

# BUSINESS WEEKLY



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

Issue #557 | Behar-Bechkosai | Friday, May 7, 2021 | 25 Iyar 5781

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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### USD/NIS LOAN

The Benders had retired to Eretz Yisrael after living many years in the States. They retained significant financial assets in the States, including IRAs, mutual

funds and CDs of varying durations.

Their daughter, Mrs. Fine, had also moved to Eretz Yisrael fifteen years earlier, and was currently renovating her house.

The Fines approached various banks about loans. One evening, Mrs. Fine was discussing the issue with her parents. "It's a shame for you to pay interest to the banks," Mr. Bender said. "We have money sitting in CD's that are maturing shortly. The CD rates now are so low, anyway. We can lend you the money, and this way won't have to bother with a bank loan."

"If you're willing, that would be great," said Mrs. Fine. "Our salaries are in shekels (NIS), though. We can't repay you in dollars."

"That's no problem," said Mr. Bender. "Our living expenses are now mostly in shekels. Furthermore, with the dollar dropping against the shekel, it's more profitable for us to get repaid in shekels. After decades that the dollar was significantly more stable than the shekel, the shekel is now more stable than the dollar!"

That evening, Mrs. Fine said to her husband: "My parents offered to lend us money for the renovation and repay in shekels. My father said that it is even more profitable for him that way."

"I would be happy to avoid taking a bank loan," said Mr. Fine. "I'm just concerned that borrowing dollars and returning shekels may entail some aspect of *ribbis*. Particularly in light of the fact that the shekel for the last decade has risen against the dollar. Perhaps we need a *heter iska*."

"Go ask a Rav," Mrs. Fine suggested. "I don't think my parents will have a problem with that."

Mr. Fine contacted Rabbi Dayan and asked:

**"Is there any *ribbis* issue in borrowing dollars in Israel and repaying shekels?"**

"A loan can be either of money or of commodities," replied Rabbi Dayan. "Just like one who borrows \$1,000 should repay \$1,000, one who borrows a ton of wheat should repay a ton of wheat.

"However, *Chazal* prohibited loans of commodities (*se'ah b'se'ah*), since the price of the wheat might rise, and it would then seem like *ribbis* when the borrower repays a greater value, but allowed it when certain conditions are met" (*Y.D.* and *Shach* 162:1).

"Although the dollar and shekel are both currency



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

### DOUBLE BORROW

**Q:** Reuven borrowed an object from a *gemach* and lent it to Shimon. But then the object was stolen, and Shimon doesn't have money to pay for it. The *gemach* is demanding that Reuven pay for it.

Is Reuven obligated to pay for the stolen object?

**A:** The *halachah* is that a *sho'el* (someone who borrowed an object) may not lend the borrowed object to another *sho'el* (*Shulchan Aruch, C.M.* 342:1). If he does, and that second *sho'el* has a valid claim to absolve him from payment - e.g. the object broke in the course of normal use (*meisah machmas melachah*) - the original *sho'el* must pay for it. The reason is that the owner can claim that he doesn't trust the second *sho'el's* oath declaring that he is not liable, and suspects him of stealing it or being neglectful in safeguarding it.

The *poskim* write that if the lender frequently lends objects of equal value to the second borrower, the original *sho'el* does not have to pay for the item, because the owner cannot claim that he doesn't trust the second *sho'el's* oath (*Shach* 342:1). Furthermore, the first borrower may even lend it to the second borrower *l'chatchilah* (*Shulchan Aruch Harav, Hilchos She'eilah* 1, and *Chochmas Shlomo*).

Family members of the borrower may also use the borrowed object, because when someone loans an object, he realizes that the borrower's family members will also use it and will trust their oath to absolve them of liability (*Nesivos* 72:17 and 341:3). Obviously, this applies only to family members who can care for it responsibly, not to young children who may destroy it.

Similarly, if someone borrows an object from a *gemach* that lends out items to anyone, he may lend it out to another person (*Pischei Choshen, Pikadon* 9, fn 28).

In cases in which a *sho'el* may pass the item on to others, and the second *sho'el* is responsible to pay but does not have money to pay, the first *sho'el's*



## CASE FILE

money, local legal tender is considered money, whereas foreign currency is halachically considered a commodity. Thus, a loan of foreign currency is considered a commodity loan, subject to the laws of *se'ah b'se'ah*" (C.M. 203:8).

"Some authorities considered dollars as currency also in Israel, due its prevalence (Years ago, some stores and many real estate transactions in Israel were valued in USD.) However, most consider it a commodity, especially nowadays, when the shekel has stabilized, and price quotes are required by law to be in NIS" (Bris Yehudah 18:[15]).

"Nonetheless, when a commodity, or foreign currency, is valued at the time of the loan in local currency, and the agreement is to repay that monetary value, there is no rabbinic prohibition of *se'ah b'se'ah*, since it is then considered a loan of a set monetary value" (Bris Yehuda 17:3[9]).

"Thus, if the dollars are calculated at the time of the loan to their shekel value, and that NIS value is returned, there is no issue of *ribbis* or *se'ah b'se'ah*, even if the exchange rate changes. It is also permitted to repay that evaluated shekel amount in dollars, at their exchange rate when repaying" (Toras Ribbis 7:18, 19:7; Machaneh Ephraim, Ribbis #27).

"Often, in permitted circumstances of *se'ah b'se'ah*," concluded Rabbi Dayan, "it is also permissible to stipulate initially that the loan be repaid in its dollar face value, which we will address *b"H* next week."

**Verdict: If foreign currency is evaluated in the local currency at the time of the loan, it is permitted to return that value.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### BAR METZRA #17 (Bordering Property) Forgoing Bar- Metzra Rights

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

#### Q: If the *bar-metzra* allowed selling to outsiders, does he forgo his rights?

A: If the owner offered to sell to the *bar-metzra* at the same price as the outside buyer, but the *bar-metzra* said clearly: "Sell to others; I am not interested in the property," he forgoes his rights and cannot take the property later from the buyer (C.M. and *Kesef Hakodashim* 175:31). Nonetheless, some explain that since this halacha is for the seller's benefit, the seller can allow the *bar-metzra* to take the property later; others disagree (*Pischei Teshuvah* 175:11; *Erech Shai* 175:31).

If the potential buyer told the *bar-metzra* to buy the property, who replied that he is not interested, he forgoes his rights; the buyer does not become the *bar-metzra's* agent against the *bar-metzra's* will. (See *bar-metzra* # 3 in newsletter 543 that when *bar-metzra* does apply the buyer becomes a purchase agent of the *bar-metzra*.) Others maintain, though, that the *bar-metzra* loses his rights only if the buyer explicitly offered to buy on his behalf and he declined, but not if the *bar-metzra* simply stated that was not interested in buying the property (*Rama*, C.M. 175:29; *Sma* 175:53; *Shach* 175:25).



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liability would depend on the specific circumstances.

We will first present the general *halachos* that apply to other guardians and then the *halachos* of a *sho'el*.

If a *shomer* gave the object to a family member, and that person was neglectful with its care, that person must pay, not the original *shomer*. The reason is that the owner assumed the *shomer* might give it to his family members. If that family member does not have money to pay, the Rosh (B.M. 3:23) rules that the *shomer* himself must pay, for otherwise, the family members of a *shomer* would be free to misuse an object left in his care (*Sma* 291:40). The Rambam (*Hilchos She'eilah* 4:9), however, rules that the *shomer* is not obligated to pay (*Shulchan Aruch* 291:24).

If it is known that this *shomer* doesn't generally safeguard objects on his own, but gives them to others to watch, then according to all opinions he is not obligated to pay (*Shach* 291:32).

If the object was transferred from one *shomer* to another who the owner generally trusts with his possessions, and the second *shomer* can't pay, there is a dispute whether the first *shomer* is required to pay. Some *poskim* rule that the first *shomer* has no obligation to pay, because the owner cannot claim that he suspects the second *shomer* of foul play (*Maharshal*, *Yam Shel Shlomo*, B.K. 1:32). Others rule that the first *shomer* is obligated to pay, because the owner gave no indication that he was willing to allow the second *shomer* to guard it (*Sma* 72:96). A third opinion is that this matter is subject to the above dispute between the Rambam and the Rosh (*Shach* 72:134).

Returning to your question: Some *poskim* rule that in the case of one *sho'el* transferring it to another, the original *sho'el* is required to pay *even* if the owner typically lends this object to the second *sho'el*. The fact that according to the Rambam a *shomer* is not obligated to pay for a family member's negligence is not relevant to this case; the reason he is absolved of payment there is because he was allowed to give to a family member, since the owner understands that he will rely on his family to help guard it, and he is therefore considered an *oness* in the neglect. But since a borrower is generally required to pay for *oness*, giving it to another *shomer* does not absolve him from that liability (*Nesivos* 291:24).

Others maintain that the reason a *shomer* is not obligated to pay for a family member's negligence is because it is as though the owner himself handed it over to the family member, so the original *shomer* is no longer a party in this case (see *Sma* 41 and *Mishneh L'Melech Hilchos She'eilah* 4:9). Similarly, when the first *sho'el* is allowed to hand it over to another trustworthy *sho'el*, it's as though it was returned to the owner, and he is not obligated to pay (*Divrei Mishpat* 291:5; *Nachal Yitzchak* 72:17, *Ulam Hamishpat* 291:24, and see *Ketzos* 291:8).

Therefore, if Reuven did not sign an agreement with the *gemach* obligating himself to pay regardless of the circumstances, and the *gemach* did not take any sort of collateral when Reuven borrowed it, Reuven can absolve himself from payment by claiming that he is relying on the later *poskim*.

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

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