

BUSINESS WEEKLY



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

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



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

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

OMITTED DATE

Eliezer Bloom was getting married.

In preparation for the wedding, Rabbi Wise, who was going to be *mesader kiddushin*, asked to see the *kesubah* of Eliezer's parents, who got married thirty years ago.

Rabbi Wise looked over the *kesubah*. He mostly wanted to see how Mr. Bloom's first name was spelled, since it was not a standard one.

While looking over the *kesubah*, Rabbi Wise frowned sternly.

"What's the matter?" asked Eliezer.

"There is a potential problem with your parent's **kesubah**," Rabbi Wise replied.

"What is the problem?" asked Eliezer with concern. "Does it affect me?"

"No, don't worry about that," replied Rabbi Wise. "Come read the date, and see for yourself."

Eliezer read the Hebrew date: "In the year five thousand and fifty-four..."

"Wow, they got married in 5754!" Eliezer exclaimed. "Whoever filled out the *kesubah* mistakenly omitted the seven hundred!"

"Indeed," Rabbi Wise responded. "There is a serious question whether such a *kesubah* is valid. I will have to tell your parents that they should consult their Rav whether they need to write a new *kesubah*."

Rabbi Wise called Mr. Bloom. "I noticed that there is a potential problem with the date in your *kesubah*," he said. "It mistakenly says 5054 instead of 5754. Please discuss with your Rav whether you need to write a new *kesubah*."

"That's very strange," replied Mr. Bloom, "but I'm glad you caught it."

Mr. Bloom called Rabbi Dayan, and asked:

"Is our *kesubah* valid if the centuries were omitted?"

"The date, as written, is predated 700 years before the marriage," replied Rabbi Dayan. "The *Mishnah* (*Shevi'is* 10:5; *B.M.* 72a) teaches that a predated debt document is invalid, whereas a postdated one is valid (*C.M.* 43:7)."

"This is because a debt document signed by witnesses, such as a *kesubah*, establishes a halachic lien, which enables the creditor to collect real estate sold afterwards by the debtor if he is unable to pay. A predated document can lead to unlawfully collecting from property sold between the predated date and the true one.

"Shulchan Aruch, following Rashi and Rif, rules that the creditor cannot collect at all from sold property based on the invalid document, but he can still collect based on it from the debtor, who is not believed to contradict it. Rema, following *Tosafos* and Rosh, rules that the document is completely void, so that the creditor can collect only if the debtor admits to the debt (*ibid.*).

"Nonetheless, Shulchan Aruch (*C.M.* 43:2) rules that if the date ignored the millennia and centuries, and instead of writing (Hebrew date) 5784 wrote 84, the document is valid, since the abbreviation is evident and self-understood. Similarly if he wrote 24 (English date).

"Rema rules, though, based on Rivash, that if the millennia, centuries and units were written, but the decades were omitted, the document is invalid, since here

FOUND BUT NOT FORFEITED

Q. I was in a store, and a woman suddenly noticed that she was missing a hundred-dollar bill. She searched all over for it, but eventually

gave up and left. I was also looking for it and eventually found it. May I keep the money, given that the woman was *meya'esh* (despaired of finding it) and I was the first one to lift it, or did the storeowner take possession of it since it was on his property when the woman was *meya'esh*?

A. The *halachah* of *kinyan chatzer* (lit. acquisition by a courtyard) stipulates that a person's property automatically acquires any objects abandoned on it.

A store, however, is a *chatzer* that is open to the public, not a secure location with access limited to the owner. A *chatzer* of this sort does not automatically acquire objects left on it (*Choshen Mishpat* 260:5, with *Shach* 18). Therefore, if you were the first to lift the bill, you are not obligated to give it to the storeowner.

Whether you are allowed to keep it is a complex *she'eilah*.

It is possible that the woman's *yi'ush* was inconsequential, because generally speaking, any money a woman has rightfully belongs to her husband. Even if she earns money from her job, the *halachah* is that her earnings (*maasei yadeha*) belong to her husband. Even if her husband gave her the money she lost to spend as she sees fit, it remains his, and her *yi'ush* does not cause the money to become *hefker* (ownerless), because her husband would not want to give it up so easily (*Kesef Hakodashim* 262:5; see *Shu"t Magen Shaul* 162, which cites this ruling in the name of Harav Yitzchak Elchanan of Kovno).

Although there are instances in which a woman's money belongs to her (see *Even Ha'ezer* 80, with *Beis Shmuel* 2), we would assume that the money the woman lost belongs to her husband, since that is generally the case with a woman's money (see *Choshen Mishpat* 62:1 with *Shach* 7).

We find a similar deliberation in *Nachlas Tzvi* (259) regarding a *shaliach* (courier) who lost money that was sent with him. There, too, some *poskim* rule that the finder must return the money even if the *shaliach* despaired of finding it, because his *yi'ush* cannot cause the owner to lose his rights to his money (see *Shu"t Shevet Halevi* 3:140).

Other *poskim* rule, however, that his *yi'ush* does render the money *hefker*, because when the owner entrusted the money to him, relying on him for its safety, he became the de facto owner of the money, for all practical



CASE FILE

the abbreviation/omission is not evident; for example, if he wrote “five thousand seven hundred and four,” omitting the decades, eighty.

“Similarly, Terumas Hadeshen (*Psakim* #11) disqualified a *get* that omitted the centuries, like our case, 5074. Shulchan Aruch cites a dispute whether the woman needs a new *get* if she already remarried (*E.H.* 127:13).

“Beis Yosef questions, though, whether Terumas Hadeshen would invalidate also regular monetary documents that omitted the centuries, or only a *get*, due to its severity. Rema rules that omission of centuries also invalidates monetary documents.

“Shach (43:5) disputes this, and distinguishes between omission of centuries and decades, since clearly the person was not alive centuries ago, so that the omission is considered evident (*Pis'chei Choshen, Shtaros* 6:6[13]).

“Thus, our case,” concluded Rabbi Dayan, “since Rema invalidates the *kesubah*, you should write a new one.”

Verdict: A predated monetary document signed by witnesses, such as a *kesubah*, is invalid. If the centuries or decades were mistakenly omitted, Beis Yosef questions whether the document is valid; Rema invalidates it; Shach specifies that omission of decades invalidates it, but not of centuries.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial
Practice #28
Fixing the Roof

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

Q. I own a ground floor apartment in a multi-dwelling building. The roof is leaking into the upmost apartment and needs repair. Must I share in the expense?

A: In the times of the *Gemara*, the roof belonged to the upmost apartment alone, and he was responsible for fixing it. Rema (*C.M.* 164:1), citing the Rosh, rules accordingly.

Elsewhere, Rema (*C.M.* 155:4) writes that if the leak from the roof affects the lower floors, the tenants below share in the expense. The *Acharonim* address this apparent contradiction, and provide various resolutions to the two statements (see *Pis'chei Choshen, Nezikin* 15:39[84]).

Nowadays, however, the roof is usually defined as the joint property of all the tenants, so that by law they are all required to share in necessary repairs. This is true especially if the tenants use the roof for solar panels, hanging laundry, storage, etc. (*Pis'chei Choshen, Shutafim* 4:8[11]; *Chasam Sofer C.M.* 155:4).

In this regard, we follow the *minhag hamedinah* (*Minchas Yitzchak* 7:126).

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purposes (*Divrei Mishpat* 260:1, *Ulam Hamishpat* 262; *Shu"t Maharil Diskin, Psakim* 1:189, *Chayei Aryeh, Chullin* 139a; *Shu"t Igros Moshe, Choshen Mishpat* 1:82). Some say that this is subject to a dispute between *Rishonim* regarding a case in which one partner was *meya'esh* after a shared asset was lost (*Gidulei Shmuel, Bava Metzia* 26a).

The *poskim* discuss a similar *she'eilah* regarding money found in a yeshivah. Most money found in a yeshivah is presumably pocket money that fathers gave to their sons to spend as they see fit. If we assume that when the father gives his son the money, he is *makneh* (transfers ownership of) it to him (which is likely what happens in most cases nowadays), then it is obvious that if the son (who is not a minor) lost money and was *meya'esh*, his *yi'ush* renders the money ownerless. But if the father did not intend to be *makneh* the money to his son, then it would depend on the dispute above as to whether *yi'ush* by someone other than the owner can affect the money that was lost.

If money is found in an elementary school, then the *halachah* is exactly the opposite: If the father was *makneh* the money to his son, who is a minor, then the finder is not permitted to keep the money, since it belongs to the minor and a minor's *yi'ush* is inconsequential (*Nesivos* 260:11; *Gilyon HaShas, Bava Metzia* 21b, but see *Milu'ei Mishpat* on *Nesivos* *ibid.*). But if the father was not *makneh* it to his son, then the finder may keep it even without the father's explicit *yi'ush*, since the very act of giving the money to a minor is akin to willfully forfeiting it, because if he loses the money, there is no obligation of *hashavas aveidah* (see *Ketzos* and *Nesivos* 261:1; cf. *Imrei Yosher* 2:117).

In all of the above cases in which there was *yi'ush*, but not by the owner, many *poskim* lean toward ruling stringently, requiring the finder to return the money, especially because there might be a *mitzvah* of *hashavas aveidah* involved (see *Beis Yosef* 260:9, and *Mishnas Hamishpat* p. 35). In addition, in many cases, it is proper for the finder to go *lifnim mishuras hadin* (beyond the letter of the law) and return the money, such as if the finder is wealthy and the person who lost it is not (*Choshen Mishpat* 259:5).



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