



# 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

### SHARDS OF GLASS

Mrs. Spitz was spending the summer in a bungalow colony with her children. One day she returned from shopping and began unloading the packages from her car. A bag containing a bottle of apple juice ripped;

the glass bottle fell and shattered.

"That's strange," Mrs. Spitz said to herself. "I didn't overload the bag; I don't understand why it ripped." She carefully pushed aside the broken pieces of glass with her foot and continued to unload the car.

When she finished unloading, Mrs. Spitz picked up the large pieces of glass. "See if you can find the outside broom to clear away the small pieces," she told her daughter as she began putting away the food.

Meanwhile, one of the neighbor's young children came running by barefoot. He stepped on the small shards of glass and cut his foot; it began bleeding profusely! The neighbor heard him crying and ran out. She hurried with the child to the local doctor, who removed a small piece of glass and put in two stitches.

When the neighbor returned, Mrs. Spitz went out to meet them. "Is your son OK?" she asked worriedly. "A bottle of juice fell and shattered. I was going to clear away the remaining glass shortly."

"He needed two stitches, but should be all right," said the neighbor. "I'm glad that it was only a small piece and that the doctor was available."

"I feel that I owe you," said Mrs. Spitz, "at least to cover your co-pay and something to appease your child."

"It's not necessary," said the neighbor. "It's not your fault that the bag ripped and the bottle broke."

"I'd feel more comfortable if we asked Rabbi Dayan," said Mrs. Spitz. "I heard that he came to visit his daughter today."

"Mrs. Spitz is required to clean up the dangerous shards," said Rabbi Dayan. "Nonetheless, if someone was injured by them she is not legally liable, but is morally responsible *b'dinei Shamayim* if she could have removed the shards but neglected to do so."

"Could you please explain?" asked the neighbor.

"A potentially hazardous object left in a public place is included in the category of damage called *bor* (pit),"

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## BHI HOTLINE

### RIBBIS IN CIVIL COURT

My ex-employer filed a civil suit against

me claiming that I am violating our non-compete clause. I contacted a *beis din* who instructed him to withdraw his claim from court and have the issue adjudicated in *beis din*. He ignored their instructions and I was forced to respond to the court. Once in court, I filed a countersuit for outstanding wages that he owes me, and for him to cover my lawyer's fees and court costs.

After a prolonged process, the judge ruled that he must pay me the money he owes me. The judge also ruled that he must pay interest on the money he owed me from the time that he terminated my employment. However, the judge did not obligate him to pay my lawyer's fees and court costs.

**Q: May I collect the interest money that the judge granted? If not, may I at least collect that interest in order to cover the legal expenses that I was forced to pay?**

**A:** When a borrower refuses to repay a loan and the lender is forced to file a claim against him in civil court (with permission from *beis din*), even if the court obligates the borrower to pay interest it is prohibited for the lender to collect that interest and for the borrower to make an interest payment.

The prohibition against collecting interest applies to a lender who was seeking repayment of a loan. Permission from *beis din* to go to court for assistance in collecting a loan does not permit collection of *ribbis*.

However, if one went to court to recover stolen money or wages that were not paid, there is a debate whether the plaintiff may accept *ribbis* if the court awards it.



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explained Rabbi Dayan. "The Torah holds the one who created the hazard liable, even if he does not own it. Thus, one who digs a pit in public property is liable as if it were his" (*B.K. 29a-b*).

"So why am I not legally liable for having left the shards there?" asked Mrs. Spitz.

"When the bottle broke, you immediately relinquished ownership of the worthless shards," replied Rabbi Dayan. "When the owner relinquishes ownership of the hazardous item, his continued liability depends on whether he was at fault that the item fell there. If he was at fault for creating the hazard, he remains liable; if he was not at fault, he is no longer liable. Thus, Mrs. Spitz is not liable, as it was not her fault that the bottle broke there" (*C.M. 411:1-2; 412:4; Pischei Choshen, Nezikin 8:11-13*).

"Why does Mrs. Spitz have to clear the shards that she relinquished ownership of?" asked the neighbor.

"If the former owner could remove the hazard but neglects to do, it is still included in *grama* (indirect damage)," answered Rabbi Dayan. "A person is required to avoid doing indirect damage, even though he is not legally liable. Therefore, Mrs. Spitz is required to clear the shards, as she would be any *grama* that is prohibited, and remains morally responsible *b'dinei Shamayim* if she didn't. However, if she did not have a reasonable chance to clean, she would not be responsible at all, since one is responsible *b'dinei Shamayim* for *grama* only when intended or negligent, not if unintended or beyond his control" (*Rema 386:3; Pischei Choshen, Nezikin 3:39; Halvaah 2:[76]*).



## MONEY MATTERS

### RENTALS #15

Extending a Rental

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

**Q: I rented an apartment for a year, but continued living there afterward without renewing the lease. What are the respective responsibilities?**

**A:** Many rental leases stipulate that the lease is renewed automatically at the termination date or carries on as a month-by-month lease, sometimes at a slightly increased cost. Whatever was stipulated is binding. Similarly, in some places the common practice is that the lease renews automatically with the same conditions (*C.M. and Taz 312:14; Sma 312:20*).

If there is no stipulation or common practice, some say that either party can terminate the rental henceforth at any point without giving notice, whereas others consider it now a rental without a time frame, which requires at least 30 days' notice (*Meiri, B.M. 101b; Aruch Hashulchan 312:24*).

If one party stated his intent to extend the rental when the lease terminated and the other party was silent, and the tenant remained a short time, it is questionable whether the silence reflects tacit agreement to extend and now requires giving notice (*Kesef Kodashim 312:8*).



## BHI HOTLINE

Some authorities maintain that when the debt was not generated by a loan, one is permitted to accept the *ribbis* in such a case (*Shoel U'Meishiv, second edition, 4:123*).

Most authorities reject this position and contend that since ultimately the *ribbis* is paid due to the defendant's late payment (*agar natar*), it is prohibited (*Maharsham 1:90, 3:69; Maharshag 4:45; Shevet HaLevi 9:309*). In your case, where your intent is to collect the *ribbis* to cover your lawyer's fee and court costs, all opinions would agree that it is permitted.

We have explained (*Business Weekly #308 and Hamodia May 11, 2016*) that when *beis din* instructs a plaintiff to withdraw his case from the secular court to have the disagreement adjudicated in *beis din* and warns him that if he refuses to comply he will bear the defendant's court costs and he ignores the warning, he must cover the defendant's costs due to the principle of *garmi* (indirect damage for which one is liable [*C.M. 388:5; Shach 388:26 and Rabi Akiva Eiger at the end of siman 14*]).

Since the money that you claimed was undisputed, you are permitted to claim and keep the *ribbis* the court obligates your employer to pay to cover all of your court-related expenses. Once your employer pays the money, you must inform him that you collected the money to cover your court costs, which he is halachically obligated to pay, and not *chas v'shalom* as *ribbis* for the delayed payment of your wages (*Minchas Shlomo 2:68:[8]*).

However, it is important to note that some *Rishonim* prohibit issuing a loan with interest to recover a debt. For instance, if one is owed money for his salary, theft, etc., he may not lend the debtor money with interest in order to recover what he is owed (*Shu"t Rashba 2:231*).

For questions on monetary matters,  
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