

# 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

## BAR MITZVAH LEARNING

Dovid was 12 and started preparing for his bar mitzvah. He planned to *lein* his *parashah* and say a *drashah*, but nothing else.

His maternal grandfather, Rabbi Cohen, hoped for more.

"How about learning a *seder Mishnayos* or *maseches Gemara* with Dovid?" Rabbi Cohen suggested to his son-in-law, Akiva. "It would be nice for you, as well, to spend quality time with Dovid each evening."

"It is a nice idea," replied Akiva, "but I don't think I can. I come home late from work, and my schedule doesn't enable me to commit."

Rabbi Cohen's disappointment was evident. "Some people invest great amounts of money making a lavish affair," he said, "but forget that the primary event of a bar mitzvah is entering into an adulthood obligation of Torah and *mitzvos*!"

"In any case, Dovid is learning his *parashah*," replied Akiva. "He will be busy with that and the *drashah*."

"I'll tell you what," Rabbi Cohen finally said. "If you learn regularly with Dovid during the year and he makes a *siyum*, I'll pay you \$10,000 for learning with him."

Akiva couldn't refuse that offer. "OK," he said. "I'll make time to learn with Dovid."

"Great!" said Rabbi Cohen. "Consider your namesake, Rabi Akiva; through persistent learning, a drop at a time, you can make an indelible impression on Dovid's life!"

Throughout the year, Akiva learned with his son. At the bar mitzvah, Dovid made a *siyum*.

Dovid glowed with pleasure at his accomplishment; he also was grateful for the many one-on-one hours learning with his father. Rabbi Cohen beamed with pride.

"Regarding the \$10,000 you said you would pay me for learning with Dovid....," Akiva started saying.

Rabbi Cohen looked him in the eye. "Do I really have to pay you for learning with your son?!" he replied. "You are required to teach him Torah, regardless!"

"I was about to say that I don't need you to pay me!" Akiva finished his statement. "The experience with Dovid was worth more than any payment!"

"Like I said," Rabbi Cohen smiled. "Rabi Akiva's persistence bore fruit! You gave Dovid *chaim* (life)!"

"I would like to ask Rabbi Dayan, though," said Akiva:

**"Can I demand that my father-in-law pay me for having learned with Dovid?"**

"Rama rules that a grandfather who told

## DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered *schar Shabbos*

Ask your Rav or email  
ask@businesshalacha.com  
for guidance and solutions.



## BHI HOTLINE

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

## PROTECTING A LOAN

**Q:** I am about to lend money to a *gemach*, whose administrators will sign a *shtar* (contract) acknowledging the loan. Given that this is a *Shemittah* year, what can I do to ensure that I am allowed to collect the loan after *Shemittah*?

**A:** The Torah (*Devarim* 15:1-2) instructs us that during the *Shemittah* year, all loans are nullified (*shemittas kesafim*). The *halachah* (*Shulchan Aruch, C.M. 67:30*) is that this cancellation of loans happens at the end of *Shemittah* — in our current *Shemittah*, at the end of 5782. If someone lends money during this year, he is permitted to collect that loan all of this year, but if he doesn't, at sunset of Erev Rosh Hashanah (the beginning of 5783), the loan is automatically nullified. [According to the Rosh (*Gittin* 4:18), loans are nullified at the beginning of the *Shemittah* year. Some people therefore write a *pruzbul* at the end of the sixth year as well (see *Pischei Teshuvah, C.M. 67:5*).]

The *Rema* (*ibid.* 1) writes that in Ashkenazic lands, people did not observe the *halachah* of *shemittas kesafim*, based on several factors, but the *poskim* write that we *should* keep these *halachos* (*Pischei Teshuvah, ibid.* 1). The *poskim* debate whether one may rely on this leniency nowadays, when people *do* keep the *halachah* of *shemittas kesafim*, which might negate the leniency mentioned by the *Rema* (See *Shu"t Igros Moshe, C.M. 2:15* and *Kisei Mishpat* 41).

Nevertheless, there are several ways for a person to ensure that his loans are not nullified during *Shemittah* without contravening the *halachah* of *shemittas kesafim*.

If the loan is due after *Shemittah*, it is not canceled, and the lender is entitled to collect the loan when it is due (*Shulchan Aruch* 57:10). If the loan is due before *Shemittah* ends, the loan would be nullified at the end of *Shemittah*. The *poskim* debate whether the lender is allowed to extend the loan period against the wishes of the borrower so that it will not be nullified (*Derech Emunah, Shemittah* 9:45; see *Kava Dekushyasa* 46).



## CASE FILE

his son-in-law that he would pay him to learn with his son (the grandchild) is exempt, since the father is required to learn with his son regardless" (C.M. 81:1; 336:1).

"The source is a responsa of Maharam of Rothenberg, cited in *Teshuvos Maimoniyos (Mishpatim #64)*, who writes: "Since Shimon (the father) ... is obligated to teach his son ... and did not want to teach him, and Reuven (the grandfather) promised him money to fulfill the *mitzvah* incumbent upon him, he can say, 'I was insincere,' as we find regarding one who is escaping and found on a ferry or one who was required to do *chalitzah* but ran away." *Ketzos* (81:4) and *Tumim* (81:6) maintain that if, in fact, the grandfather was sincere, he is obligated to pay his son-in-law as a salary. The obligation of the father to teach his son does not preclude an employee status vis-à-vis the father-in-law.

"*Nesivos* (81:2), though, maintains that even so he is not liable. Since the father is obligated to teach his son, it is like paying him to make a *sukkah* for himself, for which he is not considered an employee. Only if the father-in-law were to make a *kinyan* would he be liable, since this generates a personal commitment" (*Aruch Hashulchan* 81:15).

"Regardless, if the son-in-law is needy, the father-in-law's statement is considered a *tzedakah* pledge, and binding," concluded Rabbi Dayan. "This is like any other promise of a gift to a poor person, that one cannot retract from, even if there was no *kinyan*, since it is considered a *tzedakah* vow" (C.M. 243:2; Y.D 258:12; *Ketzos* 81:3).

**Verdict: A person who told a father that he would pay him to learn with his son is not liable, since he can say that he was insincere, unless the father is needy, in which case it becomes a *tzedakah* pledge.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS Mechilah (Forgoing) #23 Mechilah of a Sold Debt

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

**Q: I sold someone a debt owed me, and transferred the loan document to him. Am I still able to forgo the loan to the debtor?**

A: Even if the debt was sold and the loan document properly transferred, the initial lender can still forgo the debt. This is because the primary, personal obligation of the borrower to the lender (*shi'abud haguf*) remains, and the sale affects only the monetary obligation (*shi'abud nechasim*), which is like a secondary guarantor to the personal obligation (C.M. 66:23).

However, it is generally prohibited for you to forgo the loan, since you thereby cause the buyer a loss.

Therefore, you are liable to compensate the buyer for the damage you cause him by forgoing the debt. According to the Mechaber and later authorities, this means the full current value of the loan, whereas according to the Rama, only the amount the buyer paid for it, plus any other expenses he incurred (C.M. 66:32; *Shach* 66:109; *Pischei Choshen*, Halvaah 12:29[51]).



## BHI HOTLINE

Even if the due date is before the end of *Shemittah*, or no collection date was specified when the loan was made, one can avoid having *Shemittah* nullify the loan by making the loan conditional on the borrower not enforcing the nullification of the loan due to *Shemittah*. This declaration must be made in this exact terminology, which establishes that the borrower will not claim that he is exempt from repaying the loan because of *Shemittah*, which means that the lender can collect it after *Shemittah*. If the wording of the condition was that the loan is conditional upon *Shemittah* itself not nullifying the loan, the condition would not be valid, because that condition contravenes a Torah commandment (*masneh al mah shekasuv baTorah*; *ibid.* 67:9).

Some *poskim* rule that a lender may rely on such a declaration even *lechatchilah* (*Beis Yosef*), while others write that although the condition is binding when phrased correctly, the lender still violates a prohibition (*Shu"t Chasam Sofer*, C.M. 113, cited in *Pischei Teshuvah* 2; but the *poskim* seem to rule that it is permissible to make this condition). The condition is binding only if it is made at the time of the loan, not afterward (*Shemittas Kesafim Kehilchasah*, *Shevivei Eish* 6, in dispute of *Beis Dovid*, C.M., *Choshen Mishpat* 17).

The most effective way to prevent a loan from being canceled is for the lender to write a *pruzbul*, a mechanism that was instituted by Hillel Hazakein (C.M. 67:18; *Sma* 36).

A *pruzbul* states that the lender transfers his loans to *beis din* for collection, in which case *Shemittah* doesn't nullify the loan (there is a slight difference between the Ashkenazic and Sefardic texts of a *pruzbul*, as we explained in *BHI*, issues #272-273). *Beis din* then appoints the lender as a *shaliach* (agent) to collect the loan on their behalf.

The lender does not have to actually deposit his *shtaros* (contracts) in *beis din* for this to work; it is enough to declare in the *pruzbul* that he is transferring the loans to *beis din* (*Sma* *ibid.* 39).

Some *poskim* rule that the lender must understand the mechanism of a *pruzbul* for it to work (*Perishah* 23).

The *pruzbul* must be written *after* the loan took place; if the *pruzbul* predates the loan, it will not work for that loan, because a person cannot transfer a loan to *beis din* if it hasn't been lent yet (*Rambam*, *Hilchos Shemittah* 9:22).

If a lender is concerned that he will forget to write a *pruzbul* on Erev Rosh Hashanah, before the end of *Shemittah*, he can write one immediately after he lends the money, even if the borrower is not present and does not know about it.

The *pruzbul* remains in the possession of the lender, so that he can prove that he has it when he collects the loan. But even if he doesn't have it with him when he comes to collect the loan, if he says that he had a *pruzbul* and lost it, we trust him (*Shulchan Aruch* 67:33; see *BHI* issue #507).

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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