



BUSINESS WEEKLY

WERDIGER EDITION
Restoring the primacy of choshen mishpat

Issue #249 | Ki Tisa | Friday, March 6, 2015 | 15 Adar 5775

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

BENEVOLENT JUSTICE

Mr. Alter walked slowly around the shul, organizing the siddurim and Chumashim. After his retirement, more than fifteen years ago, he had volunteered to straighten the shul a few times a week. Shortly afterward, the shul began to pay him a small, unofficial stipend.

Recently, it was becoming difficult for Mr. Alter to carry the piles of sefarim back to their places. Also, due to his health, he was not able to come as regularly as he used to. Often sefarim were left lying around. With much reluctance, Mr. Reiss, the shul president, decided to raise the issue with him.

"We really appreciate your efforts in straightening the shul," said Mr. Reiss. "How is it going?"

"I've been straightening the shul faithfully for over fifteen years," said Mr. Alter, "but it's getting harder."

"I've noticed," said Mr. Reiss. "We'd love for you to continue, but the shul needs to be straightened up. Do you think you can do it?"

"I've been wondering about that," answered Mr. Alter. "To be honest, though, the extra money makes a big difference in my monthly budget."

"Unfortunately, the shul's budget doesn't allow paying two people for the job," replied Mr. Reiss. "If you can commit to doing it regularly — great; otherwise, we'll have to get someone else."

"I'll do my best, but my health is not what it used to be," replied Mr. Alter. "Some weeks, especially in the winter, I'm not able to come out. I'd hand the responsibility over to someone else if I could get a pension or severance pay from the shul; that would provide at least some income."

"Given the informal nature of the work and the minimal hours involved, you're not entitled to pension or severance pay," said Mr. Reiss. "I'd like to help you, but I can't distribute communal money freely. We'll leave things through the summer, but next winter we might have to get somebody else."

The following winter, Mr. Alter was out for a month straight with pneumonia. Mr. Reiss visited him often. During one visit he notified Mr. Alter that the shul would have to transfer the responsibility of straightening up the shul to someone else.

When Mr. Alter recuperated, he summoned Mr. Reiss to a din Torah with Rabbi Dayan, demanding some pension or severance pay.

DID YOU KNOW?

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LOST MEZUZAH. PART II

Last week we discussed whether one who finds a lost mezuzah may use it.

Q: Does the finder have to be concerned whether the mezuzah is invalid or may he assume that it is valid?

A: The Teshuvos Halachos Ketanos (2:166) was asked about the status of tefillin found in genizah (the place where sacred items are buried). He responded that it seems that despite their appearance of being valid, since they were found in genizah they might be invalid, since the invalidation may be one that is invisible (e.g., it was not written lishmah — for the sake of the mitzvah). He equates this with a lost loan document that is not returned to the lender since we are concerned with even unlikely invalidating possibilities (e.g., it was written for a loan that was never issued) since a lost loan document raises suspicions regarding its validity (C.M. 65:6). He then suggests that perhaps it is only concerning monetary matters that we exercise such a high degree of caution, but when it comes to mitzvah objects perhaps the bar is lower and if it appears valid, it may be assumed valid. Consequently, if one finds a pair of tefillin in a tefillin bag, there is no reason to suspect that they are invalid, but if they were found open and without retzuos, there is reason to question their validity.



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"The shul has no legal responsibility," Mr. Reiss countered. "I empathize with Mr. Alter, but am I entitled to spend communal money for unwarranted expenses?"

After some deliberation, Rabbi Dayan ruled: "As there is no legal requirement, the shul is exempt from paying Mr. Alter a pension or severance pay. However, the shul should pay him some compensation lifnim mishuras hadin, beyond the letter of the law."

"Could you please explain?" asked Mr. Alter.

"The Gemara (B.M. 83a) relates that Rav once ruled that Rabbah bar bar Chanah should pay his poor workers lifnim mishuras hadin, despite the fact that they were not legally entitled to payment then," replied Rabbi Dayan. "The Rema (C.M. 12:3) cites a dispute between the Rosh and the Mordechai whether beis din can enforce acting lifnim mishuras hadin. Many Acharonim conclude that beis din may not force with legal consequences, but can use persuasive speech, telling the party that he is obligated to do so lifnim mishuras hadin" (see Pischei Teshuvah 12:6; Aruch Hashulchan, C.M. 12:2). "I would understand that as an individual," said Mr. Reiss. "But also from communal money?"

"Yes; the Chasam Sofer (II, Y.D. 239:9) rules that a community should also act lifnim mishuras hadin, where applicable," answered Rabbi Dayan. "In fact, there may even be a greater responsibility for a shul to act in a manner of lifnim mishuras hadin than for an individual, since they represent the community and are never impoverished. Thus, if the shul is able to, you should provide some compensation for Mr. Alter in return for his dedicated service throughout the years" (see Teshuvos V'hanhagos 1:409, 3:204; Minchas Yitzchak 5:121, 6:167).



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He also notes that it is possible that our concern is limited to loan documents, which people are extremely cautious to safeguard and thus if lost there is strong ground for suspicion. Regarding other objects people are not as cautious, and even if tefillin are found open and without retuzos, one may assume that they are valid.

Mishnah Berurah (39:28) cites Halachos Ketanos that tefillin found in genizah, open and without retuzos, should be assumed to be invalid, but if they were found in a manner that indicates that they were lost rather than discarded, one may assume that they are valid.

If one found a mezuzah in genizah there is reason to suspect that despite the appearance of being valid there is an invisible invalidation. On the other hand, a mezuzah that has an invisible invalidation is usually not rolled, since that is done after it is purchased and a scribe would not sell a mezuzah that has an invisible invalidation. Furthermore, it is common practice to put a mark on a mezuzah that is invalid, even if it will be put into genizah. Consequently, if one finds a rolled mezuzah with no physical indicators that it is invalid it is presumed valid (Shevet HaKehasi 6:373), but each circumstance must be considered independently.

In your circumstance, since the mezuzah was not even found in genizah, it is evident that someone simply lost the mezuzah so you may certainly assume that the mezuzah is valid (see Eruvin 96b).

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shita

BEIS DIN AND CIVIL COURT #1 INTRODUCTION

In general, Halachah demands litigation in beis din and prohibits turning to civil court for adjudication. However, in certain situations Halachah allows litigation in civil court (C.M. 26:1).

In the ensuing series, be"H, we will address details of this issue. Among the questions are:

What is the source of and reason for this halachah? What is the status of a Jewish civil court?

What if no beis din is available? What if there is mutual agreement to litigate in civil court or it is stipulated in the contract?

Does this halachah include also arbitration in civil courts? In trade courts?

What if the other party refuses the summons to beis din or sues in civil court?

After suing unsuccessfully in civil court, can one litigate in beis din?

Can one turn to civil court for legal measures such as stop orders?

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