

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #127 / PARSHAS BEREISHIS
FRIDAY, OCTOBER 12, 2012
26 TISHREI 5773

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STORY LINE

by Rabbi Meir Orlian

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Snatching Security

Mr. Freund slammed the phone down. "This is just impossible!" he muttered. "What's going on?" asked his wife. "I lent someone money a year ago," Mr. Freund said. "It was supposed to be for six months." "Has he paid you back?" asked his wife. "I wish!" declared Mr. Freund. "He keeps coming up with excuses. First his daughter got married. Then his son was bar mitzvah. Then he had an accident, which wasn't covered by insurance. He keeps saying, 'A little longer; a little longer,' but I'm afraid I might never see the money again." "The obvious thing, then, is to summon him to beis din," said his wife. "Then he'll have to pay." "I'm planning to do that," said Mr. Freund. "But I suspect he'll try to push things off and weasel his way out."

A silence fell in the room for a few minutes. "I know what I'll do," Mr. Freund suddenly announced. "I'm going to pay him a visit after Shabbos and take his silver Shabbos candlesticks as security until he pays. That will 'encourage' him to make good on his debt!" The following Sunday, Mr. Freund went over to visit the borrower, Mr. Blass. "When do you think you can pay me?" Mr. Freund asked. "Unfortunately, things are very tight now," said Mr. Blass. "I don't have money available, but hopefully in a month or two I should be able to pay." On his way out, Mr. Freund grabbed the Blasses' silver candlesticks. "What are you doing?" cried Mr. Blass. "Put the candlesticks down!" "I'm taking the candlesticks as security un-

til you pay what you owe me!" Mr. Freund replied. "I'll pay you when I'm able to," blurted Mr. Blass, as Mr. Freund walked out the door. "But be aware that you just violated a Torah prohibition! You also have a positive command to return them." When Mr. Freund got home, he called Rabbi Tzedek. "If the borrower is delinquent in repaying his loan, am I allowed to take security from his house?" he asked. Rabbi Tzedek said, "The lender may not enter the borrower's house to take security or to forcibly grab it from him." "I didn't realize that grabbing a security involved a prohibition," said Mr. Freund. "Yes," replied Rabbi Dayan. "The Torah states that when you have lent to someone, 'You shall not enter his home to take security from him (Devarim 24:10)'. [Tak-

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Who Benefits?

Submitted by Y. A.

A friend and I ran a summer camp and purchased \$750 worth of supplies on credit. The camp was not very successful and we just barely broke even. My friend's brother went to the store and negotiated on her behalf with the owner, who granted a 20-percent discount, amounting to \$150. My friend claims that the discount was for her only, and I still owe \$375.

Q: Is my friend correct that she is the sole beneficiary of that discount?

A: It depends whether your friend asked her brother to speak to the owner on her behalf or whether her brother spoke to the owner of his own volition. In principle, each partner agrees to work for the benefit of the partnership rather than for personal gain and that those benefits are equally shared (C.M. 178:1; see also Taz). Also,

neither partner can unilaterally dissolve the partnership and decide to work for himself; therefore, each partner acts as a representative of the partnership and is an equal beneficiary of all profits and benefits (Nesivos 178:1). Therefore, even if the benefactor states that he wants to benefit only one of the partners, it must be shared with all the partners (Sma 178:1). However, this principle applies only if the benefit resulted from the effort of one of

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ing from his enclosed property may also be included.] In fact, even an agent of beis din may not enter the borrower's home to take security, but rather the borrower should bring it out of his own accord, or beis din's agent may grab it from him outside. The lender, however, may not forcibly grab security from the borrower even outside the home (97:6; Pischei Choshen, Halvaah 6:1[1*]).

"There is also a specific prohibition against taking food utensils as security," added Rabbi Tzedek. "Even beis din's agent should not do so. Professional tools used to earn a livelihood are considered by some as included in this (see Rama 97:8; Gra 97:17)."

"What do I do now that I did grab his candlesticks?" asked Mr. Freund. "Must I return them?"

"If the lender grabbed an item as security, although he violated the prohibition, he does not necessarily have to return it," replied Rabbi Tzedek. "However, if the borrower does not have another item of this kind, the lender must return it for the duration of the time the borrower needs it.

"An item typically used at night must be returned for the duration of the night, as it says: 'You shall return the security to him when the sun sets (24:13)'. An item typically used during the day must be returned for the duration of the day. On the other hand, when the borrower willingly gave the item as security at the time of the loan, there is no need to return it (97:16, 20; Ahavas Chessed, vol. I, 8:1)."

The following Friday, Mr. Freund returned the candlesticks to Mr. Blass in time for Shabbos.

the partners. If someone other than one of the partners was able to generate a benefit for one of the partners, it depends if he acted on his own initiative for the benefit of one of the partners, or as an agent on behalf of a partner. If he acted on his own initiative, there is no reason that all partners should share the benefits. If he acted as an agent for one of the partners, that agent also works for the benefit of the partnership rather than for the personal gain of the partner that appointed him (Ne'os Deshe 29, cited in Pischei Teshuvah 178:1).

Accordingly, in your case, if your friend asked her brother to speak to the storeowner on her behalf, that discount

would be shared by the two of you. If he decided to negotiate with the storeowner on his own, the discount that he secured would belong to your friend exclusively.

Moreover, in your case, even if the storeowner did not verbalize that the discount was for your friend, it is assumed that he agreed to what was requested of him by your friend's brother and that is comparable to verbalizing explicitly that the discount was for your friend (Pamonei Zahav). However, if it was evident that the storeowner was offering a discount to the partnership rather than for your friend exclusively, that discount must be shared by the two of you.

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Shomrim: Guardians #27

MONEY MATTERS

Q: I borrowed my neighbor's handcart for a week to move across the hall. I also hired him for two days to help in the move. If the handcart is stolen or ruined, am I liable?

A: Regarding one who borrows an item, the Torah states: "If the owner is with him, he shall not pay (Shemos 22:14)." The Gemara (B.M. 94a) explains that if the

owner of the item is in the employ or service of the borrower, the borrower is not liable for the item. This exemption is called "shemirah biv'alim."

The owner must be in the service of the borrower when the item is initially borrowed, since at that point the borrower assumes liability.

Even if the owner is no longer in his employ when the item is lost, the borrower remains

exempt (C.M. 346:1).

This exemption applies also to other shomrim. There is a dispute in the Gemara (95a) whether it extends even to negligence; the halachic ruling is that the borrower or guardian remains exempt (291:28; Pischei Choshen, Pikadon 6:[1]). However, if he actively damaged the item, he is liable for it, like any other person who damages (Pischei Teshuvah 176:13).

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