



# BUSINESS WEEKLY

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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### A LITTLE EXTRA

The Weisers had moved across town some years back but remained friendly with their former neighbors, the Landers. The families arranged to go out together to a restaurant.

At the end of the meal, the waiter brought the bills for each family. The Weisers' bill came to \$480.

Mr. Weiser pulled out his wallet, but couldn't find his credit card. "I don't believe it!" he exclaimed. "I accidentally left my credit card on the desk last night after paying some bills."

"I didn't bring my pocketbook," Mrs. Weiser added. "So I don't have mine, either."

"No problem," said Mr. Lander. "I'll charge the bill to my card and you can pay me back when it's convenient."

"We would appreciate that," said Mr. Weiser.

Mr. Lander told the waiter to charge both bills to his card.

The following week, Mr. Weiser stopped off at Mr. Lander's house to repay him for laying out the money. He handed Mr. Lander an envelope.

"Thank you very much," said Mr. Lander. "It was \$480. Is the right amount in here?"

"Yes," said Mr. Weiser. "I counted the money."

After Mr. Weiser left, Mr. Lander opened the envelope. He counted the money and found \$600. There were five \$100 bills and five 20s. "That's strange," Mr. Lander said. "He only owed \$480."

"You should call Mr. Weiser and return the extra to him," said Mrs. Lander. "He clearly made a mistake. He should have given four bills of each, but gave an extra one of each."

"Do you think he would make such a mistake?" asked Mr. Lander.

"It's possible," replied Mrs. Lander. "Sometimes bills get stuck or a person makes an error in his count."

"It seems strange," said Mr. Lander. "I asked Mr. Weiser whether it was the right amount, and he said that he counted the money."

Mr. Lander decided to consult Rabbi Dayan. "What should I do with the extra money?" he asked.

"You must notify Mr. Weiser and return the extra money to him," answered Rabbi Dayan.

"Why is that?" asked Mr. Lander.

"The *Gemara* (B.M. 63b) teaches that when the borrower returns extra bills, we assume that he counted wrong, within reason," explained Rabbi Dayan. "A bill of the wrong denomination is also assumed to be a mistake, if the bills are somewhat

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## BHI HOTLINE

### PAYMENT BY CHECK

I am a party planner. Generally I contact and book a

hall, a caterer, a band, etc. The customer pays the providers and the providers pay our fee, usually a percentage of what they charged the customer. Occasionally it is easier for the customer to pay us and we then deduct our fee from that money and send the remaining amount to the provider.

Recently a customer dropped off an envelope, explaining that he wanted to pay that day to fulfill the *mitzvah* of paying a worker on the day he completes his employment (*b'yomo titen secharo*). To my surprise it contained two postdated checks, one for next month and the second for the following month.

**Q: Was he obligated to pay in full that day? If one pays an employee with a check does he fulfill the mitzvah of paying that day, or is a check similar to an IOU and he does not fulfill the mitzvah?**

**A:** Although paying with a postdated check does not fulfill the mitzvah of paying an employee on time, nevertheless the prohibition of delaying payment to an employee does not apply in your circumstance, as we shall explain.

The character of the obligation to make a payment depends on the circumstance. When paying for damages, he may even pay with objects of value (*shaveh kesef*) (C.M. 419:1). When repaying a loan one must use cash unless he does not have cash, in which case he may use objects of value (C.M. 101:1). When paying an employee, the standard method is cash. Even if the employer does not have cash, it is his responsibility to exert the necessary effort to obtain cash to pay his employee (C.M. 336:1; *Pischei Teshuvah* 1; see also



## STORY LINE

similar" (C.M. 232:2; *Aruch Hashulchan* 232:3; *Pischei Choshen*, *Geneivah* 11[58]).

"What if it was clearly not a mistake?" asked Mr. Lander. "For example, if there were five \$100 bills?"

"In that case, you would not have to return the extra \$20," replied Rabbi Dayan. "The extra was clearly added intentionally. We assume that he owed you money from some other occasion or gave it as a gift."

"Wouldn't giving money as a gift be *ribbis* (interest), though?" asked Mr. Lander. "How does that help?"

"Indeed, the borrower is not allowed to add extra when he repays, even as a gift," said Rabbi Dayan. "However, if the lender received the extra gift without realizing it, some say that he is not obligated to return it" (Y.D. and *Pischei Teshuvah* 160:4).

"Why not?" asked Mr. Lander.

"The rules of returning *ribbis* depend on the severity of the *ribbis*," replied Rabbi Dayan. "Standard, stipulated interest for a loan (*ribbis ketzutzah*), which is Biblically prohibited, must be returned and is enforceable in *beis din*. Most other forms of *ribbis* (*avak ribbis*), which are prohibited by the Sages, are not enforceable, but the lender has a moral responsibility to return it.

"However, a gift that the borrower gives after repaying the loan (*ribbis me'ucheres*), there is not even a moral responsibility to return. Regarding extra, added while repaying the loan, such as this, there is a dispute whether there is a moral responsibility to return it" (Y.D. 161:2,5; *Shach* 160:4; *Chavas Daas*, Y.D. 160:2).



## MONEY MATTERS

### RENTALS #9

Fit For Use

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

**Q: I rented a resort cottage for two weeks and the air conditioner is broken. Can I demand a different cottage or a reduction in price?**

**A:** The owner is required to provide the cottage fit for use, in accordance with the stipulations or common expectations. In the summer the cottage is considered defective without an air conditioner and he is required to repair it (C. M. 232:6; 314:1; *Nesivos* 310:1).

Even if you continue to use the cottage, you do not forfeit the right to demand repair (unlike a defective purchase), since you expect the owner to repair it (C.M. 232:3; *Sma* 314:6).

When repair is not possible, if the rental specified this particular cottage, the owner is not required to provide an alternate one, but you have the right to withdraw from the rental. However, you cannot demand unilaterally to continue renting at a reduced price. If the rental did not specify this cottage, the owner is responsible to provide an alternate one (C.M. 232:4).



## BHI HOTLINE

Hotline in *Business Weekly* #239.

An important principle is as binding as though it were explicitly stipulated between the two parties (C.M. 331:1). Therefore, according to most *poskim*, when common practice is to pay an employee by check or credit card, that method of payment fulfills the *mitzvah*. This is certainly true when merchants accept third-party checks as payment, and a check enables the employee to purchase his needs.

The allowance to pay an employee by check, however, has limitations. It is allowed only when the check is dated that day so that it can be used to make purchases. There is no custom to pay with a postdated check. Additionally, in industries where checks are not used for payment — for example, taxis — a check may not be used to pay an employee (see *Sefer Hachek B'Halachah* 13:22-29, and note 132 that some *poskim* maintain that one never fulfills the *mitzvah* of paying an employee on time if he issues him a check).

In your situation, although the customer gave you postdated checks, he did not violate the prohibition of delaying payment of an employee's wages. You are not an employee of the customer, you are an agent for the providers and paid by them. Furthermore, the customer does not violate the prohibition of delaying payment to the providers since an employer does not violate the prohibition if he hired the employee via an agent. Since you make the arrangements between the customer and the provider, it is considered as though the provider was hired via an agent.

Nevertheless, even when the prohibition of delaying payment to an employee does not apply, there is a prohibition (*midivrei Kabbalah*) against simply pushing off payment of an employee when one has the means to pay him (C.M. 339:7).

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