

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #130 / PARSHAS VAYEIRA  
FRIDAY, NOVEMBER 2, 2012  
17 CHESHVAN 5773

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## There is a Way!

*(Continued from last week)*

Rabbi Dayan, Mr. Berger, his daughter Bracha, and her husband Yehuda sat around the table as Mr. Berger began, "In my will, I bequeathed my house to Bracha and distributed the remaining assets equally among the sons. Bracha was concerned that perhaps she cannot accept the house, since daughters are not entitled to inherit with sons, according to Torah law."

"She is correct that according to halacha, daughters do not inherit," responded Rabbi Dayan. "Despite this, if the sons willingly agree to grant her the house when going through probate (the legal procedure of dividing an estate), she can accept it."

"Furthermore, some poskim have suggested reasons to validate secular wills de facto even if they do not conform to Torah laws of inheritance, although these reasons are

subject to debate. In any case, you should prepare a halachically valid will."

"Do I have to redo my entire will?" asked Mr. Berger.

"Not at all," smiled Rabbi Dayan. "You can leave your will intact, but must fill out this additional document." He pointed to a paper sitting on the table in front of him. "It is based on a centuries-old practice called 'shtar chatzi zachar' - a document of a half-male."

"Sounds like bio-technology," Bracha remarked with a quizzical look.

"Not at all," Rabbi Dayan laughed. "Chatzi zachar does not mean biologically half-male, but rather half the inheritance rights of a male. Throughout the period of the Acharonim, it was common to award the daughter half the inheritance rights of a son as a dowry. For example, if there were two sons and a daughter, each son would get 40 percent

of the estate, and the daughter 20 percent." "But we said that daughters cannot be designated as inheritors," interjected Yehuda.

"True," responded Rabbi Dayan. "The shtar chatzi zachar did not declare the daughter an inheritor; the inheritance itself was defined according to Torah law. Nonetheless, the shtar chatzi zachar served as leverage forcing the sons to grant the designated share of the estate to the daughter."

"Fascinating," said Mr. Berger, "but how was this accomplished?"

Rabbi Dayan continued, "The father would obligate himself to leave the daughter a very large sum of money, payable one minute before death. However, this 'debt' was conditional; if the sons would agree to grant the daughter a half-share of the estate, the debt would be null and void retroactively, and the daughter would have no further claim."

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## Someone Else's Glove

*Submitted by L. G.*

I noticed my eleven-year-old son playing with an adult-sized baseball mitt. When I asked him about it, he told me that he found it a few weeks ago in the park.

**Q: Now that I have the glove, am I obligated to announce that we have a lost object?**

**A:** Before your question is answered, some background is necessary.

If one finds a lost object and it is known that the owner was meya'esh (abandoned hope of recovering that object), the finder may keep the lost object. When a lost object does not have a siman (identifying mark) and it is the type of object whose loss is noticed immediately, the finder may assume the owner was meya'esh and keep the object for himself (C.M. 262:3).

The circumstance of an object lacking a siman but whose loss is not immediately detected is referred to as ye'ush shelo midaas. The owner will, no doubt, abandon hope of recovering his lost item since it lacks a siman, but since he does not realize its loss right away, the mitzvah of hashavas aveida (returning lost objects) applies.

There are two explanations why in a case of ye'ush shelo midaas the mitzvah to return the object remains in force:

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"Amazing!" Yehuda exclaimed. "After the father's death, the sons would have to pay the large debt to the daughter unless they agreed to grant her the designated share of the estate. Obviously, they would prefer to grant her the share, since otherwise she would collect everything anyway as payment of the debt. But why does she receive only a half-share?"

"This was to uphold the notion that daughters do not inherit equally with the sons," explained Rabbi Dayan. "Nonetheless, later poskim also mention a 'full-male document,' which stipulates that the daughter be granted a full share."

"Still, how does this help me with my will?" asked Mr. Berger. "We're getting to that now," responded Rabbi Dayan. "Current poskim have adapted shtar chatzi zachar as a halachic solution to modern wills."

He picked up the document. "In this document, you declare that the inheritance itself should be in accordance with Torah law. However, you acknowledge a large conditional 'debt,' payable just before death, to various benefi-

ciaries of your will. If the true Torah heirs grant each beneficiary the share outlined in the will, as will occur when going through probate, the debt will be retroactively void. Thus, your daughter will not take the house as an inheritance; the sons will have to grant it to her to avoid paying the large conditional debt."

"Does this also solve the issue of the firstborn son?" asked Mr. Berger. "I am concerned that leaving him double might cause jealousy within the family."

"Yes," said Rabbi Dayan. "The inheritance itself is to follow Torah law, and the firstborn inherits in principle a double share. However, if he does not agree to grant the other brothers an equal share, as per the will, he will have to pay the debt."

"So I can leave my will intact, and attach this document to grant it halachic validity?"

"Yes," said Rabbi Dayan. "I should note that some poskim recommend designating a certain amount to be divided according to true Torah law."

"Come, take a pen, and let's complete and sign the document." →

One explanation is that since the finder took possession of it before the owner was meya'esh, he was already obligated to return it; that mitzvah does not dissipate when the owner abandons hope of recovering the object (Tosafos, Bava Kama 61a).

A second explanation is that when the finder initially picks up the item, he becomes a shomer (custodian) for that item, and as such, he is an extension of the owner himself (yad shomer k'yad baal habayis). Even though the owner subsequently is meya'esh, the finder cannot take possession of it for himself since it is considered as though it remains in the possession of the owner (Ramban cited in Ketzos 259:1).

We can now address your

question. According to both explanations of the principle of ye'ush shelo midaas, the lost object need not be returned. The reason is that it was found by a child who is not obligated in the mitzvah of hashavas aveida, and also has no obligations of shomrim (custodians), so neither of the above explanations applies. Accordingly, the mitzvah would not begin until you took possession of it, and at that point, it is assumed that the owner abandoned hope of recovering it. There is therefore no obligation to return it (see Minchas Chinuch 539:8). It must be noted, however, that if it is possible that the owner did not yet abandon hope of recovering his object, you would be obligated to search for the owner.

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## Shomrim: Guardians #30

**Q: Is a paid babysitter or housekeeper considered a shomer chinam or shomer sachar on household items?**

**A:** There is a dispute whether a person who is paid for his or her service or labor becomes a shomer sachar for household items on account of this. Some differentiate between a person who is paid to perform a specific service and one who is paid to perform all

kinds of services. Regardless, a babysitter or housekeeper is not even considered a shomer chinam on items that are not in his or her jurisdiction (Pischei Choshen, Pikadon 1:[16,17]; Aruch Hashulchan 303:4).

Thus, a babysitter would not be a shomer sachar on household items, except for those related to the children's care. A housekeeper would be considered a shomer sachar on most household items. Nonetheless, the

practice is not to be particular over small losses, unless the babysitter or housekeeper was grossly negligent (Pischei Teshuvah, C.M. 331:1; Aruch Hashulchan 331:7).

The babysitter is responsible, however, for the welfare of the children entrusted to her care. She is also responsible to ensure that the children do not cause damage or loss to others (see Nesivos 95:6; C.M. 390:12; P.C., Pikadon 1:[49]).

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