

BUSINESS WEEKLY



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

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

STOLEN TZEDAKAH

Binyomin was careful to set aside as *maaser kesafim* a tenth of his earnings for *tzedakah*. When he received his salary, at the end of each month, he would calculate the amount to donate the following month. Most of the donations were through checks or credit cards, which Binyomin recorded in a ledger and balanced every few months, but he always put a certain amount of cash aside in an envelope for needy people who knocked on the door and for daily *tzedakah* in the shul *pushke*.

Binyomin kept the envelope with the cash safely in a drawer in the desk in his study. This way, the money was also readily available when people would come.

As the summer was over and the holidays were approaching, Binyomin expected more people than usual to come to the door. He set aside \$250 cash in the envelope.

One day, Binyomin returned from work, and found that his house had been broken into! He quickly took stock of the missing items, and checked the drawer in his desk. The envelope containing the *tzedakah* money was missing; it had been stolen!

The insurance covered most of the theft, but limited cash to \$200, significantly less than the amount in the house. Binyomin's *chavrusa* blessed him that Hashem should fill his loss (see *Y.D.* 377:1).

"Thank you," said Binyomin. "I wonder about the envelope I set aside for *tzedakah*, though. Do I have to replace the money?"

"That's an interesting question," replied his *chavrusa*. "On the one hand, you already set the money aside for *tzedakah*, so it's not really your money that was stolen. On the other hand, the *tzedakah* never got to needy people, so how can you count it as *maaser kesafim*?"

"That's exactly what I was wondering," said Binyomin. He called Rabbi Dayan and asked:

"Do I have to replace the money set aside for *tzedakah*?"

"The *Mishnah* (*Megillah* 8a, *Kinim* 1:1) teaches that if a person accepts upon himself a vow to bring a sacrifice (*neder*) and later designates an animal to fulfill the vow, if the animal is stolen he must replace it," replied Rabbi Dayan. "However, if a person initially sanctifies an animal as a sacrifice (*nedavah*) and it is stolen, he is not required to replace it." Similarly, a person who designates produce as *terumah* or *maaser* and it is stolen, has no obligation to replace it.

"Some authorities consider money set aside for *tzedakah* like a *nedavah* or tithes, so that the person is not required to replace *tzedakah* money that was stolen. He is also not liable

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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for guidance and solutions.



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

DO I NEED WITNESSES?

Q. I have seen some contracts or similar documents — e.g., loan documents, wills, partnership agreements — that are signed only by the two parties, and others that are signed by proper *eidim* (witnesses) as well.

Considering that *hodaas baal din k'meah eidim dami* (a party's acknowledgment of an obligation is equivalent to testimony of a hundred witnesses), is there any benefit to having *eidim* sign on a contract?

A. You are correct in your assertion that a party's signature is enough to make a contract binding. Therefore, if it is difficult to find valid witnesses, the signatures of the parties suffices. Nevertheless, there are benefits to having witnesses sign the contract, as we will explain.

In earlier times, there was a major benefit for a contract to be signed by *eidim*: If a person who borrowed money instructed witnesses to sign a loan contract, he effectively places a lien on all of his real estate to the loan. If he sold a plot of land after he borrowed the money, and he does not have money to repay the loan when it is due, the lender may repossess the plot of land from the buyer.

This *halachah* is limited to loans in which the contract was signed by witnesses, whose signatures on a contract creates a buzz that reaches the ears of the community. The buyer of the plot of land is therefore expected to have known that this loan existed, and he should have ascertained, before he bought the land, whether the borrower/seller had enough other assets with which to repay his loan.

If a loan contract is not signed by witnesses, only by the borrower, that document does not create a buzz, and the buyer of the borrower's land is assumed to have had no way of knowing about it. *Chazal* ruled that in such a circumstance, the lender may not repossess the land, even if the loan preceded the sale of the land (*Shulchan Aruch*, *C.M.* 39:1, 69:2, and 111:1).

According to the majority of *poskim*, this distinction no longer applies today.



CASE FILE

for the money as a guardian, since a person who holds *tzedakah* money is considered a *shomer chinam* – unpaid guardian, who is exempt if theft occurs. Moreover, if the money was not designated for a specific recipient, he cannot be held halachically liable even if he was negligent, since there is no plaintiff, but he carries a moral responsibility" (*Pischei Teshuvah*, Y.D. 249:1, citing *Arba'a Turei Aven* #6; C.M. 301:6; *Pischei Teshuvah* 301:6).

"However, others claim that *maaser kesafim* is like a vow, since the obligation is incumbent upon the person, not specific money. Thus, if money set aside is stolen, the person is required to fulfill his obligation with other money. *Tzedakah* money is not like a sacrifice that acquires inherent sanctity, nor like tithes, or even *maaser ani*, which acquires inherent status as such. This is true, even more so, if the person intended that the money should not acquire the status of *tzekadah* until given" (Chasam Sofer, *Chullin* 131a; *Derech Emunah*, *Hil. Matnos Aniyim*, *Bi'ur Halachah* 7:5).

"Thus, there is a dispute regarding your question," concluded Rabbi Dayan. "If you are able, you should be stringent and replace the money to benefit the needy" (see Y.D. 259:5; *Tzedakah Umishpat* 8:7, 10:16; *Hilchos Maaser Kesafim* 8:1-4,7).

Verdict: Some maintain that a person who set aside money for *tzedakah* that was stolen is exempt; others require him to replace it.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Dayanim (Judges) #12
In Remote Places

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

Q: What should be done in places where there is no learned person worthy of judging?

A: We mentioned last week that at least two of the three *Dayanim* must be learned. If not even one is, they need explicit acceptance of their authority by the litigants, similar to *Dayanim* who are relatives or disqualified for some other reason (*Pischei Teshuvah*, C.M. 3:1).

In remote places, where there is no one halachically learned, if there is a need to appoint *Dayanim* so that people should not turn to civil courts, we appoint the best and wisest of those available. Similarly, the community can accept upon them someone who is invalid for some other reason to be a *Dayan* (Rama, C.M. 8:1, 22:1, 33:18).

Nonetheless, they should not be appointed to rule according to civil law, but rather to the best of their Torah or fairness understanding (Chazon Ish, *Sanhedrin* 15:4).

Once appointed by the city members, an individual cannot invalidate them and claim that he refuses to adjudicate before them since they are not inherently worthy.



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Nowadays, even if a loan contract is signed by witnesses, no lien is created on the borrower's possessions, because a lender does not expect to be able to repossess the borrower's assets unless he took additional legal action to record the lien. Furthermore, the signature of witnesses on a loan document no longer creates a buzz, because such matters are usually conducted in a private setting and are not publicized afterward (*Erech Shai* 60:9, *Igros Moshe*, C.M. 2:62, and *Kovetz Hayashar v'Hatov* 6, p. 33. *Shu"t She'eilas Shalom*, *Mahadura Tinyana*, *Even Ha'ezer* 71 writes that the same applies to a *kesubah*). Other *poskim* maintain that the *halachah* has not changed, and a contract signed by witnesses *does* create a lien (*Kovetz Teshuvos* 3:197).

Another benefit of a contract being signed by witnesses is that as long as the contract is in the lender's possession, the borrower will not be believed if he claims that he has already repaid the loan. Since a contract signed by witnesses could create a lien, we are certain that if the borrower repaid the loan, he would not have left such a contract with the lender, to avoid causing damage to a buyer of his properties. If the lender has the contract, then the borrower must never have repaid.

Furthermore, even if the contract states that it is not guaranteed by the borrower's possessions, we still do not believe the borrower's claim that he repaid the loan, because the borrower still would not have left such a potent contract in the lender's hands (*Shach*, C.M. 69:14; see *Nesivos* 69:6). Similarly, nowadays contracts signed by witnesses — even ones without a lien on the borrower's assets — would not be left in the lender's hands.

If the contract was signed by the borrower only, on the other hand, and he now claims that he repaid the loan but never took the contract back from the lender for a specific reason, we do trust his claim, because due to the weakness of the contract he can claim that he forgot about it (*Shach* *ibid.* 7, 14). Other *poskim* argue that even if the contract is signed by the borrower without witnesses, we still wouldn't automatically believe his claim that he repaid; rather, we would leave it up to the presiding *dayan* to determine whether to trust him, based on the circumstances (*Rema* *ibid.* 2).

Returning to your question, one benefit of having witnesses sign the contract is that the borrower will not be able to claim that he repaid the loan if the lender still has the contract. If it is too difficult to find valid witnesses, the lender can have the borrower write into the contract that he will not be trusted in a claim that he repaid the loan as long as the lender has the contract (62:2 and 71:1). [Even if the contract is signed by witnesses, it is still preferable to include that language, because the above analysis is the subject of a dispute (see *Rabbi Akiva Eiger* 2:110)].

In our next essay, iy"H, we will discuss two more aspects of this area of halachah.

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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