

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #140 / PARSHAS VA'EIRA
FRIDAY, JANUARY 11, 2013
29 TEVES 5773

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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Shoveled

The snow had piled up during the night, covering everything with a beautiful blanket of white.

While Mr. Farber was eating breakfast, Yaakov and Elisha knocked on his door.

"Do you want your snow shoveled?" asked Yaakov.

"No, thank you," replied Mr. Farber. "I'll shovel it as soon as I finish eating."

The two boys turned to go away. "My next-door neighbor, Mr. Schreiber, always wants his snow shoveled," Mr. Farber called out after them. "He won't be home until evening, so you should shovel his house and driveway."

"Thanks," said Elisha. "We'll do it now."

After shoveling for an hour, the boys had cleared the sidewalk and the driveway. When they finished, they knocked again on Mr. Farber's door.

"We finished shoveling your neighbor's house," they said. "That will be \$35."

"I'll tell him this evening," said Mr. Farber.

"Leave me your phone numbers."

"We expected that you would pay us," Yaakov said. "You told us to shovel his house. We would like our pay today and might not even be around in the evening."

"I never said that I would pay you," Mr. Farber protested. "I just told you that Mr. Schreiber always wants his house shoveled."

"No, you told us to shovel his house and driveway," argued Elisha. "You gave us the job, so it's your responsibility to pay! You can work it out with your neighbor when he comes home. There is a mitzvah to pay a worker on the day that he completes the job, and it's prohibited to delay payment against his will to the following night."

"That's only if I'm responsible to pay,

though," countered Mr. Farber. "I'm not convinced that I owe you anything."

"We just had a similar case in yeshiva," said Yaakov. "I mistakenly took Elisha's suit to the cleaners instead of my own. Rabbi Dayan said that since I brought it in, I have to pay the cleaners and can then ask reimbursement from Elisha for the benefit I provided him. It's the same here."

"I'm not sure it's the same," said Mr. Farber. "I told you outright that it was Mr. Schreiber's house. Come in; we can call Rabbi Dayan."

Mr. Farber put the phone on speaker. The boys called Rabbi Dayan and asked, "If Mr. Farber instructed us to shovel his neighbor's property, must he pay?"

"A person who instructs someone to work in another's property is liable only if he assumes responsibility, which can be in one

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Taking Back a Torah

Submitted by H. C.

Many years ago, I donated a sefer Torah to a local shul. We are now moving out of town and I would like to bring the Torah to our new home.

Q: Is the sefer Torah mine? May I take it with me?

A: When a sefer Torah is known to belong

to someone but was in the possession of the local shul, there is a dispute as to who is assumed to be the owner.

One opinion asserts that possession of the sefer Torah gives the tzibbur's contention greater credibility and requires the original owner to prove that he did not donate the sefer Torah (Maharshal cited in Taz, O.C. 153:15).

Another approach argues that since the original ownership is undisputed, the tzib-

bur cannot claim ownership of that sefer Torah without proof that ownership was transferred to them (Shulchan Aruch, O.C. 153:20 and Taz).

Furthermore, since common practice is for people to lend sifrei Torah rather than give them as a gift, it is considered as though the donor stipulated that it was being given on loan (see Magen Avraham 153:22).

An additional consideration lends greater credibility to the claim of the original owner:

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of three ways," answered Rabbi Dayan. "He would then violate bal talin (the prohibition of withholding salary) if he didn't pay promptly (C.M. 339:7)."

"What are the three ways?" asked Elisha.

"The classic case," answered Rabbi Dayan, "is when the person initially employed the worker for himself, and then instructed him — whether intentionally or by mistake — to do work for his neighbor instead (C.M. 336:1)."

"This was the case with the cleaners," noted Yaakov. "I gave them the suit with the understanding that they were working for me."

"The second case," continued Rabbi Dayan, "is when you accept direct responsibility for the salary by saying, 'I will pay your salary,' even though the work was being done for someone else."

"What is the third case?" asked Elisha.

"When the worker was unaware that it was someone else's property," answered Rabbi Dayan. "For example, had Mr. Farber simply instructed you to shovel the driveway adjacent to his house — which you assumed to be his but turned out to be his neighbor's — he would be liable to pay you (Rema 339:7; Sma 336:4)."

"Where does this leave us?" asked Mr. Farber.

"Since you did not assume responsibility for the employment or salary, and the boys knew that this was Mr. Schreiber's property, you are not required to pay them," concluded Rabbi Dayan. "When your neighbor comes home, he should pay them the going rate for such work, since he is generally interested in having his property shoveled (C.M. 375:1). You may have a responsibility to help them collect payment, though, if necessary (Pischei Choshen, Sechirus 8:[84])."

It is a mitzvah to write a sefer Torah. According to many authorities, one who writes a sefer Torah and then gives it away loses the mitzvah, since the mitzvah requires possession of the sefer Torah (Toras Chaim, cf. Pischei Teshuvah, Y.D. 270:3). Accordingly, it is unreasonable to think that one would spend a large sum of money to write a sefer Torah and then donate it to a shul (Maharsham 1:48, Imrei Yosher 1:77), especially since the sefer Torah can serve the tzibbur's needs even when privately owned, and certainly when a shul already owns si-frei Torah.

This is true even if the original owner was unlearned and mistakenly thought that donating the sefer Torah to the shul

is a greater mitzvah. Although his intent was to donate the sefer Torah to the shul, since the donation was made under incorrect premises, it is not binding. It is assumed that had he known that he would lose the mitzvah of writing a sefer Torah by donating it, he never would have done so. However, if he had explicitly expressed that he is donating the sefer Torah to the shul, he cannot now claim that he did not mean to donate it, since it is possible that he understood that ramification of his donation.

Nevertheless, as long as he was not explicit about it, the assumption is that his intent was to retain possession of the sefer Torah (Igros Moshe, O.C. 1:52).

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Damages #10

Q: Does a person carry any responsibility for indirect damage (grama)?

A: A person who damages indirectly is not legally liable, but he carries moral responsibility for the damage until he pays (chayav b'dinei shamayim - Shach 32:2). If one who damaged indirectly does not pay, some consider him "wicked". However, the victim may not grab payment from him forcibly, since there is no legal liability (Pischei Choshen,

Nezikin 3:[92]; Shach 28:2).

Although a person is liable for direct damage even if accidental, one does not carry moral responsibility for indirect damage done accidentally, against his will (oness), or even in an attempt to save his own property (P.C., Nezikin 3:39).

If someone acted in a way that caused potential damage, but the damage has not occurred yet, beis din can force him to rectify the

situation to prevent the damage or to accept liability for whatever damage may occur. This applies even if it will cost the person money to prevent the damage (Rema 386:3).

Furthermore, if a person contractually accepts liability for indirectly caused loss, the agreement is binding and is not considered asmachta, i.e. a stipulation that lacks the halachically required level of commitment to validate the agreement (P.C., Nezikin 3:42).

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