

# BUSINESS WEEKLY



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

Issue #577 | Bereshis | Friday, October 1, 2021 | 25 Tishrei 5782

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## CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

**WHAT'S YOUR NAME?** David Klein was recently divorced. Before writing the *get*, the *Beis Din* thoroughly questioned David about his various names and his father's names, including their civil names and common nicknames.

Finally, after some consideration, his name in the *get* was written as: *Dovid Avraham hamechuneh* (=known as) *David v'hamechuneh Dave ben Shlomo Elimelech*."

In the aftermath of the divorce, David needed a \$15,000 loan. He turned to one of the wealthy members of his community, Mr. Silver, who agreed to provide the loan.

David sat down with Mr. Silver to draft a loan contract.

"How should I write your name?" asked Mr. Silver.

"Good question!" exclaimed David.

Mr. Silver looked at David quizzically. "Don't you know your name?" he asked.

"I always knew my name simply as David Klein," replied David. "However, when the *Beis Din* wrote the *get*, they wrote my name: Dovid Avraham, known as David and known as Dave, son of Shlomo Elimelech."

"That is a mouthful," acknowledged Mr. Silver.

"I don't know whether to give you my Hebrew or English name," explained David, "my first name or full name, with my father's name and nickname or without."

"I suggest we start with something simple," laughed Mr. Silver. "In my business documents, I never write names as they are written on a *get*; just the standard name."

"That helps," said David. "But do you want my full official name or just the first and last; Hebrew or English?"

"Whatever you prefer," said Mr. Silver.

"Well, then it's David Klein," replied David.

"That sounds like a pretty common name," noted Mr. Silver.

"I know," said David. "There's another person in my shul with the name David Klein; it sometimes causes confusion. We have different middle names, though."

Mr. Silver decided to call Rabbi Dayan. He asked:

**"What name or names should I put on the loan contract?"**

"In previous eras, people were identified through their name and father's name, and by the city in which they resided," replied Rabbi Dayan. "When a person had numerous names or nicknames, Chazal instituted to include them in a *get*, but did

## DID YOU KNOW?

Using another person's credit card for your purchase and paying back the cost including the interest accrued can entail ribbis.

Ask your Rav or email  
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for guidance and solutions.



## BHI HOTLINE

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

## "MAY I USE THE SHTREIMEL?"

"Yankel" was about to spend a Shabbos with family in a different city, when he realized late on Friday afternoon that he had forgotten to bring his *shtreimel*. When he asked his hosts whether they knew anyone who had a spare *shtreimel* he could borrow, they said that a neighbor "Reuven" has a spare.

Before giving him the *shtreimel*, Reuven explained the circumstances under which he had received it. Ten years earlier, on a Chol Hamoed day, he was strolling outdoors, when an antisemite suddenly grabbed his *shtreimel* and ran off. The story had been so shocking that it made the local news at that time.

Shortly thereafter "Shimon" entered a train car and was surprised to find a *shtreimel* just sitting there on a seat. Since the overwhelming majority of the city's residents were non-Jews, he was certain that this must be the *shtreimel* he heard about on the news, and he was happy to bring it back to Reuven. To his consternation, however, when Reuven saw the *shtreimel* he was certain that it was *not* his. They surmised that some other Jew must have ridden on that train car and placed his *shtreimel* on the seat, and he simply forgot it when he disembarked.

Ten years passed with Reuven having no way to trace the *shtreimel's* owner, but he was happy to allow Yankel to use it.

**Q:** After hearing this story, however, Yankel was uncertain whether he was allowed to use a *shtreimel* without the permission of its original owner, and he called BHI for a ruling.

**A:** Obviously, since it is at least ten years since the owner of that *shtreimel* has seen it, he has long been *meya'eish* (despaired) from finding it and anyone may acquire it.

Although there is a *halachah* that if someone finds a *sefer* in a locale with a non-Jewish majority, he must still try to locate its owner; that is because the



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not require this in monetary documents" (C.M. 49:1-2; *Shach* 49:13; E.H. 129:1).

"Nowadays, it is more common to identify people by their first and last names. Therefore, it is preferable to write the first and last names in monetary documents, since the primary purpose of names in documents is to identify the parties. In this respect, it does not matter whether the Hebrew or English name is used" (*Pischei Choshen*, Shtaros 7:[15]).

"The *Mishnah* (B.B. 172a) teaches that if two people in the city share the same name, which is listed as the borrower in a loan document, the lender cannot collect from either one of them, since each one can claim that he was not the borrower and deflect the lender to the other person. In this case, additional identification should be added to the name, such as the grandfather's name, or *Kohen* or *Levi*, if one of them is such. Alternatively, this issue can be solved nowadays by adding the person's middle name or identification number" (C.M. 49:7).

"If the borrower's signature is identifiable on the loan document, it can also serve as identification, and the lender would be able to collect from him. Similarly, if witnesses testify who borrowed, or there is other evidence to whom the loan was granted, the lender can collect from him.

"In the converse case, though, where the shared name appears as the lender's, the person who holds the loan document is assumed to be the lender and can collect repayment of the loan; the borrower cannot claim that this person is not the lender and the document fell from the other person who shares the name (ibid.).

"Thus," concluded Rabbi Dayan, "it is important that the borrower be most clearly identified (ibid.)."

**Verdict: The names in a loan contract should identify both parties simply and clearly, especially that of the borrower.**



## MONEY MATTERS

### BAR METZRA #36 (Bordering Property) Bar-Metzra Who Sold

Based on writings of Harav Chaim Kohn, shlita

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

**Q: I bought a property from Reuven, but the *bar-metzra* claimed the property from me. Before we settled the issue in *Beis Din*, the *bar-metzra* sold his own property to Shimon. Does the *bar-metzra* or Shimon still retain a claim to the property that I bought?**

A: Even if the *bar-metzra* already submitted his claim for Reuven's property, once he sold his own property, he loses his rights, since the logic of doing "what is fair and good" no longer applies (C.M. 175:15; *Gra* 175:15).

Shimon, who bought from the *bar-metzra*, also cannot claim the property from you, since you bought it before Shimon became a *bar-metzra*, and the initial *bar-metzra's* right is not transferable to his buyer (*Pischei Choshen*, *Shutafim* 11:[138]).

Conversely, you cannot take the *bar-metzra's* former property from Shimon, even though you had become a *bar-metzra* before Shimon bought it, since your right to Reuven's property was tenuous then, and you could have been removed by the *bar-metzra* until he sold his property (*Pischei Teshuvah* 175:9).



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person who lost it is not *meya'eish*, because he reasons that a non-Jew who finds it would try to sell it to a Jew, who would then try to return it to him (*Shulchan Aruch*, C. M. 259:3 with *Sma* 8, and 236:8). It is unclear whether the same applies to a *shtreimel*, which a non-Jewish finder would be more likely to throw in the garbage than sell to a Jew – in which case the owner is *meya'eish* and it now belongs to Shimon.

There is another factor to consider, however.

The *halachah* is that a finder only acquires the object he found if he took possession of it **after** *yi'ush*. If he took possession of it before *yi'ush*, it does not become his (ibid. 262:3).

Based on this *halachah*, there are two questions to consider: Are we required to consider the possibility that the finder took possession of it before *yi'ush*? And if we could ascertain that he picked it up before *yi'ush*, may he – or anyone else – acquire it after *yi'ush*?

The *poskim* deliberate the latter question. Some rule that since the finder picked it up before *yi'ush* and is required to return it to the owner (ibid. 262:3), someone who receives it from him cannot acquire it (*Chiddushei Ritva Hayeshanim*, B.M. 21b; *Yad Hamelech on Rambam*, *Hilchos Gezeilah* 15:1). Others rule that it is dependent on a dispute among the *Rishanim* (see *Imrei Moshe* 37 and *Mishnas Hamishpat* pp. 181-2, and *Kehillos Yaakov*, B.M. 25:6).

Even if we say that one is not allowed to acquire a lost item from a finder who took possession of it before *yi'ush*, some *poskim* rule that once the owner is *meya'iesh*, although if he ever shows up and claims it, the finder is required to return it, he is allowed to use it in the interim (*Shach*, C.M. 260:26 according to *Rambam*. See *Sma* 260:42 and *Hagahos Rabbi Akiva Eiger*, who explain the *Rambam* differently).

But other *poskim* argue, and since it is a *safeik* (uncertainty) in a Torah-level prohibition, we must act stringently (*Shulchan Aruch HaRav*, *Metzia* 2). (Another reason to rule leniently for temporary use when someone is stuck without *bigdei* Shabbos appears in the *Shach* [358:1], who writes that in cases in which the owner would be happy to have someone use his lost item, he may use it.)

In this specific case, however, we likely do not have to rely on these leniencies. In all likelihood, the *shtreimel* owner realized, the minute he got off the train, that he left his *shtreimel* behind, and since most riders are not observant Jews, he was *meya'eish* immediately (see *Shulchan Aruch*, C.M. 362:6). Even if there is a lost-and-found department at the train station, and even if a person would generally try to check if his item turned up, he does so without any real hopes of retrieving it, and it does not prove that he wasn't *meya'eish* (for an example of this type of case, see ibid. 262:14 and *Shitah Mekubetzes* 26b).

**Since there was likely *yi'ush*, Yankel is allowed to use it.**

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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