

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

BOTTLE OF OIL Avraham and Yitzchak shared a dorm room in their yeshivah. A week before Chanukah, they went shopping for Chanukah supplies with a friend, Yaakov. Each bought a bottle of oil, each placed in a separate bag.

Yaakov was returning to the yeshivah, whereas Avraham and Yitzchak were heading straight home for Shabbos.

"If you want, I can take the oil to the yeshivah for you," Yaakov offered. "It's not advisable to travel back and forth with a bottle of oil; it can break."

"It's enough that you have your own bottle," Avraham and Yitzchak replied. "We don't want to trouble you."

"It's really not a problem," replied Yaakov. "I don't mind!"

One of them gave Yaakov his bag with the oil, and the other decided to take his home.

The afternoon before Chanukah, Avraham said to Yaakov, "I'll come by later to pick up my oil from you."

Shortly afterwards, Yaakov met Yitzchak, who similarly said that he would come pick up his oil. "But Avraham just told me that the oil was his!" Yaakov said, puzzled.

"No, he took his oil home," Yitzchak replied. "I gave you the oil to bring back to yeshivah."

"The truth is," Yaakov said, "I don't remember who gave me the oil. Talk with Avraham."

Fifteen minutes later, Avraham approached Yaakov. "I don't know what Yitzchak told you, but I gave you the oil," he said. "He apparently forgot what happened."

Yitzchak then showed up, insisting that the oil was his. "I know that I gave you my oil," he said. "Avraham is the one who is forgetting."

Yaakov looked at the two. "Are you both serious?" he asked. "Do you really each insist that the oil is yours?"

"Yes," the two replied.

"I will have to consult Rabbi Dayan on this," Yaakov said. He called and asked:

"What should I do with the bottle of oil?"

"The *Gemara* (B.M. 37b) teaches that if one of two people entrusted an animal to a shepherd and both claim that it is theirs," replied Rabbi

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

RETROACTIVE RENT

Reuven signed a five-year lease on a three-room apartment for his daughter and son-in-law, committing to pay the rent for the entire period of the lease.

A couple of years in, Reuven's fortune turned, and he could no longer afford to pay the rent. After a few months passed with the couple living in the apartment without any rent paid, the landlord approached them and demanded that they pay the rent due for those months. Although they had never signed the lease, he explained, they had used his property, and they should therefore pay for the benefit they had derived. The couple countered that they could not afford such an expensive apartment, and had they known that they would be responsible for the rent, they would have sufficed with a one-bedroom apartment.

The couple agreed to vacate the apartment immediately.

Q: Are they required to pay for the benefit of living in the apartment, following the general *halachah* that a squatter must pay for the benefit he derived from living in the other person's property?

A: Your *she'eilah* brings to mind a *mashal* from the Chofetz Chaim (*Shemiras Halashon, Shaar Hazechirah* 13). Reuven invited Shimon out to eat in a restaurant, telling him that he could order anything he want from the menu, on his tab. When it came time to pay, Reuven absconded, leaving Shimon to deal with the bill. (The *nimshal*, says the Chofetz Chaim, is that when a person shares *lashon hara* with another person, the listener thinks that the person sharing the story is his buddy, but he then leaves him with the tab of the *aveirah*.)

In that case, it's obvious that Shimon must pay for the food he ate, since he ordered it and derived benefit from it. The question is, what would be the *halachah* if Reuven ordered all the food and then left Shimon with the bill – would Shimon still be



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Dayan, "the shepherd is required to pay both if he does not remember whose it is, after they both swear. He is considered negligent in not having recorded and knowing from whom he received the animal" (C.M. 300:3; Sma 300:11).

However, if the animal was left in the herd not in the shepherd's presence, he can leave the animal between the two, since he is not at fault. *Shulchan Aruch* writes that the entrusted item should remain with him or with *beis din* until one of them admits, or they agree to divide it (C.M. 300:4; *Pischei Choshen, Pikadon* 7:21).

A similar issue arises regarding someone who borrowed from one of two people, or bought from one of two sellers, but the *halachah* in these other cases varies (C.M. 76:2-3; 222:2).

If neither one definitively claims the entrusted item, the guardian is not required to pay both, even to fulfill his Heavenly obligation, since they also should have remembered. However, some write that he does have a Heavenly obligation to pay both, similar to someone who borrowed from one of two people and does not remember from whom (*Shach* 300:16; 76:18; *Be'er Hagolah* 300:8; *Ketzos* 300:2).

"Thus," concluded Rabbi Dayan, "since the oil was entrusted directly to Yaakov, and both claim it, Yaakov must pay both after they swear (nowadays, *beis din* would likely impose partial payment in lieu of an oath). However, had Yaakov allowed them to place the bottle in his room and agreed to watch it, or if they were also uncertain, he would not be liable to pay both; the bottle would remain until the two reach an agreement."

Verdict: If one of two people entrusted an item and the guardian does not remember from whom, if both claim it definitively, he is required to pay both. If neither claims definitively, some say that he does not have even a Heavenly obligation to pay both; it remains until they reach an agreement.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

APOTROPUS #27 FIDUCIARY GUARDIAN Chanukah Lights

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

Q: Should the *apotropus* purchase olive oil for the orphans or suffice with Chanukah candles?

A: We mentioned previously that the *apotropus* should acquire for the orphans whatever *mitzvah* items are necessary for them, such as *lulav*, *sukkah*, *tzitzis*, etc., even for those *mitzvos* that are of rabbinic nature. Thus, he should acquire Chanukah lights for them (C.M. 290:15).

Regarding the question of oil or candles, the *apotropus* should follow the practice in which the father led his family in his lifetime. If he provided oil to his young children, so should the *apotropus*; if the father sufficed with candles for them, so should the *apotropus* (C.M. 290:7,26).

If there was no clear practice from the father, he should follow what is commonly practiced in that locale, according to the educational training of the children.

If this also is not clear, presumably the *apotropus* should suffice with candles, and conserve the money of the orphans and not spend for what is not necessary, even though more *mehudar*.



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required to pay for the food he enjoyed? That is the case in the above *she'eilah*. The father-in-law certainly did the "ordering," but is the son-in-law required to pay for the benefit he derived from something he never "ordered"?

We can determine the answer to this *she'eilah* from a ruling of the Ran (*Nedarim* 32b), who writes that if someone steps in to provide financial support for a woman (whose husband is away), his intention is to provide the money as a loan. Nevertheless, we assume that his presumption was that the husband would repay him, not the wife, because he knows that she does not have her own resources – only money that belongs to her husband – so he expects to get paid back by the husband (see *Even Ha'ezer* 70:8).

Based on this Ran, the *poskim* discuss the case of a *shadchan* who arranges a *shidduch* between a young man and woman who are financially dependent on their fathers, and the father refuses to compensate him, so he approaches the *chassan* and demands payment from him instead. Since a *shadchan* generally arranges a *shidduch* under the assumption that the father will pay, we can assume that the *shadchan* never had in mind to demand payment from the *chassan* and therefore has no right to do so (*Erech Shai, Choshen Mishpat* 185).

A similar case once reached the Business Halachah Institute from a *yungerman* who was approached by the administration of the yeshivah he had learned in before his wedding. They explained that his father had not paid his tuition, and they demanded that he pay for the benefit he derived from learning in the yeshivah. According to the Ran, this *yungerman* has no obligation to pay.

Additional proof to the principle that the landlord may not demand payment from Reuven's children can be derived from the following *halachah*. If a man died while owing rent to his landlord and he did not leave any money as an inheritance, his wife is not obligated to pay the rent, unless she was an *areiv* (guarantor) on the rent payments (see *Shu"t Maharshdam, Even Ha'ezer* 184, cited in *Ba'eir Heiteiv, Even Ha'ezer* 102:4 and in *Ketzos Hachoshen* 77:8). Furthermore, it is apparent from the *poskim* that if a father dies, we cannot obligate his children to pay rent even if they continued to reside in the rental house after his passing, unless the father left an inheritance (see *Shu"t Rabbi Akiva Eiger* 133 and *Chiddushei Rabbi Akiva Eiger* 341:3; see *Mishkan Shalom* 2:59, fn 5).

Returning to your question: Reuven is the party who obligated himself in the rental contract, and he gave the apartment as a gift to his daughter and son-in-law. The landlord is certainly entitled to void the rental contract from this point forward if the couple does not agree to pay (see *Ba'eir Heiteiv* 312:4), but he cannot retroactively void the rental contract with Reuven to obligate the son-in-law to pay the rent like he would for a stranger who took up residence on his property without permission (see *Choshen Mishpat* 363:6).

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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