

# VOLUME I: NUMBER 12: UNCASHED CHECKS

*by Rabbi Aron Tendler*

## Question:

A person purchased an item from his friend, and paid him with a check. Four months later he was going through his checkbook and realized that the seller had never cashed the check, despite the fact that there were enough funds in the checking account to do so.

- A. Does the buyer have to inform the seller that the check never cleared?
2. If the seller would have contacted the buyer and requested a new check because the previous check had been lost or destroyed, would the buyer be obligated to provide the seller with a new check?

What is the Halacha?

---

## Answer:

- A. If a person paid for an item with a check, and after a considerable amount of time he realizes that the check has not cleared - the buyer has no obligation to inquire from the seller why the check has not been cashed. This is true even though he is using the item in the interim and it has not been paid for.
2. If the seller would approach the buyer and ask him to exchange the old check for a new one (either because the old check was more than six months old and the bank would no longer accept it, or because it had gone through the wash and was no longer usable), the buyer would be obligated to do so. However, he may deduct any expense incurred in having to write a new check. This obligation applies even if the seller had negligently caused that the check not be usable.  
However, if the seller approaches the buyer and requests a new check because he had *lost* the previous check, the buyer has no obligation to provide the seller with a new check. See below.

## Sources:

There is an important difference between a cash payment and a check payment. When a customer purchases something with cash, there is an immediate transfer of funds from his domain to the seller. However, a check is merely an instruction to the bank to issue funds to whomever the check is made out to. (Pay to the order of...) Until this is done, it can not be considered as if a payment has been made.

Therefore, if something was purchased with a check, and for some reason the check was not cashed, the buyer is using something that he has not paid for. Although this may be entirely the fault of the seller, e.g. he left it in a pocket and it went through the wash, or he waited too long and the bank is no longer willing to accept it, this does not change the fact that the buyer is using merchandise that has still not been paid for. The seller clearly had no intention to relinquish his ownership of the item if he was not going to receive payment for it. Therefore, if the seller would request that the buyer accept the invalid check back in exchange for a valid one or cash, the seller must do so.

However, if the seller claims that the check was lost or destroyed and he is unable to exchange the original check with the buyer, the buyer has no obligation to issue another check. There are two primary reasons for this;

1. He has no obligation to believe that what the seller is saying is true, unless the seller is able to prove that the check was lost.
2. Even if he would believe the seller, the buyer is putting himself at risk by issuing another check. If someone unscrupulous would find the original check, he could end up paying twice. Even though he could put a stop on the check, the buyer could argue that perhaps someone could alter it, or bypass the stop in some way, and he simply does not want to expose himself to such a risk. Although the seller clearly wants to be paid, the fact that he accepts checks and doesn't demand cash payments indicates that he is willing to accept the possibility that something may happen and the buyer may not want to put himself at risk. (As opposed to exchanging the check where there is no risk at all to the buyer).

This Halacha is stated in the Pischei Teshuva (Choshen Mishpat 54:1) and in the Nesivos Mishpat in his Biurim at the end of Siman 50. The Nesivos adds that in our case, even if the seller would obligate himself to reimburse the buyer for any loss that he may incur by issuing a new check, the buyer has no obligation to issue a new one.

It would be proper, however, for the buyer to go Lifnim MiShuras HaDin (beyond the letter of the Halacha) and issue a new check if he is given guarantees that he will incur no loss by doing so.

There is an additional point that should be taken into consideration. Although we can not say that the merchandise has been paid for until the seller cashes the check, it is possible that the seller may have endorsed the check and given it to a third party who lost it. If the seller received merchandise or payment from the third party, this would be considered as if the seller had received payment from the buyer, and the third party would have to take the loss. In this case, the buyer has every right to use the items purchased, and has no further obligation to either the buyer or the seller. This is why the buyer has no obligation to approach the seller if he sees that the check has not been cashed. Since it is possible that the check had been lost by a third party, the buyer has every right to assume that he has paid in full for his purchase.

---

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in Baltimore. Rabbi Tendler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to [atendler@torah.org](mailto:atendler@torah.org).

We hope you find this class informative and stimulating! If you do not see a subscription form to the left of the screen, access the [Advanced Learning Network](#) to subscribe to Business-Halacha.

For information on subscriptions, archives, and other Project Genesis classes, send mail to [learn@torah.org](mailto:learn@torah.org) for an automated reply. For subscription assistance, send mail to [gabbai@torah.org](mailto:gabbai@torah.org).

**Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!**