

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

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

HEIRS' LIABILITY

Last week's story addressed the case of Mrs. Cohen who was *niftar*, and discussed whether her heirs are liable to pay the rent for the remaining months of the rental term. We mentioned that there is a dispute between the *Rishonim* on this issue. A further issue arose.

"If we are liable to pay for the remaining months," asked Mrs. Cohen's children, "from which assets are we liable to pay?"

"What did Mrs. Cohen leave after her?" asked Rabbi Dayan.

"Our mother owned no real estate," replied the family. "She rented all her life. Since she had an aide for many years, which was a large expense, she also did not leave much. Just her furniture and a small amount in the bank. She subsisted mostly on her social security income. Occasionally, we even had to help with the bills, especially if there were large expenses."

"Did she take out any loans in her name?" asked Rabbi Dayan.

"She did have a loan that she was repaying slowly," replied the family. "If we add together the loan, other household bills, and the rent for the remaining months — if we're liable — I'm not even sure that her estate will cover everything."

"I understand," said Rabbi Dayan.

"This brings us to the following question," said the children, "beyond just the rent."

"What is that?" asked Rabbi Dayan.

"When someone is *niftar* and leaves debts or liabilities, what is the halachic liability of the heirs or next of kin to cover them from various assets of the estate — real estate, movable items, forthcoming loans, bank accounts, life insurance proceeds, etc.? Do the heirs have any obligation to pay these debts or liabilities out of their own pocket?"

"Halachah does not view the estate as an independent entity," replied Rabbi Dayan. "Rather, the heirs immediately inherit the *niftar's* assets and those assets become the heirs' property, albeit in partnership with each other. "Nonetheless, the assets carry within them a lien for the debts of the deceased and the heirs — particularly the children — have a *mitzvah* to pay the parents' debts as a part of their *mitzvah* to honor their parents, *kibbud av v'am*, by fulfilling the parents' monetary commitments from the inherited assets.

"The *Gemara* (*Kesubos* 86a, 91b) teaches that *beis din* coerces the heirs to pay only from



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

OVERPRICED REALTOR (PART I)

Q: I engaged the services of a realtor to help me buy a house. He told me that since a particular seller had his own realtor, he would get paid only by me, so he

would have to charge me a higher fee for the deal. I was in a rush when he told me this, so I agreed to the fee without looking into whether the amount he was asking was fair. When I actually bought the house, he charged me 3 % of the sale price, and told me that the balance would be due later. I now found out that the total he charged me is way above the standard realtor's fee. Am I required to pay him the balance?

A: There are two *sugyas* (Talmudic topics) that are relevant to your question: *hashta'ah* and *ona'ah*.

Hashta'ah is a situation in which the party who agreed to pay a certain amount for something claims that he was joking when he made that agreement.

We find several cases in which this is considered an acceptable claim:

- If someone is escaping from captivity, and he asks someone to ferry him across a river for an exorbitant sum, then after the ride is over, he is required to pay only the normal fee, and he can say, "I was joking (when I promised to pay the higher amount)" (*Bava Kamma* 116a, *Shulchan Aruch Choshen Mishpat* 264:7).

- Similarly, if a *yavam* (brother of a man who died without children, who is required to do either *yibbum* [levirate marriage] or *chalitzah*, which enables her to marry other men) is instructed to do *chalitzah* because he would be an inappropriate spouse for his brother's widow, and he refuses to do so unless he is paid, the widow may agree to pay him, and then, once he does the *chalitzah*, she may say, "I was joking" (*Yevamos* 106a; *Even Ha'ezer* 169:50).

- If a person was sick and he agreed to pay a doctor an unreasonable price to treat him, he is required to pay only the normal fee, and he may say, "I was joking" (*Ritva Kiddushin* 8a; *Yoreh Dei'ah* 336:3).

- If someone promises to pay his son-in-law to learn with his grandson (the son-in-law's son), he may later refuse to pay, since a father is required to learn with his

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real estate that they inherited, which carries the primary lien, but not from movable items, cash or loans receivable (including bank accounts, etc.). Nonetheless, there is a *mitzvah* on the heirs to pay also from these assets, just as there is a *mitzvah* on the borrower to repay his loan (*C.M.* and *Gra* 107:1).

The *Geonim* instituted — based on a precedent in the *Gemara* (*Kesubos* 67a) about camels in Arabia — that nowadays *beis din* coerces and collects even from movable items or loans receivable, since the primary reliance nowadays is on these assets, just as from real estate (*Shach*, *C.M.* 107:2; *Pischei Teshuvah* 107:1).

However, if the *niftar* did not leave any assets, the children have no liability whatsoever to pay his debts out of pocket, since the obligation of *kibbud av va'em* is to serve them through the parents' own money. Nonetheless, some maintain that it is morally recommended, especially if the parent was at fault in not paying. Furthermore, some suggest that there is a *mitzvah* on the beneficiaries of a life insurance policy to pay from the proceeds, as from other loans receivable (*Y.D.* 240:5; *Rema*, *C.M.* 107:1; *Aruch Hashulchan* 107:2; *Pischei Choshen*, *Halva'ah* 9:2[3]).

"Thus, if Mrs. Cohen left assets, even movable ones or a bank account," concluded Rabbi Dayan, "nowadays there is an enforceable *mitzvah* obligation on the heirs to pay her liabilities from these assets."

Verdict: Heirs have an enforceable *mitzvah* obligation to pay their parent's liabilities from the inherited assets — nowadays even from movable assets, loans receivable, bank accounts, etc. However, they have no obligation to pay out of pocket, but it is morally recommended.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #2
Minhag Hamedina vs. Torah Law

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

Q: In what cases does minhag hamedina take precedence over Torah law?

A: We mentioned last week that *minhag hamedina* is a fundamental principle in monetary law, and in certain cases the common commercial practice supersedes the default *halachah* (*Radbaz* #545; *Pischei Teshuvah* 333:8).

This is because in most contractual monetary issues, the parties can agree to whatever binding terms they want. A community, as well, can establish monetary guidelines that are binding, as a matter of convention (*C.M.* 231:27-28).

Therefore, *minhag hamedina* applies only in cases that the parties can contractually agree, but it cannot uproot Torah law on issues that are not contractual.

Therefore, regarding the laws of inheritance, *ribbis* or *ona'ah* (unfair pricing), which entail absolute halachic rules and prohibitions that the parties cannot agree upon to violate, *minhag hamedina* cannot undo Torah law (*Y.D.* 160:1; *C.M.* 227:1; *Rema* 281:4).

However, regarding monetary obligations that the parties can obligate themselves through a *kinyan* – *minhag hamedina* can establish this obligation.



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son without pay, and he may say, "I was joking" (*Choshen Mishpat* 81:1).

A common denominator unites these cases: the service the person agreed to provide was a *mitzvah*. Some *Poskim* therefore rule that one may only claim to have been joking when he pledged to pay a high price for a service if that service involved a *mitzvah*, but if it is not a *mitzvah*, he may not make this claim.

We also find this claim mentioned regarding a *shadchan* who demands a large sum to *redt* a *shidduch* (*Choshen Mishpat* 364:7), and some *Poskim* write that *redting* a *shidduch* is also a *mitzvah*, and that's why someone who promised to pay him a large sum may later claim that he was joking (*Mahari ben Lev* 1:100).

Other *Poskim* say, however, that a person may claim to have been joking any time he agreed to pay beyond the market price for a service, even if no *mitzvah* is involved, if the person providing the service was exploiting his desperation (according to the *Nesivos* [264:8], the price would have to be at least a sixth more than the market value).

According to the latter *Poskim*, a person is entitled to claim that he was joking even if the service provider is a realtor or another non-*mitzvah* service provider, as long as there is a set price for that service and the provider demanded a much higher price due to the client's desperation (*Shach* 264:14; *Rema* 129:22).

Furthermore, if the provider demanded a price that involved *ona'ah*, the client may even pledge to pay the demanded price *lechatchilah*, with the express plan of later saying that he was joking (*Nesivos* 264:8).

Nevertheless, if someone already paid the high price for a service, he may no longer demand a refund, because by paying he proved that he had no intention of fooling the service provider (*Shulchan Aruch* 264:8 and *Ketzos* 227:1). Similarly, if the two parties made a *kinyan* (act to formalize the deal), the client may not renege on his agreement due to paying the higher price (*Ketzos* 129:8 and *Nesivos* 264:8).

In your specific case, however, you may not claim that you were joking. The *Poskim* write that if the recipient of a service was sincere in his agreement to pay the higher price and only later regretted it, he may not claim that he was joking (*Machaneh Ephraim*, *Sechirus* 15 and *Ketzos* 81:4; see also *Chikrei Lev*, *Choshen Mishpat* 135). The claim is valid only if he was indeed joking at the moment of the agreement, or at least agreed to the price with the intention of dealing with the overcharge later.

You clearly were *not* joking when you agreed to pay the realtor's price, so you are not entitled to claim that you were. The only question that remains is whether you are not required to pay the balance due to the *ona'ah* aspect of this case. We will discuss that *she'eilah* next week, *b'ezras Hashem*.

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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