

THE Devar Hamishpat

BULLETIN



Clarifications in the Laws of Choshen Mishpat and Ribbis | #30 Teves 5785

Halacha Insights

The Kosher Way to Pay for Furniture

Question: A Jew wants to buy furniture from a Jewish shop. The seller says that the goods are ready in China, and they only need to be transported to London by ship. The shop-owner agreed to sell the furniture for a cheap price on condition that the buyer pays in advance, and the shop-owner will deliver the goods after two months. Is this permitted?

Answer: The ruling depends on the shop-owner's method of purchase. After clarifying the situation with the stores, it appears that there are two basic ways for furniture shop-owners to sell their products:

1) **There are shop-owners who also own the company that manufactures the goods.**

In such a case, we have a halachic rule of "yesh lo – it is his." If the seller is presently in possession of the commodity which the buyer wants to receive at a later date, the sale is permitted, because it is considered as if the buyer takes immediate ownership of the item, and if so there is no issue of *ribbis* even if the seller reduces the price on receiving an advance payment (Shulchan Aruch 173:1).

This is permitted on two conditions: **a)** The shop-owner does not clarify to the buyer that there are two prices, meaning he is prohibited from telling the buyer that if he advances the payment, the price is one amount, and if he only pays upon receipt of the goods, the price is another amount (as explained in Rema *seif* 7). Instead, the seller must tell the buyer that if he pays in advance, the price is such and such, without saying that he is giving a discount. **b)** That the goods are ready and do not lack any work (as explained in Sha"ch 175:7, if one gives a discount, the product may not be lacking any work).

2) **If the shop-owner doesn't own the company that produces the furniture,** there are also two options:

a) That the shop-owner pays the full amount to the

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Editorial

We thank Hashem for the many favours He has bestowed upon us, and Who enabled us to reach this day, to see the printed *divrei Torah* of the *halachos* that were studied and clarified in our kollel *Mishpat Avraham* and *heichal hora'ah Devar Hamishpat*.

The *halachos* presented here relate to the *halachos* of *Choshen Mishpat* and *ribbis* that were learnt within the framework of our *kollel*, and the *chidushim* are the fruit of the *kollel* men's labour and toil, reached by studying and discussing these laws together, and by examining all the sources in order to arrive at the correct *halachah*.

This pamphlet discusses *shaalos* in the *halachos* of *ribbis*.

Today, when the global financial market is so unstable, and especially in our country where everyone is concerned about securing their money, we must make sure that our money is kosher money without any *chasbosh* of embezzling. The Be'er Hagolah writes regarding the *isur* of stealing from gentiles, he saw very rich people who lost all their wealth, because in business they weren't careful about the *halachos* involved. Especially regarding the *isur* of *ribbis*, the Gemara (*Bava Metz'ia* 71a) states that a person loses all his wealth if he transgresses the *isur* of *ribbis*, and the *poskim* note that this also applies to *ribbis derabanan*.

People must therefore be careful to make sure that their *heter iska* is done correctly.

And since we have a rule that *מדה טובה מרובה*, it is much more so in the positive direction, if a person conducts his business according to the *halachos* of *Choshen Mishpat* and *ribbis*, his wealth will remain.

The Tur writes in his introduction to *Choshen Mishpat*, "Hashem warned us several times about these issues, in *Marah* it say *ומשפט שם לו חק ומשפט*, There He gave them a statute and a *mishpat*. And at Har Sinai, immediately after the *Aseres Hadibros*, Hashem taught us the financial laws, *ואלה המשפטים*."

He cites the Midrash, "This is compared to an empress who walks in the street with servants in front of her and behind her." And he continues, "The *pasuk* says *דבר למשפט כי יפלא ממך דבר למשפט*, If a matter eludes you in *mishpat*, if a person disputes the majority they should go to the judge who will teach them the *mishpat*, so that the Torah won't appear to be two laws, one ruling one way, the other ruling differently. No, it is one Torah and one *mishpat*."

We must note that although all the halachic rulings and *chidushim* presented here have been approved by eminent Rabbanim, the *halachos* of *Choshen Mishpat* can differ when even just a small detail changes, and therefore every *shaalah* must be brought to a Rabbi.

The Editors
Tevet 5775

Heichal Hora'ah Devar Hamisphat

For shaalos and halachic clarifications Monetary Dinim and Hilchos Ribbis of Kollel Dayanus Mishpat Avraham, London

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manufacturer and the manufacturer sends him the goods, b) the shop-owner only pays a down-payment, and the remaining payment is paid when the goods arrive.

a) **In the case where all the money is paid to the manufacturer before receiving the goods**, the goods are considered a *pikadon*, a collateral, which is deemed as if *yesh lo*. If so, one may permit selling at a lower price (as explained in Sha"ch 173:18, if the seller has a *pikadon*, it is permissible to give a discount.)

However, it should be noted that in the matter of *sa'ah besa'ah* (borrowing an amount of grain and returning an amount of grain, which is *ribis* because the value of grain might rise), if the borrower has a deposit it is only permitted if the lender can reach it. Otherwise, the deposit is not considered *yesh lo* and it would be prohibited to give a discount.

Does the same apply regarding *piskab* (fixing a lower price due to the advance payment, even if the market price increases) and *bozalab* (discount for advance payment), that the buyer must be able to reach the commodity in order to be considered *yesh lo*?

This issue is a *machlokes* between the *poskim*.

The Shulchan Aruch Harav implies (section 23 and the end of section 30) that only regarding a loan, as in the case of *sa'ah besa'ah*, is it necessary for the borrower to be able to reach it, but regarding a sale this condition doesn't apply.

However, Rav Mordechai Dov Twersky in his *Turei Zahav* disagrees, and he derives from the Sha"ch that even regarding a sale, the buyer must be able to reach the merchandise, otherwise it isn't considered *yesh lo*.

[Incidentally, Rav Akiva Eiger cites the Toras Chaim (162) that regarding *piskab* there is no need to be able to reach the merchandise, but it is not clear from Rav Akiva Eiger's words if he intends to bring this view *lehalachah*.]

However, nowadays, with the developed methods of transportation and communication, everything could be considered as if he can reach it, and if so it would be permitted according to all views.

b) However, in most cases, **the shop-owner only pays a down payment**, and if so, the shop owner doesn't own the goods, and the goods are considered his only upon completion of payment (which is when the certificates and documents are presented as proof of ownership). In this case, we do not have the leniency of *yesh lo*, as stated explicitly in the Shulchan Aruch (173:7), "If a person buys something worth 12 coins for 10 coins because of his advanced payment, if it is in the possession of the seller but is not with him until his son comes or until he finds the key, it is permissible. **But if it is not in his possession, it is prohibited.**"

The source of the law is in the Gemara (*Bava Metz'ia* 63b), where the Gemara says that if the seller has "*ashrai bemasa* – credit in the town," meaning that he has a debt with someone, it is not considered *yesh lo* and he is not permitted to pay in advance for a discount, since every

debt is "*mechasra guvayna* – has yet to be collected," and as long as the debt isn't collected, it isn't regarded his.

If so, all the more so in our case, where the shop-owner has yet to pay the outstanding bill for the goods, and it is not his until he pays the full amount, it is certainly considered an uncollected debt and *mechasra guvayna*, and is not considered *yesh lo*. If so, paying in advance in such a case would be *ribis*.

One may want to argue that our case is not similar to a loan, since here the shop-owner has already paid the down payment and the goods are considered his, since the manufacturer cannot retract after receiving a down payment. If so, the furniture is regarded a collateral by the manufacturer, and the Shulchan Aruch Harav ruled regarding a collateral, even if it is deposited with other people and in another city, it is permitted. If so, there might be room to permit the case in question where a down payment was made.

But this does not seem to be correct *lehalachah*, because our case is more similar to a debt (which is prohibited) than to a collateral (which is permitted). Since the shop-owner has not yet paid the full amount and according to the law, the furniture is not yet considered his, it should therefore be prohibited to give a discount, as explained in the language of the Shulchan Aruch Harav (30) that *ashrai bemasa* isn't considered *yesh lo* "because it isn't his." We see from his words that the *better* of *yesh lo* is because it is considered as if the price rose in his ownership. This is only applicable if it is *yesh lo*.

However, we might be able to be lenient in the case of custom-made furniture, since its value is not known and it does not have a fixed price, in which case it is permissible to give a discount as explained in Shulchan Aruch (173:7). The Be'er Hagolah explains this concept of "*ein shumaso yadua* – not having a fixed price," that it doesn't have a fix price when the buyer pays the money nor when he receives the product (and so writes the Chochmas Adam).¹

This is indeed the case of custom-made furniture, where each seller fixes a price according to his taste, and if so, it would be permissible to give a discount. However, as mentioned above, this is only permissible without mentioning two prices. וכן אסור להויל הרבה שאז ניכר הריבית.

The Bris Yehudah comes with a *chidush*, that if the shop is only an agent of the manufacturer, one can rely on the "*yesh lo*" of the manufacturer and the shop owner doesn't need to have "*yesh lo*." This is only applicable if the buyer has no claim to the agent, otherwise what helps the "*yesh lo*" of the manufacturer? He isn't buying from them, he is buying from the agent! But this *chidush* still needs clarification.

Also, according to the Bris Yehudah, since in our case the manufacturer in China is not Jewish, there would not be any *issur* of *ribis* if the buyer can only claim from the manufacturer and not from the agent.

1) But the Shach disagrees, and is of the opinion that *ein shumaso yadua* only helps if the price is fixed. However, in our case it could be that it is considered a fixed price, only that *ein shumaso yadua*.

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