Business weekly

PARSHAS **VAYAKHEL-PEKUDEI**
FRIDAY, **MARCH 16**, 2012
22 ADAR 5772
ISSUE #99
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

innocent **bystanders?**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

"Have a good day," Mr. Reich wished his wife. "I'm heading off to work."

He hurried out to his car, but his heart sank immediately. His tires had been slashed.

"Who did this?" Mr. Reich cried out. "He's going to pay for it!"

Mr. Reich suspected that it might have been his neighbor, Mr. Plaut, with whom he had a very icy relationship. Finally, Mr. Reich located two teenagers who said that they'd seen Mr. Plaut slashing the tires during the night.

Mr. Reich summoned Mr. Plaut to Rabbi Tzedek's beis din and accused him of slashing the tires. Mr. Plaut, for his part, denied the charge outright.

Rabbi Tzedek, the head of the beis din, called upon the first witness to testify. "We were walking home from a friend's house at 1:30 AM when we saw Mr. Plaut crouching next to Mr. Reich's car. We saw him take a jab at the tires with a knife. When Mr. Plaut noticed us coming, he quickly put the knife in his shirt and walked away."

Rabbi Tzedek called in the second witness, who provided similar testimony. He asked them each a few questions to corroborate their story, which seemed intact.

"These fellows are liars and known thieves!" Mr. Plaut responded. "You can't accept their word. For all I know, they slashed the tires and are trying to shift the blame to me."

"Do you have evidence to disqualify their testimony?" Rabbi Tzedek asked him.

"Yes," Mr. Plaut replied. "I can prove that they've been involved in a series of thefts."

Rabbi Tzedek scheduled another session and instructed Mr. Plaut to bring his counter evidence.

The following week, Mr. Plaut presented three pairs of witnesses who said they had seen the two teenagers involved in theft. However, two pairs were dismissed out of hand because they were related to Mr. Plaut, and the third pair had not observed the theft firsthand.

At that point, the original witnesses stepped forward. "We admit that we were previously involved in theft," they acknowledged, "but are willing to return what we stole."

"I told you they are liars," Mr. Plaut exploded. "They admit that their testimony is invalid!"

"Testimony of thieves is invalid, but a person is not able to disqualify himself after testifying," said Rabbi Tzedek. "Once testimony is accepted by beis din, the witness is not able to retract his testimony or undermine it in a way that invalidates it. This principle is called: keivan shehiggid, shuva aino chozer

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FROM THE BHI HOTLINE

a dishonest **deal**

Submitted by
F. P.

I heard that Chaim's house was for sale. I called him and inquired about his asking price. He told me that Shmuel had offered him $500,000 for the house, but he had rejected the offer. Not wanting to forgo the opportunity, I immediately offered Chaim $515,000, and he accepted my offer.

Some time later, I bumped into Shmuel. When I mentioned that I was buying the house for which he had offered $500,000, he informed me that his bid had been only $450,000, since he does not think it is worth any more than that.

Q: Now that I've discovered Chaim's deception, am I obligated to honor the contract I signed to purchase the house for $515,000?

A: At first glance, it would seem that you should be able to cancel the transaction, since the seller lied to you by telling you that he refused an offer for $500,000. This is especially true since the Poskim emphasize the iniquity of those who employ deception in their business practice (Sefer Chassidim #310).

However, upon further consideration, it is not so clear that this sort of deception is grounds to cancel the transaction. The essential question is whether one can break a contract such as yours when he acted irresponsibly by not confirming the other

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STORYLINE CONTINUED

u'magid – once he testifies, he is not allowed to testify otherwise (C.M. 29:1). Therefore, since we cannot corroborate the theft, their original testimony remains intact and you remain obligated to pay for the tires."

It took Mr. Plaut some time to compose himself. "I've been framed," he insisted. "If the witnesses admit that their testimony was invalid, they caused me an unfair loss! I demand that they reimburse me the money that you're making me pay based on their original testimony!"

"We don't feel that we should have to pay," said the witnesses. "Even if we were not qualified to testify, we still know that you slashed the tires. We didn't cause you any loss."

All eyes turned to Rabbi Tzedek.

"The Shulchan Aruch rules that if witnesses admit that they testified falsely, they are obligated to pay for the damage they caused (29:2; 38:1; 46:37)," said Rabbi Tzedek. "However, there are three reasons why the witnesses are not obligated to pay in this situation."

"Why not?" asked Mr. Plaut.

"First, although the witnesses acknowledge that their testimony was invalid because they were thieves, they still insist that the facts are true (Aruch Hashulchan 46:39). If they would not know the facts firsthand, though, they are liable if they improperly testified based on what they heard from other people (Mishnat d'Rabbi Eliezer 29:2).

"Second, some maintain that the witnesses carry liability only if they didn't retract until the money was paid. However, if they retracted beforehand, although we cannot accept their retraction and rule based on their original testimony, they are not considered as causing damage and are not financially liable (Pischei Teshuva 38:1)."

"Third, there is a minority opinion that witnesses who admit that they testified falsely do not carry financial liability (see Bach 38:5; Shach 38:5; Pischei Choshen, Nezikin 4:ftnt. 65). Most authorities follow the Shulchan Aruch, but this opinion is additional basis to exempt the witnesses in conjunction with the other reasons."

Mr. Plaut pulled out his checkbook and paid Mr. Reich.

FROM THE BHI HOTLINE CONTINUED

party's claim. This is especially true when it is common knowledge that sellers may misrepresent the quality or value of the items they sell.

An example of this type of deception is an employer who offers a potential employee a salary that is comparable to what he pays his other employees, and it turns out that the employer lied about what he pays the other employees. In such a case, the halacha depends on the way the employee accepted the salary offer. If he linked his agreement to the fact that the other employees are receiving the amount he was told, then his agreement was conditional and can be reversed. If he accepted the offer without conditions, then it is assumed that he is comfortable with the salary being offered. Since he could have verified that the other employees are actually receiving the claimed amount and he did not bother to do so, it is assumed that he was satisfied with what he was offered.

The same principle applies in your case. Since you did not make your offer of $515,000 conditional on the fact that Chaim had already rejected an offer of $500,000, it is assumed that you were willing to pay $515,000 because you felt that it was a reasonable price for the house (Meiri B"M 76b, Taz C.M. 332:4, see also Mishpat Shalom 227 Mishmeres Shalom 3).

It must be noted that although the purchase of the house cannot be cancelled as a result of this deception, the iniquity of deceiving others is a very serious matter and you have the right to expect Chaim to ask for forgiveness – ta'arumos (Chavas Yair cited in Pischei Teshuva 207:9). Additionally, the Chafetz Chaim (Sefas Tamim 2) decries this type of behavior in very strong terms.

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MONEY MATTERS

borrowing and lending week #17

Q: I took a short-term loan of $4,000 from my neighbor. To assure him that I would repay promptly, we agreed that if I wouldn't pay back in two months, he could take my car, which is worth $10,000. Is such an obligation valid?

A: This kind of exaggerated, conditional obligation is referred to in halacha as asmachta (B.B. 168a). This means an obligation that was made just to reassure the lender that the borrower will repay. An asmachta obligation is not viewed as a serious commitment and is not binding (C.M. 207:2,13). An asmachta obligation is valid, however, if it was made (or if stated that it was made) with a kinyan sudar in a reputable beis din. In this case, we view the obligation as one that was meant seriously (207:15). Alternatively, if the agreement stipulated that ownership of the car is retroactive to the time of the loan (mei'achshav), the Shulchan Aruch does not consider it asmachta, whereas the Rama does (207:14).

In a case where the borrower obligates himself to reimburse any collection costs, some authorities maintain that this is not considered asmachta, since the borrower caused the lender an actual loss (SM"A 61:12; Pischei Choshen, Halva'ah 2:ftnt. 105).