

# BUSINESS WEEKLY

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לע"נ גלינה בת אליעזר וואלף ע"ה



## CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

### "DON'T PAY! I DON'T NEED YOUR MONEY!"

Mr. Gold lent Mr. Neuman \$5,000 for a six-month period.

After six months, Mr. Gold approached Mr. Neuman. "The loan is due," he said. "Can you please repay the \$5,000?"

"I'm sorry, but I had extra medical expenses this past month," Mr. Neuman replied. "I hope to repay next month."

"All right," replied Mr. Gold good-naturedly. "I hope you feel better."

Month after month passed. Mr. Neuman always had some excuse why he could not pay now and pushed off Mr. Gold's request to repay for another month.

Mr. Gold became impatient. "I don't want any more of your excuses!" he said heatedly to Mr. Neuman. "I expect payment next month, regardless of what difficulty you have."

Nonetheless, when Mr. Gold contacted Mr. Neuman the following month, he again evaded paying.

Mr. Gold lost his temper. "Don't pay! I don't need your money!" he shouted and disconnected.

The following month, Mr. Gold again approached Mr. Neuman for the money.

"What do you mean?!" asked Mr. Neuman. "You said that I don't have to pay and that you don't need my money. That was *mechilah* on your part; you relieved me of the need to pay!"

"I never intended to forgo the loan," replied Mr. Gold. "I was just fuming after you kept pushing me off and said that I can manage without your money this month, like you refused to pay all year."

"That's not what it sounded like," insisted Mr. Neuman. "When the lender tells the borrower, 'Don't pay! I don't need your money!' that means he does not require repayment."

"Whether it sounds like that or not, I did not sincerely mean to forgo the loan," explained Mr. Gold. "I just lost my temper."

"Whether you lost your temper or not, you said what you said!" argued Mr. Neuman. "Once you said, 'Don't pay!' you can't take that back; the loan is gone."

The two came before Rabbi



## BHI HOTLINE

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

### STATUTE OF LIMITATIONS

**Q:** In civil law, there is a concept called "statute of limitations" that limits the amount of time in which someone can claim

money owed to him. The exact time limitation varies from one jurisdiction to another, but if, for instance, someone borrowed money and the statute of limitations expires, the lender can no longer collect that loan.

**Is that law binding in halachah?**

**A:** It would appear that the concept of a statute of limitations does exist in *halachah*. The *Mishnah* (*Kesubos* 104a; cited as *halachah* in *Even Ha'ezer* 101:1) rules that a widow may claim her *kesubah* for 25 years after her husband's passing. After that deadline, unless the actual *kesubah* document is still in her possession, even if the heirs acknowledge that the amount due to her was never paid, she still may not collect it, because we consider her silence for that length of time an indication that she is *mochel* (forgoes) her right to payment (see *Ketzos Hachoshen* 12:1 and *Nesivos* *ibid.* 5 as to why an un verbalized *mechilah* is valid in this case).

But that case cannot be cited as proof that a statute of limitations applies to other financial obligations, because there are two reasons that a widow is more likely to forgive her *kesubah*: one, she is grateful to the orphans for having covered her expenses for all those years, and two, she is not losing money that was already hers, because she did not lend the money that was owed to her from her *kesubah*, to her husband (*Rashi* to *Kesubos* *ibid.* s.v. *Almanah*).

In the case of a loan, these reasons do not apply. Therefore, the borrower is obligated to repay the loan even if the loan contract is no longer in the lender's possession, regardless of how much time has passed (*Shulchan Aruch*, *Choshen Mishpat* 98:1). Even if the lender was *meya'eish* (despaired) from collecting the loan, it does not prevent him from collecting (*ibid.*; see *Taz* *ibid.* 163:3 and *Chacham Tzvi* *ibid.*). Even if the lender did not attempt to collect the loan for many years after the borrower passed away, and even if he had been desperate for money during that time and he never tried to collect, that does not invalidate the loan contract (*Choshen Mishpat*

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## CASE FILE

Dayan and asked:

### "Was Mr. Gold's statement considered *mechilah*? Is the loan canceled?"

"The Rishonim rule unequivocally that *mechilah* does not require a *kinyan*, and a verbal statement of *mechilah* suffices," replied Rabbi Dayan (C.M. 12:8).

"Nonetheless, *mechilah* must be stated with sincere intent, and not jokingly or sarcastically (E.H. 105:5).

"Thus, *Rambam* (Hil. *Mechirah* 5:11-13) writes that in many places the practice is to make a *kinyan* about the *mechilah*, even though it is not necessary, to indicate that it was stated sincerely.

"The *poskim* address the case of a person who stated *mechilah* in anger. *Rema* (C.M. 333:8) cites from *Rabbeinu Yerucham* (39:4) an opinion that a person who told his worker, 'Leave!' in anger is not considered *mechilah* to forgo the worker's responsibility to him. *Toras Chaim* (B.B. 160b) disagrees, though, and several *Acharonim* understand that the *Rema* himself cites a dispute on this matter (*Maharsham* 3:31).

"Thus, when the seeming *mechilah* was said in anger or extreme frustration, not necessarily as sincere *mechilah*, several *poskim* consider this as invalid or questionable *mechilah*, which is not binding (see *Mishmeres Shalom* 209:11; *Pischei Choshen, Halva'ah* 12:2[5]).

"Although in cases of doubt we usually rule *hamotzi meichaveiro alav hare'aya* — the burden of proof is on the plaintiff — regarding questionable *mechilah*, the rule is different. Because there is a definite debt and questionable *mechilah*; alternatively, because the *mechilah* is tantamount to a gift gratis — many *poskim* maintain that the burden of proof is on the debtor to show that there was sincere *mechilah* to cancel the debt (see *Rema* 65:23; *Shach* 65:78; *Nesivos, Dinei Tesifa* 25:11; *Mishpetei Hachoshen* 333:8).

"However, when the angry statement was accompanied by an act indicating *mechilah* or stated before *beis din*, we consider the statement sincere and binding (*Pischei Teshuvah* 333:8).

"Moreover, Rebbe Akiva Eiger (New Responsa, C.M. #5) writes that when the lender explicitly stated *mechilah*, even in anger, it is binding. A person who acts in anger is legally competent and is not considered as acting in error. Other *Acharonim*, however, do not distinguish (*Imrei Binah, Dayanim* 20:5).

"Thus," concluded Rabbi Dayan, "because Mr. Gold did not explicitly state *mechilah*, and he spoke in anger without any *kinyan* or other action, Mr. Neuman remains obligated."

**Verdict: Verbal *mechilah* suffices but must be stated sincerely. When the language is not explicit and stated in anger, the borrower remains obligated.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS

Ye'ush – Abandonment

#25

Purposeful Loss

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

**Q: My neighbor was inspired by a mussar shiur and decided to throw out his television. He put it out for garbage collection, with a prominent sign, "For Disposal." Is it hefker?**

**A:** We mentioned that even according to the *Rambam*, who does not consider *aveidah mida'as* as *hefker*, when the owner places an item at the curbside for garbage collection, it is like *hefker*.

However, when circumstances indicate that the owner does not want the item to be available to others but rather wants it destroyed, it is not *hefker*, and others may not take it.

For example, if someone wants to destroy his item in anger and thereby soothe his anger — others may not take the item, which would negate the owner's intended use (*Machaneh Ephraim, Zechiya Mei'hefker* #6).

Similarly, excess food that a grocery or bakery threw out at the end of the day is not necessarily *hefker*, because the owner may not want to train others to get it for free but wants it disposed of.

Here, too, the owner did not merely intend to remove the television from his house but rather wanted it disposed of, to make its way to the garbage dump. Therefore, it is not *hefker*, and people may not take it from the curbside.

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## BHI HOTLINE

61:9).

Nevertheless, when a loan contract of this sort is presented in *beis din*, the *Dayanim* should investigate why the lender did not attempt to collect until now (ibid. 61:9 & 98:2). If *beis din* is convinced that the debt was never repaid, the lender may collect. But if the lender is evasive or does not have convincing answers for *beis din*'s questions, it is considered a *din merumeh* (fraudulent case; see ibid. 15), and *beis din* must write on the contract that it may not be used to collect (see *Divrei Geonim* 102:24).

Some *poskim* write that the custom is that if a loan contract of an interest-free loan is three years past due — or six years, if the loan is an investment (through a *heter iska*), which would explain why the lender was in no rush to collect — then the contract expires, and the loan is now considered a *milveh al peh* (contract-free loan). When it turns into a *milveh al peh*, the borrower would be absolved from payment if he's willing to swear that he repaid the loan, even if the contract states that the lender is trusted if he claims that the loan has not been repaid (see *Nesivos* 61, *Chiddushim* 18; *Kesef HaKodoshim* 61:9; *Shu"t Beis Shlomo, Choshen Mishpat* 39, s.v. *Od*). But it seems that this custom is not prevalent nowadays.

Now, there is generally a concept of *dina d'malchusa dina* — civil law of the government is binding in *halachah* — but that is true only if it does not contradict *halachah* (see *Pis'chei Choshen, Halva'ah* 2:[72]). Furthermore, in most jurisdictions, the statute of limitations does not absolve the borrower from payment; it only means that the courts will not assist the lender in attempting to collect the loan. Moreover, if the borrower does not claim that the statute of limitations has expired immediately upon being brought before a court, he can no longer make that claim.

In summary, the concept of statute of limitations has no validity in *halachah* — neither as a function of *mechilah* (forgiveness of a loan), *yi'ush*, or due to local civil law. (The lone case in which a loan could expire is if *shemittah* passed and the lender did not arrange a *pruzbul*.) Nevertheless, when adjudicating such a case, *beis din* should investigate why the lender did not attempt to collect the loan earlier and ensure that he has a plausible explanation for the delay. [If the lender received a check from the borrower and never deposited it, and he now wants to collect the loan, the borrower likely has a valid claim if he says that he repaid the loan and he left that check with the lender only because he knew that it could no longer be deposited anyway (see *Choshen Mishpat* 69:2).]



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