



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

BROKEN KEY

Ephraim and Miriam had been married for half a year. They rented an upstairs apartment in a two-family house.

One evening they returned from shopping at 8:30 p.m. Miriam tried to open the door, but the key wouldn't turn. Ephraim tried turning the key. It turned a little, and then snapped.

"Oh, no! Now half the key is stuck inside the lock!" he exclaimed. "Maybe I can take it out with pliers."

Ephraim knocked on the landlord's door downstairs, but no one was home. He borrowed pliers from a neighbor and was able to extract the key.

"That's good," Miriam said, "but what should we do now?"

"I'll call the landlord," said Ephraim. "He has a spare key."

Ephraim called the landlord, but there was no answer. "The landlord's not answering," he said to his wife. "I'll try again in ten minutes."

Time went by, but there was no answer from the landlord.

It was getting cold. "Let's step in to our neighbor," Miriam said. "We can't wait outside like this."

Two hours went by, and still no answer from the landlord. "I think we should just call a locksmith and break the lock," said Ephraim. "The cylinder will have to be replaced."

"Do we have a right to do that?" asked Miriam. "It's not our house!"

"We are entitled to enter the house," reasoned Ephraim. "The landlord is not answering — I don't see another option."

"I'm still not sure we have a right to damage his property," said Miriam. "Can you ask someone?"

Ephraim looked at his watch. "I can still call Rabbi Dayan," he said. "I'll ask him!"

Ephraim called Rabbi Dayan. "The key to our apartment broke, and the landlord, who has a spare key, is not home and is not answering his phone," Ephraim told Rabbi Dayan. "Can I call a locksmith to break the lock? If yes, who is responsible for the bill?"

"A tenant who lost the key and needed to break the lock is clearly liable for the repair, since a person who does not know where he placed an entrusted item is considered negligent," replied Rabbi Dayan (C.M. 291:7; Responsa Raanach #38). "Even when the key broke or was lost through oness, the tenant would usually be liable, since a person does not have the right to spare himself at the expense of his friend" (B.K. 60b; C.M. 380:3, 359:4).

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OBLIGATION TO PAY WORKERS

Reuven contacted me to do the necessary construction on the store that he and his brother

Shimon will be opening. We clarified all the details and agreed that I would be paid upon completion of the project. On the day I finished, Reuven paid me his half of my bill. Shimon, however, informed me that he could not pay me immediately since all of his funds were tied up in the business and would not be available for a couple of months.

Q: Am I allowed to contact Reuven and inform him that as a partner in the business, he is obligated to pay me the second half of the bill and if he doesn't he will violate bal talin – the prohibition against not paying an employee on the day that he finished his job?

A: Shulchan Aruch (C.M. 77:1) rules that when two people borrow money or purchase something, each party is obligated to pay half of the cost and is an arev, a guarantor, for the other half of the bill. There are two categories of guarantors, the standard arev and the arev kablan. The main difference between them is that a creditor may not collect from a standard arev unless he demonstrates to beis din that he first attempted to collect from the borrower and was unsuccessful. In contrast, the creditor may seek to collect from an arev kablan without even attempting to collect from the borrower.

In the case of partners there is a dispute whether they are standard arevim for one another or whether they qualify as arev kablan for one another. In other words, can the creditor collect the full amount from one of the partners without even contacting the second partner (arev kablan)? Shulchan Aruch



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"OK, but am I allowed to call the locksmith?" asked Ephraim. "Can I break the lock at my expense?"

"If you don't have a reasonable alternative, and waiting until the morning would cause great hardship," answered Rabbi Dayan, "you could break the lock with intention to replace the cylinder immediately with a comparable or better one."

"Could you please elaborate?" asked Ephraim

"The Sma (378:1) explains that in general it is prohibited to damage even with intention to pay, just as one is not allowed to steal with intention to repay," replied Rabbi Dayan. "However, if you will have the locksmith replace the cylinder immediately with one of a superior quality, then the Rosh maintains that it is permissible, since it is a zechus for the owner. An identical lock would also seem permitted, since it is zeh neheneh v'zeh lo chaser, and we presume the owner wouldn't mind unless we know otherwise" (C.M. 359:2; Pischei Teshuvah, C.M. 359:3).

"Why did you indicate that waiting until the morning would be better?" asked Ephraim.

"Some authorities question what we mentioned," replied Rabbi Dayan. "Furthermore, since we are dealing with breaking a permanent lock, not clipping a simple padlock, there is some concern that the owner might object. Nonetheless, the Gemara (B.K. 114a) indicates that in certain situations a person is allowed to cause minimal damage to another, with reimbursement, to spare himself a great loss" (Rama, C.M. 274:1).

"Thus, it would be preferable to wait and get the key or the landlord's explicit permission," concluded Rabbi Dayan, "but if needed, you could call a locksmith" (See Emek Mishpat, Sechirus Batim 36:27; Mishpetei HaTorah 1:14).



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rules in accordance with the opinion that partners are standard arevim for one another, and the creditor cannot collect the full amount from one partner without first attempting to collect the second half from the second partner.

However, Poskim agree that the above is limited to circumstances in which each partner does not benefit from the full amount, e.g., each partner took half the amount [borrowed] and they did not share the profits that each one earned. When the money was given to the partnership and each partner benefited from the full amount, all opinions agree that the creditor may claim the full amount from either partner. The reason is that we look at each partner as though he borrowed the full amount (see Shach 77:3 and Tumim 77:3).

In your case, since both partners benefitted from your work, it is considered as though you performed the entire project for each partner and you may claim the full amount from either one.

Regarding the prohibition of bal talin, if Shimon does not have the funds to pay his share of the bill he does not violate the prohibition, even if he has movable property and land (C.M. 339:10). Whether Reuven violates the prohibition is subject to the above parameters. If Reuven is a standard arev he would not violate bal talin since his obligation is to cover Shimon's debt rather than pay you your wage. Even if beis din would obligate him to pay Shimon's share, it would not be considered payment of your salary and thus is not subject to bal talin.

However, since Reuven benefited from the entirety of your work, he is obligated as an arev kaban to pay the full amount and thus, if he has the means and refuses to pay, he would violate bal talin (see Rishonim cited in Ketzos 77:1).

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MONEY MATTERS

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Q: Can heirs publish the writings of their father posthumously without his prior consent?

A: The Netziv (Meishiv Davar 1:24) was asked: In regard to a gadol who left instructions not to publish his responsa posthumously, does such a person have the right to refuse sharing his Torah teachings and rulings with others?

The Netziv responded that although a person can regard his Torah teachings as his own and can grant this right of ownership of intellectual property to his heirs, he has no right to inhibit the use of his Torah teachings. A person is commanded to teach others and not retain his Torah knowledge for himself!

This seems applicable, however, only to writings that are deemed worthy of publication, both regarding content and style. However, writings not worthy of dissemination or that are in a draft stage, which can cause a slight to the author's honor, should not be published.

The Netziv's rationale applies only to Torah writings. The author of non-Torah writings who has ownership of his intellectual property has the right to leave instructions not to publish his writings for whatever reason (see Emek Hamishpat, Zechuyos Yotzrim, intro. 25:1-3; ch 3:7; Igros Moshe, O.C. 4:40[19]).

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