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STORYLINE

porter damage

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"This house needs a major reorganizing," Mrs. Blum said to her husband. "Some boxes need to be taken down to the basement; others need to be brought up."
"Sorry, but I can't do that with my weak back," replied Mr. Blum. "Get a strong teenage boy to help."
Mrs. Blum posted a message on the community list: "Strong teenage boy needed to move boxes. \$15 an hour."
Shortly after posting the request, Shimshon replied, "I am strong and available to work in the late afternoons." They arranged a day. When Shimshon came over, the Blums directed him moving boxes up and down.
"Now, take this box up to the kitchen," said Mrs. Blum.
Shimshon lifted the box. "You're sure you have it?" asked Mr. Blum. "It contains glass."

"Yes," replied Shimshon. "It's not heavy."
Halfway up the stairs, Shimshon tripped. The box slipped out of his hand and fell with a smash! Mr. Blum came running.
"Sorry about that," said Shimshon. "I hope nothing broke."
"It certainly sounded like things broke," sighed Mrs. Blum. "I had glass decanters and vases in there."
Shimshon picked up the box and brought it to the kitchen. Mrs. Blum opened it and was greeted with shimmering slivers of glass at the bottom of the box.
Mr. Blum assessed the damage. "There's about two hundred dollars' worth of damage here," he said slowly.
Shimshon drew his breath. "That's almost three times what I earned working the whole afternoon," he thought.

"It was an accident," he finally said. "You saw that I tripped on the stairs and the box fell out of my hand."
"So what?" said Mr. Blum. "You are responsible for the damage."
"It's true that I carried the box," said Shimshon, "but I never accepted responsibility for the contents."
"I think that's included in the job," said Mr. Blum. "We can consult Rabbi Dayan about this, though."
Mr. Blum and Shimshon met with Rabbi Dayan. "We hired Shimshon to move boxes," said Mr. Blum. "He tripped on the stairs and broke a number of expensive glass items."
"There was damage," acknowledged Shimshon. "But it seems unfair that I should work all afternoon and walk away owing money!"
"Strictly speaking, Shimshon is respon-

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FROM THE BHI HOTLINE

Submitted by
E. P.

forbidden food

I own a nursing home in which all the residents are gentiles.
A friend recently informed me that it may be an issue for me to serve them non-kosher food. He advised me to ask your opinion and advice on this matter.
I know that I may not trade with non-kosher food, but I am puzzled why providing non-kosher food to my residents should be a concern, since gentiles are allowed to eat non-kosher food.

Q: Is this practice permitted?

A: Shulchan Aruch (Yoreh Deah 117:1) based on the Gemara Pesachim (23a) rules that it is forbidden to buy and sell food that is Biblically prohibited. Some authorities mention that the reason for this prohibition is to prevent the consumption of prohibited food.
One might think that the prohibition applies only if the Jew owns the food, since in such

a circumstance, one is concerned that the Jew may eat it. However, the truth is that it is a reason for stringency - a Jew may not even be involved in handling non-kosher food that is owned by a gentile, since the concern that the Jew may eat it still exists. As such, if the food is owned by a Jew, trade is prohibited even if he does not handle it (see Pischei Teshuva 117:6).
Rema adds that one may not even purchase non-kosher food to feed to his workers.

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sible for the damage, unless it was due to circumstances beyond his control (ones). Since he was paid for the job, he is considered a shomer sachar, who is responsible for controllable loss,” replied Rabbi Dayan. “However, Chazal instituted that a porter who stumbles and damages his load is exempt, unless he was negligent, such as if he tried to carry a load that requires two people (C. M. 304:1,4). The reason for this ruling is that otherwise, people would not be willing to accept such a job. Being a porter is a difficult job generally done by poor people, with high risk and low salary. If they would be held responsible for accidental damage, they would not be willing to take the risk (Shvus Yaakov 3:177).”

“Even if Shimshon doesn’t have to pay for the damage,” said Mr. Blum, “I assume that I don’t have to pay him for his work?!”

“There is a dispute whether Chazal required paying his wages,” said Rabbi Dayan. “Therefore, if the employer is in possession of the money he cannot be made to pay. However, if the worker is poor, righteous people go beyond the letter of the law

and provide his wages (see Aruch Hashulchan 304:1,11).” “Why should there be an obligation to pay wages?” asked Mr. Blum. “The Gemara (B.M. 83a) relates that Rabbah b. b. Chanan hired porters, who broke a barrel of wine,” explained Rabbi Dayan. “Rabbah grabbed their garments as payment for the damage. Rav instructed him to return their garments, based on the verse, ‘So that you should walk in the way of the good.’ The porters then said, ‘We are poor and worked all day; we are hungry and have no money.’ Rav instructed Rabbah to pay them wages, based on the verse, ‘and keep the paths of the righteous.’ This means that we should act in a manner beyond the letter of the law with needy workers, unless they were grossly negligent (SM”A 304:1).”

“Does this exemption apply also to professional movers?” asked Mr. Blum.

“Nowadays, the custom is that moving companies pay for damage and usually have insurance to cover it,” said Rabbi Dayan. “Therefore, the common custom would prevail, and they would have to pay for the damage.”

The rationale is that paying a debt with non-kosher food is also considered a profit-making transaction. Others (see Shach 117:3, Aruch Hashulchan ibid:19) defend this common practice. In their opinion, only purchasing non-kosher food to give as a gift to a gentile is prohibited, because gift-giving is probably a reward for some benefit and comparable to a sale. As such, the purchase of non-kosher food to feed gentile workers in one’s home should be permitted. It is still preferable to avoid feeding non-kosher food to gentile employees, but one cannot protest against those who follow the lenient position (see Maharam Shik Y.D. 136, Kaf Hachayim 117:12 and Daas Torah 60:17).

Although the above discussion seems to indicate possible grounds for leniency,

your case is fundamentally different. Buying food to feed workers is not a profit-making venture and can be defined as paying a debt, whereas food expenses of a nursing home are clearly part of the profit calculation, similar to a restaurant that sells food for profit. The purchase of non-kosher food for feeding clients in a nursing home is therefore a commercial trade and violates the prohibition against buying and selling non-kosher food. In summary, since providing non-kosher food for gentile residents raises very serious halachic concerns, you should contact a Rav who is experienced in these matters to help arrange an agreement for a gentile to purchase and provide the food for the residents according to the guidelines set forth by Divrei Chaim (O.C. 2:27).

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

payment of wages week #14

Q: The contractor who renovated our house finished working and asked for payment of the final installment. However, we are dissatisfied with one of the cabinets and would like it replaced. Must we pay the bill now or can we withhold payment until he replaces the cabinet?

A: The halachic principle is: “ain sechirus

mishtalemes ela l’vasof” – payment for labor is due only at the conclusion of the job (BM 110b; Rama C.M. 78:1). So long as the contractor has not finished his work, even if only a little bit is left, you are not obligated to pay him, unless the terms of the agreement state otherwise (Pischei Choshen, Sechirus, ch. 9 end of ftnt. 29).

Therefore, if the contractor agrees that the

cabinet has to be replaced, you are not obligated to pay him the remaining balance yet. However, if he claims that the cabinet is adequate, you run the risk of violating the serious prohibition of “bal talin” by withholding his wages (see Pischei Choshen, Sechirus, ch. 9 ftnt. 1). An external professional must confirm that the cabinet is indeed deficient to justify withholding payment.

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