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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

NEPHEW/ NIECE INHERITANCE

Mr. Ginsberg passed away at the age of 95. Unfortunately, he had never married and had no children. His two brothers had also passed away some years ago, so that he was survived by his nieces and nephews, his brothers' children.

Mr. Ginsberg's older brother had two daughters, and the younger one two sons.

Mr. Ginsberg had never written a will, so the court divided his estate according to intestate law equally between the four nieces and nephews.

The nieces were concerned, though, whether they had a right to accept their awarded share of the inheritance, since they knew that sons have halachic priority over daughters, and reasoned that the same is true for nephews and nieces.

Some people told them not to worry about it, since this was the law of the land (*dina d'malchusa*). Other people told them that it was a problem, since *dina d'malchusa* does not apply to inheritance, so they had no right to take the money.

The nieces turned to Rabbi Dayan, and asked whether they were allowed to take the court-awarded share of the inheritance?

Rabbi Dayan heard the details of the case, and replied: "In your particular case, there is no issue whatsoever!"

The nieces were happy to hear this, but were surprised at the response, and asked:

"Why is our case special? Why is there no issue for us?"

"Indeed, according to *Halachah*, a daughter is not entitled to a share in the estate in the presence of sons," replied Rabbi Dayan. "The Torah states, regarding the daughters of Tzelofchad: 'If a person dies and *does not have a son*, transfer his inheritance to his daughter'" (*Bamidbar* 27:8).

"This applies not only to children, but also to grandchildren and other relations: brother/sister; nephew/niece. Thus, if a person has one child, who passed away in his lifetime and left a son and a daughter, the grandson has halachic priority over the granddaughter in the estate. Similarly, if a person has no children, only brothers and sisters, the brothers have priority over the sisters.

"However, there is another principle, whose practical application sometimes leads to what might seem like an exception. The principle is that the descendants of a person most often



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

BORDER CONTROL

My neighbor recently put up his house for sale, and he received an offer from a potential buyer for a certain amount. I offered him the same amount, and told him that as the *bar metzra* (neighbor with whom he shares a boundary), I have first rights to his property.

My neighbor asked me if I plan to knock down the wall between the houses and create one big residence out of them, as he would have found this surprising, given that I no longer have a use for such a large house. I admitted that I wasn't planning to combine the properties, but wanted to buy the house for my married daughter, so she could live nearby and care for me in my old age. My neighbor claims that the *halachah* of *meitzranus* might not apply if the purpose of the purchase is not to use the two properties as one.

Who is correct?

A: The *halachah* of *bar metzra* (or *meitzranus*) was established by *Chazal* to give priority in real-estate sales to neighbors, as an application of the principle of "*v'asisa hayashar v'hatov* — you shall do what is just and good" (*Devarim* 6:18), which exhorts us to go *lifnim mishuras hadin* (beyond the letter of the law) in business dealings.

The reasoning behind this *halachah* is that a non-neighbor can purchase a property anywhere else, but neighbors benefit from having territorial contiguity, so they are given first rights to buy a neighboring property. *Chazal* considered this so significant that they established a rule that if someone other than a neighbor purchases a property, we view him as an agent of the neighbor, who may forcibly expel the buyer by paying him the full price he paid to the seller (*Shulchan Aruch*, C.M. 175:5-6).

The *halachos* of *meitzranus* are very complex, involving numerous details that could change the *halachah*. We will focus on the general rules of this topic.

She'eilos about *meitzranus* often arise in cases such as yours, or when children want to buy a house for



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stand in his place to inherit, when that person predeceases his inheritors.

"Thus, if a person had a son and a daughter who predeceased him, and they both had children, the grandchildren stand in the place of their respective parents. Therefore, if the son had a daughter and the daughter had a son – here the *granddaughter* has priority over the grandson, since she stands in place of the son, whereas the grandson stands in place of the daughter" (C.M. 276:1).

"Moreover, if a person had a son and a daughter, and the son predeceased his father, leaving a granddaughter, the granddaughter has priority over the daughter, since the granddaughter stands in the place of the son" (C.M. 276:2).

"Similarly, if a person had two sons who passed away, one who left a son and one who left a daughter, the two grandchildren inherit equally, since each stands in the place of one son" (C.M. 276:3).

"The same is true regarding nieces and nephews, when the deceased has no children or siblings alive. A nephew takes priority over a niece from that same sibling. However, a niece from a brother takes priority over a nephew from a sister (or even the sister herself), since the niece stands in the place of the brother.

"Thus, in our case, where the nieces stand in the place of one brother and the nephews stand in the place of another, each set is entitled to their parent's equal share," concluded Rabbi Dayan. "The actual question of non-halachic inheritance between a son and a daughter or between a brother and sister, *be"H* we will address on another occasion."

Verdict: A descendant stands in the place of his parent regarding priority of halachic inheritance.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #12 Conditional *Mechilah*; *Mechilah* Under Duress

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

Q: Is *mechilah* on condition valid? What about *mechilah* under duress?

A: 1) Since *mechilah* needs to be definite, some authorities maintain that conditional *mechilah* requires a *kinyan*, similar to a compromise. Others do not differentiate, and rule that conditional *mechilah* is also valid without a *kinyan* (Taz and *Mishpat Shalom* 207:16).

If the condition is fully dependent on the debtor, e.g., if the creditor said: "If you do such and such the debt is canceled," it is valid without a *kinyan*.

Nonetheless, some say that the creditor can retract until fulfillment of the condition (*Imrei Binah*, *Dayanim* 20:16).

2) *Mechilah* of debt is tantamount to a gift of the creditor to the debtor. Just as a gift given under duress (even if not complete coercion), without full intent, is invalid, so too *mechilah*. This is worse than a sale made under duress, which is valid if the seller did not explicitly invalidate it beforehand, since the seller at least received fair compensation (C.M. 205:1,3; 242:1).



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their elderly parents near their own so they can care for them. The question then becomes, as in your case: Is the *halachah* of *bar metzra* limited to instances in which the neighbor wants to use the property for himself, or does it apply when he has a different use for the property?

We must emphasize that the *halachah* of *meitzranus* applies only if the neighbor is the actual buyer, not if he wants the seller to allow his parents or child to buy it (see *ibid.* 175:22).

Some *Rishonim* write that in shuls where seats are sold for perpetuity, there is a *halachah* of *meitzranus*; if a seat becomes available, those who sit closest to that seat have first rights to it (*ibid.* 175:53 and *Pischei Choshen* ch. 11, fn. 63). Other *Rishonim* argue that it is illogical to apply the *halachah* of *meitzranus* to this case, because a person needs only one seat in shul, and *meitzranus* applies exclusively to situations in which the buyer wants to connect the two properties (see *Tur* and *Sma* *ibid.* 99).

The later *poskim* rule that *meitzranus* does apply to shul seats even if the buyer intends to give the second seat to a family member. The common practice of family members to sit near each other in shul is enough of a reason to apply the *halachah* of *meitzranus* (*Shu"t Chasam Sofer* 95, cited in *Pischei Teshuvah* 175:23).

The *Aruch Hashulchan* (175:60) adds that buying a nearby seat in shul is no different from buying a neighboring property so that his family members can live there; although the buyer doesn't intend to live in two houses, it is nevertheless considered as though he is purchasing it for himself.

Obviously, then, according to these *poskim*, *meitzranus* does apply to cases in which a person wants to buy a house for his family members (*Shu"t Kinyan Torah* 6:139, and see *Shu"t Ra'anach* 1:119, cited in *Knesses Hagedolah*, *Hagahos Beis Yosef* 175:176).

Other *poskim* argue that the *halachah* from the *Rishonim* regarding shul seats does not apply to houses, because it is far more common for family members to sit next to each other in shul than to live next door to each other. Therefore, although there are cases in which people do want to purchase a home next door to a family member, the practice is not common enough to establish a *halachah* of *meitzranus* (*Vayevarech Dovid*, C.M. 142). According to this opinion, *meitzranus* would apply only if a person wants to connect the house next door to his own to create more space for family members who are living at home.

Practically speaking, even according to the *poskim* who rule that there is no absolute obligation to sell a property to a next-door neighbor for his parents or children, it is still recommended to allow a neighbor to buy the house for this purpose (see *Shulchan Aruch*, C.M. 175:50, regarding the *halachos* of prioritizing selling to a neighbor who does not qualify for the *halachah* of *meitzranus*).

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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