

BUSINESS WEEKLY



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

WAGES FOR TESTIMONY

Rabbi Dayan was teaching about *kiddush hachodesh*. "Until 1,650 years ago, there was no set Jewish calendar," he said. "The months were determined by Sanhedrin based on the testimony of witnesses who observed the faint crescent of the new moon. Our current calendar was established by the

second Hillel, about the year 359 C.E.

"The determination of Rosh Chodesh Nisan took on special importance toward the end of the Second Temple period," Rabbi Dayan continued. "It became the subject of a struggle between the Sages and the Boetusians (a Jewish sect, connected to the Sadducees, who did not accept the Oral Torah) relating to Shavuos.

"The Sages maintain that the *Omer* is brought on the second day of Pesach, and Shavuos is seven weeks later, regardless of the day of the week, whereas the Boetusians maintained that the *Omer* was always brought on a Sunday, and then Shavuos was set. Therefore, the Boetusians were interested that Rosh Chodesh Nisan fall on Shabbos, so that Shavuos would fall on Sunday, regardless, in line with their opinion.

"The *Gemara* (*Rosh Hashanah* 22b) relates that the Boetusians once wanted to rig the calendar, and sought to hire false witnesses to testify that they saw the new moon on Shabbos. An honest person, who was concerned that others might cooperate, 'offered' them his services.

"The person came and testified about the moon in a most bizarre way, alerting the Sanhedrin that something was awry, and showed them the money he had received for the plot. The Sages awarded him the money as a gift, and punished those Boetusians who had sent him. The Sages then instituted to accept new-moon testimony only from people who were known to *Beis Din*.

Reuven, who heard this, sat with a contemplative look on his face.

"In this story, the witnesses were paid to deliver false testimony," Reuven said. "What about honest testimony, though?"

"Is there anything wrong with paying a witness to testify honestly?"

"The *Mishnah* (*Bechoros* 29a) teaches that the testimony of a witness who charges money to testify is invalid," replied Rabbi Dayan. "This is because a witness is required by the Torah to testify (*Vayikra* 5:1), and so he should not be charging money for his performance of this *mitzvah*" (*Rama C.M.* 34:18; *Sma* 34:46).

"If the witness was paid to state a specific testimony, he is certainly disqualified as an interested party (*noge'a b'davar*), since if he will



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

RETURNING A COUNTERFEIT BILL

Q: Someone repaid in cash a debt he owed me, and I found some counterfeit bills among the cash he gave me. When I called him to tell him about it, he was not surprised, because he had received the money from someone else, and there had been counterfeit bills mixed into that pile. He told me that if I return the counterfeit bills to him, he would replace them with genuine bills.

Am I allowed to return them to him, or must I suspect that he might try to pass them off to someone else?

A: The *Gemara* (*BM.* 52a) and *Shulchan Aruch* (*C.M.* 227:18) state that if someone has a coin that is worn out to less than the value *Chazal* set for the coin to be *onaah*, he is not allowed to leave it lying around, because it is very easy to fool people with it. He must either melt it or puncture it, so everyone will realize that it doesn't have the value of a regular coin. He is also allowed to sell it to someone on condition that the person will melt it, but he may not sell it to someone who he suspects might use it to trick someone.

We see, then, that we are not allowed to give devalued coins to someone who, we suspect, will use them to trick others, even if he promises to melt them; we are allowed to do so only if we trust that the person will puncture or melt them (*Tosafos* *ibid.* *s.v. Yeser*).

In the times of the *Gemara*, coins had inherent value because they were made of gold, silver or copper. Since melted pieces of metal are valuable, we have no reason to suspect that an average person will misuse a devalued coin.

Nowadays, the value of the metal the coins are composed of is insignificant, and a counterfeit bill is certainly valueless. If someone expresses an interest in buying such coins or bills for any amount, we must assume that he plans to trick someone with them, and we may not sell them to him.

In your situation, where someone tried to repay

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CASE FILE

not testify as instructed he will not 'earn' his pay. However, if the witness was paid to state whatever testimony he knows regarding the case, according to most authorities the disqualification of his testimony is a Rabbinic penalty" (*Pischei Teshuvah* 34:25).

"According to the *Bach* (C.M. 9:9), the witness is not required to return this pay, unlike bribery, which the Torah specifically prohibited, so that if the judge does not return the bribe money it is considered as theft in his hands. However, many *Acharonim* disagree with the *Bach*, since the testimony is disqualified, so that his service is negated and not deserving of pay" (*Machaneh Ephraim, Sechirus* #16).

"Nonetheless, the witness himself does not become inherently disqualified, nor as other criminals, who require a *teshuvah* process. Therefore, if the witness simply returned the money, his testimony is once again valid, but according to many authorities, he must repeat it after returning the money" (*Rama, ibid.*; *Pischei Teshuvah* 34:26)

However, if the witness incurred a loss in coming to testify, e.g., travel expenses or lost wages, he is entitled to ask for compensation for his loss" (see C.M. 9:4).

"Furthermore," concluded Rabbi Dayan, "someone who initially undertakes to become a witness - e.g., to sign a *kesubah*, *get*, or other legal document - is allowed to receive payment. Some maintain that he should be paid by both parties" (*Nesivos* 34:10; *Pischei Choshen, Sechirus* 8:45).

Verdict: A person who knows testimony may not charge for it, only for his expenses. If he charged for his testimony, it is disqualified until he returns the money.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #19 Future Debt

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

Q: I told my roommate that I am *mochel* whatever he will take from my box of cookies. Is such *mechilah* binding?

A: *Rama* rules that just as one cannot sell something that does not yet exist, so, too, one cannot be *mochel* a liability that does not yet exist. Therefore, if you say to someone that you are *mochel* whatever he will subsequently obligate himself to you, your prior *mechilah* is not binding and his subsequent obligation is in force (*Rama, C.M.* 209:4).

Similarly, your prior *mechilah* here is not binding, in the sense that you can retract before your roommate takes the cookies and refuse him permission. However, if your roommate already took cookies, you cannot claim payment from him. Since you hadn't yet retracted your permission when he took them; it is like you were *mochel* at that time any liability was generated and allowed him to acquire the cookies as a gift (C.M. 241:3; *Nesivos* 209:17 (*Chiddushim*), 241:4; *Aruch Hashulchan* 241:7; *Pischei Choshen, Halvaah* 12:11-12).



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you with a counterfeit bill, you obviously may not pass it off to someone else. The question is whether you can return it to the person who gave it to you in exchange for a valid bill. Is this the same as giving it to someone we suspect of trying to trick someone with it (*Pischei Choshen, Geneivah* 11, fn. 46)?

Chazal decreed that we are not allowed to sell the following things to a non-Jew, out of concern that he might resell it to a Jew: *chametz* that was in the possession of a Jew over *Pesach* (*Orach Chaim* 467:1), clothing that has *shaatnez* in it that cannot be spotted easily (*Yoreh Deah* 301:8), or an animal that became a *treifah*, but the defect that made it a *treifah* is not visible (*Yoreh Deah* 57:21).

The *poskim* deliberate what a Jew may do if he bought one of these things. For instance, if he bought an animal and found out that it is *treifah*, may he return it to the non-Jew for a refund?

Since halachically, this would qualify as a *mekach ta'us* (C.M. 332:12), which means that the sale is void and the sold item is still in the seller's possession. Therefore, if we force the Jew to keep it, it's as though we're forcing him to buy it, and he is not required to keep it (*Shu"t Noda B'Yehudah, Mahadura Tinyana* 77, *Teshuras Shai* 127; and see *Daas Torah, Yoreh Deah* 57:56). Applying this logic to your case, you would not be required to keep the counterfeit bill if your borrower says he will give you a genuine bill only if you return the counterfeit one.

But our case might be worse, since it is certain that he will trick someone else, so the prohibition of "*lifnei iveir lo sitein michshol*" would apply. One may not transgress a prohibition (*lo sa'aseh*) even if he will lose all his possessions (*Orach Chaim* 656 and *Yoreh Deah* 157:1).

Nevertheless, some *poskim* provide a reason why you might be allowed to return the counterfeit bill. They write that if a person is merely trying to tend to his own financial concerns and is not trying to cause anyone else to do anything wrong, but it is possible that because of his actions, someone might transgress a Torah prohibition, he does not violate *lifnei iveir* (*Shu"t Maharil Diskin, Kuntras Acharon* 5:145; *Shu"t Beis She'arim* 1:17; *Shu"t Minchas Shlomo* 1:7, 4, and see *Shu"t Kapei Aharon* [Epstein] 53. Others disagree, however; see *Ashrei Ha'ish, Orach Chaim* 2, p. 369.).

If it is possible that the reason your borrower is asking that you return the counterfeit bill is that he has to show it to the person who gave it to him so he can be reimbursed, then it is certainly permissible for you to return it to him, just as *Chazal* allowed a person to give a worn-out coin to someone who is not suspected of fooling others with it (see *Harimu Michshol* 36).

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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