

Rav Shmuel Binyomin Honigwachs

Question: If I have a legal document for a loan or transaction, is there still a reason for me to have a halachic *shtar* as well?

Answer: A legal document that has been reviewed by a lawyer is a very good thing to have, but it is also important to have a good halachic *shtar*. Obviously, we are supposed to go to *bais din* to resolve our monetary disputes. In *bais din*, there are a number of reasons why it is beneficial to have a *shtar*. One of the main reasons is the cardinal rule when it comes to monetary law, *hamotzi meichaveiro alav haraya*; whoever is trying to get money away from his friend has the onus of proving his case. The *muchzak*—the one holding the money—has the upper hand, and, as long as it cannot be clearly proven that he must hand over the money, he is allowed to keep it. This can be very frustrating for the one trying to get money away from a *muchzak*, because if the *muchzak* can show that there is any minute doubt regarding whether or not the other party's claims are correct, he does not have to turn over the money.

The *muchzak's* claim could be through casting doubt on the facts of the case, but very frequently they are regarding the technical halacha. One must realize that practically every possible scenario has been discussed by the Poskim over hundreds of years, and there are many disagreements amongst them. In almost any case, the *muchzak* may be able to find a minority opinion that seems to take his side. Even if the vast majority of Poskim are against him, as long as he can show that a few halachic opinions validate his claim, the money cannot be forced away from him due to *hamotzi mechaveiro*.

In a halachic *shtar*, there is something known as an Agreement Validation Clause. This clause basically stipulates that the intent of the *Shtar* would remain intact even if there is only a minority of the Poskim that would uphold it. This negates any future attempts of the *muchzak* to hold onto the money by finding an opinion that agrees with him..

For this reason alone, it is worthwhile to have a *shtar* written up.

Additionally, even if a full halachic *shtar* is not written, a simple Agreement Validation can often be added to a legal contract that will assist with this problem.

Note: this is not intended to be legal advice and should not be construed as such. One should consult with their attorney and a competent dayan in each case.