



# Business weekly

PARSHAS VAYEIRA  
FRIDAY, NOVEMBER 11, 2011  
14 CHESHVAN 5772  
ISSUE #81  
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

### forget about it

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Yanky was going through difficult times. "My company merged over a year ago and I got laid off," he poured his heart out to Moish, a neighbor. "I've been trying everywhere to get a job, but nothing's available."

"How have you been managing meanwhile?" asked Moish. "Barely, with my wife's salary and our savings," said Yanky.

"I'm sorry to hear that," said Moish consolingly. "Is there some way I can help?"

"If you could lend us \$1,000 for four months, that would help greatly," said Yanky. "I expect to be able to find something by then."

"I can do that," replied Moish. "Come by tomorrow. I just ask that you write an IOU note for the loan."

The following day, Yanky stopped by Moish's house and received the loan. "We will make

every effort to repay on time," he said.

Three months later, Moish was talking with Yanky. "What's doing?" he asked. "Any leads with a new job?"

"Unfortunately, nothing yet," said Yanky. "I had a couple of interviews, but nothing's panned out."

"I wish you hatzlacha (success)," Moish encouraged him.

"Thank you," said Yanky. "We've been setting aside a little each month towards repaying you, but now the transmission went on our car. We're going to have to use that money to cover the repair!"

"How much is the repair?" asked Moish.

"Almost \$2,000," said Yanky with a sigh. Moish thought for a moment. "You've got too much on your head," he said. "Forget about the loan; you don't have to repay it."

"Thank you!" said Yanky. "That will be a big burden off of me."

A week later, Yanky met Moish. "Guess what?" he said. "I just found a job!"

"I'm glad to hear that," said Moish. "So you'll be able to pay back my \$1,000 sometime soon?"

"You told me to forget about the loan," said Yanky with surprise.

"I did," said Moish. "That was because I thought you wouldn't be able to come out from under. It's not like I can easily afford to forgo \$1,000. Anyway, I didn't sign any release or receipt and I'm still holding the IOU."

"I don't understand you," said Yanky. "I am thankful for the loan, but you told me that I didn't have to repay it! We're not rolling in money, and a word is a word."

"Not if said mistakenly," said Moish. "Any-

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## FROM THE BHI HOTLINE

Submitted by  
D. T. S.

### faulty flush

According to my lease, I pay a fixed monthly price for the water bill.

My landlord complained that the most recent water bill was significantly higher than it had been in the past. He inspected the apartment and discovered that the handle of the water release of the toilet was malfunctioning, causing a major water flush.

When I apologized for my procrastination, saying that I've known about that issue for some time, he demanded that I pay the ex-

tra amount, since I neglected to alert him to repair the leak.

I checked my contract, and it does not stipulate that the tenant is liable if he fails to inform the landlord in such a circumstance.

**Q: Am I obligated to pay my landlord the difference of this month's higher water bill?**

**A:** Although you did not damage any prop-

erty, your negligence to inform the landlord of the leaking toilet indirectly caused him a loss. Hashavas aveida, the Torah's obligation to return a lost object to the owner, includes an obligation to prevent someone else from loss. For instance, one who sees water threatening to flood a friend's field is obligated to erect a partition to prevent the field from flooding (C.M. 259:9).

If, despite the Torah's obligation to return a lost object, one fails to do so - thereby vio-

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## STORYLINE CONTINUED

way, words alone do not always carry legal validity, especially when a document remains extant."

"I suggest that we consult with Rabbi Dayan," said Yanky. "If he says that I still have to pay, I will." Yanky and Moish arranged to meet with Rabbi Dayan. He listened attentively, and then ruled: "Yanky does not have to repay the loan, even though no formal release was made."

"Why is that?" asked Moish.

"When you said to Yanky, 'Forget about the loan; you don't have to repay it,' it is considered mechila (forgoing the loan)," explained Rabbi Dayan. "Although most transactions require some formal act or document to be legally valid, mechila is valid with words alone; it does not require any official confirmation, receipt, or kinyan (act of transaction) (C.M. 241:2)."

"But doesn't the fact that I held on to the IOU note negate the mechila?" asked Moish.

"There is, in fact, a dispute whether mechila with words alone is valid when the lender continues to possess a loan document

(shtar)," replied Rabbi Dayan. "However, the Rama indicates that it is valid. Even if we consider the dispute as a doubt, Yanky is in possession of the money and cannot be made to pay. Furthermore, the dispute relates to a loan document signed by witnesses, not an IOU note signed by the borrower alone (Shach 241:4; Pischei Teshuva 241:2)."

"What about the fact that the mechila was made by mistake?" said Moish. "I wouldn't have been willing to forgo the loan if I had known that he would get a job a week later."

"You are correct that a mechila made mistakenly is not valid," answered Rabbi Dayan. "However, this applies only when there was a mistake at the time of the mechila, such as if Yanky had already found a new job. However, if there was no mistake at the time and circumstances only changed afterwards, the mechila remains valid (Pischei Teshuva 241:3).

"Therefore," concluded Rabbi Dayan, "Yanky does not have to repay the loan and Moish must return the IOU note to him."

## FROM THE BHI HOTLINE CONTINUED

lating the prohibition against turning away from a friend's lost object - is not obligated to reimburse the owner for the object. Liability occurs only if one did or said something that caused an object to be destroyed; someone who merely neglected to return an object is not liable (Ketzos 66:21). As such, it seems that your landlord cannot demand that you pay the extra cost of the recent bill.

On the other hand, one who neglects to return a lost object must discharge a halachic moral responsibility (latzeis

yedei shamayim) and repay the owner of the lost property. It is similar to a case of two witnesses who, by refusing to testify, are causing a litigant a loss and must repay the litigant that lost money, latzeis yedei shamayim (Gilyon Maharsha to Shach C.M. 259:1, Minchas Shlomo 1:82).

This principle applies to your case as well. Your negligence to inform the landlord about the malfunctioning toilet caused him a loss. As such, you have an obligation latzeis yedei shamayim to discharge this responsibility.

**Please contact our confidential hotline with your questions & comments**

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## MONEY MATTERS

### laws of interest week #21

**Q: I granted my cousin a \$25,000 loan, which required withdrawing money from my savings account. Can I charge him the 2% interest that I would have earned?**

**A:** Loss of potential earnings is not reason to allow charging ribbis. Therefore, you may not charge your cousin the 2% unless you draft a heter iska (Igros Moshe Y.D. 3:93;

Bris Yehuda 3, nt. 4).

If lending the money incurs an actual cost or expense, such as a wire transfer fee or legal fee to draft a loan document, that expense can be charged to the borrower. A penalty for early withdrawal of CD depends on the nature of the penalty, so a posek should be consulted (The Laws of Ribbis, 4:1, 8-9). Regardless, interest payments to a non-Jew

for which the lender is responsible may not be "passed on" to the borrower. Therefore, if someone took a loan from the bank, he may not share it with his friend and have him pay the interest on the proportional amount [without a heter iska]. Similarly, one may not take a cash advance from his credit card on behalf of his friend and pass on the incurred interest (Y.D. 168:17).

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