

BUSINESS WEEKLY



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

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Dedicated to the Aufruf of Moshe Amsterdam



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

BAR MITZVAH LEARNING

Followup

Rabbi Dayan received the following letter from one of his readers:

"The Business Weekly column featured a story about a grandfather who offered to pay his son-in-law to learn with his own son to make a siyum at his bar mitzvah. I was surprised by the application of the Rema (C.M. 81:1) to this situation. I thought that the Rema was discussing a case where the grandfather was trying to get the father to do something that the father was specifically obligated to do. As the Shach there explains, a father is obligated to teach his son Torah or to hire someone to teach him Torah. There is nothing in the story that implies that this father was negligent in his obligation to provide his son with a Torah education. He presumably sends his son to yeshiva and probably spends some time with him each week reviewing, too. I would not have thought there is a specific obligation for a father to learn with his son in order to make a siyum on his bar mitzvah, so the Rema does not apply and the father-in-law would have no excuse not to fulfill the deal.

Does the author think that a father is obligated to make a siyum with his son for his bar mitzvah? Or does he hold that since a father is generally obligated to teach his son Torah, the Rema's opinion will apply to any deal related to the mitzvah of teaching Torah to his son, even beyond the level of obligation?"

A similar question was posed by two other readers.

"Does the Rema's ruling apply also in this case of a siyum?"

"I wondered about this when writing the article," acknowledged Rabbi Dayan. "There certainly is no obligation to make a siyum at a bar-mitzvah, although it is highly commendable." The *Gemara* (*Kiddushin* 30a) addresses the extent of a father's obligation to teach his son Torah. It cites the case of a child whose grandfather taught him *Tanach*, *Mishnah*, *Gemara*, *halachos* and *aggados*, but concludes that the father's obligation suffices with teaching the written Torah.

"Rambam (*Hil. Talmud Torah* 1:7) rules, accordingly, that a father is required to hire a teacher for all of *Tanach*. *Kesef Mishneh* understands that he is not obligated beyond this, even for free.

"Tur (Y.D. #245), however, cites from Ramah (R. Meir HaLevi Abulafia) that the minimal obligation

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

FOUR-DECADE DELAY

Q: My father-in-law passed away, and when we went through his estate, I found a *shtar* (contract) signed by a borrower, stating that he had borrowed \$10,000 from my father-in-law in 5740/1980. I contacted him to ask whether he had repaid the loan, and he said that he could not recall events that had occurred more than 40 years ago.

Is he obligated to repay the loan?

A: When a plaintiff claims that he lent someone money without drafting a loan document (*milveh al peh*), but is uncertain whether he is owed that money (*taanas shema*), the defendant is not required to pay.

Even if the defendant is also uncertain whether he paid, many *poskim* rule that he has no obligation to pay — even *latzeis yedei Shamayim* (to avoid Heavenly judgment; see *Shulchan Aruch*, C.M. 75:10, with *Taz*, and *ibid.* 18 with the commentaries). Some *poskim* argue that there is an obligation to pay *latzeis yedei Shamayim* (*Chazon Ish*, C.M. 5).

Furthermore, even the latter *poskim* might agree that if a lot of time has elapsed since the loan was due, he would not be required to pay even *latzeis yedei Shamayim*, because his claim that he can't recall whether he paid is a fair claim (see *Nachal Yitzchak* 17).

Generally, when a lender has a contract in his possession, but he doesn't remember if the loan was repaid, and the borrower is also uncertain whether he repaid, he is required to repay the loan; the lender's *shema* claim does not undermine the reliability of the contract (*Shulchan Aruch* 82:2). The mere fact that the contract is in the lender's possession makes it almost certain that it was never repaid (*Maharashdam*, C.M. 40, cited in *Shach* 59:1 and 75:65), because the lender can ask the borrower, "If you repaid the loan, why do I still have the contract?" (*Gra* 82:13).

But this is true only if the contract was signed by witnesses, which lends validity to the lender's claim that it must not have been repaid, because



CASE FILE

of *Tanach* is for someone who is unable to educate more, but one who can, is obligated (*chayav*) to teach his son *Mishnah*, *Gemara*, *halachos* and *aggados*.

"Shulchan Aruch (Y.D. 245:6) cites the Ramah, but uses the word *mitzvah* instead of *chayav*." Shulchan Aruch Harav (*Hil. Talmud Torah* 1:4) rules that a father is required to teach his son the entire Written and Oral Torah. Aruch Hashulchan (Y.D. 245:3-5, 15), though, rules that the absolute requirement is only for the Written Torah, but there is a great *mitzvah* to teach the remainder of Torah, and we force someone who is able to through laws of *tzedakah*.

"We mentioned in the article that according to the *Ketzos* (81:4), if the father-in-law was sincere, he is liable for payment of wages even for fulfillment of an obligated *mitzvah*. If he claims that he was insincere, though, and just cajoling the father to fulfill his *mitzvah* of *chinuch* more fully, in my opinion the Rema's ruling exempting him would still apply, even though learning *Mishnayos* or *Gemara* for a *siyum* is not an absolute obligation.

"Conversely, we mentioned that the *Nesivos* (81:2) maintains that even without a claim of insincerity, there is no employer-employee commitment when "hiring" someone to fulfill his own obligation. It seems to me that this applies only to an absolute requirement, though, not to additional learning for a greater *mitzvah*.

"Thus, in this case," concluded Rabbi Dayan, "the deciding factor is whether the father-in-law's intention was sincere or not."

Verdict: Regarding learning for a *siyum*, If the father-in-law claims that he was insincere, he is exempt; otherwise, he is liable.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #2

Role and Significance of *Dayanim*

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

Q: What is the role and significance of a *dayan*?

A: The Torah commands the *dayan* to rule justly, as it says: "Judge your fellow justly" (*Vayikra* 19:15), and not to be fearful, as it says: "Do not fear any person" (*Devarim* 1:17).

A *dayan* should be cognizant of the significance and weightiness of his position. He causes the Divine presence to dwell in Israel, as it says: "The Almighty stands *baadas e"*" (*Tehillim* 82:1). He should not push to be appointed unless he is the worthiest for the position (C.M. 8:2-3).

Chazal further teach that a *dayan* who judges truly for even one moment becomes a partner with G-d in Creation (*Shabbos* 10a). This is because he fulfills the will of G-d that the world endure, since otherwise one person would devour his fellow and might would make right (*Tur*, C.M. #1).

Am Yisrael is destined to be redeemed through justice, as it says: "Tzion will be redeemed through justice" (*Yeshayah* 1:27).



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otherwise why would it still be in his possession.

If, however, the loan document is merely a declaration, signed by the borrower, acknowledging that he borrowed money, since he can claim that he repaid it (see *Rema*, C.M. 69:2 and *Kovetz Hayashar V'hatov* 9, pg. 85 and 18, pg. 166), the fact that it's still in the lender's possession is not considered proof that it wasn't repaid. The *halachah* would therefore be subject to the delineation above regarding cases in which there is no documentation of the loan. But if the borrower specified in the handwritten contract that it was written with "*ne'emanus*" — i.e., that we would not trust him if he claims that the loan was repaid, as long as the handwritten contract is in the lender's possession — because the lender's question of, "Why is the contract in my possession if it was repaid?" remains a compelling argument (*Tur* and *Shulchan Aruch* 89:2).

Accordingly, if both the lender and borrower are uncertain about a contract that's written with *ne'emanus*, the borrower is required to repay.

On the other hand, since in reality, borrowers are not so careful about retrieving a handwritten contract — even if it is written with *ne'emanus* — the contract's remaining in the lender's possession it is not valid enough proof of non-repayment for it to obligate the borrower to repay if both he and the lender are uncertain in their claims.

In addition to all of the above, in your case, we must take into account that since 40 years have passed since the loan was issued, it is likely that it was repaid, because a lender generally would not allow so much time to elapse without demanding repayment on a large loan. The *Shulchan Aruch* (C.M. 61:9 and 98:2) generally rules out any statute of limitations, but does require *beis din* to interrogate the lender as to why he did not demand payment of the loan until now.

But some *poskim* write that after a three-year interval for a regular loan, and a six-year period for a loan that is profitable (i.e., with a *heter iska*), the loan becomes akin to a *milveh al peh*, and the borrower may claim that he has already paid (see *Nesivos*, *Chiddushim* 61:18, and *Shu"t Beis Shlomo*, C.M. 39). It is likely, however, that we no longer follow this ruling in practice nowadays (see *Chazon Ish*, C.M. 22, *Kovetz Hayashar V'hatov* 18, p. 167).

Considering all of the above factors, in your case, the 40-year interval certainly does weaken the validity of the claim. Although the borrower isn't certain that he repaid the loan, if *beis din* determines that he truly doesn't remember and he isn't merely trying to avoid paying, then we would lean toward absolving him from paying, even if the contract states that it was written with *ne'emanus*.

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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