

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

DUPLICATE DOCUMENT

Mr. Weil needed to borrow \$10,000. He turned to his neighbor, Mr. Goldstein, and asked: "Would you be willing to lend me \$10,000 for the year?"

"I'm willing to lend you the money," replied Mr. Goldstein, "but I require two guarantors to sign on the loan."

"I hope that I'll be able to find them," said Mr. Weil. "I can't think of anybody offhand who will agree."

"That's your issue," replied Mr. Goldstein, "but I'm not willing to lend without guarantors." After discussing the issue with his family, two of Mr. Weil's brothers overseas finally agreed to serve as guarantors.

"I have two brothers who agreed to serve as guarantors," Mr. Weil told Mr. Goldstein, "but they live overseas in different countries."

"That's no problem," said Mr. Goldstein. "We can send them the loan contract. They can sign and return it."

"But if they each need to sign the original loan contract it will take a lot of time," Mr. Weil said. "I have to send the document to one brother, have him sign and return it, and then send to the other. I desperately need the money next week!"

"If we draft two loan documents," suggested Mr. Goldstein, "we could send one to each brother simultaneously. That will save time!"

"Do you really expect me to give you two originals?" said Mr. Weil. "You could then collect the money twice!"

"What's the problem?" said the neighbor. "It's clear that the two documents refer to the same loan - the names, amount and date of both documents are all the same!"

"Even if the two documents are duplicates," added Mr. Weil, "you could present them each at different times. It doesn't seem a good practice to me!"

Mr. Weil decided to consult with Rabbi Dayan, and asked:

"Is it acceptable to make two originals of the loan document?"

"A person should avoid writing duplicate loan documents," replied Rabbi Dayan. "At the least, it should be clear within the documents that they refer to the same loan."

"The *Rishonim* derive from the *Gemara* (B.B. 172a) that if the lender presents two similar loan documents, with the same amount and date, both are independently valid; he can collect doubly from the borrower. This is

DID YOU KNOW?

Assigning an employee to perform his duties on Shabbos, Yom Tov, or Chol Hamoed can be *isur of schirus v'kablanus* (working on behalf of a Yid).

Ask your Rav or email
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לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

FLIGHT FOLLIES

Q. I am a photographer, and I was hired to shoot a wedding out of town. The client sent me an \$1,800 deposit. My flight to the wedding was delayed and then canceled, and all subsequent flights were either delayed or canceled. Am I required to return the deposit? If yes, am I entitled to charge them for the travel expenses I incurred going to and from the airport?

A. The *Rishonim* note a contradiction between two *sugyos*. One *Gemara* (*Bava Metzia* 77a) says that if a *po'el* (day laborer) had to stop working in the middle of a job through no fault of his own (*oness*), his employer is required to pay him for the work he did prior to the disruption, but not for the rest of the time he was originally scheduled to work.

The other *Gemara* (*Kiddushin* 17a) states that an *eved ivri* (Jewish slave) who was sold for a six-year term, but was sick for three of those years, is not required to compensate the owner for the years that he could not work.

If so, wonder the *Rishonim*, why wouldn't we say that a *po'el*, too, should not lose payment for hours he couldn't work due to an *oness*?

Two of the answers offered by the *Rishonim* are relevant to your case.

The Maharam of Rothenberg writes that the Baal Hachalom (master of dreams) revealed to him (while he was being held captive in the Ensisheim castle) that the difference lies in the payment arrangement. An *eved ivri* is paid in advance, and since he is the *muchzak* of the money, we do not demand it back from him. A *po'el*, on the other hand, is paid when the work is completed, so he does not have the rights to payment for time he did not work.

Therefore, he adds, if the worker was paid upfront, and an *oness* prevented him from completing the work, he is not required to return the payment, just like an *eved ivri*. The Rema (*Shulchan Aruch*, C.M. 333:5) rules according to the Maharam of Rothenberg.

The *Shach* (ibid. 25) argues, writing that although the



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because we do not expect two documents to be drafted for the same loan, so we presume that the person borrowed twice, or divided the total sum into two separate documents for some reason" (C.M. 104:12; Sma 104:30).

"Of course, if the lender acknowledges that he lent only once, he collects only once.

"It further seems that this concern applies primarily to loan documents signed by witnesses or that stipulate that the borrower is not believed to say that he repaid without proof. However, regarding an IOU note signed only by the borrower, without a *kinyan*, the borrower is generally believed that he paid, regardless" (C.M. 70:1).

"Elsewhere, the *Gemara* (B.B. 168a) and *Rishonim* address cases where it is necessary to copy a loan document. For example, if the document faded and is becoming illegible, or if the lender needs to travel overseas to collect his loan and is afraid to carry the original with him. *Beis din* can have the document copied, but must indicate that it is a copy and should hold the original, so that the lender should not be able to collect twice" (C.M. 41:1-3; *Pischei Choshen, Shtaros* 3:15-27[77]).

"Additionally, although it usually suffices to destroy the loan document when repaying, when collecting with a copy the lender should write a receipt, so that the borrower can show it should the original be presented later" (Sma 41:25).

"Here, too," concluded Rabbi Dayan, "two documents should not be made without indicating in them that one is a copy and that they relate to the same loan."

Verdict: Two loan documents should not be made for the same loan. In cases of need, a duplicate can be made, while indicating that it is a copy.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #11

Erudition of Dayanim

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

Q: How knowledgeable must the *dayanim* be to serve as *beis din*?

A: ideally, all the *dayanim* on the panel should be worthy *talmidei chachamim*, well versed in monetary *halachah* (C.M. 3:4).

However, even three regular people can serve as a *beis din* and summon for adjudication someone who does not come willingly before *beis din*, provided that at least one has learned and can reason in a halachic manner. Some require that the other two can understand the halachic material and rationale when explained to them. Preferably, though, all three should be learned (C.M. 3:1; *Shach* 3:2; *Chazon Ish, Sanhedrin* 15:4; *Nesivos, Chiddushim* 8:1).

If the two who are not learned outvote the learned one, most authorities maintain that their majority decision is valid (*Shevus Yaakov* 1:137; however, see *Sha'ar Mishpat* 18:1).

In a place where there isn't anyone learned, three unlearned people cannot adjudicate – unless accepted by the litigants or community – but they can hear the opposing claims and testimony, and send the material before a reliable *posek* to guide them (*Rama* 3:1; 8:1).



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Maharam had this approach revealed to him in a dream, "words of dreams do not affect *Halachah* in any direction" (*Sanhedrin* 30a). The *Shach* rules according to Tosafos's (*Kiddushin*, loc. cit. s.v. *Chalah*) resolution of the contradiction between the *sugyas*.

An *eved ivri* becomes property of his master for the six-year term of his enslavement. If he gets sick, it is akin to an *oness* occurring to any other item belonging to the owner. A *po'el*, on the other hand, does not belong to his employer, and he is therefore entitled to payment only for the time he actually worked.

According to the *Shach* (and the majority of *poskim* who concur with his opinion), it is obvious that in your case, you must return the entire deposit (even if the deposit is considered a *kinyan*; see *Pischei Teshuvah* 207:13 and *Minchas Pittim* 190:10), since you are not owned by your client.

But you would not be entitled to the deposit even according to the Rema. The *halachah* is that even an *eved ivri* who misses more than three years of his six-year term is required to make up the time, and he is allowed to keep the full payment without making up time only if he worked at least half of the term (*Kiddushin*, loc. cit.). The logic behind this *halachah* is that we are certain that the owner would never have agreed to pay him for a six-year term had he known that the slave would be sick for that much time. He is therefore obligated to make up the time (*Ritva* *ibid.*).

The same would obviously be true for a *po'el* — whose halachic status, according to the Maharam and Rema, is derived from the *halachos* of an *eved*; if he was sick for more than half the time he was scheduled to work, he is not entitled to payment.

Since you didn't do *any* work, you are certainly required to return the deposit (*Ketzos* 333:9; *Divrei Mishpat* *ibid.* 3, and *Ulam Hamishpat*).

We find a similar case in which a person paid upfront to rent a specific boat to transport wine, but the boat sank before he could use it. The *halachah* is that the owner of the boat must return the payment, because the *oness* happened to him, not to the renter (*Shulchan Aruch* loc. cit. 311:2). Since the renter derived no benefit from the boat, his status is akin to that of an *eved* who worked fewer than three years, and the owner is therefore required to return the payment (*Divrei Mishpat* and *Ulam Hamishpat*, loc. cit.).

Clearly, then, according to all opinions in this *machlokes*, you are required to pay back the entire deposit. You may not even keep your travel costs, because the *oness* was on your end, not on your client's; he derived no benefit from you and is therefore not required to pay you at all (see *Nesivos* 335:3).

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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