



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

WERDIGER EDITION

Issue #227

Rosh Hashanah

Wednesday, September 24, 2014

Erev Rosh Hashanah 5775

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

ROOFTOP BLESSING

Mr. Braun was renovating his house and making a spacious porch for the second floor. He discussed the plans with his learned neighbor, Mr. Adler. "Making a guardrail (maakeh) for a roof porch is not only a safety issue, but also the fulfillment of a mitzvah!" Mr. Adler commented.

"I know," replied Mr. Braun. "I told Tony."

"Who's Tony?" asked Mr. Adler.

"The contractor," said Mr. Braun, "an Italian fellow."

"You're going to let Tony take away your mitzvah of building a maakeh?" asked Mr. Adler.

"I'd love to build the maakeh myself," said Mr. Braun, "but I've got two left hands!"

"I understand," laughed Mr. Adler. "How high will the guardrail be?"

"Tony said the code in most places in the U.S. is at least 36 inches for residential guardrails," replied Mr. Braun. "Some make it higher, 42, or even 52 inches for high porches. What's the required height according to Halachah?"

"Halachah requires that the maakeh be at least 10 tefachim," replied Mr. Adler (C.M. 427:5).

"What is that in inches?" asked Mr. Braun.

"A tefach is at least 3 inches; according to the Chazon Ish, almost 4," replied Mr. Adler. "Harav Moshe Feinstein maintains 3.6 inches, so that 36 inches would be 10 tefachim according to him. However, since this is a mitzvah d'Oraisa and is to protect from danger, ideally one should adopt the stringent view of 40 inches."

"I heard that there is a brachah on making a maakeh," said Mr. Braun. "I guess I'll make it when Tony starts working."

"I'm not sure that you can make the brachah on Tony's work," replied Mr. Adler.

"Why not?" said Mr. Braun. "I'm making sure that there is a maakeh on my porch!"

"Yes, but you're not performing the mitzvah," said Mr. Adler. "Tony's building the guardrail!"

"But he's doing it for me," said Mr. Adler. "He's like my agent to do it."

"The issue is a bit complex," said Mr. Adler. "I suggest that you contact Rabbi Dayan."

Mr. Braun called Rabbi Dayan: "Do I make a brachah on a maakeh made by a gentile worker?"

"A person who performs a mitzvah generally makes a brachah," replied Rabbi Dayan. "If he performs the mitzvah through an agent (shaliach), the agent usually makes the brachah. However, a non-Jew cannot serve as an agent."



BHI HOTLINE

PAYING EXORBITANT PRICES (2)

Preparing a dvar Torah in camp, I asked my bunkmates if anyone had a relevant story.

Reuven offered to "sell" me a story for \$100, insisting that I prepay him. I told him that I didn't have that amount of money in camp, but I would pay him after we returned. He agreed and "sold" me the story. Now that camp is over he contacted me to pay him.

Q: Since I wasn't really serious about paying that amount, am I obligated to pay him for the story he "sold" me?

A: In the previous issue we cited authorities who maintain that when one promises an exorbitant amount of money to purchase something, if he has not yet paid for that item he is not obligated to pay, but if he already paid, he cannot demand the money back. Similarly, making a kinyan (proprietary act) obligating the customer to pay the inflated amount demonstrates a genuine and binding commitment (Ketzos 129:8 and Nesivos 264:8).

Authorities maintain that if the customer actually intended to pay the inflated amount but now has buyer's remorse, he may not claim "meshateh ani bach — I was joking," since his initial commitment was sincere (Ketzos 81:4, Machaneh Ephraim, Sechiros 15; cf. Chikrei Lev, C.M. 135).

There are additional circumstances that indicate that the customer was serious when he made his commitment. For example, if one promised or vowed to give the exorbitant amount for a service, his promise or vow mitigates any subsequent claim of meshateh ani bach, and he is thus obligated to pay

The Business halacha Institute wishes all our readers a **כתיבה וחתימה טובה**



STORY LINE

"So it seems clear that I can't make a brachah," said Mr. Braun. "Why did my neighbor say the issue is complex?"

"The Machaneh Ephraim (Hil. Sheluchin #11) differentiates between an agent and an employee," explained Rabbi Dayan. "The Gemara (B.M. 10a) teaches that even according to the opinion that an agent cannot acquire a lost item (aveidah) for his sender, an employee can acquire it for his employer (C.M. 270:3). The employee's hand is considered as the hand of the employer. Thus, even though a gentile cannot serve as an agent for the mitzvah of building the maakeh, if he is an employee his actions are attributed to the employer, so the employer can make the brachah."

"So it seems I can make a brachah?" asked Mr. Braun hopefully.

"In practice, no, since some limit the Machaneh Ephraim's position to a salaried worker who is paid by the hour or the day (po'el)," said Rabbi Dayan. "In the common case that the worker is paid a flat fee for the job (kablan), he is considered independent, so that the employer would not make the brachah, even if the worker is Jewish" (see Pischei Teshuvah, C.M. 427:1; Aruch Hashulchan, C.M. 427:3).

"Moreover, other authorities disagree completely with the Machaneh Ephraim," continued Rabbi Dayan. "They maintain that only regarding acquisition of an item is the employee's hand like the employer's, but not regarding the fulfillment of a mitzvah (see Nesivos 188:1; Minchas Chinuch 216[6], 546[3]; Sedei Chemed, Asifas Dinim, Maareches Brachos #16).

"Therefore, on account of safek brachos l'hakel, you should not make a brachah," concluded Rabbi Dayan. "Only if you yourself complete the mitzvah and affix the last required piece of the maakeh can you make the brachah."



BHI HOTLINE

the inflated amount.

This issue impacts how much the purchaser's heirs are obligated to pay. If his promise or vow does not rise to the level of a halachic promise or vow, his heirs would not be obligated to fulfill what their father committed to pay and would be obligated to pay only the going rate. But if his promise demonstrates a sincere commitment, his heirs would be obligated to pay what their father agreed to pay (Ketzos 264:4).

There is a disagreement whether a commitment to pay an exaggerated amount to a provider who is poor is binding. The position that it is binding is rooted in the assumption that the commitment constitutes a vow to give money to the poor and his subsequent claim that he was not serious is rejected (Ketzos 264:4, 81:3, Hamakneh 59a). Others contend that when one hires someone who is poor his intent is to pay wages rather than to make a tzedakah commitment and thus if he agreed to pay an unreasonable amount, the agreement is not binding and he does not pay more than the going rate for the job (Tzemach Tzedek, C.M. 39; Beis Shlomo, C.M. 17; and Minchas Pitim 334:4). Some write that in such a case the parties should negotiate a compromise (Mishpat Shalom 185).

According to some opinions, when one did not actually verbalize a vow to give money to the poor, but rather the Torah binds him to honor his words as if he made a vow, the declaration that is made before Rosh Hashanah that future vows should not be binding (mesiras moda'ah) is effective and his statement is not considered as though he made a binding vow (Minchas Shlomo 1:91 [20]).

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



MONEY MATTERS

COPYRIGHTS AND PATENTS # 13

Q: Can I make an extra copy of a music disc for listening in my car? What about a backup in case the disc gets ruined?

A: According to the opinion that Halachah recognizes ownership of intangible intellectual property, the creator can limit the right to make multiple copies of his creation even for such personal use. In some cases, though, he might not object if the discs will not be played simultaneously.

According to the opinion that there is no ownership, it would usually be permissible when you would not consider buying another copy.

On the other hand, to make a backup copy would seem permissible even according to the opinion that there is ownership. You are not making unauthorized use of his intellectual property, but rather securing the copy that you purchased. In some countries dina d'malchusa allows copying for such purposes.

A similar halachah would apply to installing a program onto multiple computers. Many programs now specify whether the license is for single or multiple use. Some single licenses still allow copying onto a home computer and a laptop (see Emek Hamishpat, Zechuyos Yotzrim, Intro. 3:43-46; ch. 35:201).

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

BUSINESS WEEKLY INSPIRES & INFORMS THOUSANDS ACROSS THE WORLD. SPONSOR A WEEK TO JOIN US IN THIS MITZVAH.
email sponsor@businesshalacha.com to reserve your week.



LEASELAND
Since 1991
Auto Leasing & Sales Inc.
(800)223-5327
info@leaseland.com



GROSS & CO.
INSURANCE
(212) 620-4040

PATENTS AND TRADEMARKS
MICHAEL (MOSHE) FEIGIN, ESQ.
Licensed at U.S. Patent Office, NY, NJ
Offices in Passaic, NJ and NYC
(973)685-5280 / (212)316-0381
Learn more about Intellectual Property at:
<http://PatentLawNY.com>

Sell with me, move for free!



Schmidt REALTY
Residential • Commercial • Sales • Rentals
718-853-HOME (4663)
info@schmidtrealtyinc.com