



# BUSINESS WEEKLY

WERDIGER EDITION  
Restoring the primacy of choshen mishpat

Issue #246 | Mishpatim | Friday, February 13, 2015 | 24 Shevat 5775

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian



## BHI HOTLINE

### NOT MINE!

Mr. Miller had lent the significant sum of \$100,000 to a business associate, Mr. Rubin. Unfortunately, Mr. Rubin was only able to repay half the sum. "I have no available cash," he claimed, "nor assets that I can liquidate now."

"I'm willing to give you additional time, if you need it," replied Mr. Miller.

"B'ezeras Hashem, when business picks up," said Mr. Rubin, "I will pay immediately every penny that I owe you."

Some time later, Mr. Miller saw Mr. Rubin walk into a jewelry store. Mr. Rubin handed the storeowner a thick wad of bills and received a diamond ring. Mr. Miller waited until he came out.

"How's business going?" Mr. Miller asked.

"Still not well," Mr. Rubin sighed.

"Sorry to hear..." said Mr. Miller. "I'm just wondering ... you still owe me \$50,000. You also promised that if business picks up you will pay immediately every penny that you owe."

"Of course," replied Mr. Rubin. "Unfortunately, business hasn't picked up yet."

"Then how did you buy that diamond ring with a wad of bills?" asked Mr. Miller.

"That's what you're wondering?" laughed Mr. Rubin. "That ring is not mine. A relative gave me money to buy it for him."

"Who is that relative?" asked Mr. Miller.

"He asked that I not reveal his name," said Mr. Rubin.

"That sounds very fishy," said Mr. Miller. "You owe me money, and you're holding expensive property, bought with cash! It seems my right to demand payment unless you can verify whose it is! I'd like to go with you right now to discuss the matter with Rabbi Dayan!"

"Why should I have to tell you?" responded Mr. Rubin. "The ring is not mine, and that's it! But I'm willing to speak with Rabbi Dayan."

The two came to Rabbi Dayan. "Mr. Rubin owes me \$50,000 and is holding a diamond ring, bought with cash, which he claims is not his," said Mr. Miller. "Is he to be believed?"

"A borrower who is unable to pay, but is known to hold property, is not believed without evidence that the property belongs to another," replied Rabbi Dayan. "This is based on the presumption that whatever is in a person's hand is his (chazakah kol mah shetachas yado shel adam shelo hu). The borrower may be trying to evade repaying the lender" (C.M. 99:1; Maggid Mishneh, Malveh V'loveh 1:4).

"Similarly," continued Rabbi Dayan, "the

### PAYING FATHER'S DEBT WITH ANTIQUES

My father passed away and the only possession of value in his estate is a collection of antique sefarim.

I had his collection appraised and it is worth approximately \$30,000. The other day a relative whom I trust informed me that my father owed him some money and wants me to repay him. He further claims that my father promised to give him his collection of antique sefarim if he did not repay the loan on time. I would prefer to keep the sefarim for myself and repay the lender in cash.

**Q: Am I obligated to give him the sefarim or may I keep the sefarim and repay the debt with cash?**

**A:** It is clear that when an heir considers an undocumented claim to be credible he must repay that loan (Minchas Pitim, C.M. 17, in the name of Sefer Chassidim). However, that obligation is limited to repaying the testator's debt from his estate, which, subsequent to the enactment of the Geonim, includes the movable objects the testator bequeathed to his heirs (C.M. 107:1). However, if an heir wishes to repay the debt with money or other objects rather than the actual objects the testator bequeathed to him, he may do so (C.M. 107:3).

The fact that your father committed to repay his debt with his sefarim collection if he was delinquent in repaying the loan does not obligate you to repay the loan with the sefarim, since a kinyan (proprietary

### DID YOU KNOW?

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## STORY LINE

Gemara (Kesubos 19a) teaches that if a borrower who is unable to pay admits that a loan document he possesses from a third party is void, the borrower's admission is not accepted to exempt the third party at the expense of the lender."

"Are there cases where this rule does not apply?" asked Mr. Rubin.

"In cases where the borrower holds property that beis din is not aware of," replied Rabbi Dayan, "the question arises whether he is believed when he says it belongs to others on account of the principle of migo (lit. "since"), since he could hide the money or give it away. The Ramban maintains that the chazakah overpowers the migo and he is not believed, while others disagree. The Rema cites both opinions."

"What else?" asked Mr. Rubin.

"In situations where the borrower is likely to possess property of others, he is believed," explained Rabbi Dayan. "For example, if he manages investments, serves as a salesman, or holds items that are typically rented, there is a reasonable likelihood that, in fact, the property belongs to others" (C.M. 99:3).

"Is money the same as other property?" asked Mr. Miller.

"Money is even more problematic for the borrower!" answered Rabbi Dayan. "Even if the money was given by another, if the borrower was expected to use it for himself and substitute other money, it is considered his. Moreover, the Shach (C.M. 99:2) maintains that whenever the borrower has the right to use the money, even if he didn't, it is considered his; others disagree" (See Pischei Choshen, vol. X, 12:30-36).



## BHI HOTLINE

act) was not made to ratify that agreement. Even if your father had made a vow, it does not obligate his heirs to fulfill it, and his commitment is no stronger than that (C.M. 252:2, see also Minchas Pitim 204:11). [It is interesting to consider whether the borrower himself would be obligated to fulfill his commitment to give his sefarim collection to the lender. An argument could be made that the commitment lacked the necessary intent (semichas daas) to be binding, and therefore the lender would not receive the sefarim unless they were given to him as security for the loan (see C.M. 73:17 and Shach, ad loc. 50)].

You should, however, be aware of a potential risk you would be taking by paying the lender with cash. If you subsequently discover that there are other creditors with claims against your father's estate, you may have to pay them as well. If you pay the first creditor with the sefarim collection your father bequeathed, the estate would be depleted and would not be liable for other debts, since an heir's responsibility to repay a testator's debt is limited to the inherited estate. Consequently, if you choose to pay this creditor with your own money in order to retain your inheritance, you are at risk from other creditors seeking collection for their debts. (Note: this halachah is different for an inheritance of land; see Ketzos 107:8.)

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 32

**We have seen various halachic, legal and technical aspects of copyrights and patents.**

There are two fundamental approaches in the poskim towards this issue. Some maintain that halacha recognizes ownership of intangible, intellectual property. Thus, there is an element of theft when using copyrighted material in a restricted manner. This would limit even copying for personal use in certain cases and provides a broader base for liability of one who copied. It would also prohibit violating a gentile's copyright, in addition to the concern of chilul Hashem.

Others maintain that halacha does not recognize ownership of intangible IP. According to them, the primary concern of copying is commercial infringement, hasagas gevul, where there is significant financial loss for the owner. Nonetheless, since copyrights is an established, contemporary issue, with legal rules and professional practices - restrictions of dina d'malchusa and minhag hamedina would often apply, although permission for "fair" or "educational" use is usually permitted in this context. Even according to this opinion, it is generally considered morally improper to violate someone's copyright. Furthermore, some apply the concept of shiyur b'mecher (limitation of sale) where the owner specifically restricted usage for copying.

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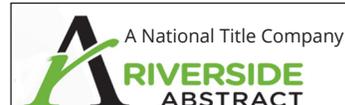
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