

BUSINESS WEEKLY



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

Issue #643 | Bo | Friday, Jan 27, 2023 | 5 Shvat 5783

לע"נ ר' בניהו בן ר' יהושע ע"ה, ר' שמואל בן ר' בנימין ע"ה



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

PASUL TEFILLIN

For his bar mitzvah, David's father bought him high-quality *tefillin* from a *sofer* whom he knew in Yerushalayim.

Six years later, David went to learn in Israel. He decided to have his *tefillin* checked, and brought them to the *sofer* from whom they were purchased.

"*Shalom*, I'm David Rosenblum," he said to the *sofer*. "Six years ago, my father bought these *tefillin* from you for my bar mitzvah. I'd like to have them checked."

"I know your father well," said the *sofer*. "I remember him telling me about your bar mitzvah. I'll have them checked by 5 p.m."

David returned later to the *sofer*. "I recognize the *parshiyos* as my handwriting," said the *sofer*. "Unfortunately, though, one of the *parshiyos* of the *shel rosh* is *pasul*. A set of new *parshiyos* costs \$300. Should I put them in?"

"I'll have to ask my father," David replied. "I'll call him now."

"If the *parshiyos* are *pasul*, that should be the *sofer's* problem!" Mr. Rosenblum exclaimed. "He wrote them. Please let me speak with him."

David handed the phone to the *sofer*. "We bought the *tefillin* from you," Mr. Rosenblum said to the *sofer*. "If one of the *parshiyos* is *pasul*, why should we have to pay for new ones?! The *tefillin* are not old!"

"You bought them six years ago," replied the *sofer*. "There's no way of knowing when they became *pasul*. All my *parshiyos* are checked by an outside *magiah* (proofreader) and by computer. Presumably they were kosher when I put them in."

"Can I put Rabbi Dayan on the line?" asked Mr. Rosenblum.

"Certainly," said the *sofer*.

Mr. Rosenblum included Rabbi Dayan on the conference call and asked:

"Who bears responsibility for the *pasul* *parshiyos*?"

"Clearly, *tefillin* that are *pasul* are considered defective merchandise," replied Rabbi Dayan. "The sale can be voided, even if discovered many years later" (C.M. 232:3).

"Furthermore, the letters of *tefillin* must be written in order, so that in many cases – unlike a *sefer Torah* – they cannot be corrected afterwards. Even the subsequent *parshiyos* of the *shel rosh* that are intact cannot be used by merely replacing the one defective *parashah*" (O.C. 32:23-25).

"However, the sale is void when the *p'sul*

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email
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for guidance and solutions.



BHI HOTLINE

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

RENTAL EXTENSION

Q. I rented an apartment for five years with an option to extend the lease for another five years. Lately, rental prices have skyrocketed, and my landlord asked that I either agree to a rent hike or vacate the apartment and not extend the lease. Is he entitled to raise my rent?

A. We will begin by delineating a tenant's rights.

When there is a signed contract (or even a verbal agreement) between a landlord and tenant for a certain period of time — two years, as an example — the landlord cannot evict the tenant until the agreed-upon date. Even if the house the landlord is residing at collapses and he doesn't have where to live, the renter retains the rights to reside in the rented property owned by the landlord for the duration of the lease (*Shulchan Aruch*, C.M. 312:1). Even if rental prices rise or fall, neither side is entitled to change the agreement (ibid. 312:9-10).

If they never discussed the length of the lease, then the landlord may evict the tenant at any time, but he is required to give him fair notice so he can find a different place to live. In this situation, the tenant's right to remain in the property for the notice period is not based on a *kinyan* made by the landlord and tenant; it is a *takanas chachamim* (Rabbinical enactment) to ensure that a tenant isn't left without a roof over his head (ibid. 312:5). Consequently, if the landlord's house collapses, the landlord may evict the tenant immediately, because it would be a travesty of justice to force him to provide lodging for his tenant while he himself has nowhere to live.

Furthermore, if rental prices rise at any point during the fair notice period, the landlord may tell the tenant that he must either agree to pay the going rate for the apartment or vacate it (ibid. 312:11). The converse is also true: If rental prices drop, the tenant may insist that the landlord drop the price or allow him to leave without giving the landlord time to find a new tenant (ibid. 312:9).

This background prepares us for your *she'eilah*.



CASE FILE

is from the beginning, for example, an extra or missing letter. This is rare nowadays, when the *parshiyos* often undergo a computer check. Nonetheless, it can happen with an improperly written letter, such as a *yud* that is a little long and marginally becomes a *vav*, or a *kaf* whose bottom right corner is not sufficiently rounded and marginally becomes a *beis*. "Much more common is a letter that is cracked, especially on the fold. The question then arises: Did the crack occur before the sale, perhaps when folding and inserting the *parshiyos*, or over time, after the *tefillin* were already in the hands of the customer?

"The *Gemara* (*Kesubos* 75b) teaches that when there is doubt when the defect occurred, the burden of proof is on the person in whose possession it was discovered (*kan nimtze'u kan hayu*). Thus, if the defect was discovered in the hands of the buyer, we presume that it occurred in his possession, and the loss is his – even if he hasn't fully paid yet and still holds the money" (*C.M.* 224:1-2; 232:11; *Sma* 232:24-25.)

"*Parshiyos* that were checked in the standard manner before being inserted in the *tefillin* are *b'chezkas kashrus*. Since they now belong to the customer, we assume that the crack occurred in his hands" (*Kesef Kodashim* 232:11).

"Thus," concluded Rabbi Dayan, "if we cannot ascertain when the *p'sul* developed, since it was discovered after the *tefillin* belonged to David, we presume that they became *pasul* in his hands, so that you must pay for the new *parshiyos*" (*Pischei Choshen, Geneivah V'onaah* 12:34-39[92]).

Verdict: When a crack was discovered in a letter in *tefillin*, we presume that it occurred in the hands of the customer in whose possession it was found, so that the initial sale remains valid."



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #31

Legal Expenses

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

Q: Is the defendant responsible for the plaintiff's legal expenses when found liable?

A: When the parties litigate in good faith, each party is responsible for his own legal expenses. This is true even if they had to travel to another city, e.g., if there was no local *beis din* (*C.M.* 14:5; *Aruch Hashulchan* 14:10).

However, if the defendant refused to adjudicate, and the plaintiff incurred expenses to force him to come to *beis din*, if the defendant was found liable, he is responsible for the plaintiff's expenses from the time of his refusal, at least those ensuing from his refusal (*Shach* 14:10).

Some write that even if the defendant did not refuse to adjudicate, but falsely denied the claim even though he knew that he owed (to evade payment or to wear down the plaintiff in the hope of forcing compromise), he is responsible for the plaintiff's legal expenses. Conversely, if the plaintiff forced the defendant to adjudicate and caused him expenses, and it turned out that the plaintiff lied outright in his claim, he is responsible for the defendant's expenses (*Yeshuos Yisrael* 14:4).



BHI HOTLINE

A renewal option entitles the tenant to extend his lease for an additional rental period, and only the tenant can decide whether he wants to pick up that option. Even if the landlord no longer wants to honor the option, he cannot void it, and if the tenant wants to leave, the landlord cannot force him to continue living there, as long as the tenant gives him fair notice.

If the tenant does decide to stay, the terms that were agreed upon for the first rental period carry forward for the additional period. Therefore, the landlord may not raise the rent. If the landlord wants to prevent this from becoming an issue, he must write into the initial contract the specific terms he wants for the extension. For instance, he may write that the lease will extend for another five years with a certain increase in rent, etc. If the tenant then elects to exercise the option, he may not choose to extend the lease for only two years unless the landlord agrees (*Hayashar V'hatov*, vol. 12, p. 62; cf. *Mishpatecha L'Yaakov*, vol. 2, 16:1).

If they did not discuss the terms of the renewal option, but simply wrote that such an option exists, the assumption is that all the terms of the first rental period — the rental price, the length of the lease — apply to the extension as well.

It is advisable to specify a date, toward the end of the first rental period, when the tenant must give notice whether he plans to extend the lease or move out (see *Mishpetei HaTorah* v.2 p. 74; *Emek Hamishpat, Sechirus* 18; *Chukei Chaim* 15:22; cf. *Hayashar V'hatov* v.12, p. 62 and *Shimru Mishpat* 2:54).

The accepted interpretation of such an option is that it is one long rental period that includes the extension, with a stipulation that the tenant may leave after the first rental period (i.e., not simply that the landlord obligates himself to allow the tenant to rent the property for an additional term).

As a result, the two sides do not have to make another *kinyan* (act to formalize the transaction) after the first rental period. Furthermore, if the landlord dies or sells the property before the extension, since it is one long rental period, the tenant may stay in the property for the duration of the second rental period as well (see *Shu"t Rivash* 257 and *Nesivos* 206:2).

Accordingly, your landlord may not raise the rent at this point unless he wrote that option into the original contract.

After all is said and done, however, it is possible that local real estate practices will influence the *halachah* and determine the intent and interpretation of the agreement.

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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