



# Business weekly

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## STORYLINE

### first things first

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Adam worked as a salesman from 8 to 6, leaving him little time to learn.

"I was asked to help run the night Kollel in our shul from 8 to 11 PM," Adam said to his wife. "They'll also pay. What do you say?"

"It's not going to be easy for the family, but it's a great opportunity to learn," his wife responded. "We could also use the additional income."

Adam accepted the offer. After a full day's work, he had supper and headed out again. By the time he returned home, took care of some necessary paperwork, showered, and went to sleep, it was almost 1:00 AM.

"Five hours of sleep," he mused, as he set the alarm for 6:00 AM.

As the weeks wore on, it became harder to get up. The alarm rang and Adam hit the snooze button, half asleep. "Adam, you've

got to get up," his wife roused him. Adam rubbed his eyes and dragged himself out of bed. After davening, he had a double-strength cup of coffee, and headed out to work. When Adam arrived, his boss called him in. "Adam, there have been errors in your sales reports recently," he said. "You also seem less energetic and enthusiastic. Is everything okay?"

"I'm okay," said Adam, "but I've mentioned to you that I started running a night learning program to supplement our income. I'm going on very little sleep."

"I understand that you need to supplement your income and want to learn," said the boss, "but it's beginning to affect your work. I value your contribution to our business, but you must make your job a priority and give it your all."

"But you've known about this program for a while," said Adam, "and you never objected." "Still, if the learning program leaves you too tired to function properly," said the boss, "you have to consider dropping it. It's unfair to us."

Adam went to consult with Rabbi Tzedek. "I started running a night Kollel to supplement my income, but the late hours are beginning to detract from my work," said Adam. "Can I continue with the Kollel?" Rabbi Tzedek answered, "You are not allowed to take on additional responsibilities if it detracts from your ability to function properly at your primary work."

Rabbi Tzedek pulled a volume of Rambam from the bookshelf. "Here, read this passage in the end of Hilchos Sechirus (13:6-7)," he said to Adam. "It's cited by the Shul-

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## FROM THE BHI HOTLINE

Submitted by  
L. L.

### partial penalty

I own a row of townhouses. My lease with the tenants includes a halachically binding penalty clause for late payment of the rent that reads: "If I do not fulfill my rental commitment by the 15th of the month, I will pay a penalty of \$250." Sometimes a tenant pays only part of the rent on time. I would like to know if this affects the penalty.

**Q: Is he obligated to pay the full \$250, since the rent was not paid in full, or per-**

**haps the penalty is in force only if he did not pay any of the rent that was owed? May I at least demand that he prorate the penalty based on the percentage of the rent that is still due?**

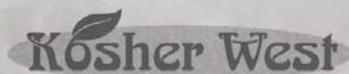
**A:** A similar case is that of a debtor who accepted to pay a one-time penalty if he failed to repay the full loan at the due date, and then paid only a percentage of the debt owed on the designated date. Is the debt-

or obligated to pay a penalty? If so, how much? Taz (C.M. 73:8) resolves this matter with a case of a sharecropper who leased a field for the purpose of sharing its profits with the owner (aris) and agreed to pay a fixed penalty if he would leave the land fallow. The Gemara in Bava Metzia (104b) rules that in case the farmer would leave one-third of the field fallow, he would have to pay the owner a third of the penalty. This seems to prove that a penalty is prorated. So too, in the cases of

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chan Aruch (C.M. 337:19-20) and sets forth the required work ethic.”

*A worker is not allowed to do his own work at night and hire himself out during the day... He should not starve and afflict himself... because this is stealing from the work of the employer, since his strength will be weakened and his mind will be dulled and he will not work energetically.*

*Just as the employer is warned not to steal the wages of a poor laborer and should not withhold them, so too, the poor [employee] is warned not to steal the work of the employer and waste time a little here and a little there, spending the whole day unproductively, but must be meticulous with his time.*

“Wow!” commented Adam. “That’s quite a work ethic!”

“Yes,” responded Rabbi Tzedeck. “The employer pays the employee for the time and effort that he invests in his work. Therefore, when the employee wastes time or behaves in a way that makes him work inefficiently, he is taking wages unfairly and cheating the employer.

“The details of the work obligation depend on what is customary in that time and place (331:1). If it is customary to allow workers a short call home during the course of the day, to daven mincha (pray), or to string together a number of part-time jobs, that is acceptable. However, the employee should be careful not to overextend this allowance and make numerous calls, spend time to handle personal needs during work hours, or spread himself thinly so that he cannot properly fulfill his responsibilities.”

“But what about the opportunity to learn extra Torah?” asked Adam.

“Learning Torah is of utmost importance and you should continue learning whenever possible,” replied Rabbi Tzedeck. “However, working with integrity is also part of upholding Torah, as the Rambam concludes: *He must work with all his energy, as the righteous Yaakov said: ‘I worked for your father with all my energy.’ Therefore, he received reward [for] this also in this world, as it says: ‘The man was very, very prosperous.’*”

the debtor who paid only part of his debt and a tenant who paid only part of his rent, they must only pay the percentage of the penalty that corresponds to the percentage of the debt that is still outstanding.

Other authorities (Gur Aryeh Yehudah Y.D. 82) reject the parallel between the two cases. In the case of the sharecropper who left the land unsown, the penalty is designed to compensate the landowner for the damage he would suffer as a result of his field lying fallow. For that reason, the farmer pays only the percentage of the penalty that corresponds to the percentage of the caused damage.

In the case of a self-imposed penalty for a debt, the reason for the penalty is to ensure the timely full payment of the debt. Although there is no damage to the creditor, the borrower did not repay the loan in full

and should therefore be responsible to pay the entire penalty. Similarly, the purpose of a penalty on a tenant is to ensure the full timely payment of the rent. Consequently, the tenant who did not pay the full rent at the due date should have to pay the full penalty. Since there is a dispute between the halachic opinions about how much of the penalty the debtor or tenant must pay, Bais Din would force the debtor to pay only the lesser amount. However, in your case, the lease specifically reads, “If I do not fulfill my rental commitment by the 15th of the month, I will pay a penalty of \$250”. The rental commitment is a full and timely pay of the rent, and since the tenant did not completely fulfill this commitment, all opinions would agree that he is obligated to pay the full penalty (see also Divrei Geonim 86:9).

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

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# MONEY MATTERS

## borrowing and lending week #4

**Q: I lent a friend \$50. When I asked him to repay, he replied that although he did inquire about a loan, he doesn’t remember whether he ended up borrowing. Does he have to pay? What if he admits borrowing, but doesn’t remember if he repaid already?**

**A:** When a person is uncertain whether he borrowed, he is not required to pay without evidence, even if the plaintiff claims with cer-

tainty. Nonetheless, one who wants to fulfill his obligation towards heaven should pay if the lender claims with certainty (C.M. 75:9). This is only meritorious, though, not required (Shach 88:36).

On the other hand, if a person definitely borrowed and is uncertain whether he repaid, the borrower must pay if the lender claims with certainty that the loan was not repaid (75:9).

The rationale for the distinction is as follows:

When the defendant is in possession of the money, the burden of the proof is upon the plaintiff when there is any doubt (“hamotzi mei’chaveiro alav ha’raaya”). However, when there is a known debt, the known status quo of debt supports the definite claim of the lender against the uncertain claim of the borrower. Therefore, the borrower must repay the loan if he cannot counter with a definite claim that he already paid (Shach 75:23).

### 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*

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