

# BUSINESS WEEKLY



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

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לז"נ ר' יהודה נטע בן ר' צבי ע"ה, נלב"ע ביום י"ז אלול תשע"ו



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

## SHEMITTAH LESSONS

Mr. Schmidt received the shul schedule for Rosh Hashanah 5782.

“Really?!” he exclaimed aloud. “That’s very interesting!”

“What does it say?” asked Mrs. Schmidt inquisitively.

“On the second day of Rosh Hashanah,” replied Mr. Schmidt, “Rabbi Dayan will give a *shiur* on the topic: ‘Lessons of *Shemittah*.’”

“That is interesting,” acknowledged his wife. “I didn’t even realize that we’re entering a *Shemittah* year. But why do you sound so surprised?”

“I’m surprised that Rabbi Dayan chose to speak about *Shemittah*,” replied Mr. Schmidt.

“Why?” asked Mrs. Schmidt. “What’s wrong?”

“First, why would Rabbi Dayan address *Shemittah*, when it’s relevant primarily for those who live in Israel?” replied Mr. Schmidt. “Second, why discuss *Shemittah* on Rosh Hashanah? There are so many more fundamental issues to discuss — *shofar*, *malchus Hashem*, or *teshuvah*. Third, Rabbi Dayan generally talks about a topic related to monetary law.”

“I assume that if he chooses to speak about *Shemittah*, Rabbi Dayan feels that there is an important Rosh Hashanah message to all,” responded Mrs. Schmidt.

“I guess you’re right,” said her husband.

On Rosh Hashanah, Mr. Schmidt joined the crowd in shul to hear Rabbi Dayan’s *shiur*.

**“Rosh Hashana 5782 ushers in a *Shemittah* year,” began Rabbi Dayan. “Many of you may be wondering: What is the connection of *Shemittah* to Rosh Hashanah?”**

“The *Shemittah* year affords us an opportunity to consider our outlook on life,” continued Rabbi Dayan, “particularly regarding our money and possessions, whether we are privileged to observe *Shemittah* in practice, or not.

“First, the Torah teaches that the Land should rest a sabbatical for Hashem. Just as the Jewish people – the holy nation – rest and refrain from work every seventh day to remind us that G-d created the world, so, too, Israel – the Holy Land – rests on this seventh year. This reminds us that G-d is Master of the World and we should not take the earth’s produce for granted” (*Sefer Hachinuch* #84).

“Second, the Torah mandates that the fruit of the *Shemittah* year should be *hefker*. This *hefker* applies to vegetables picked after Rosh Hashanah or fruit that begins growing after Tu B'Shvat 5782. The field itself is also *hefker* vis-à-vis the produce,

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## BHI HOTLINE

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

## GUARANTEE EXPIRED?

**Q:** Several years ago, I signed as a guarantor on a loan. The repayment date was two years ago, but the lender did not approach the borrower to request repayment. Now that he is demanding payment, the borrower has defaulted and the lender is insisting that I repay the loan.

Had he approached me two years ago, when my financial standing was considerably better, I could have repaid the loan easily. My finances are shakier now, and I can't afford to pay him. The lender and I have agreed to pose this question to your *beis din* and follow your ruling.

Am I responsible to repay this loan?

**A.** The *Shulchan Aruch* (*Choshen Mishpat* 131:4) discusses a case of a guarantor who warned a lender, at the repayment date, that he should try to demand payment from the borrower immediately, and if not he would no longer guarantee the loan. The lender ignored the warning and extended the loan period, and the borrower defaulted on the loan or passed away (*Maharashdam*, *Choshen Mishpat* 86). The *Mechaber* (Rav Yosef Karo, author of the *Shulchan Aruch*) records a dispute whether the guarantor is still responsible for the loan, and writes that the issue is unresolved.

There are two reasons given for why the guarantor should be absolved from payment. The straightforward approach is that the lender's failure to demand timely payment from the borrower is itself a reason to release the guarantor from his responsibility, since, had he demanded repayment on the due date, he may have been able to collect.

This approach applies only to cases in which the guarantor warned the lender to demand payment, but if he did not do so, he is still responsible for the loan (*Pischei Teshuvah* 131:3 writes that this is the opinion of the *Maharashach* 2:101, 156, and *Gra* 131:5).

Some *poskim* write, according to this approach, that the guarantor is released from responsibility for the loan only if it can be determined that the borrower



## CASE FILE

so the owner must allow people free access to collect the produce” (Rambam, *Hil. Shemittah* 4:24).

“There is a well-known dispute, dating back 500 years to Rav Yosef Karo, author of the *Shulchan Aruch*, as to whether the fruits become *hefker* automatically, by G-d’s decree, regardless of the owner’s intent, or whether the owner is commanded to make them *hefker*. Either way, this reminds us that our sustenance comes from the Hand of Hashem, so that we should generously share with others what He bestows on us and strengthen our faith and trust in Him” (*Responsa Mabit* 1:11; *Avkas Rochel* #24; *Minchas Chinuch* 84:1).

“Third, the *Shemittah* year cancels outstanding loans that are past due, although nowadays, we usually write a *pruzbul* to allow collecting loans past *Shemittah*, based on an enactment of Hillel. The loans are not canceled until the end of the *Shemittah* year, and therefore the common practice is to write the *pruzbul* toward the end of *Shemittah*. However, some maintain that while the borrower is still responsible to pay during the *Shemittah* year, the owner should not demand the loan without a *pruzbul* from the end of the sixth year. [We discussed this seven years ago, in “[Preliminary Pruzbul](#)”]” (*C.M.* 67:30-31; *Pischei Teshuvah* 67:5).

“The cancellation of loans teaches us that our money is not truly ours, but granted to us by G-d,” concluded Rabbi Dayan. “He expects us to act charitably with those less fortunate than we are. Furthermore, it teaches us, all the more so, to be careful not to covet, steal or cheat others” (*Sefer Hachinuch* #477).

**Verdict: The *Shemittah* year provides us an opportunity to consider our outlook toward money, to strengthen our faith in Hashem as Master of the World Who sustains us, and to improve our concern and care about others.**



## MONEY MATTERS

### BAR METZRA #33 (Bordering Property) Seats in Shul

Based on writings of Harav Chaim Kohn, shlita

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

**Q: I have an established seat in shul. For Rosh Hashanah, the *gabbai* assigned the adjacent seat, which I would like for a visiting family member, to someone else. Can I claim *bar-metzra* rights?**

A: *Shulchan Aruch* writes that *bar-metzra* rights apply to any real estate, also to seats in shul. However, this relates primarily to the former practice that seats in shul were owned on a permanent basis, and even inherited, bought, and sold, so that they were treated as any other real estate (*C.M.* 175:53, 162:7; *Pischei Teshuvah* 175:23).

Nowadays, congregants do not own their seat. Most often, the spot itself is not even rented to them, but rather they are granted rights to a seat assigned at the *gabbai's* discretion. Thus, the absolute halachic rights of *bar-metzra* do not apply to seats (*Pischei Choshen, Shutfim* 11:27[63]).

Nonetheless, to the extent possible, the *gabbai* should enable families to sit together. At the same time, people should be flexible and willing to forgo on these Days of Judgment.



## BHI HOTLINE

had money to pay back the loan at the repayment date, and the only reason he can't pay now is because the lender failed to demand payment. But if the borrower could not have repaid the loan at the repayment date either, there is no reason to release the guarantor from responsibility (*Mateh Shimon* 131, *Hagahos Beis Yosef* 7, and *Pischei Choshen, Halvaah*, ch. 13, fn. 61).

The Chacham Tzvi (51) offers another reason why the guarantor should not be responsible for the loan. He writes that a guarantee on a loan has a time limit — the guarantor agrees to pay for the loan only at the original payment date. According to this approach, even if he did not specifically caution the lender to demand payment, he would still not be responsible for the loan once the repayment date passes.

The Chacham Tzvi adds that even if the guarantor agreed verbally that the lender could extend the loan period, he is no longer responsible for the loan, because a guarantor is responsible for a loan only if he agrees to guarantee it at the time the money is being handed over, or if there is a *kinyan* at the time he agrees to guarantee it (*Shulchan Aruch* 129:1). Therefore, since the original guarantee expires at the repayment date, in order for him to be responsible for the extended loan, there would have to be a new *kinyan*.

According to the Chacham Tzvi, then, you are no longer responsible for your friend's loan. But many *poskim* disagree with the Chacham Tzvi and maintain that you are absolved of your loan guarantee only if you warned the lender to demand payment, which you did not do, so you are still responsible for the loan. (The *poskim* deliberate whether a person could claim *kim li* in such a case; see *Pischei Teshuvah* *ibid.*, *Erech Shai, Divrei Geonim* 78:9, and *Pischei Choshen, loc. cit.*)

There is an additional factor to consider, however.

As we explained at length in BHI issue #477, there is a key difference between an ordinary guarantor, who commits to repaying the loan only if the borrower defaults, and an *areiv kablan*, who commits to allow the lender to demand payment from him without the lender ever approaching the borrower.

All the *poskim* who write that a guarantor in your sort of case is not responsible for the loan were referring to an ordinary guarantor. If, however, the guarantor agreed to serve as an *areiv kablan* (which is generally the case in reliable contracts), he cannot absolve himself of responsibility for the loan even if a lot of time has passed. Since an *areiv kablan* cannot demand that the lender collect from the borrower, and he is equivalent to the borrower, who does not become less responsible for the loan because the repayment date has passed, there is no reason to release him from responsibility (*Maharshach* 2:156, *Pischei Teshuvah, loc. cit.*, citing *Chacham Tzvi; Shu"t Imrei Yosher* 1:86). The only exception would be if the *areiv kablan* specified in the contract that he would only guarantee the loan for a limited amount of time (*Shach* 121:3).

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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