

# 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

### KIDDUSH OF THE CHASSANIM

The Yamim Tovim were over, but the celebration continued. The *chassanim* of Simchas Torah were sponsoring a *kiddush* for the community.

The *gabbai* contacted Mr. Furst, who was honored with *Chassan Bereishis*. "We have arrangements with the caterer for standard *kiddush*, deluxe, and super deluxe," he said. "Which would you like?"

"I'm happy to sponsor the super deluxe," said Mr. Furst. "It's a very special occasion for me! But I have to ask the other *chassanim*."

Mr. Furst called Rabbi Yunger, who was honored with *Kol Hanea'rim* and shared in the *kiddush* of the *chassanim* in their shul. "The *gabbai* asked what kind of *kiddush* to order," he said. "I'd like to order super deluxe."

"I agree," replied Rabbi Yunger. "It was a big *zechus* to be with all the children!"

Mr. Furst then called Rabbi Moses, the *Chassan Torah*. "I'm happy to sponsor a deluxe *kiddush*," Rabbi Moses said.

"Rabbi Yunger and I were thinking of super deluxe," said Mr. Furst. "This is a very special occasion."

"I agree that it's very special, that's why I said deluxe," replied Rabbi Moses. "I think that super deluxe is excessive. It's almost a meal, and afterwards people go home and have a full Shabbos meal prepared. I'd rather spend my money on things that people need, like worthy *tzedakah* causes, tuition for the children, or *sefarim* for the shul library."

"We're sponsoring the *kiddush* together," said Mr. Furst. "Two out of three want super deluxe."

"You're welcome to cover super deluxe," replied Rabbi Moses. "How can you require me, though, to pay for something I consider excessive?"

"Since we're sponsoring the *kiddush* together," argued Mr. Furst, "the majority opinion should prevail, like anything else!"

Mr. Furst called Rabbi Dayan and asked:

**"Is Rabbi Moses required to share equally in a super deluxe *kiddush*?"**

"In most shuls, the *chassanim* are expected to sponsor a *kiddush* after Simchas Torah," replied Rabbi Dayan. "They accept the *aliyah* with this understanding and become partners in sponsoring the *kiddush*, even though there is no explicit arrangement between them.

"The principle regarding partners is to act according to the accepted practice for such a partnership, unless explicitly agreed otherwise" (C.M. 176:10).

"Thus, the *Mishnah* (B.B. 2a) teaches that neighbors building a joint wall between their properties should build in the accepted construction manner of that locale. However,

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## BHI HOTLINE

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

### COIN CONUNDRUM

**Q:** A certain Judaica store carries silver coins for use at a *pidyon haben* (redeeming of a firstborn son). The proprietor found a website selling American Eagle silver coins at a discount price, and he ordered 30. When the shipment did not arrive on time, he checked the tracking and was surprised to see that they were being shipped from China. This aroused his suspicion, considering the prevalence of counterfeit goods coming out of China, and it seemed particularly suspicious that a coin minted in the United States would ship from there.

When those coins finally arrived, the proprietor compared them to real coins and found them to be counterfeit.

He called another store owner and they determined that he, too, had been duped. He then publicized this issue so other unsuspecting shopkeepers and/or fathers of newborns would not use these coins for a *pidyon haben*.

I am a *kohen*, and when I heard about this issue, I checked the coins I have received at *pidyon haben* ceremonies, and lo and behold — I had a set of those fake coins in my collection (they were easily distinguishable from real silver coins because they were the only ones that hadn't tarnished).

I assume that the person who gave me these coins is required to redeem his son again, but I'm not sure which father gave them to me. What should I do?

**A:** First of all, it might not be difficult to track down which father gave you those coins. This would be particularly easy if you returned a coin to each father, because they can each check if their coin is tarnished (we can assume that each person's set of coins came from the same source).

But what if you can't determine which father gave you those coins?

In a case of *bari v'shema* — i.e., when a plaintiff claims that he is certain (*bari*) that someone owes him money, and the defendant is uncertain (*shema*) whether he owes the money — the *halachah* depends on how the uncertainty arose. If the defendant is uncertain whether he ever owed the money — for example, if the plaintiff claims he lent the defendant money and wasn't repaid, and the defendant isn't sure if he ever borrowed it — *beis*



## CASE FILE

if there is no clear manner of construction, one cannot force the other to participate beyond the cheaper construction" (C.M. 157:4; Sma 157:13).

"Therefore, if the practice in that shul is that the *chassanim* sponsor a certain kind of *kiddush*, any one of them can insist that the others share in doing so" (see *Pischei Choshen* 2:[12]).

"What if the *chassanim* sometimes sponsor deluxe and sometimes super deluxe," asked Mr. Furst. "Does the majority opinion prevail?"

"Regarding communal issues of the city, Rama rules that we follow the majority opinion," replied Rabbi Dayan. "This is because community members are considered like a *beis din* for the city's issues" (C.M. 2:1;163:1; Chazon Ish, B.B. 4:8; Tzitz Eliezer 3:29:4, 16:51).

"Although we do not follow the statistical majority in monetary matters, but rather monetary possession (see *Business Weekly* #626 "Recording Hours"), in a ruling of *Beis Din*, the minority opinion is nullified by the majority opinion" (Sma 18:4).

"Igros Moshe (C.M. 2:23) similarly writes about partnership issues, e.g., whether to hire an additional worker, that we follow the majority opinion, unless the partners stipulated otherwise, since it is impossible that partners will agree on all issues.

"Nonetheless, this applies to needs of the partnership. However, for issues of personal preferences, without any objective need, the majority cannot impose its preference on the minority at his expense, unless there is a clear practice to follow the majority on this, as well" (*Aruch Hashulchan* 2:2-3; Chazon Ish, B.B. 5:3).

"Therefore," concluded Rabbi Dayan, "you cannot require Rabbi Moses to sponsor a super deluxe *kiddush*."

**Verdict: Partners can usually impose the majority opinion for partnership needs, but not for personal preferences at additional expense, unless the practice is to follow the majority for this also.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

*Dayanim* (Judges) #18

**Compromise**

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

### Q: Should *beis din* seek to achieve a compromise?

A: The *Gemara Sanhedrin* (6b-7a) concludes that *beis din* should offer the litigants the option of mediating a compromise between them. A *beis din* that regularly achieves compromise is commendable (C.M. 12:2).

Some *Acharonim* write that it suffices to merely offer the option, while others maintain that *beis din* should actively encourage the litigants to reach a compromise (Sma 12:6; Taz 12:2; see *Moznayim Lamishpat* 12:3).

The purpose of compromise is twofold.

First, to achieve peaceful justice – *mishpat shalom*, when each party believes the merits of his claims, even if *beis din* already heard the arguments, and knows in which direction the law leans. However, if one party clearly took from the other unlawfully, it is not commendable to compromise; *beis din* should seek to spare the victim from his aggressor (Sma 12:9; *Divrei Malkiel* 2:133).

Second, since our ability to rule properly according to true Torah law has diminished through the generations, *beis din* prefers to avoid ruling by the letter of the law without the parties' willing agreement to the ruling (C.M. 12:20; *Gra* 12:30).



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*din* does not obligate him to pay, but he should pay nonetheless, *latzeis yedei Shamayim* (to avoid judgment in Heaven). But if the defendant acknowledges that he took the loan, but is unsure if he repaid, he is obligated to pay (*Shulchan Aruch*, C.M. 75:9).

The *poskim* discuss a case in which a borrower repaid a loan, and the lender later approached him with counterfeit money claiming he received it from the borrower, but the borrower is uncertain whether it is the money he gave. Some *poskim* rule that this is similar to the former case, in which the borrower is unsure whether he ever took a loan, because when he repaid the loan, that ended their initial transaction, and now the lender is beginning a new claim (*Taz*, end of *siman* 75). Other *poskim* compare this to a case in which the borrower is unsure if he repaid, and he is therefore obligated to pay (*Shach* 232:15).

In your case, since you are also uncertain which father owes you money (*shema v'shema*), many *poskim* say that even the *Shach* would rule that none of them are required to pay, even *latzeis yedei Shamayim*. (See *Shulchan Aruch* 75:10 with *Taz*, and 75:18 with the commentaries. In our case there is an additional factor to consider: the *kohen* has no standing on this case, because each father is entitled to give the money to a different *kohen*.) This is especially true because the defendant — in this case, each father — had no way of knowing that the money was counterfeit (*Tumim* 88, *Urim* 38, and see *Mishnas Hamishpat* 75:28).

The only question is whether extra stringency is applied to this case because of the gravity of a *bechor* (firstborn) not having been redeemed.

The *Gemara* (*Chullin* 134b) states clearly that if a *safek* (uncertainty) arises regarding a *pidyon haben*, we rule leniently, since the *bechor* is not actually consecrated; a *pidyon haben* is merely a monetary transaction between his father and a *kohen*, so we apply the rule of *hamotzi meichaveiro alav haraayah* (the burden of proof is on the party who is seeking to extract money from the other party; *Yoreh De'ah* 305:13 and 25; and see *Shach*, *Yoreh De'ah* 177:68).

Some *poskim* write, however, that the *Gemara* is only addressing cases in which the uncertainty is whether there was an obligation to make a *pidyon haben* altogether (e.g. a woman gives birth to twins, and it is unclear whether the boy was born first or the girl), but if we are certain that this child needed to have a *pidyon haben*, and the uncertainty is whether a valid *pidyon* occurred, then some *poskim* consider it a *safek issur*, in which case we must rule stringently (*Mahari Kurkus*, *Bikurim* 11:18, and *Imrei Binah*, *Pidyon Haben* 2). But many *poskim* rule that it is that it is still a monetary case (*Yad Elyahu* 37, cited in *Pischei Teshuvah*, *Yoreh De'ah* 305:5; see *Pidyon Haben K'hilchaso* ch. 4). Many *poskim* rule that in a case of *pidyon haben* in which a *safek* does not require the father to pay, there is no obligation to act stringently and perform another *pidyon* (see *Shu"t Mahariy'a*, *Yoreh De'ah* 364-365; *Shu"t Maharam Shik*, *Yoreh De'ah* 298).

Others write that it is preferable to do another *pidyon*, but the father may give the coins as a *matanah al menas lehachzir* (a gift given on condition that it be returned, which works for *pidyon haben* — see *Yoreh De'ah* 305:8), but a *brachah* should not be recited (*Migdal Oz* [Yaavetz] 1:28; *Os Bris* 21 in the name of the *Chasam Sofer*; see *Shu"t Minchas Yitzchak* 2:30).

[For a discussion whether each father can claim that the coins he used are among the majority of such coins, which are real, not counterfeit, see *Yoreh De'ah* 110:3 and *Shach* 14.]

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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