

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

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Half the Truth

Rabbi Dayan walked into his shiur (lecture). "Today we will continue learning about oaths," he began. "Does anyone know the three cases in which the Torah imposed an oath in beis din?"

"We discussed only one," Sruli said, "an oath to contradict the testimony of a single witness."

"Very good," said Rabbi Dayan. "Can anybody tell me another case in which the Torah imposed an oath?"

"There's also something called modeh b'miktzas," Dani said, "a case in which there is a partial admission."

"What do you mean by a partial admission?" asked Sruli. "Either you admit, or you don't!"

"There's also a possibility of a partial admission," explained Rabbi Dayan. "Let's say that someone claims that he lent you \$500.

You admit that he lent you \$200, but deny the remaining \$300, and there are no witnesses. This is called a partial admission, since you admit to have borrowed \$200 out of the \$500. What is the ruling here? Can you help us, Dani?"

"Since you admit to \$200 — part of the claim," answered Dani, "you require an oath to exonerate yourself from the remaining \$300."

"Beautiful!" exclaimed Rabbi Dayan. "We suspect that you might have borrowed the full amount, but can only pay part and are trying to buy time to pay the remainder. The oath will force you to admit the full truth or confirm your claim (B.M. 3b)."

"And if I don't want to take the oath?" asked Sruli.

"Then you must come to a compromise with the plaintiff or pay the \$300," said Rab-

bi Dayan.

Sruli sank into thought for a moment. He reminisced about an event that had just happened. Before Purim, a sefarim store had given him some boxes of sefarim (Jewish books), Megillas Esther with commentaries, to sell in his shul and yeshivah. He had picked up the sefarim and taken them home in a friend's car. He then moved the boxes to his room in the yeshivah, and from there to the shul. The sefarim store owner claimed that he had given Sruli ten boxes, 200 sefarim in all, but Sruli could only account for nine boxes.

"It seems that one box is missing," he told the sefarim store owner. "Are you sure that you gave me all ten boxes?"

"Absolutely," said the storeowner. "Why do you ask?"

"One box is missing. I'm not sure whether

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Go and Pay

Submitted by A. W,

My employer gave me money to pay a creditor. I am due to receive my paycheck in two weeks for work already done, but am concerned that the business will go bankrupt before that.

Q: May I keep the money to cover the money owed me?

A: The permissibility of keeping that money

depends upon your employer's instructions and your intent. Halacha distinguishes between terminology that indicates that the principal wants to transfer control of the money to the agent, relinquishing his own control, and terminology that does not carry that connotation. For example, the phrase *tzei u'pra* (go and pay) implies that the principal wants the agent to act as his proxy to pay a debt, but does not transfer control over the money and may take it back from the agent.

In contrast, the phrase *holech* (deliver) indicates that the principal wishes the agent to take the money on behalf of the recipient. Since the owner relinquishes control of the money, he may not take it back from the agent.

A practical difference between these phrases arises in the following circumstance: A borrower gives money to his lender to deliver to a third party. The lender wants to retain that money for the debt that the borrower

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you made a mistake or if I lost one box somewhere along the way," replied Sruli. He tried to recollect whether he had initially counted nine or ten boxes, but didn't remember clearly.

The storeowner demanded that he pay for all 200 copies, but Sruli had refused to pay for more than the nine boxes.

"Prove to me that you gave me all 200 sefarim," Sruli insisted. "You have no evidence that you gave me ten boxes; it's your word alone. You can't make me pay just based on your word."

Sruli now wondered whether he was correct in his insistence. After all, he'd admitted partially to having received nine out of the ten boxes.

"What happens if the borrower can't swear because he doesn't remember whether he borrowed \$500 or \$200?" Sruli finally asked Rabbi Dayan. "Can he swear that he remembers only \$200 and doesn't know

about the remainder?"

"This touches upon a fascinating concept known as: mitoch she'eino yachol lishava — meshalem; since he is unable to swear — he must pay," replied Rabbi Dayan. "The partial admission gives credence to the lender's claim, which, if not countered with an oath, requires the borrower to pay in full. The same applies when there is a single witness; if the defendant cannot swear to contradict the witness's testimony, he must pay.

"This rule does not apply to an oath imposed by the Sages, though — only to a Torah-imposed oath. Thus, a person who admits partially, but does not remember clearly enough to swear about the remainder, must pay the amount claimed (C.M. 75:12-14)."

"I guess I'm going to have to pay for all the boxes," Sruli said to himself.

owes him. If the borrower used terminology indicating that he did not pass authority to the lender, the lender may retain the money for his debt. However, if he did indicate that he passed authority to the lender, it is assumed that the lender took the money as the proxy for the third party. He may not keep the money for himself.

There is a dispute regarding the circumstances when the lender can claim that he took the money for himself, even though the borrower indicated that he was passing authority to the lender. According to one approach, once the principal indicates that he wants to relinquish control, if the agent wants to retain the money for himself, he must claim that when he initially took the money his intent was to keep it for himself (see Shach 83:2).

Otherwise, he may not retain the money for himself.

Others maintain that the principal's intent is to relinquish control over the money, but does not intend for the agent to take the money on behalf of the recipient. The money does not belong to the recipient until it physically reaches his possession; therefore, the lender may retain the money for himself (Ketzos 125:3).

The allowance for the agent to keep the money for a debt is limited to a debt that is already due; he may not retain the money for a debt that will come due (Paamonei Zahav). Therefore, despite your concern that the business will go bankrupt, you may not retain the money at the expense of another lender, since your employer does not yet owe you that money.

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Damages #18

Q: What is the liability of one who assaults or inflicts physical injury on another?

A: A person who inflicts physical injury is liable for a five-part payment: nezek (disability), tzaar (pain), ripuy (medical expenditures), sheves (lost wages), and boshes (embarrassment) — whichever are relevant (C.M. 420:3).

Nezek relates to the inherent, permanent

disability of the injury, such as loss of limb or ability to see or hear. Tzaar is payment for the pain and suffering associated with the assault or injury, even if there is no disability. Ripuy covers medical expenditures associated with healing the injury. Sheves covers the temporary loss of wages while the victim is convalescing. [Permanent loss of work due to disability is included in nezek.] Boshes covers the embarrassment inflicted

on the victim through injuring or hitting him. This payment is required only when the perpetrator intended to embarrass or injure (C.M. 421:1, 11).

Beis din is limited nowadays in its ability to judge cases of physical injury and to enforce payment. Nonetheless, the culprit is obligated to pay and should be censured until he does so. If the victim is able to seize the amount owed, he may keep it (C.M. 1:2, 5).

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