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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

UNSTIPULATED INTENTIONS

The boss called Mr. Haber into his office. "We are downsizing our branch here," he said. "We need to relocate you to another city."

Mr. Haber was not pleased about the move but needed to keep his job, so he and his wife began making preparations. They inquired about yeshivos, housing options and moving companies. As the moving date approached, they began sorting their household items, those to take and those to sell.

Three weeks before moving, they posted a notice in their community bulletin: "Moving sale! Many household items at reduced price. Sunday afternoon this week and next." They also prepared a placard at the front of the house.

Among the items sold were Mr. Haber's bicycle, their refrigerator — with an agreement to leave it until they moved — and some heavy professional tools.

A week before the move, Mr. Haber's boss called him in. "We have some good news for you," he said.

"What is that?" asked Mr. Haber.

"Three employees transferred to other companies, so we would like you to stay here," said the boss. "There is no need to relocate you."

"Wow!" exclaimed Mr. Haber. "You really caught me by surprise! We've been making plans for two months, but we're very happy to stay!"

Mr. Haber immediately shared the good news with his wife. "What about all the items we sold?" she asked. "It's going to cost us double to replace them. Can we get them back?"

"I don't know," he replied. "They're sold!"

"But we sold them because of the anticipated move," she said. "If we're not moving, the sale should be null and void."

"We didn't stipulate that the sale was contingent on the move," said Mr. Haber. "We don't have legal basis to revoke the sale."

"Why don't you consult Rabbi Dayan?" suggested his wife. "See what he says."

Mr. Haber called Rabbi Dayan. "We sold various household items, including my bicycle, the refrigerator and some professional tools, with the expectation of being relocated," he said. "It turns out we're staying. Can I annul those sales?"

"The Gemara (Kiddushin 49b) discusses the case of a person who sold his property with intention to emigrate to Eretz Yisrael, but did not mention this at the time of the sale," replied Rabbi Dayan. "Although his plans fell through, Rava rules that he could not invalidate the sale, because non-verbalized inten-



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PAYING WORKERS

I own a camp, and currently we do not have the funds to pay all our bills. The staff is un-

aware of our financial situation and hasn't asked to be paid.

Q: Am I permitted to pay my brother his salary since I know the financial challenges he faces?

A: Before addressing your specific question, which we will do next week, we must first discuss the general principles involved in repaying creditors.

When there are multiple creditors who seek payment from the debtor's real property they are prioritized according to the dates the loans were issued. [Nowadays even the right to repossess land has changed, as explained in the previous issue.] When collecting from movable property this priority does not apply, since a creditor does not rely on property that can easily be hidden.

In a circumstance in which a debtor does not have sufficient funds to repay all his debts and he paid one creditor ahead of the others, we would not force the creditor to release what was collected. Nevertheless, if the debtor has not yet paid any of his creditors, the available funds are split between the creditors (C.M. 104:10).

There is a debate as to how to divide funds when creditors are owed different sums of money. One approach is for the money to be divided proportionately among the creditors, meaning that each creditor receives a percentage of the available funds consistent with the amount he is owed (Rabbeinu Chananel). The second approach is for the creditors to divide the funds equally. The rationale is that the claim of a creditor who is owed less is just as strong as the claim of a creditor who is owed more (Sema 104:27).

Shulchan Aruch follows the second opinion, although some authorities contend

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STORY LINE

tions are not of legal consequence (devarim sheb'lev einam devarim)."

"But we clearly mentioned that the sale was a moving sale," noted Mr. Haber. "Does that make a difference?"

"Tosafos (s.v. devarim) infer that if the person mentioned his intention to emigrate at the time of the sale he could undo it," explained Rabbi Dayan. "They distinguish between three cases: 1) Where circumstances indicate that the sale was predicated on something, as in the Gemara's example, we suffice with verbal indication (giluy daas) at the time of the sale. 2) Where there isn't sufficient circumstantial support we require an explicit stipulation. 3) Where the intention is absolutely clear to all, it is not even necessary to indicate verbally" (C.M. 207:3-4).

"In our case there is circumstantial support," said Mr. Haber, "so should we be able to undo the sale on account of the giluy daas?"

"It would seem so," said Rabbi Dayan. "However, the Rema (207:4) limits Tosafos's ruling about giluy daas to real estate — which people do not sell without good reason. Movable items — which people often sell without great need — require explicit stipulation. Thus, although you mentioned your intention to move, there isn't sufficient circumstantial support to determine that the move was a conditional factor for the sale of the bike."

"What about the professional tools and fridge?" asked Mr. Haber.

"Those sales you can undo," replied Rabbi Dayan. "Since people sell their professional tools only for good reason, if the plans fell through, that sale is also invalidated when there was a giluy daas. Moreover, since the Rema's qualification is questionable, the seller can keep items still in his possession, such as the refrigerator" (See Pischei Choshen, Kinyanim 20:[56]; Pischei Teshuvah 207:5).



MONEY MATTERS

COPYRIGHTS AND PATENTS # 3

Q: How long does a person who created "intellectual property" have halachic rights over it?

A: According to the opinion (discussed last week) that a person has ownership over his intellectual property, there is no time limit to his rights, just as there is no time limit to his ownership of tangible property.

According to the opposing opinion that there is no ownership and that halachic monetary rights are rooted in other reasons (as will be discussed in future articles, b'eizras Hashem), there is a time frame.

For example, if rooted in dina d'malchusa or minhag hamedinah, the time frame would parallel that of secular law. In the U.S., this is 20 years for patents and lifetime plus 70 years after death for copyrights.

If based on hasagas gevul or similar reasons, the time frame would depend on the amount of time needed to recover the investment cost and earn a reasonable profit. Many early approbations [for reprinting sifrei kodesh] mention a time frame of four to ten years, or until the first printing was sold out. The Heidenheim Machzor, which entailed a great investment, was granted protection for twenty-five years! (Emek Hamishpat, Zechuyos Yotzrim, Intro. ch. 14).



BHI HOTLINE

that custom follows the first opinion (Maharsham 3:359). Others maintain that although the halachah follows the second position, a compromise should be negotiated (Aruch Hashulchan 104:15,17).

Some authorities maintain that these guidelines are directed toward beis din who must assist in dividing the debtor's assets, but the debtor may repay in any manner he chooses (Baruch Taam on Tumim 99:7; Bris Avraham, Y.D. 69[7], Poras Yosef 82), although it is morally debatable whether one should repay one creditor at the expense of another (Knesses Hagedolah 104:38). It seems that others contend that these guidelines are directed toward the debtor as well (Taz 99:2 and Tumim 99:7).

Furthermore, this discussion is relevant when all the creditors are seeking collection of debts, but there is a debate concerning the halachah when only one creditor files for collection. One approach is that the mitzvah to repay a debt applies only to the creditor who actively seeks reimbursement. Consequently, when only one creditor seeks reimbursement he should be repaid fully (see Ketzos 104:2). Others assert that the mitzvah applies even to creditors who are not actively seeking reimbursement, and the funds must be divided between all the creditors (Nesivos 104:1).

In your case, according to one opinion there is no obligation to pay the employees who have not yet asked to be paid, and you would be permitted to pay your brother. However, since it seems that some opinions maintain that you should divide the available funds among all the creditors, and according to some authorities it is improper to repay one creditor at the expense of another, it is advisable that you do not pay your brother ahead of the other employees. Next week we will discuss whether the fact that your brother is poor impacts the halachah.

For questions on monetary matters,
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