

# 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

## FEE COUNTERCLAIMS

Last week we presented the case of offsetting corresponding fees: Mr. Cooper's fee for electrical work he had done at Mr. Singer's office against Mrs. Singer's fee for playing music at the Coopers' bas mitzvah.

"I am entitled to my fee for playing music, regardless of any debt my husband has to you," claimed Mrs. Singer. "I keep a separate business account."

"But your husband is halachically entitled to your earnings, so essentially I owe him," claimed Mr. Cooper. "I can offset the debts!"

Rabbi Dayan explained that there is an unresolved question whether a husband is entitled to his wife's earnings through exceptional exertion, so that if the wife holds these earnings, she can keep them. Some contemporary *poskim* maintain that this includes earnings from work out of the house in the evenings.

"Since I can keep these earnings, you can't offset them by my husband's debt," argued Mrs. Singer.

"But you can't make me pay, since there is halachic doubt," countered Mr. Cooper.

The two asked Rabbi Dayan:

**"Can Mr. Cooper offset Mrs. Singer's fee with Mr. Singer's debt to him?"**

"The *Gemara* (*Kesubos* 110a) addresses the issue of mutual obligations. When the payments are halachically similar, they cancel each other. However, when there are halachic differences between the payments, *Shulchan Aruch* rules that each party collects his appropriate payment" (*C.M.* 85:3).

"Thus, if the Singers share a single account, Mr. Cooper could certainly offset his obligation to Mrs. Singer with Mr. Singer's debt to him. It is pointless to pay \$600 to the joint account, and then withdraw \$600 from it. If Mrs. Singer and/or Mr. Cooper need to issue or receive receipts for bookkeeping purposes, they can be recorded as cash payments. Mr. Singer's debt should be marked 'paid' in tandem.

"However, if Mrs. Singer keeps a separate business account for her music services, the issue requires clarification.

"Were we to rule that Mr. Singer is entitled to all his wife's earnings, including the fee for her music at the Coopers' bas mitzvah, we would similarly say that the two debts cancel each other, since ultimately the fee goes to Mr. Singer.

"However, we mentioned last week that there is an unresolved dispute regarding a wife's earnings through her exertion. Since Mrs. Singer has a regular job, some contemporary *poskim*



## BHI HOTLINE

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

## PAYMENT TUTORIAL

I tutor a *bachur* in yeshivah, and I am paid by the hour. In the previous *zman*, there were several instances in which he did not show up to learn with me, and his father refused to pay me. When I asked a Rav whether I could demand that he pay, he told me that I couldn't.

At the beginning of this *zman*, I made sure to stipulate to the father that he had to pay me even if the boy didn't come to yeshivah.

The father just called me to inform me that his son can't come this Monday, adding that he understands that he has to pay me regardless.

It happens, however, that I can't be there on Monday either, and I wouldn't have learned with him regardless. Am I obligated to tell the father, or is it my *mazel* that caused me to get paid for a day that I would not have been able to tutor?

**A.** When someone hires a *poel* (worker), and because of an *ones* (circumstance beyond his control) the *poel* couldn't do the work, if both parties were aware that it was common for this *ones* to occur (e.g., the worker was hired to water a field from a creek that runs through the area, but occasionally runs dry, and they both live in town and are aware of it), or if both *didn't* know about it (e.g., if it's unusual for this circumstance to occur), then the *poel* takes the loss, and the employer does not have to pay him.

In such a case, there is a *safeik* (uncertainty) as to who was required to make a condition regarding such an *ones*, and since the *poel* is the *motzi* (the one trying to retrieve money) and the employer is the *muchzak* (the one holding the money), it is incumbent upon the *poel* to prove that he was entitled to payment despite the *ones*, which he can't do (*Shulchan Aruch*, *C.M.* 334:1,4, with *Sma* 1; and see *Minchas Pittim*).

## 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.



## CASE FILE

view her additional earnings from playing music at simchos at night as earnings through exertion, so that it is questionable whether Mr. Singer is entitled to them.

"In a case that one party's obligation is definite and the other's is questionable, Ketzos Hachoshen (75:5) reasons that we treat each obligation independently in regard to the doubt. Thus, in our case, since it is questionable whether Mr. Singer is entitled to his wife's earnings at the bas mitzvah, we treat each obligation independently. Mrs. Singer can claim *kim li* that she can keep this fee for herself, so that Mr. Cooper cannot offset it by Mr. Singer's debt to him.

"However Nesivos Hamishpat (75:5) reasons that a counter obligation is considered a form of payment. Thus, in this case, Mr. Cooper can claim *kim li* that Mr. Singer is entitled to his wife's earnings, so that he paid her fee through Mr. Singer's obligation to him.

"Bottom line, Mr. Cooper can offset Mrs. Singer's fee with Mr. Singer's obligation," concluded Rabbi Dayan. "According to many *poskim*, Mr. Singer is halachically entitled to his wife's earning even outside the house. Even according to those who question whether he is entitled to them, Mr. Cooper - who is currently in possession of his money - can claim *kim li* and refrain from paying Mrs. Singer, offsetting her fee with Mr. Singer's debt."

**Verdict: A person can offset his obligation to a wife with the husband's debt to him when the couple shares an account. Even when the wife keeps a separate account, the person can offset it when there is a question whether the husband is entitled to these earnings.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS

Yored L'sedei Chaveiro  
Enhancing Another's Property  
#4 Unfit for Enhancing

לע"נ ר' יחיאל מיכל ב"ר חיים זוגו' חל' בת ר' שמואל חיים ע"ה

### Q: What happens if someone enhances a property unfit for enhancing?

A: If someone enhances another's property that is not fit for enhancing, such as if he planted trees in a field meant for sowing seeds, he is entitled only to the lesser of his expenses or the capital gain of the property. *B'e"H*, we will discuss later details of this, or if the owner or enhancer wants to uproot the trees (C.M. 375:1).

However, if the owner subsequently indicated approval of the enhancement, such as if he built a protective fence around the trees, and certainly if he expressly granted approval to the enhancement afterwards, most *Rishonim* maintain that the enhancer is entitled to the going rate, even if the property is inherently unfit for this enhancement, but some disagree (C.M. 375:3; *Sma* 375:7; *Aruch Hashulchan* 375:6).

Similarly, if the owner explicitly instructed the enhancer to plant the trees, he is entitled to the going rate, even though the field is not inherently fit for planting (C.M. 375:4).



## BHI HOTLINE

If, however, the employer knew that the *oness* tends to occur and the *poel* did not, the employer is required to pay him in full, because it was incumbent upon him to make the pay conditional on the work being able to commence. Since he was negligent in not having made the condition, it is considered as though he reneged on the deal, which makes him liable. He is entitled to deduct only the amount the *poel* benefits by not having to work — unless he prefers to work and not sit around doing nothing (ibid. 335:1).

Before directly addressing your *she'eilah*, we will adapt the above halachic principles to the specific example of a tutor.

If a boy doesn't want to come learn, and the father tried, unsuccessfully, to convince him, it is considered an *oness* for the father, and he is not required to pay. [If he prepaid, the *poskim* debate whether he can demand a refund.] But if the father knew that his son doesn't like to go to a tutor, and he didn't tell the tutor when he hired him, the father is required to pay when the child doesn't show up.

If the father forgot to tell his son about a session with his tutor, the father was negligent and must pay in full, unless the tutor benefited from not having to spend the time tutoring, in which case he may deduct part of the payment.

Turning to your specific case, since you stipulated with the father that you would get paid even if there was an *oness*, he must abide by that condition and pay if his son didn't show up — even if it was due to an *oness*.

Clearly, however, the father never agreed to abide by that condition if you can't teach his son on a given day, unless you spoke out specifically that you would be entitled to pay even if the cancellation was mutual. If you did not make that condition, and the father called to cancel on a day that you can't make it either, you must tell him so he doesn't pay for a session he never agreed to pay for.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businessshalacha.com

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