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STORYLINE

weed whacker

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"Our weeds are getting totally out of hand," Mr. Mazer said to Moish, the gardener. "I'd like you to come cut them."

Moish drove over to the Mazer's house and unloaded his professional weed whacker, which looked like a long pipe with a rotating wire filament at the end. He revved the engine and the machine roared to life. "Whirr..." Moish made his way around the yard, cutting the weeds as he went.

He turned his attention to the brush near the house; the thick weeds obscured the side of the house completely. Moish moved over the weeds with his weed whacker. Clump by clump, the thick green weeds yielded to the force of the whirling wire with a steady "chut, chut, chut" sound.

As Moish rounded the corner of the house, the "chut, chut" suddenly became "crack!"

"What was that?" exclaimed Moish with alarm. He pushed aside the clump of weeds he was working on.

"I don't believe it!" he moaned. Affixed to the side of the house, covered by the weeds, was an electric wire leading to an outside outlet. It had gotten slashed by the weed whacker.

Moish knocked on the door. "I apologize," he said to Mr. Mazer, "but there was an electric wire under the brush that got sliced by the weed whacker. It was completely concealed by the weeds, so I didn't see it."

"I'll have to get an electrician to fix the wire," said Mr. Mazer. "Did this ever happen to you before?"

"No," said Moish. "I'm generally careful, but this wire was completely covered."

"You still have to watch what you're doing,

especially when working near the house," said Mr. Mazer. "You damaged my property, and you should pay for the repair."

"It's not like I just came and damaged property," argued Moish. "You did ask me to cut the weeds, and I can't be expected to look under every clump before I cut. I'd be here all afternoon!"

"But you do have to be more careful near the house," replied Mr. Mazer. "I'll see what the electrician charges and then we'll talk." The local electrician fixed the wire.

"That will be \$75," he told Mr. Mazer.

Mr. Mazer called Moish. "The electrician charged \$75 for the repair," he said.

"If you want me to pay that," said Moish, "that's my whole salary for the job I did. It's simply not fair!"

"Nor is it fair that I should have to pay dou-

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FROM THE BHI HOTLINE

Submitted by
M. F.

quiet contemplation

I sold \$10,000 worth of merchandise to a close friend who is a shopkeeper. After a few months, I seriously contemplated collecting only \$5,000 from him. I have since changed my mind, and given that I never told him about my mental decision, I would like to collect the full amount.

Q: May I collect the entire \$10,000?

A: Halacha rules (C.M. 12:8) that forgive-

ness of a debt does not require any legal act (kinyan). The question in this case is whether one must honor a decision to forgive a loan even if it was only made mentally and never articulated.

Generally, halacha follows the principle of devarim she'b'lev einam devarim – mental, unspoken decisions are not binding. We do not find in halacha that mental decisions should take effect. The one exception to this rule is korbanos (sacrificial offerings). The

Gemara (Shavuot 26b) derives from a pasuk that mental decisions related to korbanos are binding. In fact, major Poskim follow this principle, and in their opinion, a mental decision to forgive a loan should follow the general halacha and should not be binding (Ketzos 12:1 and Nesivos 12:5).

On the other hand, the Gemara (Kesubos 104a) teaches that a widow who allows twenty-five years to pass without asking for payment of her kesubah has forfeited the

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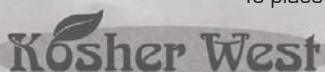
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STORYLINE CONTINUED

ble," said Mr. Mazer. "Let's speak with Rabbi Tzedek."

Rabbi Tzedek ruled: "In principle, the gardener is liable unless it was not feasible for him to notice the electric wire or if the owner was remiss in not alerting him to its existence. Since this is difficult to ascertain, it is best to compromise."

Rabbi Tzedek then explained, "A person is generally liable for any damage that he does, even if unintended and not his fault. However, Tosfos (B.K. 27b s.v. U'shmuel) explains that the person is only liable if he carries an element of blame, even if not negligent (oness k'ein aveidai). A paid worker carries additional liability if he could have prevented the loss (oness k'ein geneiva). Even a paid worker, though, is not liable for damage beyond his control (C.M. 306:4; 378:11). Ramban (B.M. 82b) maintains that one who damages is liable regardless of the circumstances, unless the owner was remiss in allowing the damage. However, even he concedes that a worker – who acted upon instruction – is

not liable for circumstances beyond his control.

"Similarly, the Mishna (B.K. 98b) teaches that if a construction worker was hired to dismantle (not demolish) a stone wall, and while dismantling one end of the wall, the other end collapsed and usable stones shattered or caused damage, he is exempt (C.M. 384:3). One explanation is that this was an accident beyond his control (Meiri B.K. 98b).

"In your case, the gardener damaged the electric line, albeit unintentionally. Since he is being paid, he is liable so long as it was feasible for him to notice the electric wire, even if he bears only minimal blame. He is exempt only if the accident was beyond his control or if the owner was negligent in not alerting him (see Pischei Choshen, Sechirus 7 nt. 56-57).

"Since circumstances are variable and it is difficult to ascertain whether it was feasible for the gardener to have noticed the wire, and whether the owner should have warned him, it is best to compromise."

FROM THE BHI HOTLINE CONTINUED

right to collect her kesubah. Although she never stated that she was giving up her right to collect her kesubah, her silence still constitutes forfeiture of the kesubah – even though it was only a mental decision. Maharshal proves from this that a mental decision to forgive a loan is effective, and if one were to collect a loan after mental forgiving the borrower, it would constitute an act of theft (Maharshal to Semag M.A. 48).

However, this proof can be rejected based on another halachic principle. If someone behaves in a manner that makes their intent obvious to others, it is not considered devarim she'b'lev (unarticulated), but it is as if the intent was verbally expressed. If a woman allows twenty-five years to pass without ever mentioning anything about collecting her kesubah, it is evident to everyone that she has decided to forgo her

right to collect her kesubah. Behavior that clearly indicates a person's intent is comparable to the person verbally expressing their intent and is treated as though it was articulated (Ketzos ibid, see also Imrei Binah Dayanim 20 and Divrei Gaonim 57:65).

Therefore, in your case, since your forgiveness of the loan was never articulated, it remained devarim she'b'lev and did not take effect. Consequently, you may retract that decision.

Furthermore, although some Poskim do maintain that a mental decision to forgive a debt is effective, you never made a final decision to release your friend from part of the debt, but merely contemplated doing so. As such, all opinions would agree that the loan was never actually forgiven, and you may collect the full amount (Pischei Choshen Halva'ah 12 footnote 11).

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MONEY MATTERS

laws of interest week #16

Q: Does the prohibition of ribbis apply also to borrowing merchandise? For example, may I borrow produce and repay later an equivalent or greater amount?

A: The prohibition of ribbis applies not only to money, but also to merchandise. Therefore, borrowing 100 lbs. of tomatoes and repaying 110 lbs. later would be ribbis prohibited by the Torah.

Borrowing merchandise and returning the same amount is permitted by the Torah. However, our Sages prohibited it in many situations, because the value of the merchandise may increase during this time. For example, the 100 lbs. of tomatoes may have been worth \$50 when borrowed, but cost \$60 at the time of repayment. This prohibition is called se'ah b'se'ah (a measure for a measure).

Therefore, our Sages required that loans of merchandise be made based on the merchandise's value when borrowed, e.g., \$50. Even if this was not done, if the value increased, one may only return an amount of tomatoes equivalent to the value borrowed (Y.D. 162:1).

There are three significant exceptions to this rabbinic prohibition, which we will discuss next week.

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