

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## In Denial

One evening, Mr. Morris's acquaintance, Mr. Roth, knocked at his door, asking to have a word with him.

"Certainly; come in," Mr. Morris said, welcoming him inside.

"Perhaps you've forgotten," Mr. Roth began, "but last year I lent you \$500, which you never repaid."

Mr. Morris scratched his head and thought for a moment.

"I never borrowed from you," he replied.

"You definitely did," Mr. Roth insisted. "And didn't repay."

"Do you have any written evidence?" asked Mr. Morris.

"No, I don't," acknowledged Mr. Roth.

"That just proves that I never borrowed your money," said Mr. Morris.

Two weeks later, Mr. Morris was summoned to Rabbi Dayan's beis din.

"I lent Mr. Morris \$500 a year ago, which he hasn't repaid," claimed Mr. Roth.

"What do you say?" Rabbi Dayan asked Mr. Morris.

"I never borrowed from Mr. Roth," responded Mr. Morris.

Rabbi Dayan asked Mr. Roth, "Do you have any evidence?"

"I have two witnesses to the loan," replied Mr. Roth.

Rabbi Dayan called upon the witnesses to present their testimony. Each testified that Mr. Roth had lent Mr. Morris \$500 in their presence.

Rabbi Dayan turned to Mr. Morris. "Witnesses have attested to the loan," he said. "Do you have anything further to say?"

"I would like a month to seek counterevidence," he requested. Rabbi Dayan consented to delay the final verdict for a month.

At the second hearing, Rabbi Dayan asked Mr. Morris if he had found any evidence to counter the original testimony.

"Yes, I also have witnesses," replied Mr. Morris. The witnesses testified that Mr. Morris had repaid the \$500 loan to Mr. Roth four months earlier.

"See, I don't owe Mr. Roth any money," Mr. Morris said. "Even if I borrowed, I paid back what I borrowed." He sat down with a triumphant smile.

Rabbi Dayan requested that Mr. Roth and Mr. Morris exit for a few moments while the dayanim convened. The two were called in shortly for the ruling.

"Mr. Morris is liable and must pay the \$500," ruled Rabbi Dayan.

"What?" asked Mr. Morris, shocked. "But witnesses stated that I already repaid!"

"There is an important, well-known concept:

*continued on reverse side*

## Paying a Broker

Submitted by A. F.

Reuven was aware that I was interested in selling some property and suggested Shimon as a potential buyer. We are about to close the deal and I wish to pay Reuven for facilitating this deal. I know that there are halachic obligations concerning paying workers on time.

**Q: May I delay my payments for a few**

**days, which would be more convenient for me?**

**A:** You are correct that there are Biblical obligations to pay salaried workers and contractors upon the completion of their work (C.M. 339:3-6). The issue in your question is the status of a broker. Certainly, if one instructs a broker to act on his behalf, he becomes an employee and must be paid on time. However, if a broker suggests a

deal on his own initiative, he does not have employee status, since he was never instructed to work for the employer. The obligation to pay this broker is for the benefit he provided to the buyer/seller, since one is obligated to pay for financial benefits provided by another person's efforts (C.M. 264:4; Gra 264:13, 185:13). This obligation is a debt rather than a salary (see Ketzos 75:13), and as such, it is not subject to either the mitzvah to pay an employee on

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Hodaas baal hadin k'meah eidim dami - The admission of a litigant is like the testimony of a hundred witnesses," explained Rabbi Dayan. "In fact, his admission that he owes is believed - to his detriment - more than witnesses who exempt him!" "But I didn't admit anything," said Mr. Morris. "I deny the charge completely!" "You initially claimed in court, though, that you never borrowed the money," said Rabbi Dayan. "A person who never borrowed doesn't pay! Thus, implicit in your denial claim was an admission that you didn't repay. This is expressed in the Gemara (B.B. 6a) as: Kol ha'omer lo lavisi k'omer lo parati dami - Whoever says, 'I didn't borrow,' it is as if he is saying, 'I didn't repay.'" "But since there are witnesses to the case," reasoned Mr. Morris, "shouldn't we follow them?" "There are two parts to this case," replied Rabbi Dayan. "One, whether you borrowed; two, whether you repaid. In

regard to the loan, obviously we accept the witnesses' testimony that you borrowed. However, regarding repayment, we accept your implicit admission [that you never paid] - even against the testimony of the witnesses! Thus, we believe the witnesses that you borrowed, but we believe your implicit admission that you did not repay (79:1,6)." "But people initially deny outright all kinds of claims, and then come to beis din and adjust their claim and bring witnesses," insisted Mr. Morris. "Are these witnesses all rendered meaningless?" "If the initial claim denying the loan was stated informally, not in beis din, or if the borrower changed his claim before the lender brought witnesses," answered Rabbi Dayan, "he is not considered a proven liar and can say that he already repaid (79:9). You, however, maintained your claim of having never borrowed until after Mr. Roth's witnesses came."

time or the prohibition against delaying payments to an employee (see also Pischei Tesuvah 89:2 for another reason that a broker is exempt from these obligations). It must be emphasized that even if the prohibition against delaying timely payment for an employee does not apply, there is a general prohibition against delaying payment of a debt when one has the funds to repay that debt — bal tash'heh (C.M. 97:3, 339:7). The distinction between the specific prohibition against delaying timely payments of an employee and the general prohibition against delaying payment of a debt is

whether one is obligated to exert himself to make a timely payment. One is obligated to exert himself to pay an employee on time, but one is not obligated to exert himself to pay a debt (B.M. 111a; Tosafos s.v. "amar" and "Maharshal"). In summary, if at any time you instructed Reuven to act as a broker on your behalf, you are obligated to exert yourself to pay him on time. If Reuven acted on his own volition, your obligation to pay him stems from the general prohibition against delaying payment of a debt, but if paying on time would be difficult for you, payment may be delayed.

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**Shomrim: Guardians #23**

**MONEY MATTERS**

**Q: I selected an esrog from a seller, but took it to a Rav to check before confirming the purchase. If the esrog gets lost or ruined along the way, am I liable for it?**

**A:** If you take merchandise from a seller with the intention of buying it if it proves acceptable, you carry full liability for the item on the way to check it - provided that the price

was set - even if it was lost through uncontrollable circumstances (oness). Some explain that you are considered a purchaser meanwhile, and others explain that you are considered a sho'el (C.M. 186:1, 200:11). If you decide that you do not want the esrog, there is a dispute whether you are considered a shomer chinam, a shomer sachar, or a sho'el on the way back (200:11; Sma 200:31).

If you took a number of esrogim with the intention of choosing only one or two, on the way to the Rav you are liable for all the esrogim, at least as a shomer sachar (and possibly fully liable). On the way back, you are fully liable for those you chose, and the aforementioned three-way dispute applies to the remainder that you return (Pischei Choshen, Pikadon, 1:[73]).

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