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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

RANSOM LOAN

Moshe and Yosef were vacationing in Mexico. One morning Yosef went out to buy some food while Moshe remained in the hotel.

An hour later, Moshe received a frantic call. "I was kidnapped!" Yosef cried. "They're demanding that you transfer \$250,000 by 12 o'clock tonight to a foreign account, or else.... I'm texting the account details."

Moshe alerted the authorities and waited tensely, hoping that this was just a hoax. He tried contacting Yosef again, but the phone was disconnected. As the day wore on and Yosef did not return, Moshe grew increasingly concerned about Yosef's life. He approached a wealthy Jewish businessman in Mexico about the ransom money.

"I will lend you the money," replied the businessman, "but I want you to sign that you will repay."

The frantic sound of Yosef's voice was still ringing in Moshe's ears. "Whatever I have to do," he said. He signed a loan form for the stated sum, and the businessman transferred the \$250,000 for the ransom.

Moshe could not sleep all night. At 6:00 a.m., he finally heard a knock on the door. "It's me, Yosef!" He opened the door and embraced Yosef. "I'm so relieved to see you alive!" he said.

After Yosef calmed down, he asked, "Where did you get the ransom money from?"

"I borrowed it from a local Jewish businessman," said Moshe. "I had to sign that I would pay him back."

"I should pay," said Yosef, "but I don't have anything like that sum."

"I was assuming you'd somehow cover the loan," said Moshe. "If you can't pay — I'm in trouble!"

"Maybe you are not liable to repay the loan," suggested Yosef, "since you only borrowed the money to save my life."

"We need to contact Rabbi Dayan," said Moshe. "Let's call him!"

Moshe called Rabbi Dayan and related the unfortunate event. "Do I have to repay the loan?" he asked. "Does Yosef have to reimburse me? What if he doesn't have that sum; does he owe me in the future?"

"You are liable for the loan and Yosef is required to reimburse you," replied Rabbi Dayan. "If he doesn't have that sum, there is a dispute whether he owes you in the future."

"Can you please elaborate?" asked Moshe.

"Harav Moshe Feinstein, zt"l, was asked



BHI HOTLINE

BUNGALOW CONFUSION

A few families appointed a contact person to arrange for their bungalows

to be cleaned before the summer season. The contact person gave an agency the addresses but made a mistake and asked them to clean #37 instead of #36. The agency sent a bill to bungalow #37, which the owner refused to pay since he never ordered his bungalow to be cleaned.

Q: Is the owner of bungalow #37 obligated to pay since his bungalow was cleaned? If not, is the contact person obligated to pay since it was her error and the agency couldn't verify with the owners since they had not yet arrived?

A: If Reuven hires a worker to plant his field and directed him to Shimon's field, Reuven is obligated to pay the worker (C.M. 336:1). The reason is that once Reuven hired him, Reuven is his employer and thus obligated to pay him.

However, if Reuven hired the worker and told him that he would be working in Shimon's field, Reuven is not responsible for the worker's salary unless he committed to pay his salary (s'charcha alai). Since Reuven never committed to pay the worker, he is not the worker's employer and the worker must seek remuneration from Shimon, the field owner. [The amount Shimon is obligated to pay depends on whether the field is prepared for planting (see C.M. 375)].

In your situation, since the agency knew that they were in touch with a contact person who never committed to pay for the cleaning of all the homes, the agency was not her employee. Therefore, the one responsible to pay for the cleaning done in bungalow #37 is the owner of that bungalow. However, he is only obligated to pay the value of the benefit that he had from the work that was done.

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STORY LINE

about the Bobover Rebbe, zt"l, who borrowed money during the Holocaust to save European Jews," replied Rabbi Dayan. "He ruled that the Rebbe was liable to repay the loan, even though he borrowed to save lives" (Igros Moshe, C.M. 2:63).

"What about Yosef's liability to reimburse me?" asked Moshe.

"The Gemara (Sanhedrin 73a) derives from the verse 'lo saamod al dam rei'echa — you shall not stand by while your brother's blood is shed,' that one is required to lay out money to rescue his fellow Jew," said Rabbi Dayan. "The Rosh, cited by the Tur (C.M. 426), adds that the rescued person has to reimburse him. One is not obligated to save another with his own money when the rescued person is able to pay. The Rema similarly writes regarding pidyon shevuyim (redeeming captives) that the captive has to reimburse the money if he has funds" (Y.D. 252:12).

"What if he does not have funds?" asked Yosef. "Is he required to pay later when he earns it?"

"This point is subject to dispute — whether this is similar to tzedakah," replied Rabbi Dayan. "The Mishnah (Pe'ah 5:4) teaches that a traveler who is out of funds can be provided food from tzedakah, even though he has money at home. The Rambam, in his commentary to the Mishnah, writes that he is only obligated to repay as a middas chassidus (pious act) (see Y.D. 253:4).

"Some suggest that the same rule applies to our case; there is only a moral obligation," continued Rabbi Dayan. "Harav S.Z. Auerbach, zt"l, though, differentiates. The traveler who returns home is like a poor person who later became wealthy; when he received the charity, there was no expectation to pay. However, the rescued person becomes obligated to reimburse the one who saves him — so he remains obligated to pay when he earns later" (see Pischei Choshen, Nezikin 12:[11]; Nishmas Avraham, C.M. 426:1[A]1).



BHI HOTLINE

Accordingly, if he did not benefit from the work performed, e.g., he has a live-in maid whom he pays monthly, he is not obligated to pay them anything.

However, the contact person is responsible to pay the agency what they cannot collect from the owner of bungalow #37. If someone places a custom order and then cancels it, he must pay the manufacturer for the latter's loss (garmi) (C.M. 333:8). This is similar to one who hires someone to do a job and when the employee arrives at the jobsite there is no job to perform (C.M. 334). In that case the "employer" must pay his "employee" since the "employee" lost a day's work.

Similarly, if Yehudah informs Shimon that Reuven ordered Shimon to plant Yehudah's field, and Reuven never gave such instructions, Yehudah is obligated to pay Shimon since Shimon worked under the assumption that he would be compensated for his work (Imrei Binah, Geviyas Chov 28. See also Chemdas Moshe, K.A. 21).

The fact that the contact person made a mistake unintentionally is not an excuse, even though generally, one who inadvertently causes indirect damage (dina d'garmi b'shogeg) is exempt (Shach, C.M. 386:1 and 6). The reason is that one is liable for indirect damage that results from negligence, even if it was inadvertent (Minchas Pitim 209:4, and Chazon Ish, B.K. 5 [13]).

This is similar to an appraiser who erred by saying a coin is authentic when, in fact, it is not. The appraiser is considered negligent since he knows that an error will cause a loss (C.M. 306:6). In your case, as well, since the contact person is aware that her mistake can cause the agency a loss, giving the wrong address is considered negligent and thus she is liable to pay the agency. [This answer is based on the understanding that the agency is the one employed and not only a brokerage service, in which case the ruling might be different.]

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



MONEY MATTERS

COPYRIGHTS AND PATENTS # 8

Q: What halachic liability is incumbent on an individual who copies a program or disk without commercial intent?

A: According to the opinion that Halachah recognizes ownership of intellectual property, many write that there is a prohibition of "theft" (gezel) in copying. (Igros Moshe, O.C. 40:19). Others question whether theft applies fully to something intangible (see Rambam, Hil. Shofar 1:3). Nonetheless, there is a prohibition against benefiting (neheneh) from another's property against his will, which is an offshoot of theft and applies even to something intangible.

Therefore, if the person might have bought the program or disk, he is liable to pay the creator on the basis of "zeh neheneh v'zeh chaser." He might not be liable for the full cost, though, since the copied item lacks technical support, user's manual, etc.

Even if the person would not consider buying the item, so that there is no loss of a potential customer, it is still prohibited to copy and benefit against the creator's expressed will, although there might not be financial liability if one copied. Of course, dina d'malchusa and minhag hamedinah would also have to be considered. (See Emek Hamishpat, Zechuyos Yotzrim, Intro., ch. 3, ch. 25-28.)

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