

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



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לע"נ הרב אהרן בן הרב גדליהו ע"ה

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

SIMCHAH HALL

Before Rosh Hashanah, the shul sent out a message to its congregants regarding yearly membership dues and purchase of seats for the Yamim Nora'im.

"In addition," continued the message, "we are notifying our congregants that the fee for using the *simchah* hall is rising from \$600 to \$800, due to

greater expenses of air conditioning and cleaning."

When Mrs. Bloch saw the message, she said to her husband: "We already booked the *simchah* hall for Nosson's bar mitzvah in the summer. We even paid a \$100 deposit to reserve the hall. Can they raise the price now?"

"That's an interesting question," replied Mr. Bloch. "I suppose that if we already rented the hall, they cannot raise the price."

"I hope so," said Mrs. Bloch. "It doesn't seem fair to me to suddenly raise the price. There was a nicer hall nearby that we could use, which charges \$800. If our price rises, maybe I would go with that hall, but now we'll lose the \$100, which was a non-refundable deposit."

"Was there any mention of a possible price raise?" asked Mr. Bloch.

"No," answered Mrs. Bloch. "The issue didn't come up at all."

"I'll have to speak with the treasurer then," said Mr. Bloch.

After Rosh Hashanah, Mr. Bloch approached the treasurer. "We already reserved the *simchah* hall for a bar mitzvah in the summer, but saw that the fee was raised."

"Indeed," replied the treasurer. "The expenses are higher than last year, so we had to raise the fee. If the bar mitzvah is in the summer, I guess it will be according to the new rate."

"That does not seem right to me," said Mr. Bloch.

The two approached Rabbi Dayan and asked:

"According to which rate must the Blochs pay?"

"Rental of real estate, like purchase of real estate, can be consummated though *kesef*, *shtar* or *chazakah*. Even a partial payment of the rental fee is considered *kinyan kesef*, and a signed rental contract would be valid as *shtar* or *situmta* (common commercial practice) (C.M. 195:9, 315:1).

"The *Gemara* (Kiddushin 26a) teaches that in places where it is customary to write a *shtar*, *kesef* alone does not acquire, unless stipulated so, since the buyer does not feel secure until the *shtar* is written (C.M. 190:7).

"Nonetheless, Beis Yosef and Rema rule that for rental, *kesef* alone suffices, since it is less common to draft a *shtar* for rental (Rema 195:9; Sma 195:20; see *Pis'chei Choshen*, *Sechirus* 4:3).

"Therefore, in this case, once the rental is consummated with a rental contract or partial payment, the shul cannot charge more than the agreed price, even if

RETROACTIVE REIMBURSEMENT?

Q. Our mother, who was a widow, moved in with one of my brothers and lived with him for many years before she passed away. Now, my brother claims that he deserves to be

reimbursed from her inheritance for housing and feeding her all those years. My other brothers and I argue that he had provided for her as a *mitzvah* during those years, and does not deserve more than his fair share of the inheritance.

Who is correct?

A. This question is discussed in *Shu"t Chavos Ya'ir* (134, cited in *Pis'chei Teshuvah*, *Choshen Mishpat* 246:3), but because the answer depends on very specific circumstances, we must preface with the halachic background necessary to understand his response.

If someone benefited another person, even if he did not specify that he wanted to be paid for it, and even if the beneficiary claims that he thought he was getting that favor for free, we trust the benefactor if he now claims that he did intend to request payment, and the beneficiary is obligated to pay (*Rema*, *Choshen Mishpat* 264:4). Therefore, someone who gives money to another person may demand repayment, unless the recipient is poor or an orphan, in which case there is a *mitzvah* to give him *tzedakah*, so he may not demand repayment (*Yoreh De'ah* 253:5).

This is only true, however, if the benefactor planned to ask for payment for his service. If he did not intend to request payment, then even if the recipient thought he *would* have to pay, the benefactor may not change his mind and charge for it (*Nesivos* 12:5).

But if the reason the benefactor was planning to do the favor for free is that he thought the recipient couldn't afford to pay for it, and it turned out that he was a man of means, then the recipient is obligated to pay (*Choshen Mishpat* 241:2). If, however, when he did the favor, the recipient could not afford to pay, and only later did he obtain the means to pay, then the benefactor is not entitled to payment (*Shu"t Zichron Yosef*, cited in *Pis'chei Teshuvah* *ibid.* 3).

With this halachic background, we can now turn to your *she'eilah*.

If your mother could not afford to cover her expenses, then your brother certainly had in mind to host her as a *mitzvah* and *chessed*, going *lifnim mishuras hadin* (beyond the letter of the law) in fulfilling *kibbud av v'eim* (since children are not obligated to pay for their parents' food, because the *halachah* is that *kibbud av mishel av* — the monetary costs of honoring a parent are the responsibility of the parent, not the child).



CASE FILE

the price rises. Conversely, the Blochs can cancel only in accordance with the cancellation policy of the rental contract.

There is no issue of *ribbis* in locking in the rental price through prepayment, certainly here where the price rise was not known when paying (see Y.D. 176:6; *Taz* and *Nekudos Hakesef* 176:7; *Bris Yehudah* 26:1[2], 26:4[13])

"One could possibly argue, though, that in shuls where the reservation is done informally, without a written rental agreement, this does not yet constitute a binding rental of the hall, but merely a note of the date in the shul calendar, even if the person paid a nonrefundable deposit. This may be supported by the fact that the person can likely cancel at will (losing the deposit), unlike a tenant who rented an apartment for a later date, who cannot cancel at will. If so, perhaps the new rate would apply.

"However, this approach seems less cogent," concluded Rabbi Dayan. "Regardless, it would seem untrustworthy (*mechusar amana*) for the shul to change the price in the middle" (C.M. 204:7,11; see *Ketzos* 204:7).

Verdict: When the rental of the *simchah* hall is formalized in a written contract, the agreed terms are binding, even if the price changes meanwhile. Similarly, a down payment would presumably serve as *kinyan kesef* to confirm the rental. Regardless, changing the price in the middle would be considered untrustworthy, *mechusar amana*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Yei'ush – Abandonment

#5

Yei'ush of a Minor

לע"נ ר' יחיאל מיכל ב"ר חיים דו"ג ח' בת ר' שמואל חיים ע"ה

Q: I found a loose \$20 bill and took it. Later, two witnesses said that a 12-year-old boy dropped it. Can I keep the money?

A: We presume *yei'ush* for loose money (C.M. 262:6).

However, although the *Gemara* (B.M. 22b) allows taking fruit that falls and is typically eaten by insects – since the owner has *yei'ush* – it prohibits taking the fruit if the tree belongs to a minor, since we cannot presume *mechilah* of minors unless they explicitly grant it (C.M. 260:1; Gra 235:9).

Nesivos (260:11) and others derive from this that *yei'ush* of a minor is not valid, since it is considered *yei'ush* without intent, so that you must return the money. They view *yei'ush* as a form of *mechilah*, which requires the owner's intent, which is not applicable to minors (*Meiri* B.M. 22b; *Pis'chei Choshen*, *Aveidah* 2:4).

However, some maintain that once the item is lost, the owner's control is weakened and automatically lost upon *yei'ush* (*Chazon Ish* B.K. 18:1,3). Accordingly, *yei'ush* of a minor could be valid (see *Ulam Hamishpat* 260:6).

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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If she did not have money when she moved in with him but later inherited or earned money of her own, your brother may not demand retroactive repayment for the expenses of hosting her, because he did it as a *mitzvah* at that time.

If, however, your mother could afford to pay her own way, then your brother was not obligated to underwrite her living expenses. Therefore, even if he did not reveal his intention to demand payment, she would still have been obligated to pay him if he had requested payment. The fact that he didn't ask for payment when she was alive is not proof that he intended to cover her living expenses; the reason he didn't say anything then was presumably because he didn't want to upset or insult her.

We certainly have no reason to believe that he wanted to forego *your* obligation to compensate him from your inheritance; even if we assume that a child is generally willing to host his mother as a *chessed* and for the *mitzvah* of *kibbud eim*, we are certain (*umdena d'muchach*) that if she has money to pay her own way, then he had no intention to pay all her expenses in order to enable her to save her money so that her other children could inherit it (see *Shu"t Mahari ben Lev* 1:119 who wrote this regarding a son who invested his father's money, and after his father died, he demanded payment from his brothers for his work).

The *Chavos Ya'ir* adds that even if the mother helped in the household while she lived there, such as by babysitting or doing housework, she and her heirs are not exempt from paying for her living expenses, because being active in the household is generally not done for compensation but rather for occupation or enjoyment. But if she helped the child she was living with by performing other work that is not typically part of participating in a household, then her work stands in place of payment for her food and lodgings (see *Hon Yosef*, *Even Ha'ezer* 30).

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