



Business Weekly

PARSHAS METZORA
FRIDAY, APRIL 8, 2011
4 NISSAN 5771
ISSUE #53
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

taking the cake

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Pesach was fast approaching. The Levins were trying to use up their chametz. The cookies and cakes they had received on Purim didn't help the situation.

"Gadi, take these packages with you to yeshiva," Mrs. Levin told her teenage son. "I'm sure your friends will be able to finish them." Gadi stuffed the cookies and cakes into a shopping bag and took them with him to yeshiva. He met his friend, Yisrael, and asked, "Would you like some cookies?"

"Sure," said Yisrael. "What's the occasion?" "We're trying to finish the chametz before Pesach and have loads left over from mishloach manos," Gadi explained.

"I'm glad to help," Yisrael smiled. Gadi gave him a cake, and gave out the remaining packages to other classmates who were present. "Almost finished," he announced. "One box left."

"Can I have it for my brother?" Yisrael asked. "No problem," Gadi said. He reached in the bag and handed Yisrael the box of cookies. "Here, take this for your brother," he said.

Just then, Gadi's best friend, Ari, entered the room. He saw the packages of cookies and cakes all around. "What's going on here?" he asked. "Someone making a party?"

"We're trying to get rid of the chametz," Gadi explained. "My mom told me to give out the extra cakes from mishloach manos."

"I'm starving," laughed Ari. "I could really use a package of cookies now!"

"Sorry," said Gadi, "but I just gave the last box to Yisrael for his brother."

"For his brother?" questioned Ari. "Where's his brother?"

"He's home," said Yisrael. "I'll bring it home with me tonight."

"Would you mind giving it to Ari?" Gadi

asked Yisrael. "Ari's my best friend and he's here now. Your brother won't even know he missed anything."

"I already took the cookies for my brother," said Yisrael. "I can't give them away without his permission."

"But they're not his yet," said Gadi. "The cookies are still mine until your brother receives them, so you can give them to Ari." "I'm not convinced that they're still yours," replied Yisrael.

Just then Rabbi Tzedek walked in. "Let's ask Rabbi Tzedek," suggested Ari.

The three boys approached Rabbi Tzedek. "I gave Yisrael a box of cookies to take for his brother," said Gadi. "I would like him to give it now to Ari, though. Can Yisrael give it to Ari or does it already belong to his brother?"

Rabbi Tzedek ruled: "Yisrael already ac-

continued on reverse side

FROM THE BHI HOTLINE

Submitted by
T. Z.

request for release

I signed a five-year lease for office space. It is now the beginning of the fourth year of that contract, and real estate value has dropped. I can find equivalent space for \$1,000 less per month. I asked the landlord to lower my rent, but he refused, insisting that I honor the contract. I feel that the change of circumstances should permit me to force him to renegotiate the contract. A friend advised me to tell the landlord that if he won't lower

my rent, I will leave; if he wants to collect the rent money for the remainder of the lease, he'll have to take me to a Din Torah. For the amount under dispute, it is unlikely that he will invest the resources to take me to a Din Torah. This leaves him with two choices: to let me leave or agree to lower my rent.

Q: I know that this tactic is common practice, but is it permitted?

A: Changes in market value do not permit you to break a lease. As such, since Bais Din would dismiss your case out of hand, even a threat to summon him is incorrect. In fact, Terumas HaDeshen (#306) writes that it is absolutely prohibited to use tactics to force someone to agree to a compromise and thereby forgo money that he deserves. Such an approach contains elements of falsehood and thus violates m'dvar sheker

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

GET YOUR FREE SUBSCRIPTION TO BUSINESS WEEKLY - SEND AN EMAIL TO SUBSCRIBE@BUSINESSHALACHA.COM

STORYLINE CONTINUED

quired the cookies for his brother and he has no right to give it to Ari without his brother's permission."

Rabbi Tzedek then explained, "This case is an example of the halachic concept, *zachin l'adam shelo b'fanav* – it is possible to acquire on behalf of a person not in his presence. When a person accepts a gift on behalf of someone else, the recipient of the gift acquires it immediately. The one who gave it can no longer back out, nor can he give it to someone else (*Choshen Mishpat 243:1*)."

"What is the basis of *zachin l'adam*?" Yisrael asked.

"The Gemara (*Kiddushin 42a*) derives this concept from the division of the Land of Israel, in which the leaders of each tribe received a portion on behalf of the entire tribe," explained Rabbi Tzedek. "Tosfos explains further that *zachin l'adam* is an extension of the law of *shelichus*, agency. The person accepting the gift serves as an agent to receive the gift on behalf of the recipient (*Kesubos 11a*; see, however, *Ketzos Hachoshen 105:1*)."

"What if Yisrael's brother doesn't want the cookies?" asked Ari.

"A person cannot be forced to accept something against his will," replied Rabbi Tzedek. "Therefore, the recipient has the 'upper hand' and can choose either to uphold the gift retroactively or to refuse it."

"Does that mean that every time I ask you to bring something to a friend it becomes his already?" asked Gadi.

"The application of *zachin l'adam* depends on the language used," Rabbi Tzedek concluded. "The language must indicate that the person was meant to acquire the item immediately on behalf of the recipient, such as: 'acquire', 'take', or 'accept for so-and-so' (*zechei*). However, if Gadi had said to Yisrael, 'deliver' or 'bring the cookies to your brother' (*holeich*) the language does not indicate immediate acquisition on behalf of the recipient.

"In that case, Yisrael's brother would not acquire the cookies until he received them. The term 'give to so-and-so' (*tein*) is questionable and subject to dispute (*C. M. 243:2-3; 125:6-7*)."

FROM THE BHI HOTLINE CONTINUED

tirchak – the obligation to distance oneself from falsehood. Also, since the compromise offer is only accepted to spare the effort to pursue the matter in Bais Din, it violates the prohibition of *oshek* – withholding someone's wages or otherwise due monies. Thus, *Shulchan Aruch (Choshen Mishpat 12:6)* rules that it is prohibited for one to look for ways to stall, thereby forcing the claimant to forgo a percentage of his claim.

Moreover, *Rema (ibid)* writes that if one improperly forced another party to agree to a compromise, he does not discharge his Heavenly responsibility (*yotzei y'dey shamayim*) for this transgression until he pays the other party the money he owes him. It is obvious from the source of this ruling (*Rashba 2:278* cited by Bais Yosef) that only in a

case where Bais Din couldn't determine whether the defendant acted in good faith will Bais Din not force him to pay. If, however, it is clear that the claimant agreed to the compromise under duress, the concession is not binding and Bais Din would be empowered to force the defendant to pay the full debt.

In your case, you are trying to force your landlord to renegotiate a contract. Although your intention is not to withhold monies you already owe, it is still prohibited to force a compromise on a lease that entitles your landlord to future income.

As such, it is clear that you may not follow your friend's advice. You must settle the matter by mutual consent - without threats that force him to accept a compromise against his will.

Please contact our confidential hotline with your questions & comments

877.845.8455 | ask@businesshalacha.com

MONEY MATTERS

payment of wages week #8

Q: Who is included in the halachic requirement for timely payment of wages?

A: As mentioned in the beginning of this series, there is a mitzvah to pay wages in a timely manner and two prohibitions against delaying payment. The requirement to pay promptly and the prohibitions to delay apply to both regular employees and someone

hired on a one-time basis. It does not make a difference whether the worker is paid by the hour or paid a flat fee for the job (*C. M. 339:6*). Furthermore, the requirement applies even to services rendered by a minor (e.g., babysitting, lawn mowing), and even if the wages amount to a small sum. It also applies regardless of whether the worker is poor or wealthy (*Ahavas Chesed 9:3,5,8*).

This requirement to pay promptly applies not only to wages, but also to rental fees. There is an opinion that the prohibition does not apply to property rental, but many authorities maintain that it applies also to real estate (*C.M. 339:1; Ahavas Chesed 9:5*). Therefore, a renter has to be especially careful to pay his rent bill promptly. The same is true for someone who leases an auto or other equipment.

WILL CONSULTATIONS

**Is your will/tzava'ah halachically valid?
Will it be upheld in a Bais Din – Court of Law?**

Consult the experienced Dayanim in our special Business Services Division.

To schedule a consultation, please call 718-233-3845 x12,
or email ask@businesshalacha.com.

SPONSOR

**Do you have an upcoming
yahrtzeit or family simcha?**

Sponsor the newsletter that is read by thousands around the world.

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