

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

**PLAYING DREIDEL** On Shabbos afternoon, Yossi's friends got together at his house. They shared with each other experiences from Chanukah and compared the lighting practices in their respective homes.

"Enough talking," Yossi finally said. "Let's play something!"

"What do you suggest?" asked Eli.

Each of the friends suggested a different game. Chaim eyed the large *dreidel* collection sitting on a nearby table. "That's a fascinating collection of *dreidels*," he said out loud.

"Yes," replied Yossi. "There are some regular *dreidels*, but many special ones, each with a unique appearance as it spins."

"Anyone want to play *dreidel*?" asked Chaim. "Last chance before they get put away till next year! With a collection like this we can use a different *dreidel* each time."

"What do you suggest we play with?" asked Shalom. "We obviously can't use money on Shabbos."

"I have a large marble collection," suggested Yossi. "We could use marbles or pieces from a game."

"We never use money in our house, anyway," piped up Eli. "We always play with nuts or candies."

"We use money during the week," said Chaim. "Usually old pennies..."

"In our house we used quarters!" exclaimed Shalom. "I walked away from one game with \$20!"

"In our house my father doesn't let us play for real," commented Uri. "We put everything back in the end!"

"Our parents let us keep what we won," said Shalom.

"You're really willing to risk your money?" asked Uri. "It seems to me like gambling!"

"It's all their money, anyway," replied Shalom.

"They let us keep what we win as Chanukah *gelt*."

"It seems that every family has different approach to playing *dreidel*," Chaim noted. "Is there really an issue about playing for keeps?"

"I heard that Rabbi Dayan is giving a *shiur* in our shul after *Minchah*," said Yossi. "We can ask him." After the *shiur*, Yossi asked:

**"Can we play *dreidel* with money for keeps?"**

"The practice of playing *dreidel* on Chanukah goes back a few centuries," replied Rabbi Dayan. "It has an element of *pirsum haness*, publicizing the miracle" (*Piskei Teshuvos* 670:4).

"Nonetheless, when playing 'for keeps,' there is a potential element of gambling; the winner is



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לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## WITNESSES TO THE WILL

**Q:** Someone approached me with a *tzavaah* (last will and testament) and asked me if I could sign as a witness. He said, however, that he wants to keep his will private, so I should merely affix my signature to the bottom without reading the contents. Am I allowed to sign it?

**A.** The *halachah* is that witnesses are not permitted to sign a *shtar* (contract) until they have read each word, because otherwise they might be guilty of bearing false testimony. They are not allowed to trust that the person who asked them to sign – whom we'll call Reuven – is asking them to sign on a legitimate document. Reuven might have written that Shimon owes him money, and he can then use the contract to extract money – even in *beis din* – from Shimon even if he insists that he never owed that money. There is a dispute among the *poskim* whether having others read the *shtar* to the witnesses is sufficient, or whether they must read it themselves (*Shulchan Aruch, C.M.* 45:2; see *C.M.* 42:3).

A *shtar* is such a potent document that even if the witnesses who signed it later claim that they never meant to bear witness that Shimon owed money, and they signed under the false pretenses presented by Reuven, we would not trust their retraction, because signing on a document they never read is forbidden, and we do not trust a person who is declaring that he acted in a prohibited manner (*ein adam meisim atzmo rasha*). This rule carries so much weight that even if we would need the witnesses to verify their signatures, they still may not retract the testimony in the contract. Although there is a principle of *peh she'asar hu hapeh shehitir* (the mouth that forbade something is the same mouth that makes it permissible) – which, in this case, means that since they could have denied that these signatures are theirs, we should trust them when they say the signatures are valid but the testimony isn't – we cannot apply it to this case because they

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determined by chance through the *dreidel*.

"The *Mishna* (Sanhedrin 24b) teaches that a dice gambler is disqualified from giving testimony. Rami b. Chama explains that gambling is considered a form of theft when collecting the winnings, since the loser's commitment to pay is *asmachta*, one given only in doubt.

"However, Rav Sheshes maintains that a dice gambler is disqualified only when he lives off of gambling and does not have another profession. The *halachah* follows him, but Rambam and Shulchan Aruch rule, nonetheless, that gambling is considered *avak gezel*, theft on the rabbinic level. Accordingly, Sephardic authorities are more stringent about gambling and lotteries" (C.M. 37:16, 370:1-2; *Yabia Omer*, C.M. 7:6).

"However, Rama rules that where the chance is totally out of the gambler's hands, like dice gambling, the commitment is sincere and not *asmachta*, provided that the money is placed up front on the table. Some require further that the table belong to both" (C.M. 207:13).

"Some allow playing *dreidel* for keeps even according to the Mechaber, since the sums are small, which people are not particular about. Furthermore, when the money is all provided by the parents, the 'winner' is not taking anything from the 'loser'.

"Playing *dreidel* is allowed also on Shabbos," concluded Rabbi Dayan. "There is no concern that it may lead to leveling the ground, like when playing marbles outside, since *dreidel* is usually played in the house floor or on a table. However, one should not play for keeps to gain or lose on Shabbos, since this is similar to business" (O.C. 338:5; *Shemiras Shabbos K'hilchasah* 16:33).

**Verdict: Playing *dreidel* for keeps may be considered *asmachta* by the Shulchan Aruch, unless all the money is provided by the parents, but allowed by the Rama, if the money is placed up front. On Shabbos, though, one should not play for keeps.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## CHANUKAH FIDUCIARY GUARDIAN Chanukah Returns

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י' בת ר' שמואל חיים ע"ה

**Q: For Chanukah, I bought a liberal supply of prepackaged oil cups and Chanukah candles. Can I return the remaining, unopened packages after Chanukah, even though the store no longer has a consumer market for them?**

A: The concept of returning a purchase for refund or exchange is not a true halachic concept. In *Halachah*, a sale is final, and can be undone only by selling or giving the item back to the seller (C.M. 189:1).

The notion of returning a purchase item for a refund is rooted in the stipulation between the store and customer via the store's return policy and the common commercial practice. Therefore, whatever return policy applies the remainder of the year applies here also, unless specifically excluded.

Nonetheless, in a store that operates with limited volume and sold out its supply, one should be more sensitive about this, not to cause unnecessary loss to the store owner, who could have sold this item also. However, in a store that stocks excess, and does not sell everything anyway, there is no concern (see C.M. 304:5).



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would still be implicating themselves as *resha'im* (see *ibid.* 46:37).

Therefore, when witnesses are asked to sign a *shtar*, they must insist on reading it, and they should not feel discomfited or embarrassed to do so even if it will seem as though they are suspecting wrongdoing on the part of the person who asked them to sign.

But this *halachah* applies only to a document that falls under the category of a *shtar*. Most contracts nowadays do not fall under that category; they are categorized as *ksav yad*. A *shtar* is a document in which witnesses bear testimony that one party obligated himself to another party.

A common example of a document that is still signed as a *shtar* is a *kesubah*. In many communities, the *chassan* himself doesn't sign the *kesubah*; rather, the two witnesses sign that he was *mekabel kinyan* (obligated himself through an act of acquisition) to fulfill the obligations spelled out in the *kesubah*. (The *poskim* deliberate whether the witnesses may sign the *kesubah* if it is read aloud at the *chuppah* but they never read it; see *Even Ha'ezzer* 66:1 and *Choshen Mishpat* loc. cit. and *Kesubah Kehilchasah* p. 89.)

In a *ksav yad*, on the other hand, the person writing the document acknowledges that he owes something to his friend, and his signature serves to confirm his declaration so that he cannot deny his involvement, because his handwritten signature proves that what he wrote is valid.

Nowadays, most wills fall into this category, and when the person writing the will signs it, there isn't much of a need for witnesses to affix their signatures, although their signatures do bolster the validity of the document.

The *Acharonim* debate whether, when witnesses sign below the signature of the person who wrote such a document, they are bearing witness on the actual content of the document, in which case it is a *shtar* and they must read it before signing, or they are merely signing that the person signed it in their presence, in which case it is a *ksav yad* and they need not read the contents.

Clearly, however, if the words preceding their signatures state that they are signing that the person is signing the will of his own accord and with clarity of mind, they need not read the will, because they aren't bearing witness on its contents, only on the state of mind of the signee. The only part they must read – and this is the custom nowadays – is the part that explains what they are signing to (see *Erech Shai*, C.M. 69:3; *Divrei Geonim*, 102:4; and *Shu"t Teshuras Shai* 1:610; and see *Aruch Hashulchan*, C.M. 147:1).

We must emphasize, however, that you must ascertain that whatever you do sign is truthful (i.e., if they are testifying that he signed in front of them, he actually has to do so) and that the date recorded with your signature is correct. If the will itself bears an earlier date, *beis din* will enforce it only from the date of your signature. This would make a difference in a case in which a person left multiple wills that contradict one another; the will with the latest date would supersede all previous documents (see C.M. 65:14 and 104:13).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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