



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### OUTSTANDING LOANS

The Rheins had received an interest-free loan from their Uncle Jack to help finance the purchase of their home. The agreement was that twice a year, in the summer and in the winter, the Rheins would repay \$2,500. This past summer, though, business was very slow, so they hadn't paid. Uncle Jack didn't say anything, but it was preying on Mr. Rhein's mind.

The extended family was planning to get together during winter break for a weekend vacation.

"I'm trying to figure out what to do about Uncle Jack," Mr. Rhein said to his wife. "He might ask us for the money that we owe from the summer."

"Are we able to pay now?" Mrs. Rhein asked. "You said that business picked up again."

"I checked the bank account and we're doing OK now," replied Mr. Rhein. "Money is not the problem."

"What is the problem, then?" asked Mrs. Rhein. "We can pay \$5,000; the payment from the summer and what we owe for now."

"The problem is that this past Rosh Hashanah was shemittas kesafim," answered Mr. Rhein. "The outstanding payment due in the summer was canceled! I wrote a pruzbul before Rosh Hashanah to prevent loans from being canceled, but I know that Uncle Jack is not the kind of person who would have written a pruzbul. It's going to be hard to explain to him that because of shemittas kesafim the summer payment was canceled."

"Can we pay him anyway?" asked Mrs. Rhein.

"That's what I'm trying to figure out," said Mr. Rhein. "If I do that, are we violating the mitzvah of shemittas kesafim?"

"You can ask Rabbi Dayan about this," said Mrs. Rhein. "He'll tell you what to do!"

Mr. Rhein called Rabbi Dayan and explained the situation. "What should I do about the summer payment?" he asked.

"The prohibition of demanding the loan after Shemittah is incumbent upon the lender," replied Rabbi Dayan. "The borrower is not in violation if he repays the loan. This differs from the prohibition of ribbis (interest), which both the lender and borrower violate. Nonetheless, when the lender demands the loan and the borrower pays, according



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### CUSTOMER SERVICE (II)

Some stores assist customers in choosing the product that best suits them. For example, clothing stores often have a salesperson who helps customers choose a size and style that match their taste. Sometimes customers spend time with the salesperson discussing a product they have no intention of purchasing. They intend to purchase the product elsewhere, where the prices are cheaper, and are simply taking advantage of the customer service the store provides.

**Q: Although it is understood that it is improper to use a store's customer service without intent to purchase, does this practice violate any halachic prohibition?**

**A:** Last week, we noted that this practice may violate the prohibitions of onaas devarim and geneivas daas. We will now point to other prohibitions that, depending on the circumstances, may be violated if one follows this practice:

**3. Gezel - Theft.** Borrowing an item without permission is an act of theft (C.M. 292:1). Accordingly, a person interested in purchasing a sefer directly from the author because it is cheaper may not go to a store that sells that sefer to obtain the author's contact information, since he is borrowing the store's sefer without permission (Sim Shalom, Piskei Rav Elyashiv, found at the end of sefer Mishpat K'Halachah 228). Even though the store owner allows people to browse through the sefarim, this allowance is limited to potential customers. However, if someone's intent is to use the sefer only to obtain a phone number in order to purchase the sefer elsewhere, it is likely that the owner would not want the sefer to be handled. Some suggest that one may be considered a ganav even without handling any merchandise. When it is

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to some authorities he violates lifnei iver, causing others to sin" (Shemittas Kesafim U'Pruzbul 5:3).

"So what should I do?" asked Mr. Rhein.

"You are allowed to give the money to the lender, despite the cancelation of the debt, as a gift," answered Rabbi Dayan. "In fact, Chazal encourage the borrower to do so, and view it favorably. Moreover, the lender can even hint to the borrower that although Shemittah has passed and he is bound to cancel the debt, he would like the money, if offered as a gift" (C.M. 67:36).

"Thus it would be proper to tell Uncle Jack that, although Shemittah canceled the loan, you are giving the payment as a gift," continued Rabbi Dayan. "It would be best to do so before he asks you for the money, since the lender violates the prohibition of shemittas kesafim when he demands the loan, even before receiving payment" (Derech Emunah, Hil. Shemittah V'Yovel 9:164; Shemittas Kesafim U'Pruzbul 4:2-5).

"I'm afraid this might confuse him," said Mr. Rhein. "And he might ask for the money before I have a chance to give it to him."

"If so, you can simply repay him," said Rabbi Dayan. "The Rema (C.M. 67:1) cites an opinion that because shemittas kesafim is Rabbinic nowadays, it does not apply outside of Eretz Yisrael. This was the practice in many European communities. Although we now instruct people to draft a pruzbul, the borrower can repay without concern of lifnei iver, since the lender can rely on this opinion" (Igros Moshe C.M. 2:15; Shemittas Kesafim U'Pruzbul 5:[6-7].)



## MONEY MATTERS

### PARTNERSHIP # 11

#### Business Expenses and Losses

**Q: My business partner made certain decisions that incurred significant expenses or resulted in loss. Does he bear liability?**

**A:** Partners are authorized to act on behalf of each other, provided that the decisions are made in accordance with the initial agreement or common practice. Thus, even if the decision incurred expenses or resulted in loss, the liability is shared, just as profits are shared. However, if the partner's decision deviated from the initial agreement or common practice, he alone bears liability for the loss (C.M. 176:10; 178:3).

Nonetheless, since partners are considered shomer sachar on the joint assets, if the partners began working for each other at the same time, some irresponsible losses are still included in the exemption of balav imo (the owner was in his service). However, depending on circumstances, such loss may be ruled as active damage (mazik b'yadayim), which is not covered by this exemption (C.M. 176:8; Pischei Teshuvah 176:13; Mishpat Shalom 176:48[60]; Aruch Hashulchan 176:35).



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clear that the owner would not allow non-customers to enter his store, doing so is trespassing, which is a form of gezel (see Rashbam, B.B. 57b, d.h. "l'kula"; Erech Shai 369:6).

Even if one violates the prohibition of gezeilah by using the sefer without permission he is not obligated to pay the merchant since he did not suffer a financial loss. However, other violations may trigger an obligation to pay for the service that was used.

**4. Mazik – Damages.** A merchant may become busy with a "customer" who has no intent of purchasing anything and as a result neglect an actual customer and lose a sale. Although the damage is indirect (grama), nevertheless, one may not knowingly cause indirect damage (B.B. 22b). Furthermore, in the opinion of some authorities the mazik (damager) has a moral obligation to reimburse the damaged party even though the damage was a loss of profit (Radvaz 1:84; Imrei Yosher 1:149; see also C.M. 333:2).

**5. Oshke – Withholding an employee's pay.** Some suggest that someone who uses the merchant's expertise to help him make his purchase but intends to make that purchase elsewhere may owe the merchant money for that customer service. The merchant is only willing to invest time with potential customers. In all likelihood he would not be willing to spend time discussing his products with someone who does not intend to make a purchase without charging him for that advice (see Rema, C.M. 264:4).

These issues apply even if one takes an employee's time rather than the merchant's. The merchant pays his employees to be productive and such a customer prevents the employee from being productive.

Behaving in this manner certainly demonstrates a lack of consideration and derech erez and, as we have demonstrated, may even violate numerous prohibitions.

For questions on monetary matters,  
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