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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlan

OLD STROLLER UP FOR GRABS

Our stroller is too heavy," Mrs. Reich said to her husband. "I'd like to replace it with a lighter one."

"What should we do with the old one?" Mr. Reich asked. "It's still in good condition."

"We could give it away," suggested Mrs. Reich. "When we get the new one, post a sign in shul."

Later that week Mrs. Reich bought a new, lighter stroller and gave her husband a sign to post: "Heavy stroller in good condition available for taking. Please contact the Reichs."

A few days later, a family called to inquire about the stroller.

"We're happy to give it to you," said Mrs. Reich. "It's sitting in our basement."

"We really appreciate it," they said. "Can we come by next week and pick it up?"

"That's fine," said Mrs. Reich.

On Thursday afternoon Mrs. Reich went out to the park with the new stroller. While she was pushing the baby on the swing, someone took the stroller and walked off.

When Mr. Reich returned from work that evening, his wife related what happened. "What should we do now?" she asked. "We can't afford to buy a third stroller."

"We'll have to keep the old one," said Mr. Reich. "There's nothing else to do."

"But I already told the other family that we'd give it to them," said Mrs. Reich. "It's not nice to back out on them."

"They'll understand," said Mr. Reich. "We only offered the old stroller because we didn't need it, but now we need it. It's not like they paid us anything or we signed any agreement. We simply committed verbally, but circumstances changed and we're not in a position to give it away anymore."

"I don't feel comfortable about doing that without asking Rabbi Dayan," said Mrs. Reich.

Mr. Reich called Rabbi Dayan. "We offered our old stroller to a family last week, but our new one was stolen and we now need the old one," he said. "Can we retract our offer and keep it?"

"That depends on whom you offered the stroller to," replied Rabbi Dayan. "A transaction usually needs a formal act of acquisition (kinyan) to be legally binding," replied Rabbi Dayan. "For example, picking up the stroller or pushing it in the recipient's property. Nonetheless, a person is still expected to honor his word. Moreover, one who does not uphold his verbal commitments is considered un-



BHI HOTLINE

PAYING WORKERS: PRIORITIZING THE POOR. PART II

I own a camp, and currently we do not have the funds to pay all our bills. The staff is unaware 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: Last week we explained that according to many authorities a debtor with limited assets must equally divide those assets among his creditors even if the division is not done under the direction of beis din, whereas according to others, although it is not obligatory it is the moral way for the debtor to divide his available assets.

We concluded by mentioning the possibility that due to your brother's financial situation, it may be permitted to pay your brother ahead of your other creditors. While there are many instances in which one prioritizes relatives ahead of others — for loans (C.M. 97:1) and tzedakah (Y.D. 251:3), for example, the reason one prioritizes family ahead of others in those instances is that it is his own money that he is distributing. In the case of a debtor, since the creditors have a lien on his assets, the assets are not considered the debtor's and he cannot decide how to prioritize those funds (Ahavas Chessed 10:9).

The only basis for prioritizing payment to your brother would be the fact that he is poor, but on that basis all poor creditors would fall into that category. The Gemara (Bava Kama 111b) teaches that one who has two employees but lacks the funds to pay them both priori-

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STORY LINE

trustworthy (mechusar amana), since the recipient relied on his word" (C.M. 204:11).

"It's not as if I'm simply backing out," objected Mr. Reich. "There was a change in circumstances; our new stroller was stolen."

"The Rema addresses this point," replied Rabbi Dayan. "Indeed, the consensus of later authorities is that a significant change in circumstances, such as this, is reasonable cause for a person to retract from his verbal commitment" (Chasam Sofer, C.M. 102; Pischei Choshen, Kinyanim 1:[5]).

"Then what difference does it make whom the recipient is?" asked Mr. Reich.

"The Gemara (R.H. 6a) teaches that a pledge to charity is tantamount to a vow," explained Rabbi Dayan. "Thus, if the recipient was a needy family, the offer is not merely a verbal commitment, but rather a vow to charity! You may not retract from a vow, even if circumstances changed afterwards" (Y.D. 258:12; C.M. 125:5).

"Is there any way to undo the vow?" asked Mr. Reich.

"It is sometimes possible through hataras nedarim (nullification of vows), although it's not simple for charity vows," replied Rabbi Dayan. "Furthermore, Harav Shlomo Zalman Auerbach, zt"l, indicates that when a person annuls before Rosh Hashanah any vows that he will make during the year, as is customary, a verbal commitment such as this — which was not intended to be a vow — would not take the status of a vow. Thus, if the recipient family was needy, the issue requires further clarification" (Y.D. 258:6; Halichos Shlomo, Moadim vol. I, Shalmei Neder [18]).



MONEY MATTERS

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Q: Does a person who created "intellectual property" bequeath his copyright to his heirs? Do heirs of a talmid chacham have exclusive rights to publish his Torah writings or teachings?

A: The Rema (C.M. 276:6) writes that one cannot bequeath something intangible. Thus, even according to the opinion (discussed previously) that a person has ownership over his intellectual property, it seems questionable whether his heirs inherit these rights.

Nonetheless, when there are manuscripts or recordings of his teachings, since the intellectual property is linked to a physical entity, he can bequeath them with their content to his heirs.

Even according to the opinion that one does not have ownership over intellectual property, the accepted practice is to grant heirs first rights to publish their father's teachings. This is based on the customary practice and doing what is just (v'asisa hayashar v'hatov), but each case would need to be evaluated individually. If the heirs made no effort to publish, they cannot demand a percentage from others who did.

When dina d'malchusa applies, heirs are granted copyright rights for 70 years after the creator's death (Emek Hamishpat, Zechuyos Yotzrim, ch. 11; Pischei Choshen, Geneivah 9:[27]).



BHI HOTLINE

tizes the employee who is poor ahead of the one who is not poor. Although this may seem to establish precedent that one prioritizes the poor ahead of others, some Poskim limit this principle to paying employees but not when prioritizing debts, since the Torah indicates that one may not show favoritism to the poor in a din Torah (Divrei Malkiel 5:278).

Others also question why it is permitted to prioritize a poor employee ahead of other employees and suggest that the prohibition against showing favoritism is limited to beis din, but that individuals, such as employers, may show favoritism to the poor (Maharshag 2:26). Accordingly, since your circumstance relates to employees and has not yet been presented to beis din, all authorities agree that you may prioritize the poor (see also Pnei Moshe 2:56; Birkei Yosef, O.C. 284 and Maharsham 3:359).

However, according to some authorities the rules of prioritizing are limited to where one will be able to pay the second creditor at a later date and the only question is whom to pay first. In the event that one does not anticipate having the funds to pay the second creditor, the rules of prioritizing do not apply and the available funds must be divided equally since there is no reason the wealthy person should lose because another creditor is poor (Divrei Malkiel op. cit.).

Other authorities, on the other hand, indicate that even in this case the poor take priority (Pnei Moshe, but see Aha-vas Chessed 10:8; Nesiv Hachessed 19 expresses uncertainty). Therefore, in your circumstance, if you anticipate obtaining the funds in the future to pay all of your creditors, at present you should prioritize paying your employees who are poor before the others.

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