THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #625 | Ki Seitzei | Friday, Sep 9, 2022 | 13 Elul 5782

CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

REVOKED RING

Rabbi Dayan was reviewing email responses he had received. One was about the article "Ring on Credit," which discussed whether a wedding ring bought with a credit card was valid for *Kiddushin*. It concluded that according to many authorities, the *Kiddushin* are valid even mid'Oraysa for various reasons.

The article mentioned that according to some authorities, even if the ring was acquired through a Rabbinic *kinyan*, the *Kiddushin* is valid mid'Oraysa, based on the monetary authority of the Sages to revoke or establish ownership – *hefker beis din hefker*.

As the article did not distinguish between a Jewish-owned store and one owned by a gentile, a reader posed the question: "How can *hefker beis din* apply when the ring is bought from a gentile?"

"That is an interesting point!" Rabbi Dayan said to himself. "The *Gemara* (*Gittin* 36b) derives the monetary authority of *beis din* or communal leaders from verses in *Ezra* and *Yehoshua*. The *poskim* understand this to be a Biblical authorization (see Rashba 1:775; 7:256), seemingly based on *beis din's* authority to adjudicate or impose enactments. However, a gentile presumably is not subservient to their authority!"

In truth, the article did not explicitly state that *hefker beis din* applies also to a ring purchased in a store owned by a gentile. Most *Rishonim* maintain that *meshichah* (taking physically) is a valid form of *kinyan* when purchasing from a gentile, on both the Biblical and Rabbinic level. Thus, when the *chassan* takes the ring home from the store, he acquires it fully, without need for *hefker beis din* (see *Pischei Choshen*, *Kinyanim* 12:6-7[10]).

Nonetheless, the fascinating question remains to be clarified:

Does the authority of *hefker beis din hefker* apply to assets of a gentile? Are there cases in which this rule is used?

"The Sages instituted (*Kiddushin* 17b) that a Jewish convert inherits his share in the estate of his gentile father, even though he is no longer halachically considered his son, and the remaining gentile brothers are the Biblical inheritors," replied Rabbi Dayan. "Some base this institution on *hefker beis din*. Thus we seemingly see the concept applied to assets of a gentile" (C.M. 283:1).

"Divrei Yirmiyahu (*Hil. Avodah Zarah* 7:5) questions this, and writes, indeed, that gentiles are not subject to the monetary authority or enactments of the Sages. He explains, instead, that the gentile brothers withdraw from the convert's share on their own initiative, since according to civil law he continues to inherit from his gentile father.

BHI HOTLINE

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

DO I NEED WITNESSES? PART II

Q. I have seen some contracts or similar documents — e.g., loan documents, wills, partnership agreements — that are signed only by the two parties, and others that are signed by proper *eidim* (witnesses) as well.

Considering that *hodaas baal din k'meah eidim dami* (a party's acknowledgment of an obligation is equivalent to testimony of a hundred witnesses), is there any benefit to having *eidim* sign on a contract?

A: In our previous essay, we determined that if a contract is signed by witnesses, then as long as the lender is in possession of the contract, the borrower would not be trusted if he claims that he repaid the loan, whereas if only the borrower signed a contract, he may claim that he repaid the loan and forgot to recover the contract from the lender.

There is another reason why witnesses sign the document after the borrower's signature: To testify that this is the signee's signature, so the signee will not be believed if he claims that the signature was forged. Aside from adding more options to verify the authenticity of the document, there are also halachic leniencies in the way the verification can be accomplished.

We rule that when a contract is signed by witnesses, it is akin to *beis din* having interrogated them and having found their testimony truthful, and therefore, *mid'Oraisa*, we do not suspect that their signatures are false. *Chazal* established, however, that if the borrower claims that the signatures are false, their signatures must be certified (see *Shach, C.M.* 28:14). Since the verification of witnesses' signatures are not necessary *mid'Oraisa* there are several leniencies we employ while verifying their signatures. For instance, we can verify their signatures by comparing them to other contracts or documents they have signed.

But if the contract contains only the borrower's signature, it is not considered as though it was

CASE FILE

"Similarly, *Sho'el Umeishiv* (1:1:124) writes that although the Sages granted the right to erect a *sukkah* in public property, in places where gentiles live and have a share it is not allowed, since the Sages cannot grant away their rights.

"However, *Sedeh Chemed* (*maareches hei* #59, s.v. *v'hayah*) writes that since *Beis Din's* authority through *hefker beis din* is Biblical and they can revoke Jewish ownership – certainly they can revoke also gentile ownership!

"We further find (*Gittin* 14a) that *Chazal* instituted "*maamad sheloshtan*," to enable verbal transfer of a loan from the lender to a third party, when the lender, borrower and third-party stand together. Rashi (ibid.) bases this institution on *hefker beis din hefker*.

"Tosafos (*Gittin* 12b, *s.v. b'maamad*) writes – in the case of a gentile lender and a Jewish borrower and third party – that if *Chazal* instituted to transfer the loan from a Jewish lender to a third party, certainly from a gentile lender. This also implies that *hekfer beis din hefker* applies to assets of a gentile.

"Dvar Avraham (1:1) maintains that *hefker beis din* is based on *beis din's* communal authority (srara umemshalah), not their judicial authority. Thus, he adopts a middle position: When Jews have political authority, *hefker beis din* applies also to gentiles, but not when they are bereft of political authority."

(See *Talmudic Encyclopedia*, vol. X, p. 110; *Kovetz Yesodos v'Chakiros*, "*Hefker Beis Din Hefker*.")

Verdict: Some sources indicate that *hefker beis din hefker* applies also to a gentile's assets; some maintain otherwise.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
***Dayanim* (Judges) #13**
Erudite, Single Dayan

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

Q: In what circumstances can a Dayan judge singly?

A: Although only a panel of three *Dayanim* is considered a *beis din*, an erudite *Dayan* (*mumcheh l'rabbim*), who is well versed in the *Gemara* and *poskim*, has balanced judgment, and is highly experienced, can force a litigant to adjudicate before him. However, Rama writes that nowadays we do not qualify a *mumcheh l'rabbim* to judge singly without the litigants' consent (*C.M.* 3:2; *Sma* 3:5).

In the times of the *Gemara*, permission from the *Nasi* in Eretz Yisrael or *Reish Galusa* in Babylon, would allow a learned *Dayan* to judge alone. This does not apply nowadays, but the community or its leaders can appoint a Rov granting him this authority (*Rama* 3:4; *Shach* 3:12-13; *Radbaz* #944; *Igros Moshe C.M.* 2:3).

Even one authorized to judge singly should preferably add others. Similarly, some say that a *Dayan* accepted by the litigants should preferably avoid judging alone. However, others say that if they willingly came before him, even without explicit acceptance, he can judge singly *l'chatchilah* (*Shach* 3:10; *Gra* 3:20).

BHI HOTLINE

investigated by *beis din*, and the verification of his signature would be necessary *mid'Oraisa*. Since that is the case, some *poskim* rule that comparing the handwriting is not enough to verify that it is genuine (see *Shach* 69:12 and Ketzos 46:8) Rather, we would need witnesses who can testify that they recognize that this is the borrower's signature.

By having witnesses signing the contract after the borrower's signature, we prevent the borrower from contesting the validity of his signature, and avoid the need for verification later on (see *Shu"t Rivash* 382 and *Beis Meir, Even Ha'ezer* 142).

Another benefit of a contract being signed by witnesses is in a case in which there are multiple creditors, and the borrower does not have enough money to repay all of the loans. If the contract was signed by witnesses, the date serves as proof of when the loan took place, and it will therefore have priority over loans taken afterward or loans without valid proof that they were given prior to that date. A contract signed only by the borrower is not valid proof of when the loan took place, and it will not take priority (*Shulchan Aruch* 104:13 with *Shach* 20, and 43:8).

There are, therefore, several benefits to having witnesses sign a contract even though the borrower (or seller, giver of a gift, etc.) signs that he is acknowledging the veracity of the transaction: One, the borrower cannot claim that he repaid the loan. Two, It verifies the date of the transaction. Three, it serves to verify that the signature of the borrower is genuine.

When a contract containing the signature of the borrower followed by the signatures of two witnesses is brought to *beis din*, we must determine what the witnesses intended to convey with their signatures. Was their intention to bestow upon it all the benefits of a *shtar* signed by witnesses, or did they only intend to verify the borrower's signature?

Some *poskim* state that those signatures verify that *all* of the information on the contract is true, which means that the borrower cannot validly claim that it was repaid (*Erech Shai* 69:3 and *Shu"t Teshuras Shai* 610). Other *poskim* maintain that those witnesses are testifying *only* that the borrower's signature is genuine, not regarding the content of the contract itself. The borrower can therefore claim that he repaid the loan (*Divrei Geonim* 102:4).

In order to avoid this pitfall, the witnesses should specify whether their signatures are meant to verify the signature of the borrower, or if they are testifying in regard to the contents of the contract as well (*Shu"t Karnei Re'em* 109).

Given all that we have discussed, when someone is asked to sign as a witness on a contract, he must determine if he is meant to testify on the entire content of the contract, in which case he must take care to read the entire document before he signs it, because otherwise he may be guilty of testifying falsely if he signs about something he didn't actually witness. But if he is merely verifying that the signature of the borrower is genuine, he is not required to read the contract before signing it.

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