

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

TOO MUCH! TOO LITTLE!

The Sanders were invited to a wedding on Thursday night.

"Were you able to arrange a babysitter?"

Mr. Sander asked his wife on Monday.

"Not yet," replied his wife. "Our regular babysitter is not available. Another one charges way more than we can afford."

"Do you have other options?" asked Mr. Sander.

"I have some more names," she replied. "I was about to call Rivki from down the block."

"I hope you find someone!" said Mr. Sander.

Mrs. Sander called Rivki. "We need a babysitter on Thursday night for about five hours," she said. "Are you available?"

"I am," Rivki said.

"Great!" said Mrs. Sander. "We usually pay our babysitter \$12 an hour."

"Oh no," said Rivki. "I charge \$16 an hour!"

"I'm sorry, but that's too much for us," replied Mrs. Sander. "We never pay that much!"

"For \$12 an hour, I'm not willing," said Rivki. "I have other things to do."

"I'll have to find somebody else, then," said Mrs. Sander. "Thank you."

Mrs. Sander tried some other options, but nothing worked out.

On Thursday morning, Rivki called Mrs. Sander. "Have you found anybody yet?" she asked.

"Unfortunately, not..." replied Mrs. Sander.

"I can babysit," said Rivki.

"Oh, great!" said Mrs. Sander. "Please be here at 6:00."

Rivki came promptly at 6:00. The Sanders left for the wedding and returned at 11.

"Thank you for watching the children," said Mrs. Sander. "Did they behave?"

"They were great!" said Rivki. "We had a good time together! And they went to sleep without a problem."

"I'm glad," said Mrs. Sander. She took out \$60 and gave it to Rivki. "This is for the five hours."

Rivki took the money hesitatingly. "Thank you," she said, "but I told you that I charge \$16 an hour..."

"But I told you that we pay \$12," replied Mrs. Sander. "When you said that you could babysit, I assumed you meant at the price I mentioned."

"Well, I assumed that since you hadn't found anybody yet and wanted me to come," replied Rivki, "it was at my price."

"You have the \$60, in any case," said Mrs. Sander. "Tomorrow we can consult a halachic authority about the remaining \$20."

The next morning Mrs. Sander and Rivki held a

DID YOU KNOW?
Having a Partnership Agreement that is not properly structured might have ribbis concerns.

Ask your Rav or email
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for guidance and solutions.



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

STOLEN SILVER (PART II)

Q: Last week, we began examining the case of a person who stole silver items a while back and sold them at a cheap price. He has now done *teshuvah* and wants to compensate the victim of his theft, but neither he nor the victim knows the value of the items. How much is he required to pay in order to fulfill his obligation to return what he stole, both in *beis din* and in *din Shamayim* (the Heavenly Court)?

A: The *poskim* deal with three types of cases in which the two parties are both uncertain (*shema v'shema*) in their claims, and the uncertainty relates to the initial obligation (*eini yode'a im nischayavti*).

1. Cases in which the defendant is uncertain whether he ever borrowed, stole, or accepted an object for safekeeping.
2. Cases in which the defendant *knows* that he borrowed, stole, or accepted an object for safekeeping, but is uncertain from whom he received or took it.
3. Cases in which the defendant knows that he borrowed or stole from a specific person, but doesn't recall the exact amount.

In the first type of case, in which both parties are uncertain whether there is a claim altogether, the defendant is not required to give any sort of compensation, even *latzeis yedei Shamayim* (*Shulchan Aruch, C.M. 75:10*).

In the second type of case, if the defendant is certain that he took a loan or accepted an object (or money) for safekeeping but does not remember from whom, some *poskim* write that he is allowed to place the amount accepted down between the parties in question, who then split it between them. Other *poskim* rule that *latzeis yedei Shamayim* he is required to compensate anyone who he thinks might have given it to him (*ibid. 73:3, 300:3 with Shach 16*).

In this case, if he stole and isn't sure from whom, all *poskim* agree that *latzeis yedei Shamayim* he would be required to pay the full amount to each one (*ibid. 365:2*). There is more of an obligation *latzeis yedei Shamayim* in cases of theft because in cases of loans or *pikadon*, we place part of the onus on the plaintiff, who should also have remembered whether he



CASE FILE

conference call with Rabbi Dayan. Mrs. Sander asked:

"Should Rivki be paid \$12 or \$16 an hour?"

"It is best to initially clarify the price," replied Rabbi Dayan.

"The Tosefta (*Kiddushin* 2:11) teaches that if the buyer is willing to pay only 100, whereas the seller demands 200, so the two sides part without completing the sale, and afterward they decide to complete the transaction without specifying the price, then, if the buyer reached out to the seller to complete the sale, they follow the seller's price; but if the seller reached out to the buyer, they follow the buyer's offer.

"This *beraisa* is not quoted in the *Gemara*, but is cited by the Rif, Rambam and *Poskim*" (*C.M.* 221:1; *E.H.* 29:8).

"The same rationale presumably applies also to a landlord and tenant, or an employer and employee. If the parties initially disputed the amount and did not enter contract, and subsequently entered contract without specifying the amount, whoever reached out to complete the contract presumably accepted the other party's terms" (*Pischei Choshen*, *Sechirus* 8:[13]).

"Thus, in our case, since Rivki reached out on Thursday morning to Mrs. Sander, and babysat without clarifying the price, we presume that she accepted Mrs. Sander's price. Conversely, had Mrs. Sander called Rivki, we would presume that she accepted Rivki's price.

"In a case where two parties had an agreed price, but one retracted," concluded Rabbi Dayan, "if they subsequently agreed to continue their relationship without specifying otherwise, we presume that they did so according to the initial price" (*Rama* 221:1).

Verdict: If two parties disagreed on a price, and subsequently one reached out to the other and they completed the transaction without specifying the price, we presume that the one who reached out agreed to the other's price.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #26
(Bordering Property)
A Husband-Wife
Purchase

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

Q: A couple bought a property jointly. Can the *bar-metzra* claim the property from them?

A: We mentioned last week that *Chazal* did not grant the *bar-metzra* rights to take the property from a woman who bought, provided that she bought it with her own assets, not her husband's. *Rama* adds that if a husband and wife bought jointly (when she has her own assets), the *bar-metzra* cannot even claim the husband's half (*C.M.* 175:47; *Sma* 175:86).

Many explain that this is because a husband has rights in his wife's property. Hence, since the *bar-metzra* cannot take the half that the wife bought, the husband, who has rights in her half, thereby now also becomes a *bar-metzra* to the other half that he bought (*Gra* 175:112; *Be'er Heitev* 175:77).

Nonetheless, some suggest that if the property was not bought by the wife as an investment, but for the family to live in, this is considered primarily a purchase for the husband, so that the *bar-metzra* can take the property from the woman, and hence from the man, as well (*Responsa Kinyan Torah* 5:146).



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gave the loan or the *pikadon*. Additionally, since a thief violated a prohibition, we place the full onus on him as a penalty for his wrongdoing (see *Shach* *ibid.* 5 and *Ketzos Hachoshen* *ibid.* 2).

In the third type of case, in which the defendant is certain that he owes money to a specific person, but is uncertain about the amount, in the scenario of a loan, there is a dispute among the *poskim*. Some rule that he repays whatever amount he is certain he owes, and by doing so he fulfills his obligation even *latzeis yedei Shamayim*. Others rule that since he is certain that he took the loan, he does not fulfill his obligation vis-à-vis *din Shamayim* until he comes to an agreement with the lender regarding proper compensation (*ibid.* 75:18). The consensus ruling follows the first approach (see *Shach* *ibid.* 67; cf. *Ketzos* 76:1).

There are two approaches to the third type of case, and the outcome will be relevant to our question.

Some (*Gra* 75:60) compare this case, in which he doesn't remember *how much* he borrowed, to the second type of case in which he is uncertain *from whom* he borrowed. According to this approach, if the case involved theft, just as we ruled that when the thief doesn't know *from whom* he stole all agree that he is required to compensate each possible victim *latzeis yedei Shamayim*, the same would apply if he isn't sure *how much* he stole. Therefore, he would be required to come to an agreement with the victim regarding compensation (*Pischei Choshen*, *Halvaah*, ch. 2, fn 78; see *Aruch Hashulchan* 365:6).

Others disagree with this comparison, and maintain that in the third type of case, in which he doesn't remember *how much* he borrowed, the amount in doubt is indeed comparable to the first type of case, and the reason some *poskim* nevertheless maintain that there is more of a requirement *latzeis yedei Shamayim* because in this case there certainly was a loan (*Chazon Ish*, *C.M.* 7:3). According to this approach, there would be the same dispute in a case in which there was definitely an act of theft, but the thief is uncertain of the value of the items he stole, with the two sides differing on whether there is there a requirement *latzeis yedei Shamayim*.

We do find some *poskim* who rule that if a thief wants to fulfill *yedei Shamayim*, he should pay the victim as much as he thinks the objects could possibly have been worth. They compare this to the case (*Yoreh De'ah* 258:3) of a person who vowed to give a certain amount to charity, and he doesn't remember how much, in which case he must give the most he could possibly have pledged (*Shu"t Chavos Ya'ir* 199, cited in *Pischei Teshuvah* 301:6; *Shu"t Igros Moshe*, *C.M.* 1:88).

It is possible that this is only true in the case of a vow; however, because we must rule stringently since not fulfilling his pledge involves a prohibition (see *Yoreh De'ah* 259:5 and *Shu"t Chasam Sofer*, *Yoreh De'ah* 240), but it would not apply to monetary disputes.

Practically speaking, it is certainly best for the thief to come to an agreement with the victim regarding fair compensation in order to fulfill all the opinions of the *poskim*.

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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