

Restitution of a Payment Made under False Assumption – Following the Supreme Court Ruling in the matter of Baizman Investments Inc. v. Haliva
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The recent judgment of the Supreme Court in the matter of *Baizman Investments Inc. v. Haliva* concerns one of the most complicated problems in the law of mistake: Is a creditor, who received a contractual payment from a third party in discharge of a debt, under a duty of restitution in the event that the contract under which he received the payment was based on a false assumption and cancelled thereafter? The article revisits the ruling in *Baizman*, according to which the creditor has a *prima facie* duty of restitution in these circumstances. The ruling was based upon the interpretation of the relationship between the payor and the creditor as contractual. Rejecting the reasoning behind this ruling, the article suggests that Israeli law should adopt the doctrine of “discharge for value”, as well as its embedded normative judgment regarding the proper risk allocation between payor and creditor. The doctrine is evaluated in light of the principle of maximizing social welfare. Furthermore, the article suggests that the doctrine should include, as an additional requirement, a rule that ascribes importance to the differential financial capabilities of the parties, especially in cases involving a financial institution on the one hand and a private party on the other.