THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #633 | Chayei Sara | Friday, Nov 18, 2022 | 24 Cheshvon 5783

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

MISTAKEN CALCULATION

Mr. Plaut and Mr. Davidoff were litigating before Rabbi Dayan's *beis din*.

Mr. Plaut was a salesman for Mr. Davidoff. The contract called for an additional commission at the end of the year, and they disputed the amount of the additional commission.

"What is the sum in dispute?" asked Rabbi Dayan.

"$3,000 a month," replied Mr. Plaut. "I began working on March 1. From 3/21 to 12/21 is nine months. Nine months times $3,000 is $27,000. I claim $27,000."

After hearing the claims of each party and examining the contract, the *dayanim* accepted Mr. Plaut's position, that he deserved an additional $3,000 a month.

"On a mathematical note, though," Rabbi Dayan said to his colleagues, "Mr. Plaut claimed nine months, and $27,000. However, from March to December, inclusive, is 10 months, so that Mr. Davidoff really needs to pay $30,000."

"We also noticed that," acknowledged his colleagues. "It's strange that Mr. Plaut repeated over and over his claim of $27,000 for nine months from March through December."

"The dates are agreed and well documented," said Rabbi Dayan. "It's clear to me that Mr. Plaut made a common mathematical error, subtracting 3 from 12."

The litigants were called back into the room.

"We accept Mr. Plaut's claim fully," Rabbi Dayan ruled. "Mr. Davidoff must pay him $30,000."

"How could that be?!" exploded Mr. Davidoff. "Mr. Plaut claimed only $27,000!"

"Mr. Plaut worked from March through December, inclusive, which is 10 months, not nine," replied Rabbi Dayan. "He repeated his error numerous times, but it remains a mistaken calculation."

"So what?" argued Mr. Davidoff. "Mr. Plaut claimed $27,000.

How can you obligate me to more than he claimed?"

"The *Gemara* (*B.B.* 5a) relates that Ravina erected fences around his fields, which completely encircled Runya's field," replied Rabbi Dayan. "Nonetheless, Runya refused Ravina's request to share, at least minimally, in the cost of the fences, but later showed that he benefited from them. Rava ruled that Runya should pay the minimal amount that Ravina demanded; otherwise he threatened to impose the full share required by law" (*C.M.* 158:6).

"Rema (*C.M.* 12:17) derives from this that if the plaintiff claims a small amount, the *dayan*

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email ask@businesshalacha.com for guidance and solutions.

BHI HOTLINE

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

HUNDRED-DOLLAR DELIBERATION

Q: I work as a secretary in a yeshivah, and each year we ask parents to send in $35 to cover the costs of books for *limudei chol*.

I was emptying a pile of envelopes, and, while holding two envelopes in my hand, I realized that instead of having a total of $70, I was holding $170. Apparently, one of the two sets of parents whose envelopes I was holding had mistakenly added a $100 bill to their envelope — but I have no idea which one it was.

What should I do with that hundred-dollar bill?

A: Your first step should be to call the two sets of parents and ask if they added an extra currency note in their envelope. If only one party says they are certain (*bari*) they added a note, and the other says they are certain they hadn't — or even if the second party is uncertain (*shema*) — the rule is *bari adif*, which means that the money belongs to the person who is certain in his claim (*see Yeshuos Yisrael* 65:9).

In cases of absolute uncertainty — i.e., if neither of the parties is aware of having placed any extra money into their envelope — the *Gemara* seems to rule in two different ways.

In some cases, the *halachah* is that the money is set aside until Eliyahu Hanavi arrives and tells us to whom it belongs (*Bava Metzia* 37a, *Shulchan Aruch, C.M.* 300:1), and in other cases the two sides split the item or sum in question (*B.M.* 2a, *C.M.* 138:1).

The *Rishonim* deliberate when the money is set aside, and when it is split.

The *poskim* (*Sma* 138:6) rule according to *Tosafos* (*B.M.* 2a, s.v. *Veyachloku*, in dispute with Rashi, s.v. *B'mekach*), who state that it depends on whether it is possible that splitting the money could be the just resolution of the case. If splitting the money cannot be a just resolution — because it clearly belongs to only one party — we do not require the true owner of the

should not rule more than this, even if by law the plaintiff is entitled to more. He cites Rivash (#227), who ruled similarly.

"Sma (17:26) understood that Rema ruled so even when the plaintiff erred in his legal rights. He questions this ruling, though, since in the *Gemara's* case, Ravina seemingly was aware of his rights but willingly agreed to accept less. Similarly, in the case of the Rivash, the plaintiff willingly offered a choice to the defendant. However, if the plaintiff erred in his rights, perhaps the *dayan* should rule what he deserves by law.

"Shach (17:15) and Taz (17:12), indeed, explain that the case of the Rema is where the plaintiff simply claimed a lesser amount, and it is possible that he intended to forgo partially. Therefore, out of doubt, the *dayan* should not obligate the defendant more than the plaintiff's claim. However, if the plaintiff clearly erred in his rights, it is *mechilah b'taus*, and the *dayan* should rule the true amount.

"Some *Acharonim* write that even if the *dayan* is in doubt whether the plaintiff intended to forgo or erred, he can alert him to his rights, but should mention that if he intended to forgo – he may not take more" (*Pischei Teshuvah* 12:17; *Aruch Hashulchan* 17:19).

When the error is mathematical, though, and there was clearly no intent whatsoever to forgo – seemingly everyone would agree that *beis din* should rule the correct sum.

"Therefore," concluded Rabbi Dayan, "since March through December is 10 months, not nine, we ruled that you are liable $30,000, even though the claim was mistakenly calculated as $27,000."

Verdict: Beis Din should not rule more than the claim when it is possible that the plaintiff was willing to forgo some of his rights, but should correct a clear mathematical error.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
***Dayanim* (Judges) #21**
Affirming a Compromise (*Kinyan*)

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

Q: Is a kinyan sudar needed to affirm a compromise?

A: The *Gemara* (*Sanhedrin* 6a) concludes that a compromise requires a *kinyan* to be binding. *Shulchan Aruch* rules so even if made by a panel of three (*C.M.* 12:7; see *Pischei Teshuvah* 12:11).

Although *mechilah* normally doesn't require a *kinyan*, a compromise does, so that the plaintiff should not claim that the *dayanim* misled him, or that he would not have forgone had he known that the law was like him (*C.M.* 12:8; *Sma* 12:15).

A *kinyan* to authorize a compromise, made at the beginning of litigation or when the litigants signed the arbitration agreement, suffices if the *dayanim* who made the compromise were specified (*Nesivos* 12:4).

However, a compromise that the creditor agreed to on his own – e.g., to accept partial payment or payment in installments due to the creditor's financial situation – is considered like mechilah as it does not require a kinyan. Some extend this to any compromise agreement that the parties reached on their own or through help of a mediator (Maharam Lublin #47; Shach 12:12; Pischei Teshuvah 12:12; Shaar Mishpat 12:2).

money to lose half of it. Therefore, we set it aside until the arrival of Eliyahu Hanavi.

If it is possible that each party has a valid claim to half — such as the case at the beginning of *Bava Metzia* in which two people are grasping a garment, and each one claims to have found it first — since it is possible that they both grabbed hold of it at the same time, the *halachah* is that they split it.

According to this approach, since in your case it is impossible that the two sets of parents are part owners of the hundred-dollar bill, the *halachah* is that it must be set aside until Eliyahu's arrival — unless both parties agree to split it (*Ketzos Hachoshen* 365:1 and *Chiddushei Rabi Akiva Eiger*, *B.M.* 2a).

Other *poskim* write, however, that the aforementioned *Tosafos* applies only if *two* conditions are met: (1) one of the sides is being dishonest and (2) splitting the money cannot be a just resolution. According to these *poskim*, since in our case neither party is being dishonest, then even though splitting the money cannot lead to a just resolution, we still split the money. Therefore, if both parties had not laid claim against the *nifkad* (person holding the money) — because if they did, one of them is being dishonest — and the *nifkad* wants to return the money to whomever it belongs, we split the sum (*Shach* 300:5 and 365:3).

There is another aspect to consider, however.

When the parent added the hundred-dollar bill into that envelope, it immediately took on the status of an *aveidah* (lost object). When you found it, you became obligated in the *mitzvah* of *hashavas aveidah*, which, according to certain *poskim*, alters the *halachah*.

The *Gemara* (*B.M.* 28b) states that if a person found something, and two people come to claim it, and they each give *simanim* (identifying characteristics) proving that it is theirs, the *halachah* is that it must wait until Eliyahu's arrival (*C.M.* 267:8), and we do not split it, even though it could, theoretically, belong to both of them, and the split would be a just resolution.

The *Acharonim* question why we don't split it in such a case (see *Chiddushei Rabi Akiva Eiger*, *B.M.* 28a, and *Imrei Binah*, *To'ein Venit'an* 12). Some explain that since the person who found the object is obligated to try to determine who the real owner of the object is —which is usually accomplished by demanding *simanim* from anyone who claims it (*C.M.* 367:5) — we do not split the object even it could be a just resolution, and even if no one is being dishonest, because we haven't determined to whom it belongs (*Chiddushei Hagrach, Shaarei Yosher* 4:9 and 6:14; *Kovetz Shiurim, B.B.* 79). Others disagree and rule that we would split it even in our case (see *Chiddushei Rabi Akiva Eiger* loc. cit.; *Even Ha'ezel* 4:10 and additions to *Hilchos To'en Venit'an* 76:4; *Shu"t Maharshag* 2:231).

Therefore, it is best to try to convince the two parties to split the hundred dollars (see *C.M.* 367:8).

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