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לע"נ הרה"ח ר' נחמיה
ב"ר שלמה אלימלך ז"ל

BY HIS SON, R' SHLOMO WERDIGER

Restoring the Prominence of Choshen Mishpat

STORY LINE

by Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Backup at the Bridge

Harry called Sholom's Car Service. "I've got a flight tonight at 11:30 PM," he said to Sholom. "Can you take me to the airport?" "Yes," said Sholom. "When should I pick you up?" "8:00 should be fine," Harry said. "The drive is under an hour, leaving me two and a half hours before the flight." At 8:00, Sholom arrived. Harry loaded his suitcases and got in the car. As they headed towards the airport, Sholom listened to the traffic report. "No particular problems," he said to Harry. On the entrance ramp for the bridge, however, traffic suddenly came to a total standstill. "You spoke too soon," said Harry. "What happened?" Sholom turned the radio on. "The bridge has been closed due to a fatal accident involving four cars," the reporter announced.

It took a full hour for traffic to start moving. Even then, cars crawled slowly through the one open lane. Harry looked at his watch nervously. "I hope I can still make the flight," he said. It was another hour before traffic began flowing smoothly. Sholom raced to the airport and got there at 10:45. "There's still a chance I can catch the flight!" Harry said. Sholom helped Harry unload his luggage. "I'll wait here half an hour," he said. "If you missed the flight, call me and I'll drive you home." Harry went made his way to the departures area. He located his flight, but the check-in desk was already closed. Harry found one of the airline personnel. "I'm scheduled for the 11:30 PM flight," he said. "Is there a way to get inside?" "I'm sorry," he said. "The flight was already

filled and boarding is underway. You'll have to reschedule." Harry called Sholom. "I missed the flight," he said. "I'll have to head home with you." Sholom pulled up two minutes later. He loaded the bags back into the car and drove back. When they arrived, Sholom said, "That will be another \$50 for the return drive." Harry looked up, surprised. "You didn't tell me that this would also cost me." "You paid me just for the drive there, which took much longer than expected," Sholom said. "Wouldn't you have to pay for a taxi home?" "But you had to return anyway," seethed Harry. "If anything, you should refund the money for the ride to the airport; you didn't get me there in time for the flight!" "It's not my fault that the bridge got closed," said Sholom. "I picked you up on time and

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Student Loan

Submitted by
S. D. B.

FROM THE BHI HOTLINE

I was asked to loan a substantial sum to a local yeshivah. It happens to be that my grandson is applying to that yeshiva and we are concerned that he may not be admitted.

Q: Am I allowed to stipulate that I will grant the loan on condition that they accept my grandson? We will be paying full tuition and are not looking for a discount; we just want to guarantee his acceptance.

A: In the laws of ribbis (interest), it is not only forbidden for the borrower to pay interest in the form of monetary compensation, it is also prohibited to give even an implicit benefit (tovas hana'ah) to the lender. The question here is whether giving you this opportunity is a benefit that violates the prohibition of ribbis. The yeshiva is not giving a tuition break or anything that is worth money; they would merely be allowing you to enroll a

child in their yeshiva. Does this form of benefit violate the prohibition of ribbis? Interestingly, the matter is subject to debate. The stringent opinion (Shulchan Aruch Y.D. 160:23) maintains that, for instance, if a lender works as a painter, he may not stipulate that if the borrower needs painting done, he will hire the lender for the job. If this condition is formulated as part of the loan agreement, it may even be Biblically prohibited. Even if it was

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drove as best I could.”
 “Well, it’s not my fault either,” said Harry. “I’m not paying another penny without consulting Rabbi Dayan about both rides tomorrow.”

The following day, Harry and Sholom went to Rabbi Dayan and asked about payment for the rides.

“When someone completes his job faithfully, you must pay him in full, even if no benefit comes from the work,” Rabbi Dayan said. “For example, if a person ordered a delivery of medicine for a critically ill patient, and the person died or recovered meanwhile, the driver must be paid. Therefore, Harry must pay for the ride to the airport even though he missed the flight (C.M. 335:3).”

“What about payment for the return ride?” asked Harry. “Sholom offered to drive me back, and never said that he would charge me. I assumed that he meant to drive me as a courtesy.”

“When a person, especially a professional, offers his services to another, we do not assume

that he meant to do it for free, unless circumstances clearly indicate so (Rama 264:4),” said Rabbi Dayan. “Therefore, if Sholom did not indicate that he intended to drive you as a courtesy, he can charge you for the return trip.”

“But Sholom had to return anyway; it cost him nothing,” argued Harry. “Isn’t this a case of zeh neheneh v’zeh lo cha’ser (this one gained and the other didn’t lose), for which one is exempt?”

“The exemption of zeh neheneh v’zeh lo cha’ser doesn’t apply here for a few reasons,” explained Rabbi Dayan. “First of all, Sholom drove you with the intention of getting paid. Second, he could have picked up another passenger on the way home, were you not with him. Third, he had to wait for half an hour and also drove you to your door; if there is even a small additional loss or cost, you have to pay the full amount for the benefit you received (363:6-7).”

Harry took out \$50 and gave it to Sholom.

not part of the agreement, but the borrower chooses to hire the lender in consideration of the loan, the prohibition against ribbis has been violated.

The lenient opinion (Taz ibid 22) disputes this ruling based on a seemingly contradictory halacha (Y.D. 172:4). It is permitted for a lender to say to the borrower, “If you sell your house, you must sell it to me at its fair market price,” and even stipulate this as a condition of the loan. This case indicates that the borrower may provide the lender with an opportunity (i.e. the right to purchase his home) made possible by the loan. A possible resolution to the contradiction is that in the case of the house, if the borrower decides to sell, the money that he received originally as a loan is applied towards the purchase of the house. Accordingly, it emerges retroactively that the money received was never a loan; rather, it was the first payment towards the

purchase. Consequently, the “lender” never received an added benefit in consideration of the loan. In other cases, however, it would be prohibited for the lender to stipulate that he should receive an opportunity, even though he will pay fair market price for that service (Chavas Da’as ibid 17).

The lenient opinion does not consider giving the painter the job as a benefit, since there is no difference for the borrower between one painter and another. Therefore, hiring him and paying for his work is not ribbis. In your case, the yeshiva has standards for admission. If they were to compromise those standards in consideration of the loan, they are giving you something of value, rather than merely the opportunity to enroll your grandson (see also C.M. 237:2). Thus, according to all opinions, it is prohibited to make the acceptance of your grandson a condition of the loan.

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Borrowing and Lending #18

MONEY MATTERS

Q: I run a debt-purchasing agency, buying delinquent loans and collecting them. What are the halachic issues involved with this?

A: There are three main halachic concerns: the prohibition of “lo tih’yeh lo k’nosheh” (do not be an [oppressive] creditor), ribbis (interest), and litigation in secular courts.
 1. A creditor is not allowed to pressure the

borrower to repay when he knows that he is unable to. It is even prohibited for the creditor to present himself before the borrower, which will cause him shame (C.M. 97:2). However, this applies only if the creditor knows that the borrower is unable to pay; if he is unsure, he is permitted to demand the loan.

2. If the loan entailed prohibited ribbis and you bought the loan, you are not allowed to collect the interest. Moreover, even if the

original loan was from a non-Jew to a Jew, you would not be allowed to collect any interest that accrued after you purchased the loan (Rama Y.D. 168:10). Your having an all-purpose heter iska would not help here, since it was not part of the original loan agreement.

3. If the debt is clearly owed, it is preferable, if possible, to get permission of beis din in order to litigate in secular courts.

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