THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #734 | Mikeitz - Chanukah | Dec 27, 2024 | 26 Kislev 5785

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

INTENSE HEAT

Chanukah was approaching. Each year, Mr. Lichter would light his menorah in the window of his house. His neighbor, Mr. Glazer, lit in a glass case outside his front door.

"We're going on vacation next week," Mr. Glazer said to Mr. Lichter shortly before Chanukah. "You're in charge of lighting up the street!"

"Enjoy!" said Mr. Lichter. "Will you be here at all on Chanukah?"

"No, we'll be away the entire Chanukah," replied Mr. Glazer.

"If you're away, would you mind lending me your glass case for the *menorah*?" asked Mr. Lichter.

"We won't be using it, so I'm happy to lend it to you," replied Mr. Glazer. "Stop by this evening."

Mr. Lichter came in the evening and took the glass case.

On the first night of Chanukah, Mr. Lichter said to his family: "I borrowed the glass case from the Glazers. So this year I'll light at the front door, like the original form of the *mitzvah*!"

"I see that we can put two *menoros* in the glass case," said 15-year-old Shmuli. "Can I also light in the case outside?"

"If it fits, I don't see why not," replied Mr. Lichter. "What's the difference whether one or two?"

Throughout Chanukah, Mr. Lichter and Shmuli lit in the glass case outside their door. On the last night of Chanukah, the flames burned brightly and warmed the winter night.

The family was inside, enjoying latkes and jelly doughnuts, when they heard shattering outside!

"What was that?!" exclaimed Mrs. Lichter.

Mr. Lichter hurried outside. He saw that the intense heat of the 18 flames had shattered the glass.

"Oh well, I'll have to pay Mr. Glazer for the glass case," Mr. Lichter said to is family. "Maybe it was wrong of me to let Shmuli also light in it."

"Are we really required to pay Mr. Glazer?" asked Shmuli. "We learned this year that when a person borrowed something and

Our heartfelt wishes for Hatzlacha to

Harav Shaul Neumann Shlita

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Harav Chaim Kohn Shlita

Dean of the Business Halacha Institute
Rosh Beis Din Eitz Chaim
and
Harav Yisrael Rubinfeld Shlita
For his appointment as
Rosh HaKollel of the BHI Kollel

Business Halacha Institute and the associated Beis Din Eitz Chaim
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לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

UNINHERITED

Q: After my father-in-law passed away, I mentioned, in passing, that I don't have a silver *menorah*. My mother-in-law decided to give me my father-in-law's *menorah*, explaining that all of her sons already had their own. When I mentioned this to one of my wife's brothers, he said that he is willing to forgo his rights to the *menorah*, but since his mother did not have a right to give away the *menorah*, which is part of the estate he and his two brothers inherited, I would have to get the consent of the other brothers as well.

My questions are: One, is he correct that I have no right to the *menorah*? Two, does his ceding his portion of the *menorah* alone enable me to use it, or do I have to ask his brothers for permission as well? Three, if I am required to ask, and they refuse to allow me to use it, what are my options going forward?

A: t appears, from your question, that your father-in-law did not leave a Will, in which case his entire estate belongs to his heirs, which, according to *halachah*, includes only his sons, not his daughters or his wife (*Shulchan Aruch, Choshen Mishpat* 276:1). A husband inherits his wife (ibid. *Even Ha'ezer* 90:1), but the reverse is not true; a wife does not inherit her husband (*Rambam, Hilchos Nachalos* 1:8). A widow is entitled only to whatever her husband obligated himself to provide in the *kesubah*, which, generally speaking, is room and board (ibid. 93:1).

The silver *menorah*, which is part of your father-in-law's estate, belongs to his sons only, and your mother-in-law had no right to give it away.

The fact that one brother-in-law ceded his portion to you does not make the *menorah* yours. Furthermore, according to the way you described your conversation with him, you are not even considered a partner in it, because he never said that he is *giving* it to you (using

it broke in the course of use, this is called *meisah machamas melachah* and the borrower is exempt."

"Regardless, I don't feel comfortable about it and will pay them," replied Mr. Lichter. "I can't answer, though, whether we are halachically liable. You can ask Rabbi Dayan."

Shmuli approached Rabbi Dayan and asked:

"Are we liable for the glass case? Were we allowed to put two *menoros* in it?"

"The Gemara (B.M. 96b) teaches that a person who borrowed something, which died or broke through the course of work, is exempt," replied Rabbi Dayan. "The rationale is that the item was not borrowed to sit idle, but to be used" (*C.M.* 340:1).

Nonetheless, this applies when the borrower used the item in the expected, normal manner. However, if he used it differently from the expected manner or excessively, he is liable (*C.M.* 340:1)

Thus, while a standard glass case can hold two *menoros*, the normal, expected usage is for a single *menorah.* Therefore, if you put in two *menoros,* which placed stress on the glass, you are liable, unless it is common in that locale to put two *menoros* in glass cases.

Moreover, a borrower should not use the item other than for the purpose for which he borrowed it. Thus, it is questionable whether it was permissible, in the first place, to use the glass case for two *menoros* (see *Sma* 340:7; *Taz* 340:1; *C.M.* 341:7; *Nesivos* 341:13; *Pischei Choshen, Pikadon* 9:[15]).

Radbaz (1:225) discusses whether a person who borrowed a clothing item can lie on it. Elsewhere (1:520) he discusses the extent to which a person can use a *sefer* or *sefer Torah* that he borrows. He writes that this depends on the type of *sefer* and on the person who borrows the *sefer*, whether it is expected that he delve into it deeply or learn it perfunctorily. However, Radbaz concludes that the common practice is to use it broadly, because people are happy to have a *mitzvah* done with their property" (*Pischei Choshen, Pikadon* 9:7[16]).

Thus, it seems permissible to use two *menoros* in the beginning of Chanukah," concluded Rabbi Dayan, "but in the last few days, when there are many candles, one should not do so without explicit permission."

Verdict: A borrower who uses the borrowed item not as intended, is not exempt based on *meisah machamas melachah*. Moreover, he should not use the item differently from the normal manner nor for a purpose other than for which it was borrowed.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Yei'ush – Abandonment

#16

Chatzer - Courtyard – Before Yei'ush

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

Q: Someone hurried through my property in the morning. In the evening, I found a packet of Chanukah wicks that apparently fell from him. Are they mine?

A: A chatzer can acquire for its owner, like his hand or agent. Therefore, if an item fell into your chatzer before the owner's yei'ush, many Rishonim maintain that you become obligated in hashavas aveidah, so that the chatzer can no longer acquire the item even after the owner's yei'ush, just like when an item came into your hand before yei'ush (Shach 262:1; 268:2).

Even so, some maintain that you can acquire the item with a different kinyan after yei'ush, because then you indicate that you didn't want the chatzer to act on your behalf, so that you didn't become obligated in hashavas aveidah, certainly if it is something not likely to be found (Nesivos 262:1; Machaneh Ephraim, Kinyan Chatzer #5).

However, some Rishonim maintain that because you didn't know of the item before yei'ush, you did not become obligated in hashavas aveidah, even if it was in your chatzer, so that your chatzer can acquire after the owner's yei'ush (Machaneh Ephraim, Hil. Gezeilah v'Aveidah 16:4).

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the term *nesinah*, or something similar). When a person says that he forgives or forgoes (*mechilah* or *vitur*) his rights to something, that can only wipe out an existing monetary obligation, such as a loan, but it cannot effect a *kinyan*, which would be necessary for you to acquire that brother-in-law's portion of the *menorah* (ibid. *Choshen Mishpat* 221:2).

If he did say that he is *giving* you his portion, and it is already in your domain or a proper *kinyan* was made to acquire it, then you now own his portion and you are partners with the remaining two brothers.

But even if you did make a *kinyan* on one brother's portion, the other heirs will generally object to your using the *menorah* without their permission, because using it could cause it to get ruined. You would therefore be required to ask them for permission before using the *menorah* (see *Mishnah Berurah* 14:18, regarding a *tallis* that was inherited by several brothers, and some object to one of them using it, in which case he may not recite a *brachah* on it until he comes to some agreement with his brothers).

Your first option going forward is to discuss the matter with your brothers-in-law (including the one you already spoke to, if he didn't use a term synonymous with "giving,") and secure their permission to use the menorah. If they don't agree, then if you did make a proper kinyan and now own a portion of the menorah, you can agree to a "timeshare" with the other two brothers, with each of you using the menorah at specific times. Alternatively, either you can dissolve the partnership through a gud oh agud, in which one partner in a venture offers to sell his portion of the joint asset to his partner for a specific price, and, if the partner does not want to buy him out, he must sell him his stake for that price (see issue 468). A third option is to sell the menorah and split the profit (see Choshen Mishpat 171).