the wine should be spilled out. Can you get your money back? Does it matter if the workers were pouring sacraments or just taking a casual sip? (234:4)
5. Simcha is making a wedding for his daughter at a well-known hall frequented by chareidi families. He asks the caterer whose Hashgacha they use, and is told "Rubin." At the wedding, one of the Rabbanim comes over and asks how he has the audacity to use a regular rabbanut caterer for such an event... turns out the *meat* is from Rav Rubin's shechitah, but the *caterer* itself is not. Can Simcha get his money back?
6. Larry Ashkenazi bought his wife a sheitel from the local sheitel macher Mrs. Gans and then opens the local yenta news website and sees that there's a *chashash* of *tikrovet Avodah Zarah* in the sheitels. Can he get his money back? (Minchat Shemuel [Pinchasi] vol. 3 Choshen Mishpat 3)

Siman 235 – Kinyanei Kattan, Cheresh, Shoteh, and Shikor

1. Under what circumstances can each of the following successfully and unsuccessfully perform the described kinyan and why?
 - a. A child below the age of six
 - b. A six-year-old selling land
 - c. six-year-old selling apples
 - d. A twelve-year-old boy selling land
 - e. A twelve-year-old boy giving away land

- f. A twelve-year-old girl selling apples
 - g. A ten-year-old boy on his deathbed bequeathing land he got as a present
 - h. A ten-year-old giving away a shetar chov he inherited from his father
 - i. What if he has an apotropos in the above cases? What if it's not an official apotropos but just someone who adopted him?
 - j. Twenty-three-years-old, yerushah land (235:8,11)
 - k. Twenty-two
2. Do the dinim of ona'ah apply to a kattan? (235:3)
 3. What Kinyanim work for a kattan on metaltelin? Maot, meshichah, chalipin, shetar, chatzer? (235:4-6)
 4. What Kinyanei metaltelin work by a ketana? (235:6)
 5. What kinyanei karka work for a kattan? (235:7)
 6. How can we accept shekalim from a Kattan on a Torah level? (PT 4)
 7. A nice old school Persian yetomah accepts a shidduch on her 12th birthday without her guardian's permission. At fourteen, the guardian decides not to go forwards, but they find that she has simanim. Can the shidduch be broken? (PT 5)
 8. Is there any way a fifteen-year-old entrepreneur can sell or rent land for his own interests? (PT 6-7)
 9. Can a fifteen-year-old orphan share his lunch with his classmate to buy a best friend? What about his yerushah property? (235:10)
 10. [Simanei gadlut or seris after the sale] (235:12)
 11. Give three reasons why we cannot exhume a body to check for simanim to confirm a sale. (235:13)
 12. Sold under twenty and then turned twenty. (235:14)
 13. If a child takes out a loan, does he have to repay it? (235:15)
 14. Can a child be a guarantor? (235:16)
 15. Can the following make Kinyanim?
 - a. Cheresh (235:17)
 - b. Ilem (235:18)
 - c. Deaf (235:19)
 - d. Shoteh (235:20)
 - e. Dr. Jeckyl and Mr. Hyde (235:21)
 - f. Drunk (235:22)
 - g. Eved kenaani (235:24)
 - h. Wife (235:25)
 - i. Beit Din on behalf of orphans (235:26)
 - j. Anyone on Shabbat, Yom Tov, or Hon Kippur (235:28)

Siman 236 – Land Stolen from a Jewish Person by a Nochri

1. How much can one demand from the original owner when returning land seized by a goy under false claims? Should he take the goy to court first? (236:7-8)
2. What about metaltelin? (Ibid)
3. What if the land was seized as a penalty for a criminal offense? (Dinei Ishut vol. 2 page 223)
4. What if the thief was Jewish? (Dinei Ishut vol. 2 page 223)

Siman 237 – Ani HaMehapech Bacharara

1. You're in the market for a house and find out about a great house for a great price, but, when you call the owner, he says it's already agreed to be sold to someone else.
 - a. Can you offer more? Can the owner accept your offer? What is the nature of each prohibition? (237:1)
 - b. If they didn't tell you they already committed it to someone else and instead asked for a bid and accepted it, do you have to back out when you find out they dropped someone else? (237:1)
 - c. What if the owner made a tenai with the perspective buyer that he could back out should a higher bidder appear? (Dinei Ishut vol. 2 page 228)
2. You're getting married in June and are looking at apartments in May with you kallah. After you put in a bid for an apartment, the agent says it's already been given to someone else. Can you outbid him? What if it's a rent stabilized YU apartment (~\$500-\$1000 less per month)? (237:1)
3. You're standing outside and suddenly see a dozen people running towards you. Flying in the wind between the mob and you is a hundred dollar bill. Can you grab it ahead of them? Let's say you did and one of them demands you give it back, because he "found it" first. (237:1)
4. Someone dropped a few pies of pizza on the hefker table. One guy jumps ahead of the mob and scoops up all the boxes and darts for his apartment. Can a beracha be recited on the pizza? (237:1)
5. Bubby Yenta overhears how the Ehrlich family is looking into one of your classmates for their daughter. She asks you if you want her to suggest you to the family before they finish. What can you say? Keep in mind, bubbies often exaggerate or underplay – for all you know, the girl is already dating him and perhaps even engaged! (237:1)
6. Heimish Healthy Super Market brought in some Sephardi soft matzahs this year from Israel, and it's all the rage in the Five Towns. You go to the Pesach freezer aisle to get some and see only one left on the shelf but there's also another buyer on the other end of the aisle heading that way.

- a. Can you get your exercise in for this *bein hazmanim* and make a run for it? (237:1)
 - b. You ran for the Matzah and got it. While waiting in the massive pre-Pesach lines, the person ahead of you grabs the box out of your cart and pays for it. Can he keep it? (237:1)
7. Heilige Schorah Auction House just put up a *sefer* you've been looking for a starting bid of \$10; someone else already got the first bid. Are you allowed to bid higher? (237:1)
8. As often happens in the Manhattan real estate market, a building owner dies and his heirs liquidate his property portfolio at a major discount. Mr. Kaspi is eager to get in on one of these deals, calls up the broker, and offers 10% above any settled contracts. Is the broker allowed to facilitate this behavior? (237:1)
9. Isabella is looking to borrow money to fund a big excursion, and the Abarbanel is meeting with her to work out the details. Can another Jew offer her a better deal? (237:1)
10. What is the *Perishah's chiddush*? Is it accepted? Prove it from *Iggerot Moshe*. (237:1)
11. If you're an accountant and know a company has only one accountant on staff, can you hand the COO your business card? If you're connected with him on LinkedIn, are you allowed to post that you're looking for work if he will definitely see it? What if you're a *mechanech* or a doctor? (237:2)
12. Are nice Jewish boys allowed to be headhunters? Can one *Kollel* wife steal another's housekeeper? (237:2)

Siman 238 – Writing Shetarot for One Party

1. Can we write a *shetar* for a:
 - a. Seller without the presence of the buyer?
 - b. Buyer without the presence of the seller?
 - c. Lender without borrower?
 - d. Borrower without lender?
2. And who exactly are "we" that we are or are not doing this?

Siman 239 – Lost and Postdated Shetarot

1. If someone comes and says he lost his *shetar*, what can we do for him? Does it matter what kind of *shetar* it is? (239:1)
2. Can one postdate a *shetar*? Does it matter what kind? (239:2)

Siman 240 – Multiple Shetarot for the Same Property

1. Reuven pulls out a shetar saying he purchased a property from Shimon on the 1st of Nissan, to which he was met by his new neighbors who complained that they were not given fair opportunity. He says never mind and pulls out a new shetar saying it was given to him as a gift. Do they still have a claim? (240:1)
2. Should one who is in possession of two contracts of the above natures submit them both to Beit Din together? (240:1)
3. If Reuven's contract says he got 30 acres of the Negev on the 1st of Nissan and then Reuven pulls out another one that says he gets the same 30 acres on the 1st of Elul, which date does he go by? What if the second one explicitly adds in an extra palm tree? Who has the rights to the profits and responsibility of property tax during that period? (240:2)
4. What if the second *shetar* reduced the property size by one palm tree? (240:2)
5. How is the rule of multiple contracts of sale different from multiple ketubot? (SMA 240:7)
6. A *shekhiv mera* tells his children to give his brother \$10,000 at lunch time and then repeats himself at dinner time. How much should they give the brother? (240:2)
7. If two *shetarot* have the same date and property but describe transfer the property to different people, who gets the land? What if it was moveable property? Do Edim help here? (240:3)
8. What, if anything, is the difference between *shitrei ra'ayah* and *shitrei kinyan* in this matter? (240:4)
9. Explain all the Shitot (including the startling one) in defining *Shuda DeDayanei*. (240:3)