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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

OVERSTATEMENT

Mr. Halperin was reviewing his financial files. He found a loan document, signed by witnesses, that Mr. Stein borrowed $600 two years before, and the repayment was already a year past due.

"I have a signed document that you owe me money," Mr. Halperin said to Mr. Stein. "The loan was due a year ago."

"I did borrow," replied Mr. Stein, "but I paid you back when the loan came due."

"I never received money from you," said Mr. Halperin. "Do you have a copy of your check or a receipt?"

"No, I paid you cash," replied Mr. Stein. "You were supposed to have returned the loan document the following day, but we forgot about it."

"No such thing happened," said Mr. Halperin. "You didn't pay me back. You still owe me the $600."

"$600?" asked Mr. Stein. "That certainly is a mistake. It was only $500; there must have been a typo."

Mr. Halperin thought for a minute. "On that point you're right," he said. "It was only $500. Even so, you owe me $500. I have the loan document and you have no receipt or proof of payment."

"If your document is unreliable, I also can't trust that it was not paid," said Mr. Stein. "I am certain that I paid."

"I don't see what one thing has to do with the other," replied Mr. Halperin. "I admit that there was a typo in the loan document, but you also admit that there was a loan of $500. You have no proof of payment, so pay the amount that you borrowed!"

The two came to Rabbi Dayan. "Does Mr. Stein have to pay the $500?" asked Mr. Halperin.

"Mr. Stein is believed that he repaid," answered Rabbi Dayan, "since the loan document is invalid. "Halachah distinguishes between three cases in which a loan document does not reflect the true sum and the borrower claims that he repaid the full amount," explained Rabbi Dayan. "First, when the correct amount was written, but there is proof, or the lender admits, that part was already repaid. In that case, the document remains valid, so that the borrower is not believed that he repaid the remainder.

THIS MOTZEI SHABBOS

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BACK TO THE BASICS: REKINDLING THE FIRE

By: Rabbi **Dovid Sapirman** and

Rabbi **Pinchos Jung**

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To listen to the live teleconference: 212.444.1323 then press 9

BHI HOTLINE

ABANDONED CAR IN SHARED DRIVEWAY

My neighbor's son-in-law dumped his old car in our shared driveway. I would prefer not to involve my neighbor, so I contacted the owner numerous times, but he seems to be ignoring me. In my last message I mentioned that there are organizations that will not only take away old cars but even pay for them.

Q: At this point, what are my options?

A: You should call the owner and inform him that if he does not remove his car, you will have it removed. He must be given a reasonable amount of time to remove the car, but if he fails to do so, you can have it removed.

The Gemara (Bava Metzia 101b) recounts an incident of a man who betrothed a woman in order to be able to store wine on her property. After the wine was stored, he divorced her. She, in response, sold some wine to generate proceeds to hire workers to move the wine out into the street. Rav Huna, son of Rav Yehoshua, justified her course of action. Even if her property was available for rent, she had the right to refuse to rent to him, since she did not trust him.

Shulchan Aruch (C.M. 319:1) addresses one who places his possessions on a friend's property without permission or uses deception to obtain permission to store his items on his friend's property and then disappears. The owner may remove the goods from his property. He may even sell some of them to generate funds to hire workers to remove the merchandise.

It is virtuous, however, for the property owner to inform beis din so that they can rent space to store the merchandise to prevent the owner from suffering a loss, even though he behaved improperly.

STORY LINE

"However, the lender is required to take a serious oath to collect the remainder. Since part was repaid, there is concern that perhaps the rest was also repaid" (C.M. 87:1; Sma 87:2).

"What about our case?" asked Mr. Stein.

"When the lender admits that the amount listed was in error, the borrower is believed that he repaid everything," replied Rabbi Dayan. "The lender's admission that the document is incorrect is like evidence to that fact (hodaas baal din k'meah eidim dami). As such, the loan document is void. The loan remains without documentation, so that the borrower is believed, with a light oath (heses) that he repaid" (C.M. 47:2; 84:4).

"What is the third case?" asked Mr. Halperin.

"When the lender admits that the amount listed was not the actual amount given, yet was written with the authorization of the borrower," replied Rabbi Dayan. "For example, he planned to borrow more, or for tax purposes wanted a greater amount listed (which of course is illegal). In this case, the document is not void, since the sum was written with the borrower's authorization. The lender is believed and may collect the true amount that he claims, since he could have collected the full amount with his document. There is no need for an oath, unless the borrower demands one (Sma 84:11).

"Because of the nature of the oath," concluded Rabbi Dayan, "beis din will usually impose a compromise in lieu of the oath."

MONEY MATTERS

PARTNERSHIP # 19

Mitzvos in a Partnership With Gentiles

Q: What are the halachos of a partnership with gentiles regarding mitzvos such as ribbis, bechor, challah, mezuzah, etc.?

A: Partnership with a gentile does not allow collecting ribbis from another Jew or paying ribbis without a heter iska, unless the gentile partner takes personal responsibility for the entire loan or in a corporation owned mostly by gentiles (see discussion in The Laws of Ribbis 16:15-23).

Animals belonging jointly to a Jew and gentile are exempt from the sanctity of bechorah (firstborn). Nowadays it is recommended that a person with kosher animals make a partial partnership with a gentile to prevent the firstborn from becoming sacred (Y.D. 320:3).

Regarding dough jointly owned by a Jew and gentile: If the Jew's share has the requisite amount, he is obligated to separate challah. (Y.D. 330:3).

The Rema (Y.D. 286:1) rules that a house owned (or rented) jointly by a Jew and a gentile is exempt from mezuzah (unless the Jew has a private room). Others disagree, but even one who follows the stringent opinion should not affix a mezuzah with a brachah (Aruch Hashulchan, Y.D. 286:2)

BHI HOTLINE

Rema cites opinions that maintain that one must inform the owner before removing merchandise, and only then is the property owner exempt from liability.

Some authorities distinguish between rental property and non-rental property. Regarding non-rental property, the halachah is the same whether the owner of the merchandise behaved deceptively or he merely deposited the merchandise without permission. In contrast, with rental property the property owner may remove the merchandise only if the merchandise owner behaved deceptively (Beis Yosef, Sema 1 and Ketzos 2 in the name of Rabbeinu Yerucham).

When the property owner needs the space, he is permitted to remove the merchandise immediately. This is based on the Gemara (Bava Kama 27b) that teaches that when someone fills a friend's yard with merchandise, the property owner may "take the law into his own hands" and break the merchandise, if necessary, in order to be able to enter and exit his property. Similarly, the property owner may remove any merchandise that is an impediment on his property (Taz, cf. Pischei Teshuvah).

You should contact the car owner and inform him of your intent to remove the car. If he still does not respond, you may remove the car from your property. This is especially true when there is reason to believe that the owner no longer cares about the car or has abandoned hope of retrieving it — either out of laziness or because it is not worthwhile to come and take care of it.

The above applies even though you jointly own the driveway with your neighbor. Even if he were to abandon a car or other possessions in the driveway you would be authorized to remove it in accordance with the above parameters.

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

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