

BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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FOR INFORMATION ON
DEDICATING THE **FLATBUSH**
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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Gershon's Gaffe

Mr. Schmeltz stopped off at Gershon's Gourmet on Friday morning.

"I'm here to pick up the order for the Schmeltz kiddush," he said to the man behind the counter.

The man returned a minute later with two bags and a box.

"Here you go," he said. "One tub of cholent, three potato and three noodle kugels, two cold cut platters, and salads. What's the occasion?"

"We're celebrating the birth of our grandson," replied Mr. Schmeltz.

"Mazel tov," the man wished him.

"Thank you," Mr. Schmeltz replied. "The baby is really cute; he's our first grandson!"

Later that afternoon, the Schmeltzes went to the shul to arrange the food on the hotplates.

"There seems to be an awful lot of cholent," Mr. Schmeltz said to his wife. "Two tubs are

way more than we need!"

"Oh," said his wife. "I only ordered one tub of cholent."

"Well, I see two tubs," said Mr. Schmeltz. "Could there be some mistake?"

Mrs. Schmeltz examined the order and the receipt. "You're right," she said to her husband. "There is an extra tub. What do we do with it now?" She tried calling Gershon's Gourmet, but they had already closed.

Everyone who had come to help set up had a different idea.

"If the cholent's not yours, you can't use it," said one person. "Give it back after Shabbos."

"What's the point in doing that?" objected another. "There's not much to do with cholent after Shabbos. Anyway, I don't think the caterer can take the food back. It's his mistake, so it's his loss. Just use it!"

"That's not fair," chimed in a third. "If you want to use it, you have to pay. Split the cost 50/50."

Mrs. Schmeltz turned to her husband. "What do you say?"

"To be honest, I'm also not sure," he said. "But Rabbi Tzedek is already downstairs in the shul. Let's ask him!"

The Schmeltzes approached Rabbi Tzedek. "We ordered food for the kiddush, and the caterer put in more cholent than we ordered," Mr. Schmeltz said. "What should we do now?"

Rabbi Tzedek responded, "You can return the extra cholent without paying, or use it and reach an agreement afterward with the caterer based on how much it was worth to you."

"Why is that?" asked Mr. Schmeltz.

"The extra tub was added inadvertently,"

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Their Father's Debt

Submitted by M. L.

Several years ago, Reuven borrowed \$20,000 and wrote a simple IOU to Shimon. He passed away shortly thereafter.

The due date for the loan passed, and Shimon contacted Reuven's heirs to repay the debt. Knowing their father to be a man who paid his debts as soon as money was available, they suspected that the debt had already been repaid.

The two parties submitted their dispute to our jurisdiction.

Q: Are the heirs obligated to repay their father's debt?

A: Generally, children have an obligation to repay their father's debt from his estate. Even if the loan was made orally, the enactment is in force; if necessary, beis din will force the heirs to pay their father's debt

(C.M. 107:1).

The relevant issue to be explored in this case is the fact that a borrower can claim that he paid a debt if the only evidence of the debt is an IOU with his signature (C.M. 69:2). It would seem that because the father could have effectively made that claim, the heirs are exempt as well from repaying this loan.

However, the reason that this claim may not apply in this case is based on the prin-

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explained Rabbi Tzedek, "so it is considered as if you found an aveidah, a lost item, of the caterer."

"Shouldn't we return it then?" asked Mrs. Schmeltz.

"That would be true for a non-perishable item, like an extra bottle of soda," Rabbi Tzedek said. "In that case, you would simply notify the caterer after Shabbos. If you used it, the caterer would be happy for you to pay its price (C.M. 267:21)."

"On the other hand, cholent is perishable and minimally usable after Shabbos," continued Rabbi Tzedek. "The store is not even allowed to accept it back afterward for resale. Since it will effectively go to waste, the finder should try to sell it on behalf of the owner (Sm"a 267:30). Alternatively, he can take it for himself at a fair price (Rema 267:24)."

"What does 'fair price' mean?" asked Mr. Schmeltz.

"Price is determined by the place and time the item is sold," replied Rabbi Tzedek (Rosh,

Kiddushin 1:17). "Normally, if the 'fair price' is not clear, it should be evaluated by beis din, or at least by three knowledgeable people (Sm"a 267:24; Igros Moshe C.M. 2:45d). However, late on a Friday afternoon, there is almost no market for extra cholent, other than you! Although you personally probably don't need a second tub, people are often willing to buy extra if it is available at a significant discount."

"How do we evaluate its value to us?" asked Mrs. Schmeltz.

"That depends on whether you ordered sparingly or generously; whether additional people came; how much other food there was," replied Rabbi Tzedek. "Foods such as kugel or cold cuts can be frozen or used during the week, so they would be worth more than cholent, which is not of much use later." Mr. Schmeltz thanked Rabbi Tzedek.

"If we decide to use the cholent, we'll work something out with Gershon's Gourmet," he said.

ciple that a person does not ordinarily repay his debts before they come due. Therefore, if the father were to claim that he already repaid the debt before the due date of the debt, his claim would be dismissed (C.M. 69:5, 78:1). The presumption that a person does not repay his debt early is so compelling that a borrower might not even be believed if he claimed that he had been repaying the debt in regular installments (see Pischei Teshuvah C. M. 78:2). Furthermore, if a debtor dies and his heirs claim in beis din that their father informed them that he had repaid a debt before it came due, their claim is not considered credible since their father's

claim is summarily dismissed (Shach 78:14).

This should not apply if the father was known to pay his debts before the due date. Nevertheless, even in such a case we must assume that the debt was not repaid. As the father was well aware that most people do not prepay debts, he would have asked for a receipt as a legal proof that he settled the debt (see Imrei Binah, To'en V'nitan 15). Consequently, in this case as well, since the father died before the loan came due, the claim that the loan was paid is not credible.

Assuming that the father's estate was worth at least \$20,000, the heirs must repay that amount.

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Shomrim: Guardians #9

Q: What oath is required of a shomer (guardian) who does not return the entrusted item?

A: If the guardian claims exemption — e.g. he claims the entrusted item was burned in a fire — he is required to include in his oath three elements (B.M. 6a; C.M. 295:2; Taz):
1) He was not negligent, but guarded the item properly.

2) The item was lost in the stated manner and is no longer in his possession.

3) He did not misappropriate the item for his personal use beforehand. [If the guardian misappropriated the item, he remains liable until he returns it.]

If the guardian will pay for the item — e.g. he admits it was lost through his negligence — he is still required to swear that it is no longer in his possession, unless the

item is a standard one readily available on the market. [Otherwise, we are concerned that he is scheming to "acquire" the item by admitting guilt and paying for it.] If the owner disputes the stated value, the guardian must also include the item's value in his oath (C. M. 295:1).

Nowadays, beis din discourages swearing and usually advocates a compromise in lieu of the oath (Pischei Teshuvah 87:19, 22).

MONEY MATTERS

DAVAR SHELO BA L'OLAM PART 3

Selling Cash Flow or Income Stream, Buying Interest Only Bonds (IO), Collateralized Debt Obligation (CDO), and Synthetic Coupon Bonds

Sunday mornings at Bais Moshe Shmiel

(Rabbi Rottenberg's shul: 1782 East 28th, btwn Quentin and R)

Seder Limud 9:00 - 9:45 am

Shiur: R' Moishe Bergman, Rosh Chabura 9:45 - 10:30 am

Refreshments served

Stipends are available to participants of the seder limud

For more information, contact Rabbi Rottenberg: 347-533-2299 or rottenberg@btinternet.com

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