

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

"IF YOU'RE HERE BY 10, THAT'S OKAY"

Mrs. Stern was interviewing for a job. The employer was impressed with Mrs. Stern; the discussion moved on to work expectations and salary. "What are the hours?" asked Mrs. Stern. "The hours are 9 to 3," replied the employer.

"The morning is a bit of a problem for me," said Mrs. Stern. "My husband leaves early in the morning. Till I get the kids out to school, and then travel, I can't guarantee getting here before 9:30 to 10."

"As I said, regular hours begin at 9," replied the employer, "but if you're here by 10 that's okay, as long as you fill in the hours on the other end.

After some negotiations about salary, Mrs. Stern and the employer came to agreement. They drafted a contract, in which the hours were listed as 9 to 3.

During the first few months, Mrs. Stern arrived in the morning when she could, anywhere between 9 and 10.

"You often arrive at 9:30 or later," the employer said one day. "As you know, work begins at 9, and it's important during the next few months that you arrive on time."

"But in the interview, you said that if I get here by 10 that's okay," replied Mrs. Stern.

"The contract clearly states hours from 9 to 3," insisted the employer. "The contract is what's binding. Even if I said then that it would be okay, that was to placate you, so long as it didn't make a difference, but it doesn't grant you rights beyond the contract when I need you at 9."

"I don't think that's fair," Mrs. Stern argued. "I raised the issue from the beginning and took the job based on your assurance!"

"But you didn't respond that this was a necessary condition for you," replied the employer, "and it didn't make its way into the contract."

The two came to Rabbi Dayan and asked:

"Was the employer's statement a binding condition?"

"The *Gemara* (B.M. 55b-56a)," replied Rabbi Dayan, "teaches that certain verbal offers of placation are considered merely words of enticement (*pitumei mil*) and not binding conditions when not stipulated or reiterated by the interested party. (Rema C.M. 207:1; Sma 207:3).

"For example, if the seller states of his own accord that he will take care of any problem with the item even beyond the warranty period, and the buyer does not reiterate this condition, we consider it as merely placating words that things will be okay, not a binding condition (Sma 207:2).



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

WHO NEEDS TO BE PRESENT?

Q: My four brothers and I inherited our father's estate, including his business. We had to file a din Torah against our father's second wife to recover money she took

from the business. Some of us sent her a hazmanah (summons) to beis din, to which she responded through the secretary of the beis din that she is willing to come, but only if all five of us will appear together at the din Torah, not only those of us who issued the summons. Does she have a right to demand that? (Some brothers live overseas and it is hard for them to be there, especially if the din Torah takes several sessions, and one brother doesn't want to get involved in the din Torah at all because he's too busy.)

A: This depends on whether those who issued the summons are representing only themselves, in which case the defendant has no right to demand that the others be present, because each defendant is entitled to sue independently for his part of the case and is not required to join any others. The only caveat is that if the *din Torah* is in regard to something that cannot be split. For instance, if joint owners of a building are suing a neighbor and the ruling will affect all of them, then the *dayanim* cannot rule for one plaintiff independent of the other potential litigants, so they must all be present at the *din Torah* (*Shu"t Chacham Tzvi* 169, cited in *Pis'chei Teshuvah* 122:3). But that is not the case with you, because the money the defendant seized can be split, and the ruling for the plaintiffs who do appear in *beis din* won't affect the claims of the brothers who do not appear in *beis din*.

Furthermore, if one plaintiff is willing to handle the suit on behalf of his partners, he alone can appear in *beis din*, and the defendant cannot say, "I'm willing to deal only with the portion of the suit that is relevant to you." The other partners do not even need to give him power of attorney (*harsha'ah*) for him to do so; because he is a party to the suit, he is allowed to represent all of the partners because we assume that they know he is representing them and are willing to rely on him (*Shulchan Aruch Choshen Mishpat* 122:9; see *Shaar Mishpat* 28:2).



CASE FILE

"Many *Rishonim* explain, though, that this applies when the deal is already in its advanced stages, so that presumably the buyer would follow through, regardless, even without this condition. However, when the offer is mentioned from the outset, the buyer can claim that he relied on it when agreeing to the deal, and the condition is binding.

"Rema further rules that if the parties verbally stipulated a condition and then drafted a simple contract, it was done with consideration of the stipulation.

"The *Poskim* qualify, though, that this applies only when the parties followed through with the deal steadily (*asukim b'oso inyan*). However, if they broke off and then resumed, we cannot necessarily assume that the deal was done on this condition if not reiterated when completing the deal. Furthermore, if the contract mentioned other conditions and omitted this particular one, we presume that it was omitted intentionally, and the parties chose to neglect it (*Pischei Choshen, Kinyanim* 20:3[8]; *Mishmeres Shalom* 207:[12])

"*Rivash* (#476) also rules that verbal conditions between the employer and employee are binding, even if not mentioned in the written contract.

"Thus, even if the condition was not mentioned in the contract," Rabbi Dayan, "it is binding in many situations, but not all, depending on some of the factors outlined above. In the context of the scenario mentioned above, it seems binding."

Verdict: Verbal conditions to placate can also be binding, even if not mentioned in the contract, but not always, depending on the specific context, such as whether stated from the outset.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Yored L'sedei Chaveiro

Enhancing Another's Property #23
Stolen Property

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

Q: I bought a property and renovated it. The property turned out to be stolen, and I had to return it to its rightful owner. Must he reimburse me for the renovations?

A: Even if you did not know that the property was stolen and thought that you were renovating rightfully, you are not considered *yored b'reshus* (enhanced with permission), but rather *yored shelo b'reshus* (enhanced without permission).

Thus, *Shulchan Aruch* rules, based on *Rosh*, that owner can say: "Take your wood and stones" (*C.M.* 236:8).

However, we mentioned at the beginning of the series (#6) that the *Rishonim* dispute whether the owner can say, "Take your wood and stones," even for a property fit for such enhancement, or only for one not fit for such enhancement (*C.M.* and *Gra* 375:2; *Sma* 375:4).

If you knew that the property was stolen and nonetheless bought it and renovated it for yourself, despite the prohibition, the owner is certainly not required to reimburse you, because you had no intent to benefit him (*Nesivos* 236:7; *Rema C.M.* 356:7).



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(If he does represent all of the partners, then they must all accept the ruling, assuming they were local and available, because *beis din* will say to anyone who wants to file suit later, "Why didn't you come take part in the initial *din Torah*?" — unless he can prove that he didn't know about it (*Shach* 122:37). [Given modern telecommunications, we would assume that partners would know if someone were representing them even if they were not local.]

The *Poskim* deliberate as to whether a partner who was not present at the original *din Torah* can file a subsequent suit if he claims that the original representative did not present certain claims in *beis din* (see *Shulchan Aruch* 122:9 with *Shach* 38; 176:26 with *Pis'chei Teshuvah* 122:2). Either way, if one partner admits to some sort of monetary obligation (*hoda'as baal din*), and his partners deny that they are obligated, they are not bound by his admission (*Chazon Ish, Choshen Mishpat* 2:8).

Some *Poskim* maintain, however, that if the partners are local, the defendant may demand that they appear in *beis din*, because not all partners would be willing to lie brazenly (*Bach* 122:17, explaining the *Smag*), but others disagree (*Shach* 122:39 and *Chazon Ish* 9). Practically speaking, the defendant can claim *kim li* (see *BHI* #473) — that the *halachah* is in accordance with the view of the former *Poskim* (*Shu"t Chacham Tzvi*, loc. cit.). This request will certainly be granted in situations where this claim is obvious to *beis din*, and they will order the other defendants to appear (*Aruch Hashulchan* 122:16).

As we wrote earlier, this applies only if plaintiff appearing in *beis din* represents his partners, but if he appears only on his own behalf, then the defendant must appear for that *din Torah*, and he cannot insist that all of the plaintiffs appear together (see *Chazon Ish* loc. cit.).

Based on the above, if the brothers who summoned your father's second wife to *beis din* are representing all the brothers, then unless she says that she wants all the brothers to appear because some wouldn't be brazen enough to lie, a few can represent the rest even without a *harsha'ah*.

Practically speaking, however, most *batei din* would not be willing to accept the case without all of the plaintiffs signing a *harsha'ah*, because they won't be able to arrange a *pesharah* (compromise) if there is a need to do so, because a *pesharah* is not valid unless all parties expressly agreed to accept it. *Batei din* will therefore insist that a *harsha'ah* be signed before they accept the case (see *Choshen Mishpat* 123:5 and *Even Ha'ezer* 85:4; cf. *Shaar Mishpat* 77:4).

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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