

## Can One Ever Back Out of a Deal?

Rabbi Yehoshua Wolfe

**Question:** We know that a *kinyan* is required to effectuate a halachic transaction. If so, is one allowed to back out of an agreement before a *kinyan* is performed?

**Answer:** Normally, a claim that one party retracted from the agreement would not be subject to action on the part of *bais din* if the *kinyan* had not yet been performed, and that party cannot be forced to comply with their side of the deal.

But the *bais din* or their rav might inform them that they would be classified as *mechusar amana* (lacking in trust). This concept is based on the Gemara in *Bava Metzia* that states that a person must be trustworthy and keep their word. Moreover, it is in fact forbidden as well to break one's commitment in most cases even if no *kinyan* was yet performed.

**Question:** Does this principle of *mechusar amana* apply only to financial agreements or also to other issues?

**Answer:** *Mechusar amana* may apply to other situations that are not strictly financial. For example, Rav Moshe Feinstein writes that if one was a member of a union, and had already committed to follow the union agreement or collective bargaining agreement as to when the group would strike, *mechusar amana* would apply and one would be required to comply with the agreement (even though no *kinyan* was made in such a case, a subject which is beyond the scope of this discussion).

**Question:** Are there any circumstances where someone would be entirely allowed to back out?

**Answer:** In cases where there has not yet been a clear commitment to the transaction on both sides, it is certainly permitted to retract, as nothing has been concretized yet. In fact, many individuals who consult with the *bais din* about this question have not yet committed themselves, and they would indeed be permitted to back out. The *issur* of *mechusar amana* applies only where both parties have already committed to the transaction, but no *kinyan* or formal contract occurred.

Even in the aforementioned case there is one notable exception according to the Remah called *trei taarei* (change in market prices). According to the Rema, retracting in a case of a change in the conditions of the marketplace, such as where prices increased dramatically after the agreement was made, does not constitute a breach of trust.

One other exception of note where one is permitted to retract is known as *matana meruba*. If one commits to giving a sum of money or similar transaction about which it is clear that he will be unable or unwilling to follow through, there would be no problem of *mechusar amana* in that case. The reason is that *mechusar amana* is a breach of trust, but in this case, the other party never believed the first party in the first place that he would follow through on his end of the deal, since the commitment was exaggerated.

**Question:** Does the *heter* of *trei taarei* include only a change in real estate or market conditions, or would personal conditions that changed on the part of one of the parties be included too (e.g., if the person lost or was not paid a significant amount of money upon which he was relying)?

**Answer:** Many contemporary *poskim* agree that one can retract even in a case of a change in one's personal conditions as well.