

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



Issue #760 | Chukas | July 4, 2025 | 8 Tamuz 5785

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

Rabbi Meir Orlan
Writer for the Business Halacha Institute



BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

Submitted by the Beis Hora'ah

THROUGH THE MAIL SLOT

Shimon borrowed \$100 from Yehuda for a week.

At the end of the week Shimon called Yehuda. "I'll be passing by your house this afternoon," he said. "I have an envelope with the money. Will someone be home?"

"No one will be home till about 8," replied Yehuda. "If you want, you

can put the envelope through the mail slot."

"OK," said Shimon.

Yehuda returned home that evening. He picked up the mail that lay scattered on the floor: some bills, a wedding invitation, and several *tzedakah* requests.

At 9 p.m. Shimon called. "Did you get the envelope with the money?" he asked.

"There was no envelope with money," Yehuda replied. "Did you put it through the mail slot?"

"Most definitely!" answered Shimon. "Maybe one of the household members took it?"

"No, I came home first," Yehuda said. "The mail was scattered on the floor, but no envelope with money..."

"Let's wait till Shabbos," suggested Shimon. "Maybe it will turn up."

"Not likely..." replied Yehuda. "But I'm willing to wait."

On Motzoei Shabbos, Yehuda called Shimon. "Guess what?" he said. "We moved the couch to clean up, and I found the envelope. The toddler must have hidden it there."

"I didn't know that your toddler would hide an envelope..." replied Shimon.

"Neither did I," acknowledged Yehuda. "Regardless, the envelope had only \$80 in it — not \$100. Could you have made a mistake?"

"I'm sure that there was \$100," insisted Shimon. "I counted twice before sealing the envelope."

"I don't know what to say," replied Yehuda. "There was only \$80!"

The two came before Rabbi Dayan. Yehuda asked:

"Does Shimon have to add \$20? And what if I wouldn't have found the envelope?"

"If the borrower slipped payment through the mail slot without prior arrangement, and somehow it got lost in the household shuffle or some other manner, it is unclear whether this is considered valid repayment," replied Rabbi Dayan. "Although it suffices to return to a secure area of the lender, it may require that he become aware of the payment" (*C.M.* and *Sma* 355:1; *Aruch Hashulchan* 120:2; *Pischei Choshen, Halva'ah* 5:1[2]).

"However, when the lender agreed to this arrangement, the borrower is exempt, because he cannot expect the borrower to watch the money further (see *C.M.* and *Sma* 120:1).

"When the borrower claims that he paid fully, but the lender denies or questions this, the ruling depends upon details of the case.

"If Shimon claims with certainty that the envelope contained the full amount, whereas the lender claims definitively that he did not receive the envelope at all or that it was lacking — this is like any other case in which the borrower claims that he repaid the full amount and the lender denies receiving payment.

"Thus, when the loan was already due and there was no formal loan document, Shimon is believed,

MISSING MEZUZOS

Q: I rented an apartment whose previous tenant had left *mezuzos* on the doors. He asked that I take them down before the apartment would be painted and return them to him, and I agreed.

On the day the painter came, I forgot to take off the *mezuzos*, and when I returned, I could not find them.

Am I obligated to compensate the old tenant for the *mezuzos*?

A: We will begin by explaining why the previous tenant did not remove the *mezuzos* himself. According to *halachah* (*Shulchan Aruch, Yoreh Dei'ah* 291:2), when a person leaves a dwelling, he may not remove the *mezuzos*, even if he wants to put them up in his new dwelling (*Tosafos, Shabbos* 22a). [If his landlord was a non-Jew, he should remove the *mezuzos*, because the landlord might treat them disrespectfully (*She'eilas Ya'avatz* 2:121, cited in *Pischei Teshuvah, Yoreh Dei'ah* 291:9). Similarly, even if the owner is Jewish, but the tenant who will reside there next is not Torah observant, he should remove the *mezuzos*.]

Tosafos (Bava Metziah 101b) explain that *mazikin* (destructive forces) fill a residence that does not have a *mezuzah*, so by removing it, he is, in effect, damaging those who will live in the dwelling after him. That damage is not repaired even when the next tenant puts up a *mezuzah*, because once the destructive forces, which had been held at bay as long as *mezuzos* were up from the previous tenant, rushed into the space, they do not leave when new *mezuzos* are affixed (*Ohr Hachaim Hakadosh*, in his *sefer Rishon Letzion*, 291:2; see *Ohr Hachaim, Bamidbar* 19:2).

Another reason why a person may not take down a *mezuzah* is because we are concerned that the new tenant will procrastinate in putting up a new one. In that case the first tenant would be causing him to stumble (*lifnei iver*) by living in a dwelling without a *mezuzah* (*Levush* and *Rishon Letzion* loc. cit.; [see *Tosafos, Shabbos* 22a s.v. *Rav*]).

Another reason cited by *Rishonim* is that once the *Shechinah* resided in a home, because of the presence of a *mezuzah*, the old tenant should not cause it to depart

THE WERDIGER EDITION - לע"נ הרב"ח ר' נחמיה בן הרב"ח ר' שלמה אלימלך ז"ל - DEDICATED BY HIS SON R' SHLOME WERDIGER



BEIS HORA'AH

Ask the Rav, Email correspondence / Arbitration and Mediation
/ Small Claims / Wills and Estate Planning / Halacha Hotline



BUSINESS SERVICE DIVISION

Rabbinical Consultation / Banking and Iska / Contract Drafting
/ Shabbos Initiative / Industry-specific Seminars



AWARENESS & EDUCATION

Business Weekly / Hebrew Masa Umatan / Shiurim and Chaburis / Kollel IDayanis Choshen Mishpat
Curriculum / Seferim & Publications / Self-learning Program / Halacha on the Daf



CASE FILE

but is obligated in a minor (*heses*) oath. This is because Yehuda is now demanding payment from Shimon, who is in possession — so that the burden of proof is on Yehuda. *Beis din* almost never administers oaths nowadays but instead usually advocates a compromise — here leaning toward Shimon, who is exempt, in principle (C.M. 78:3; C.M. 12:2; *Pischei Teshuvah* C.M. 12:3).

“However, if Shimon is unsure whether the envelope contained the full amount, whereas Yehuda claims definitely that it didn’t — because the debt is clear and Shimon is unsure whether he repaid, Shimon is required to pay the claimed missing amount. Here we say: *Ain safek motzei midei vaday*, and he remains *b’chezkas chiyuv* (C.M. 75:9; *Pischei Choshen, Halva’ah* 2:32).

“If Yehuda is also unsure whether he received the envelope or not, or whether it was lacking the full amount — because neither party claims definitively, Shimon is exempt even *b’dinei shamayim*. However, some say that they should reach an agreement (C.M. 75:18; *Shach* 75:65; *Pischei Choshen, Halva’ah* 2:31-32).

“Because this arrangement can potentially lead to disputes even among honest people,” concluded Rabbi Dayan, “it is best to hand payment directly and count the money in each other’s presence, when possible.”

Verdict: If the borrower returned the money through the mail slot with the lender’s consent, he is exempt. If there is a dispute whether the envelope contained the full amount, this is like other cases of dispute between the lender and borrower regarding whether he repaid fully.



MONEY MATTERS

MONEY MATTERS

Shabbos and Yom Tov

#9

Household Help

Based on writings of Harav Chaim Kohn, shlita

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

Q: We have a non-Jewish live-in maid. May she do household work that entails *melachah* on Shabbos of her own initiative?

A: A non-Jew who is hired for the entire year at a set salary to work as needed may not do prohibited *melachah* on Shabbos for the Jew [where leniencies of *tzorchei choleh*, *mitzvah d'rabim* or *shevus d'shevus l'tzorech mitzvah* do not apply], certainly on the Jew's premises, even of her own initiative to save herself time during the week (O.C. 244:5; *Mishnah Berurah* ad. loc.; *Piskei Teshuvos* 244:10).

Therefore, the maid may not wash the family's laundry or mend their clothing on Shabbos, even if she does so of her own initiative (*Mishnah Berurah* 244:30; *Shemiras Shabbos K'hilchasah* 30:35).

Moreover, some do not even allow the maid to do her own work (such as mending her own clothes) on the premises of the Jew, unless it is evident that it is for herself, lest people think that she does this work on behalf of the Jewish employer (*Mishnah Berurah* *ibid.*).

However, if the maid has a room to herself, it is not considered premises of the Jew, so she may do her own work or other *melachah* for herself in the privacy of her room (*Shemiras Shabbos K'hilchasah* *ibid.*).

(To be continued)

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businessshalacha.com



BHI HOTLINE

(*Ritva, Bava Metzia* *ibid.*).

The *Gemara* adds that someone once removed a *mezuzah* when he left a dwelling, and he was punished — his wife and two children perished. (The *Chiddushim Meyuchasim* L'Ritva explains that this was *middah k'negged middah*, because he was not concerned about the lives of the next tenant's family.)

That said, the *mezuzos* still belong to the old tenant, and he may ask the new tenant to pay him for them (see *Rema* *ibid.*; *Be'er HaGolah*; *Mishpat Hanehenah* 2:53) or to return them when he replaces them with his own.

In our case, however, in which the *mezuzos* went missing, we must determine whether the new tenant is considered a *shomer* (guardian) for those *mezuzos* and is therefore liable for them until he returns them. It appears that he is not, for several reasons:

1) He never agreed to safeguard the *mezuzos*; the reason they were left on the door is because the previous tenant had no choice but to leave them there (see *Shulchan Aruch, Choshen Mishpat* 291:1; *Nesivos* *ibid.* 2).

2) Even had he agreed to guard them, according to many *poskim*, in order for a *shomer* to be liable for the object given to him for safeguarding, he must make a *kinyan* (formal act of acquisition) on the object, and no such *kinyan* was made (*Shulchan Aruch* *ibid.* 291:5). [Even if a *shomer* uses an object that was given to him to safeguard, he is not liable if a *kinyan* was not made (see *Minchas Pittim* 306:4; *Shu"t Imrei Yosher* 2:68; *Erech Shai* 340:4, who disagree with *Nesivos* 306:1 & 340:8)].

3) Some say that because the *mezuzos* are affixed to the doorway and are therefore *mechubar lekarka* (connected to the ground), the new tenant would not be liable even if he was negligent in safeguarding it, due to a *gezeiras hakasuv* that limits liability to movable objects (*ibid.* 301:5; see *Nesivos* 95:1).

He cannot be held liable as a *mazik* due to hiring the painter who got rid of the *mezuzos*, because it was not certain that they would go missing. In addition, because he had merely forgotten about the *mezuzos* and did not cause them to go missing deliberately, he is not even required to pay *latzeis yedei Shomayim* (to avoid Heavenly justice; see *Shu"t Maharit* 95; *Minchas Pittim* 386:3; *Chazon Ish, Bava Kamma* 5:4).



PLACE YOUR LOGO HERE IT WILL BE SEEN BY 30,000 PEOPLE
NL@BUSINESSHALACHA.COM
(718) 233-3845 #201

Neuhaus
CERTIFIED PUBLIC ACCOUNTANTS • ADVISORS
732-886-5430

Haas & Zaltz, LLP

WILLS & TRUSTS | ELDER LAW
SPECIAL NEEDS | PROBATE

718.412.5288

Sensible

Car Rental

718-633-2500
reservations@sensiblecarrentalbklyn.com