



Business weekly

PARSHAS TITZAVEH
FRIDAY, FEBRUARY 11, 2011
ISSUE #45
under the auspices of
Harav Chaim Kohn, shlita

a project of the **Business Halacha Institute**

Business Weekly has been dedicated לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל by his son, R' Shlomo Werdiger

STORYLINE

leap year lender

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Simcha Beigel remembered it like yesterday; he called it "Go for broke week" - that week after Succos when everything broke. The fridge broke; the dryer broke; the car radiator broke. When his wife told him that the oven had also broken beyond repair, Simcha replied: "Guess what? We're also broke!" The surge of expenses had completely exhausted their available assets. Simcha turned to his neighbor, Zalman Mazal, to borrow \$1,000.

"How long do you need the money for?" asked Zalman.

Simcha thought for a few minutes. "Four to six months should suffice," he answered. "We should be able to set aside enough each month to get back on track."

"How about we say until Rosh Chodesh Adar?" suggested Zalman.

"That's fine," Simcha exclaimed. "Thanks a

lot!"

Zalman took a pen and paper and wrote clearly: "Sam Beigel borrowed \$1,000 from Zalman Mazal. Payment due Rosh Chodesh Adar 5771." Simcha took the pen and affixed his signature to the document.

Over the next few months, Simcha managed to stabilize his financial position and pay back his loans, each at its proper time. It was the end of Shevat, Shabbos Mevorchim, and Simcha was chazan for Musaf. As he proclaimed the upcoming Rosh Chodesh, he realized suddenly: "There are two Adars this year of 5771, each of which has two days of Rosh Chodesh! When is the loan to Zalman due?"

After davening, Simcha went over to Rabbi Tzedek to wish him "Good Shabbos".

"Thank you for Musaf; I enjoyed your davening very much," Rabbi Tzedek smiled.

"Thank you," Sam responded. "Can I ask you a question?"

"Sure," said Rabbi Tzedek.

"I borrowed money from Zalman Mazal and agreed to repay him Rosh Chodesh Adar," Simcha said. "Does this mean Adar I or Adar II? Is it the first day of Rosh Chodesh or the second?"

Rabbi Tzedek replied, "When a person says 'Rosh Chodesh Adar' without specifying, it is unclear whether this refers to Adar I or Adar II, and also to which day of Rosh Chodesh. On account of the doubt, Zalman cannot demand payment until the second day of Rosh Chodesh Adar II."

Rabbi Tzedek then explained: "There is a dispute in the Gemara (Nedarim 63a) as to what 'Adar' refers to when not specified. R' Yehuda is of the opinion that it refers to Adar I, whereas R' Meir maintains that it

continued on reverse side

FROM OUR HOTLINE

Submitted by
D. P.

renter or owner

We rented a popcorn maker, a cotton candy machine and a snow cone maker for my daughter's birthday. The contract I signed upon delivery included a provision that if the brand-new machines were not returned, I would be liable for the cost of purchasing new ones. After the party, I put the machines in my van overnight and forgot to lock the doors. When I came outside in the

morning, all three machines were gone. I immediately contacted the rental store. They told me that I am responsible to pay for the machines - which I expected, since they were stolen due to my negligence - but then they told me that I also have to pay the rental fee. This surprised me, because I'm paying to replace the stolen machines anyway.

Q: Am I obligated to pay the rental fee in addition to the cost of replacing the machines?

A: It is important to note that one pays a rental fee only for objects that he does not own. One does not rent an object that he owns. In other words, ownership and being a socher (renter) are mutually exclusive

continued on reverse side

Live a Life of Design, Not Default

Life-Coach

Personal • Family • Career
MR. AVI SHULMAN

IN PERSON OR BY PHONE 845.352.1175

5TOWNS
Jewish Times

To place your logo here, email
info@businesshalacha.com

EMAIL SUBSCRIBE@BUSINESSHALACHA.COM FOR A FREE SUBSCRIPTION TO BUSINESS WEEKLY

STORYLINE CONTINUED

usually refers to Adar II. The Rosh rules like R' Yehuda, Adar I, whereas the Rambam rules like R' Meir, Adar II. The Rama (O.C. 427:1) and simple reading of the Shulchan Aruch (C.M. 43:28) rule Adar I, but elsewhere the Shulchan Aruch cites both opinions (Y.D. 220:8). Later authorities also consider the issue unresolved (Shach Y.D. 220:17). When there is a questionable reading in a loan document, we apply the rule, "Yad ba'al hashtar al hatachtona": the owner of the document (i.e. the lender) has the lower hand. This rule is a corollary of the principle, "hamotzi mei'chaveiro alav ha'reaya": the burden of the proof is on the plaintiff. Since the lender is the one claiming payment, he can collect only when the loan is clearly due (C.M. 42:8). Here, it is not clear that the loan is due until the second Adar. "

"What about the first and second day of Rosh Chodesh?" Simcha asked.

"Although the first day of Rosh Chodesh actually belongs to the previous month, people refer to

both days as 'Rosh Chodesh.' Hence, the Shulchan Aruch (C.M. 73:9) rules that a person who swears to pay on Rosh Chodesh Adar must pay on the first day of Rosh Chodesh. However, many authorities explain that we adopt this stringent position due to the severity of swearing (SM"A 73:27; Aruch Hashulchan C.M. 73:13). When the debt is not accompanied by an oath to repay, it would suffice to pay on the second day.

"This dispute is also relevant for commemorating the yahrzeit of someone who passed away during Adar of a regular year," concluded Rabbi Tzedek. "The Shulchan Aruch rules to commemorate the yahrzeit during Adar II, whereas the Rama writes that the primary practice is to commemorate it during Adar I. The Achronim recommend commemorating it in both (O.C. 568:7; Mishna Berura 568:42). The Rama agrees, though, that a boy born in Adar will not become a Bar Mitzvah until Adar II, when thirteen full years are completed (O.C. 55:10)."

FROM OUR HOTLINE CONTINUED

relationships. Accordingly, Nesivos HaMishpat (309:1) writes that the question of whether a socher must pay the rental fee in addition to paying for the object relates to the grade of liability to which he agreed.

If the agreement stipulates that the socher accepts liability to repay the value of the object from the time of rental on, it emerges that the object was retroactively sold to the socher. The amount payable might be the appraised value of the object at the time of the rental or an agreed set amount. In this case, if the object is not returned, it is considered retroactively sold to the socher; he does not have to pay the rental fee for an object that he owns. In fact, depending on the responsibilities agreed upon, any payment of rent may be considered interest – ribbis

(see Y.D. 176:4).

However, if the rental agreement does not state how much the socher will be liable to pay if the object breaks or is stolen, he must only pay its value of that moment. In such a case, it is clear that the sale of the object occurs only at that time that it cannot be returned. Before that, the object is not owned by the renter, and he must pay the rental fee for the time that the object was intact.

According to these guidelines, since you already agreed at the time of rental to pay the full value of new machines if they could not be returned, you retroactively purchased those machines from the time you rented them. Since it turns out that they were your machines, you are not obligated to pay the rental cost as well (see also Nachlas Zvi C.M. 309).

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

unfair pricing week #6

Q: I sold a work of art to a collector for \$50,000 and found out later that I could have easily sold it for \$75,000. Can I claim ona'ah and revoke the sale because of the unfair price?

A: Collector's items, such as works of art, usually do not have a definable market. The regular rules of supply and demand do not

apply here, but rather each person pays as he sees fit to evaluate the item. Therefore, such items are not included in the laws of ona'ah, because it is impossible to define a "fair market price" for them.

On the other hand, items that have catalogues with defined prices, such as stamps, would be included in ona'ah. The officially listed stamp value does not necessarily

determine the actual "fair market value," though, just as the "list price" of books does not necessarily reflect the actual "fair market value." Nonetheless, the fact that the catalogue creates a definable market with a limited price range subjects stamps to the laws of ona'ah. Extremely rare stamps, however, would be similar to works of art and other collector items.

SOMETHING FOR EVERYONE

Weekly newsletter distributed across the globe

Weekly study groups across the US and Canada

State-of-the-art website with free content on all topics and levels

Article publications in five major Jewish newspapers

Weekly halacha emails

Seminars

Consultations

Mediation

and much more

SPONSOR

Unique Opportunity

**Sponsor a newsletter
in honor of a family simcha**

Email info@businesshalacha.com
to reserve your week

To support *Business Weekly* and the Business Halacha Institute, send your tax-deductible donation to
BHI • 1114 EAST 2ND STREET • BROOKLYN, NY • 11230

WWW.BUSINESSHALACHA.COM