

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



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נר ה' נשמת אדם - זכות הפצת התורה בשבוע זו הוא לעילו נשמת מו"ה שמואל ב"ר ראובן וואלף ע"ה



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

BECHOR BOY

The Smith's converted to Judaism when they were middle aged. Mr. Smith had a 15-year-old son, Tommy, from a prior marriage, who chose not to convert, whereas Mrs. Smith had no children of her own.

After the conversion, Mr. and Mrs. Smith changed their family name to Simon, and remarried with a Jewish ceremony of *chuppah* and *kiddushin*.

A year later, Mrs. Simon gave birth to a set of twin boys, whom they named Moshe and Aharon.

They celebrated the *bris* with great joy, appreciative of the privilege to be a part of *Am Yisrael*.

After the *bris*, Mrs. Simon said to her husband, "I know that there is an additional ceremony of redeeming the first-born son. Do we need to do this for Moshe, since he's our first-born Jewish son?"

"I'm not sure about that," replied Mr. Simon. "I have an older son, Tommy, although he chose not to convert."

"Still, Moshe is our first-born Jewish son," said Mrs. Simon.

"If you're raising that question," mused Mr. Simon, "I have a similar question."

"What is that?" asked Mrs. Simon.

"We learned that the first-born son inherits a double portion," answered Mr. Simon. "What happens in our case, where I have a prior child, Tommy, who didn't convert?"

"I suppose the answer would be the same," continued Mr. Simon. "If we consider Tommy, then there should be no *pidyon haben* and Moshe would not be entitled to a double portion. If we don't consider Tommy, then Moshe — our first Jewish child — should need a *pidyon haben* and would be entitled to a double portion."

"I'm hoping we have many healthy years together until the issue of inheritance becomes relevant," laughed Mrs. Simon. "Anyway, we will likely write a will, so that this issue may not be relevant. However, *pidyon haben* is only three weeks off, so I'd like you to verify."

Mr. Simon called Rabbi Dayan and asked:

"Does Moshe need a *pidyon haben*? Is he entitled to a double portion?"

"Indeed, the Torah requires



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

STOLEN LETTER

Q. After the Holocaust, a woman was about to emigrate to Eretz Yisrael. Hoping to land a good

job, she asked one of the great Gedolim at the time, the Imrei Chaim of Vizhnitz, zy"l, who was living at the time in Grosswardein, Romania, to write her a letter of recommendation that she could show to potential employers. At one of the places she applied for work, the owner took the letter and told her to return the next day. When she returned, not only did he inform her that she would not be hired for the job, but he refused to return the letter. At some point, he sold the letter to an antique collector for a tidy sum. Many years later, he regretted what he had done and decided to compensate the woman for the letter.

How much is he required to pay to rectify his wrongdoing? Is it enough to pay the price the letter was worth when he stole it? Or should he pay the amount that he received for it when he sold it, which was not much more than when he stole it? Or must he pay the amount that it is worth today, which is exponentially more?

A. If someone steals an object and it is still intact and in his possession (*be'ein*), he must return it, even if the owner was *meyda'eish* (despaired) of getting it back (*Shulchan Aruch, Choshen Mishpat 353:2 & 354:2*), because *yei'ush* alone does not transfer ownership of a stolen object to the thief.

Therefore, had the letter still been in the possession of the thief (or his heirs, as we will explain later), he would be obligated to return it to the woman (or her heirs).

Because it is not in his possession, he is obligated to pay its value at the time that he sold it, not the value when he stole it or its value today.

Now, generally, a thief must pay according to the value of the object at the time of the theft. For instance, if someone stole a barrel of wine worth \$100, and its value increased to \$200, but then the barrel broke (without his intervention), he is obligated to pay only \$100. If he broke it, however, he must pay for its value at the time he broke it (*ibid. 354:3 & 362:10*), because as long as the barrel was intact, it was considered to be in the owner's possession. The additional value is therefore considered to belong to the original owner, and when the thief broke the barrel,

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CASE FILE

redeeming the first-born son (*bechor*), and also entitles him to a double portion in his father's estate, but not in his mother's," replied Rabbi Dayan (Y.D. 305:1; C.M. 277:1).

However, there are several differences between these *halachos*. *Bechor* of *pidyon haben* relates to the first-born of the **mother**, who was her *peter rechem*, whereas *bechor* of inheritance relates to the first-born viable child of the **father**.

Thus, if a woman without children has a son from a second marriage to a man who has prior children, the boy is a *bechor* for *pidyon haben*, but is not a *bechor* for inheritance. Conversely, if a woman with children has a son from a second marriage to a man who does not have prior children, the boy is not a *bechor* for *pidyon haben*, but is a *bechor* for inheritance (Y.D. 305:17; C.M. 277:8).

Furthermore, if the mother had a miscarriage, the first-born son does not require *pidyon haben*, because he is not her *peter rechem*, but is considered a *bechor* regarding his father's inheritance, because the miscarriage did not come to be a viable child (Y.D. 305:22; 305:6).

When a gentile couple with joint children converted, and had a son after the conversion, he is not a *bechor* even for inheritance (even if the children did not convert), because also a gentile's children are halachically associated to their father (Y.D. 305:20-21; C.M. 277:9; *Aruch Hashulchan* 277:7).

Thus, in your case, Moshe is considered a *bechor* for *pidyon haben*, because Mrs. Simon has no former children, but he is not considered a *bechor* for inheritance, because Mr. Simon has Tommy.

"However, if a couple was, unfortunately, intermarried, whether a Jewish man with a gentile woman or a gentile man with a Jewish woman, the children are not halachically associated with the father," concluded Rabbi Dayan. "Therefore, if a boy was born after the gentile party converted, he will be a *bechor* for inheritance, because he is the first son associated with the father, but not for *pidyon haben*" (*Nesivos* 277:1).

Verdict: Bechor regarding pidyon haben depends on the mother; bechor regarding inheritance depends on the father. Children of intermarriage are not associated with their father, but a gentile couple who had children before conversion are associated with the father, so that the first child after conversion is not a bechor.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Yei'ush – Abandonment

#18

Lifnim Mishuras Hadin after Yei'ush

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

Q: I found an item with a name and phone number in a place that most passersby are gentile. Can I keep it?

A: When you find a lost item after the owner's *yei'ush*, which we presume here, *halachah* allows you to keep it.

However, *lifnim mishuras hadin* — beyond the letter of the law — you should usually return it, based on the verse: "You should inform them ... [what] they should do" (*Shemot* 18:20) (C.M. 259:5; 259:7; *Sma* 259:12).

Some write that if the finder is financially sound, *beis din* should even coerce him verbally to act *lifnim mishuras hadin*. On the other hand, if the finder is needy and the owner financially sound, Rema writes that the finder does not have to act *lifnim mishuras hadin*. Some infer that if both are needy, the finder should still return *lifnim mishuras hadin* (*Shach* 259:3; *Tzemach Tzedek* #99; *Pischei Teshuvah* 12:6, 259:2).

The reason to require acting *lifnim mishuras hadin* here is because the *yei'ush* was not of the owner's free will, unlike full *hefker*, or because the finder suffers no actual financial loss by returning the item (*Shulchan Aruch Harav* #18; *Aruch Hashulchan* 259:7).

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he is considered to have caused damage for the current value of \$200 (*Ketzos Hachoshen* 34:3; *Nesivos* *ibid.* 5).

Similarly, if the thief sold the stolen object, it is considered as though the thief destroyed the object and removed it from the owner's possession (see *Otzar Meforshei HaTalmud, Bava Kamma* 3, p. 237) at the time of the sale. He must therefore reimburse the woman for the amount he received for it at that time.

Q. Is the collector who bought the letter obligated to return it to the woman?

A. If a thief sold a stolen object after the owner was *meya'eish*, the buyer is not obligated to return it to the original owner, because he acquired it legally through a combination of *yei'ush* and *shinui reshuv* (change of possession; *Choshen Mishpat* 353:3).

[As we wrote above, the thief's heirs would be required to return it if it was in their possession, because inheritance is not considered *shinui reshuv* (*ibid.* 4).]

Based on the above, according to basic *halachah*, the antiques collector would not be obligated to return the letter. Nowadays, however, *dina d'malchusa dina* (the law of the land is binding in *halachah*) mandates that the buyer return the stolen object to the owner (*Rema, Choshen Mishpat* 356:7; see also, *Ketzos* 5, who writes that there is, therefore, at minimum, an obligation to return a stolen object *latzeis yedei Shamayim* — to avert Heavenly judgment).

Chazal established, however, that the buyer is not obligated to return the object unless the victim reimburses him for his purchase price. The reasoning behind this rule is *takanas hashuk* (proper running of the marketplace), because if anyone were able to show up at any point and claim that an object someone bought was stolen, no one would ever want to buy anything, lest it be seized and they would lose their money (*ibid.* 2).

Therefore, if the woman is willing to reimburse the collector for his purchase price — which is the amount she should receive from the thief when he decides to rectify his actions — he must return the letter to the woman, at least *latzeis yedei Shamayim*.



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