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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlian

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Exchange Rate

Uri met Chaim at summer camp. Chaim would come each year from Toronto, Canada, to the United States for the summer. The two maintained their friendship beyond camp; when they grew older, they would occasionally visit each other. Sometimes Chaim came to Uri's house in the U.S., and sometimes Uri went to Chaim's home in Canada.

On one of Uri's visits to Toronto, Chaim took a folded piece of paper out of his wallet. "I came across this," he said to Uri. "Have a look."

Uri unfolded the paper and saw that it was a signed IOU note: "I, Uri, owe Chaim \$100." "When is this from?" Chaim asked.

"I don't remember," Uri replied. "It's probably from camp one year. Whatever it is, you owe me a hundred dollars."

Uri reached into his wallet and pulled out his

last Canadian \$100 bill.

Chaim looked at the bill. "That's a Canadian bill," he said.

"Of course," said Uri. "What do you want me to pay you here, American dollars? What good are they here?"

"You know that American dollars are worth about 3% more than Canadian dollars," Chaim answered. "If you borrowed U.S. dollars and pay back Canadian dollars, I'm losing 3%. You'll have to toss in a package of cookies to fill in the difference," he added with a smile.

"But maybe it was Canadian dollars that I borrowed on one of my visits here," countered Uri. "If I give you American dollars, I'm paying 3% more than I borrowed. You'll have to buy me a package of cookies to return the difference! Anyway, it just says dollars in the note; any kind of dollar will

suffice."

"Obviously, I'm not going to make a fuss over the \$3," said Chaim. "But I wonder what the halacha is? What if it were not \$100, but rather \$1,000 or \$10,000? That's already a significant difference!"

"How about trying Rabbi Dayan on this one," suggested Uri. "I've got an earpiece for my cell phone that allows us both to listen and talk."

"That would be neat!" replied Chaim.

Uri called Rabbi Dayan; both he and Chaim listened in.

"If the currency of the loan is not stated clearly, what currency does the borrower have to pay?" asked Uri. "For example, U.S. dollars or Canadian dollars?"

"The borrower has to repay whatever currency he borrowed," said Rabbi Dayan (Kesubos 110b). "If the currency is not defined

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Broker, Not Buyer

I am a professional real estate broker. The following circumstance has come up recently a number of times. I want to know what halacha says about it, since different friends have different opinions.

A homeowner hires me to sell his house for \$500,000 and my commission is to be 3%. I found someone willing to pay \$550,000 to purchase the house.

Q: May I tell the buyer that the house

costs \$550,000 so that I can earn additional money on the deal — which I have done in the past? I understand that I am misleading the seller, but my rationale to permit it is that since technically I could purchase it from the seller for \$500,000 and then sell it to the buyer for \$550,000, why then shouldn't I be able to just skip that step? If my rationale is incorrect, please advise whether I am obligated to return the money.

A: You should be aware that your suggestion is not merely misleading to the seller, but would involve actual theft. If you purchase the house for yourself and resell it, you would not earn 3% commission on the sale. Furthermore, since you do not have a contract with the seller, the seller's intent was obviously to sell it to the buyer rather than you. A broker is not the buyer and, at most, will occasionally serve as an agent to deliver the money to the seller (Kovetz

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explicitly, we presume the currency was of the place where the loan took place. Therefore, if the loan was granted in America, Uri owes U.S. dollars. If the loan was granted in Canada, Uri owes Canadian dollars (C.M. 42:14)."

"What if the place of the loan is unclear?" asked Chaim. "The IOU note doesn't state the place, and neither of us remembers."

"In that case, we follow the place where the document was presented, so Uri only has to pay Canadian dollars," said Rabbi Dayan. "One explanation is that, presumably, the place where the document was presented was also the place of the loan (Sma 42:37). Thus, in the opposite case - the document was presented in the U.S. - if the borrower can prove that they used to live in Canada where the currency is less, he only needs to

pay the lesser currency (Rema 42:14; see Shach 42:34)."

"What if the loan was granted in a place where neither currency is used?" asked Uri. "Let's say the loan took place in a third country."

"According to this explanation, since there is no indication at all, we would apply the rule of hamotzi mechavero alav hara'ayah - the burden of proof is on the plaintiff," said Rabbi Dayan. "Thus, the borrower would only have to pay the lesser currency."

"Does that mean that any dollar loan in Israel can be paid in Canadian dollars?" asked Chaim.

"No, because U.S. dollars are the standard dollar currency used in Israel," said Rabbi Dayan. "Therefore, the default assumption is that the dollars loaned in Israel are U.S. dollars (see Pischei Choshen, Shtaros, vol. X, 5:48)."

Hayashar V'hatov II, p. 22). The question is, if a broker already collected the money, to whom should he return the money? Should it be refunded to the buyer who was overcharged, or should it be delivered to the seller who is unaware of the fact that the broker collected extra funds from the buyer?

The answer to this question is that it depends on who hired the broker. If the broker was not hired by the seller, the extra money must be returned to the buyer. Since the seller only asked for \$500,000, that is the amount the buyer must pay for the house. Any additional amount collected from him is stolen money which must be returned to the buyer. Even if the broker was hired by the seller, if the ac-

tual sale takes place between the buyer and seller without an agent acting on behalf of one of the parties, the seller receives his asking price, and anything more than that belongs to the buyer.

If, however, the broker was hired by the seller and the broker acts as the seller's agent in the actual sale of the house, the additional money that he collects must be delivered to the seller. Since the broker is acting as the seller's agent, it is considered as though the seller stipulated that he wants \$550,000 to sell his house. Although the broker misled all of the other parties involved, nevertheless, since he acted as the seller's agent, those additional funds belong to the seller (see Chavos Daas 168:25 and Sma 185:2).

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Damages #31

MONEY MATTERS

Q: I lit a fire that burned a neighbor's storage room. He claims to have stored there valuable works of art worth \$100,000. Who has the burden of proof?

A: Generally, we follow the dictum 'hamotzi mechavero alav hara'ayah' (the burden of proof is on the plaintiff). However, Chazal instituted that in certain cases of monetary damage, fire, bodily injury or robbery, we

believe the damaged party with an oath regarding the amount of the damage — if the amount is reasonable for the person in question and the circumstances of the damage (see C.M. 90:1; 388:1; 418:13; Pischei Choshen, Nezikin 10:36-39).

Thus, a wealthy person would be believed with an oath; one not regarded as wealthy would not be believed without witnesses or evidence [unless he can verify that he

served as a guardian for someone liable to have entrusted such an item]. If the perpetrator definitively denies the amount claimed, the damaged party is not believed even with an oath in the case of a fire, but is believed in the case of robbery (Shach 388:1, 3; 418:7).

As mentioned previously, beis din discourages swearing nowadays and strives to mediate a compromise on the matter.

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