Business weekly

PARSHAS **VAYISHLACH**
FRIDAY, **DECEMBER 9**, 2011
13 KISLEV 5772
ISSUE #85
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

evaluating **value**

By Rabbi Meir Orlian
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The beis medrash of Yeshiva Toras Mishpat was packed with people. The tables where they learned were piled high with books.

Between the tables, a number of shtenders (book stands) dotted the beis medrash. One large shtender belonged to Avrumi Klein, who would rock back and forth on it while involved in enthusiastic debate. The shtender, which had been beautiful when it was new, was already a number of years old and had seen better days. It was still fully functional, but some cracks were developing in the wood, and there were gouge marks on it from numerous falls. Its paint job was partially faded.

Mendy Blum sat at his table, engrossed in a difficult sugya (topic) about which he was preparing a shiur. He jotted down a few notes and then went over to the library room to pull a few more books off the shelf. He carried the load of sefarim back to his desk.

As Mendy hurried back to his desk, he bumped with force into Avrumi's shtender, hurling it into the sharp metal legs of the table behind. The shtender hit the legs at an angle and broke.

Mendy righted the shtender and looked at the broken pieces. The wood had splintered badly in a number of places and didn't look like it could be reasonably fixed.

"What happened?" asked Avrumi, running over.

"I was carrying too many books and wasn't watching where I was going," said Mendy. "Definitely my fault. I'll pay you for it."

"The question is, how much?" said Avrumi. "A new shtender like this costs $150, but it was already five years old. It doesn't seem fair that you should pay the full amount."

"On the other hand, you were using it fine," said Mendy. "You could have used it for many more years and wouldn't have had to pay anything. Now you have to go buy a new one."

"It's still not right to accept the full price," said Avrumi. "It's not exactly in perfect condition. There should be some guidelines in halacha how to evaluate the damage."

"Rabbi Dayan is sitting at his table," said Mendy. "We can ask him; he should know."

Mendy and Avrumi took the broken shtender over to Rabbi Dayan.

Rabbi Dayan saw them coming with the broken pieces. "Looks like there's a case of damage here," he said. "What happened?"

"I knocked it over," said Mendy. "It's clearly my fault, but the question is: How much to pay?"

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FROM THE BHI HOTLINE

Submitted by
P. N.

accrued **interest**

Reuven purchased a loan from a bank and later discovered that the borrower of this loan was Jewish. If Reuven collects the loan from the borrower according to the terms of the loan, it would turn out that he is collecting interest from another Jew.

Q: Is it permitted to collect the money that the borrower owes?

A: It is indisputable that any interest that accrues after Reuven purchased the loan may not be collected, since that interest is accruing on a loan that the borrower now owes Reuven (Y.D. 168:10). It is also not possible to draw up a heter iska at this point if the borrower will not agree to have one drawn up.

The primary question, debated by halachic authorities, is whether Reuven may collect the interest that accrued before he purchased the loan. One approach permits the collection of the previously accrued interest, since at the time that the Jew purchased the loan, that money was already owed; when it is sold to Reuven, it is considered part of the principle that Reuven purchased (Taz Y.D. 168:12). Others disagree and assert that the buyer of the loan may not even collect the interest that accrued before the sale of the loan (Nekudas HaKesef ibid.).

The rationale behind the stringent opinion is based on a Gemara ruling (Bava Metzia 72a) that if a Jew borrows money with inter-

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STORYLINE CONTINUED

"A person who damages an item is responsible to repair it, if typically repaired," said Rabbi Dayan, "or to pay the value of the damage, if not typically repaired (C.M. 387:1; Shach 387:1)."

"How do we evaluate the value of the damage?" asked Mendy.

"If the item was new and the damage was a total loss, it is easy to ascertain the value," said Rabbi Dayan. "However, it is difficult to ascertain the value of a used item. Classically, the value was the item's worth on the used-item market. The Nesivos (148:1) even seems to suggest that a person who damages something that cannot be sold is exempt, even if it is of monetary worth to the owner. Besides the fact that others dispute this (see Kehilos Ya'akov, B.K. #39), it is suggested that his exemption never included goods that were useful to other people as well (Minchas Shlomo 3:104)."

"But secondhand items are usually sold nowadays at far less than their actual value," argued Avrumi. "People are used to buying from stores, so even brand new, unopened items sold on eBay run at only 80% of their cost, and slightly used items lose significant value."

"That is true," said Rabbi Dayan. "Therefore, most batei din rule nowadays that we should estimate the item's true monetary worth to its owner."

"How can this be evaluated?" asked Mendy.

"One way is to amortize the item's cost over time," said Rabbi Dayan. "Thus, if the expected lifetime of an item is ten years and five years have passed, it would be evaluated at roughly half its cost (Mishpetai HaTorah I:24). Of course, there are additional factors to consider, such as the condition of the item and the depreciation curve of this particular item."

"What if the damaged item is not a total loss?" asked Mendy.

"Halachically, the damaged item remains property of its owner and the one who damaged is responsible only to pay the differential," said Rabbi Dayan. "He is not required take the damaged item and replace it for the owner with a new one. This applies whether the item is still usable for its initial purpose or valuable only for its parts (403:1)."

FROM THE BHI HOTLINE CONTINUED

est from a gentile who then converts, it is prohibited for the convert to collect interest that accrued even before his conversion. Ritva cites his teacher, who infers from the Gemara's case that if a gentile sells a loan to a Jew, the Jew who bought it may not collect interest that accrued before it was sold. Ritva rejects this inference and explains that in the case of the convert, the same person who lent the money is collecting the money. As such, even though he converted in the interim, it appears as though interest is being paid from one Jew to another. In the case of the gentile who sold an interest-bearing loan to a Jew, it does not appear as though he is collecting interest on a loan, since the Jew who is collecting the accrued interest did not lend the money; the interest is not being paid from the borrower to the lender.

Many authorities accept the lenient ruling that follows Ritva's position. The question is whether the borrower can assert (kim li) that he follows the second opinion that prohibits him from paying the interest that accrued before the loan was sold. Divrei Chaim (2:56) writes that the buyer of the loan has halachically purchased the money that was owed before the purchase. The borrower is merely trying to exempt himself from that payment with the claim that he follows the opinion that prohibits payment and collection of interest that accrued before the sale of the loan. Since halacha follows the opinion that permits collection of this interest, the borrower may not invoke the principle of kim li to cause a loss to the purchaser of the loan. Moreover, refusing to pay would violate a Biblical prohibition. One may not be stringent regarding a disputed Rabbinic prohibition against interest if it were to result in a Biblical prohibition of not paying money that is owed.

Please contact our confidential hotline with your questions & comments
877.845.8455 ■ ask@businesshalacha.com

MONEY MATTERS

borrowing and lending week #3

Q: My friend claims that I owe him $500 for expenses on a trip that we took together. What if I claim that I covered my own expenses or reimbursed him already? What if I admit that I owe $300?

A: The first cases are ones of denial (kofer bakol). Since you are in possession of the money, the burden of the proof is on the plaintiff (hamotzi meichaveiro alav hare'aya). Therefore, you are exempt unless your friend can prove that you owe him. However, Chazal require you to take a simple oath (shevuas heses) that you do not owe him (C.M. 75:7).

The last case is one of partial admission (modeh b'miktzas); you admit $300 of the $500 claim. This is one of the three instances in which the Torah obligates an oath. Thus, you must take a severe oath that you owe only $300, and would only then be exempt from the remaining $200 (75:2).

Nowadays, we strongly discourage taking oaths; beis din would encourage a compromise in lieu of the oath. In the first case of a simple oath, it would be tilted in your favor, whereas in the latter case of a severe oath, it would be tilted in your friend's direction.

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:
phone: 718-233-3845 x12 · email: ask@businesshalacha.com