



# BUSINESS WEEKLY

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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

**ONE OR BOTH?** Menachem, Aharon and Shimon took a two-day vacation together. They spent the night at a motel, sharing a room.

After *davening Maariv* and having supper at a kosher pizza store, Menachem decided to shoot some hoops at the basketball court. "Are you going up to the room?" he asked his friends.

"Yes," they replied. "We'll put sneakers on and come down to join you."

"Could you please take my wallet?" Menachem asked. "I have \$2,000 in cash in it. Make sure to put it in the safe."

"No problem," Aharon and Shimon said.

Menachem handed Aharon his wallet. When they came up to the room, Shimon opened the safe. Aharon gave him the wallet to put in the safe and headed down. Shimon left the safe door open to put in some valuables from his bag, but he received an important phone call in the middle and got distracted. After finishing the phone call, Shimon put on his sneakers and rushed down to join his friends. When the three returned from the court an hour later, they saw that the safe was empty!

"How did that happen?" Menachem asked.

"I got distracted and left the safe door open," Shimon apologized. "I don't have that kind of money to pay you back, though."

Menachem told Aharon, "I also asked you to take care of the wallet."

"True, but I didn't do anything wrong," said Aharon. "I gave the wallet to Shimon to put in the safe, and he left it open."

When they returned home, the three came to Rabbi Dayan. "Aharon and Shimon accepted responsibility for my wallet," said Menachem. "Shimon was negligent and left the safe door open, but does not have money to cover the loss. Can I collect from Aharon?"

"The Rema (C.M. 77:1, 299:1) says that if two people accept an item to guard, each is liable for half the value and is a guarantor for the other half, similar to two people who borrow money together," replied Rabbi Dayan. "Although the Rema in his responsa (#27) differentiates and writes that guardians do not automatically accept responsibility for each other's half, since they do not receive benefit like borrowers, the Shach (C.M. 77:1)

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## BHI HOTLINE

**SHIVAH CALL – RIBBIS DEVARIM** I needed additional funds to purchase

a home. I contacted someone from my shul and he agreed to lend me \$30,000. A few weeks later the lender's mother passed away. I planned to pay a *shivah* call, but some friends asserted that it is prohibited for me to visit, but I am concerned that it will come across as insulting if I do not visit.

**Q: Is it permitted for me to pay the lender a shivah call?**

**A:** The Torah prohibits both collecting as well as paying interest. The *Gemara* (B.M. 75b) derives from a *passuk* that even honoring or praising the lender violates the prohibition (*ribbis devarim*). Therefore, greeting the lender first (*makdim shalom*) is prohibited if previous to the loan one was not accustomed to do so (Y.D. 160:11). Even if the borrower was accustomed to greet the lender, if he does so now because of the loan, it is prohibited (*Shulchan Aruch Harav, Ribbis 11*).

Some authorities maintain that greeting the lender first is prohibited only when the borrower knew the lender but was not accustomed to greeting him. If the borrower and lender didn't know one another, it is assumed that the greeting is not in consideration of the loan, rather it is because they are now acquaintances. Greeting the lender under these conditions does not violate the prohibition of *ribbis devarim* (*Keren HaTorah 160:40; Chut Shani, Ribbis ch. 9; see Dibros Moshe, Gittin p. 352; Nesivos Shalom 160:7:[12]*). Others are hesitant to adopt a lenient position since the matter is subjective and it is sometimes difficult to determine whether the greeting is in



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supports the Rema's ruling in the *Shulchan Aruch* that they become guarantors. "Furthermore, the Nesivos (77:1) suggests that the Rema in his responsa only intended to say that guardians do not become full guarantors (*arev kablán*) for each other," added Rabbi Dayan, "which would allow the owner to collect fully from one guardian even when the other is able to pay for his half. However, he did not negate their becoming guarantors when the other party is unable to pay."

"Here I was not at fault, though," said Aharon.

"Machaneh Ephraim (*Hil. Shomrim #27*) understands that if one guardian was negligent and the item was lost, each party is still liable for the half that he took responsibility for," replied Rabbi Dayan. "However, others understand that if one party was negligent in his guardianship, or if the item was stolen from the house of one guardian, he alone bears liability. Nonetheless, if a borrowed item was lost through *ones* (uncontrollable circumstances) then both borrowers are liable, since the party holding the item is not to blame more than the other" (*Mishnas d'Rebbe Eliezer C.M. 77:1*).

"The Chazon Ish (*C.M. 5:11*) also indicates that if one party was negligent, he alone bears liability," concluded Rabbi Dayan.

"Similarly, if the item was solely under the hands of one party and stolen from him, he alone is responsible, since the other guardian transferred responsibility to him. The owner can still collect from the other guardian as a guarantor, but he is entitled to reimbursement from the guardian who was negligent. Thus, if necessary, you can collect from Aharon as a guarantor for Shimon."



## MONEY MATTERS

### RENTALS #13

#### Property Improvements

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

**Q: I installed an air conditioner and constructed a built-in, custom bookcase in my rented apartment. Does the owner have to reimburse me when I leave?**

**A:** The renter can make property improvements that are beneficial to the landlord as well. If the improvement was important, the renter can demand reimbursement of expenses, up to the amount it benefited the owner, even if the owner initially refused (*C.M. 178:3; Nesivos 341:15, 264:6*).

If the landlord would not have done the improvement because he lacks funds, he does not have to reimburse the renter, but the renter can deduct the relevant amount from the remaining rent.

However, if the improvement does not add to the rental value, so that the landlord would not have done the improvement, he is exempt from reimbursing. He can tell the renter: "Take what you installed" (*C.M. 375:6-7; Imrei Yosher 2:200; Minchas Pittim and Shiurei Minchah 375:6-7*).

Thus, the owner would have to reimburse for the air conditioner, but not for the bookcase, unless it increases the rent.



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consideration of the loan or not (*Keren HaTorah, ibid.; Mishnas Ribbis 4:18*).

Some suggest that the prohibition is violated when the borrower goes out of his way to greet the lender. If they happen to bump into one another, it is permitted for the borrower to greet the lender since it is not in consideration of the loan (*Divrei Sofrim*). It seems logical that one could be lenient in such a case.

Returning to your question, there are authorities who maintain that making a *shivah* call when you would not have done so were it not for the loan constitutes *ribbis devarim* (*Chut Shani, ibid.*), even though making a *shivah* call is a *mitzvah*. Although a borrower must fulfill the *mitzvah of hashavas aveidah* (returning lost objects) to his lender, making a *shivah* call is prohibited since the *mitzvah* is voluntary rather than obligatory. This is similar to the restriction against teaching one's lender Torah due to the prohibition of *ribbis devarim* (*Y.D. 160:10; see also Shulchan Aruch Harav, Ribbis 9 and Bris Yehudah 11:[40]*).

However, there is room for leniency if you are paying the *shivah* call because you are now friends with the lender and you generally make a *shivah* call to your friends. A barometer to decide whether it is permitted is whether one feels that the lender would also make a *shivah* call to the borrower if he was an *avel*. If the lender would not visit the borrower, it is an indication that they are not friends and the borrower's intent to make a *shivah* call is in consideration of the loan. The issue requires further research, but a practical solution to your concern for hurting or insulting the lender is to ask someone to inform the lender that you are not coming out of concern for the prohibition of *ribbis devarim*.

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

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