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STORYLINE

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

seemingly simple

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"You've been growing like crazy this year!" Mrs. Ehrlich said to her son, Rafi. "Your Shabbos suit is already too short. You need a new one."

Mrs. Ehrlich took Rafi to a local store and they chose a navy blue suit. "The jacket fits you perfectly," Mrs. Ehrlich said. "We just have to hem the pants. Our neighbor, Mrs. Cutter, is a seamstress; I'll ask her."

Mrs. Ehrlich called to ask if she could bring Rafi over to be measured.

"I'm sorry, but I'm not home tonight," Mrs. Cutter replied. "You can bring it over tomorrow."

"I'm sleeping over at a friend's house tomorrow night, though," Rafi said. "And the following night there's a learning program at school."

"That's okay," said Mrs. Ehrlich. "I can mea-

sure the pants on you and bring them over to Mrs. Cutter."

Rafi put on the pants and Mrs. Ehrlich measured them. "Your inseam is 26 1/2 inches," she said. "We'll make it 27, so that the pants will last a little longer."

The following day, Mrs. Ehrlich brought the pants over to Mrs. Cutter, who was busy at her sewing machine. "I bought Rafi a new suit," she said. "Please hem the pants at 27 inches."

Mrs. Cutter grabbed a paper and jotted down: "Hem inseam at 27 inches."

"Will the pants be ready by the middle of the week?" Mrs. Ehrlich asked.

"I'll try my best," said Mrs. Cutter. "I have a lot of other work already waiting, but I will make an extra effort to do the pants."

Late the following night, Mrs. Cutter finally

got to the pants. Rubbing her eyes, she read the note: "Hem inseam at 24 inches."

Mrs. Cutter measured 24 inches, hemmed the pants and cut off the excess material. As she put away the note, she realized that it actually said, "Hem pants at 27 inches." She had scribbled the seven quickly and mistakenly read it as a four!

Wearily, Mrs. Cutter looked at the pants, hoping that enough material remained to restore it to 27. Unfortunately, there wasn't. She could add a piece to the bottom with delicate stitching showing, but it certainly wouldn't look as nice.

"I've ruined these suit pants," she thought to himself as she shut down her machine for the night. "Now what?"

The following morning, Mrs. Cutter told her husband what had happened. "What

continued on reverse side

FROM THE BHI HOTLINE

Submitted by
B. H.

a loan and a lien

Reuven borrowed \$500,000 from Shimon, using his home and his bungalow as security for the loan.

Reuven has thus far paid back \$400,000 of the loan and would now like to sell his bungalow. He approached Shimon and asked if he would remove the lien from the bungalow so that he could sell it, since the lien that is on Reuven's primary home would more than cover the remaining value of the loan.

Q: Is Shimon obligated to release the lien on the bungalow?

A: Halacha states that a lender who has a lien on a borrower's property or properties cannot be forced to release half of the lien when half of the loan is repaid (C.M. 74:4). Poskim understand that this ruling is limited to where the lender benefits financially from retaining the lien on the entire property or properties. In the event that the lender does

not have any financial benefit from retaining a lien on the entire property or properties, we would indeed force the lender to release the lien based on the principle of kofin al midas sdom – we force a person to do something that will benefit another when it does not cause him any loss (Taz ibid.). Others disagree and contend that the reason the lender may refuse to release the lien is not because he benefits financially from the lien; rather, the reason the lender

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STORYLINE CONTINUED

do I do with these pants?" she asked. "And what about the rest of the suit?"

"I'm not sure what the halacha is," her husband said. "I'll ask Rabbi Tzedek."

Rabbi Tzedek said, "Your wife is responsible for the damage to the entire suit. However, if Mrs. Ehrlich has the possibility of selling it to someone who can wear it, even at a discount, your wife is only responsible for the differential in price."

Rabbi Tzedek then explained, "A paid professional who damaged in the course of his work is responsible, unless it was due to circumstances completely beyond his control (C.M. 306:4; 378:1). Furthermore, when damage is done to part of a set that is sold only as a whole, the damage is to the whole set. Therefore, your wife is responsible not only for the value of the pants, but for the entire suit, since the owner can no longer wear it (see Mishpetai Hatorah 1:22).

"But is there really damage here?" asked Mr. Cutter. "The pants are in perfect condition, for someone with an inseam of 24 inches. Whether the pants

have an inseam of 27 or 24, their worth is the same!"

"If the pants were intended for sale, this would be true," said Rabbi Tzedek. "However, these pants are intended for use by the owner, not for sale. Therefore, since they are not wearable, it is considered damage even though there is no loss in inherent value. If it is possible, though, to sell the suit to someone else whom it will fit, say at a discount of \$50, your wife is obligated to pay only this differential."

"Who has the responsible to try to sell the suit?" asked Mr. Cutter.

"This is Mrs. Ehrlich's responsibility," said Rabbi Tzedek. "When someone's property is damaged it remains his, so the one who damaged is responsible only to pay the differential. He is not required to take the damaged item and replace it with a new one (403:1). This is true also for a worker who did not follow the instructions of his employer properly; his variation is not considered as stealing the material, which would have required him to replace it (306:3)."

FROM THE BHI HOTLINE CONTINUED

may retain the entire lien even though the loan has been partially repaid is that it gives the lender leverage on the borrower and pressures the borrower to repay the entire loan. As such, the lender retains the lien entirely until every last penny of the loan is repaid (Shach ibid. 18).

A proof to the latter opinion is found in Choshen Mishpat 54:1. Shulchan Aruch there rules that if a borrower repays half of his loan, he cannot force the lender to write a new contract for the remainder of the loan. The reason is that the lender would prefer to provide the borrower with a receipt for half the loan. When the borrower is forced to re-

tain a receipt that states that he repaid half the loan, he will be anxious to promptly repay the remainder out of fear that he could lose the receipt and possibly be forced to pay the full amount recorded in the contract. Since it is to the lender's advantage to write a receipt as opposed to writing a new loan document, it is not considered midas s'dom (Tumim ibid. 10. See Imrei Binah Halva'ah 84, who agrees with Tumim).

Since, in this case, Shimon benefits from retaining the full lien in that it pressures Reuven to repay the remainder of the loan, Shimon cannot be forced to release the lien on the bungalow.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

borrowing and lending week #2

Q: Someone mentioned that it is prohibited to lend without witnesses. Is this true?

A: The Gemara (B.M. 75b) teaches that one who lends without witnesses violates lifnei iver and brings curses upon himself. This is because the borrower is liable to deny the loan, and then people may suspect the lender of claiming money falsely. Ravina was careful even when lending to a colleague talmid

chacham, who is not suspected of lying, because he might forget having borrowed due to his many responsibilities (C.M. 70:1).

A loan document is best, as it clearly states the amount of the loan and also indicates that the loan hasn't been repaid (SM"A 70:4).

A number of authorities seek to justify the practice of many people to lend without evidence. Aruch Hashulchan (70:1) suggests

that the two know and trust one another; the lender is sure that the borrower will neither forget nor deny. Others suggest that the halacha applies only to one who lends money on a regular basis. Some are lenient for short-term loans or small sums, where concerns are less serious.

It is still preferable, though, to obtain some evidence, especially for large sums or long-term loans.

IMPORTANT NOTICE

"Early Bird Specials" often involve serious ribbis (interest) issues.

This is especially true with day camps that offer perks or discounts for early payment.

For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at:
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