



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### BORROWED BRIS KIT

Mr. Isaacs ran a bris kit gemach, which included a pillow, two white outfits, cloth and disposable diapers, bandages, creams, etc. One evening, he received a call from Mr. Ross.

"We had a baby last week," said Mr. Ross. "Can we borrow the bris kit for Wednesday morning?"

"Mazel tov!" replied Mr. Isaacs. "Come by Tuesday evening."

"Do you charge for using it?" asked Mr. Ross.

"We charge a token fee of \$15," answered Mr. Isaacs. "It's mostly to cover the expenses of dry cleaning and replenishing supplies."

"That's perfectly understandable," said Mr. Ross.

On Tuesday, Mr. Ross picked up the bris kit. While driving home, he was stopped by armed thugs, who forced him out of the car and drove off!

Mr. Ross immediately alerted the police and reported the incident to his insurance company. He made his way home, shaken. His wife organized the necessary items for the bris.

After the bris, Mr. Ross called to apologize for the loss of the bris kit. "I was mugged last night and the bris kit was stolen," he said to Mr. Isaacs. "I'll pay you for it."

"That's really unfortunate," Mr. Isaacs replied, "but if you were mugged, you don't have to pay for the bris kit. Armed robbery is considered oness (uncontrollable circumstances)" (C.M. 303:3).

"So what!" said Mr. Ross. "Since I borrowed the bris set, I'm a sho'el and responsible even for oness" (C.M. 340:1).

"But you paid \$15," insisted Mr. Isaacs. "You are a renter (socher) and exempt from oness."

"But you said that the \$15 was to cover expenses; that's not called renting," objected Mr.

Ross. "I know other gemachs that charge \$50 for the usage. That's renting!"

"I'm not sure of that," said Mr. Isaacs.

"Let's discuss it with Rabbi Dayan."

Mr. Isaacs called Rabbi Dayan. "Does a small charge, mostly to cover expenses, make the person who uses the bris kit a socher?"

"The Gemara (B.M. 94b) indicates that a borrower is liable even for oness (uncontrollable circumstances) because the benefit is entirely his and he does not pay for the usage," replied Rabbi Dayan. "However, if the owner receives even a token payment, perhaps even less than a perutah, it is considered a rental, not a loan; the recipient is a socher (renter), not a sho'el (borrower)" (see Ketzos Hachoshen 340:5; Minchas



## BHI HOTLINE

### RENEGING ON A COMMITMENT

I have a basement apartment that I use

for hachnasas orchim. Reuven called to reserve the apartment from the beginning of Marcheshvan for his guests who were coming into town for his simchah. I confirmed with him the availability of the apartment and recorded it in my calendar. A few days later my brother-in-law informed me that he and his family will be visiting that same week and is interested in staying with us. Obviously the only way I can host him is if I cancel Reuven's reservation. When I spoke with Reuven he argued that I cannot cancel his reservation once I committed it to him.

**Q: Am I allowed to cancel Reuven's reservation? Does that fact that he did not send in a deposit or sign a contract have any effect on the halachah?**

A: You are correct that if a kinyan was not performed, whether by contract or by other means, you cannot be compelled to give Reuven the apartment. However, a person is expected to keep his word, and one who reneges on an oral agreement is considered untrustworthy (mechusar amanah) and looked down upon by Chazal (C.M. 204:7). Such a person may even be called a rasha — wicked (Teshuvos Maharam cited by Beis Yosef, Y.D. 264).

However, to be categorized as a mechusar amanah there must be grounds for the other party to believe that the benefactor would follow through on his commitment. Therefore, in your case, since Reuven had every reason to believe that your commitment to give him use of the apartment was binding, if you cancel you would be

### DID YOU KNOW?

**Paying a babysitter the next day, instead of when she completes her job, is a very serious halachic shaila.**

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## STORY LINE

Chinuch 59[15] citing Shach).

"What about a charge not for profit, just to cover expenses?" asked Mr. Isaacs.

"It seems that a payment that does not provide any profit, just to cover costs, is not considered a payment," answered Rabbi Dayan. "For example, when a person who borrows an animal feeds it, this is not considered payment, since the animal is now serving him and the owner does not benefit from this. Thus, if the charge is just to cover direct expenses, the borrower would still be a sho'el and not a socher" (see Ohr Same'ach, Hil. She'eilah 1:1).

"This seems a chiddush!" remarked Mr. Isaacs. "Does anyone write so explicitly?"

"I haven't seen so," acknowledged Rabbi Dayan. "However, a converse halachah is ruled by the Tashbetz (3:261). A shomer chinam (unpaid guardian) of an animal who uses it to cover the feeding expenditures does not become a shomer sachar (paid guardian), since he has no net gain from the use. Similarly, a lender who charges only to cover his expenses should not become a renter, since he has no net gain from the loan."

"What if the charge is meant to cover depreciation or general overhead?" asked Mr. Isaacs. "For example, people who don't pay, cloth diapers that get worn out or are not returned, or purchase of additional outfits."

"Direct, actual depreciation might still be considered covering loss," replied Rabbi Dayan. "However, if the charge is beyond the actual expenses or depreciation, even slightly, the borrower would be considered a socher. The gain from this particular loan is profit to cover losses from elsewhere. The user would then be exempt from oness, unless he wanted to pay of his own volition. However, the gemach can stipulate in their rules and regulations that the user always accept the greater liability of a sho'el."



## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 19

**Q: Our shul invited a noted Rabbi to speak. Can I record the shiur? Can I make copies of the recording?**

**A:** One should ask permission before recording, even though it is usually permissible to record a public shiur. The speaker is aware that people often record shiurim, so there is tacit permission to record if the speaker did not stipulate otherwise. (A professional lecture could be different.)

Moreover, it may even be permissible to make copies of the recording. However, if the speaker plans to sell copies, or sells recordings of a similar shiur, it is prohibited to infringe on his rights.

When the speaker stipulates that he does not allow recording, then it is prohibited, even for personal use. If he stipulated so as one of the terms of his employment, it is prohibited to expect him to work against his will. The same applies if someone gave a shiur in his house or in a private hall. The speaker can insist that he is willing to allow entrance only to someone who will follow his stipulation of not recording (Emek Hamishpat, Zechuyos Yotzrim, intro. 13:1-13; ch. 36:19-21; Igros Moshe, O.C. 4:40[19]).



## BHI HOTLINE

categorized as a mechusar amanah.

There is, however, another condition that may have to be met for one to be categorized as a mechusar amanah. If circumstances changed after the original commitment was made there may be grounds for the benefactor to retract his original commitment (Rema and Shach ad loc.). Chasam Sofer (Y.D. 246 and C.M. 102) adopts a lenient position based on the halachah that permits a father who contracted with one mohel to renege on his commitment and have someone else serve as the mohel for his son when it is clear that had the father known that his relative or a tzaddik would be available, he never would have contracted with the first mohel (Taz, Y.D. 264:5). He further explains (C.M. 102) that anytime an unexpected change of circumstance occurs, one is not bound by his original commitment. Thus, If Yehudah was prepared to sell Levi an object to generate funds for a major purchase, but before Levi took possession of the object Yehudah inherited the item that he wished to buy, Yehudah may renege on his commitment to sell Levi that item.

In your case, since there was no reason for you to anticipate that your family would visit that week and it is evident that had you known you would not have committed to Reuven, authorities would agree that you can renege on your commitment to Reuven. Furthermore, it is likely that the disagreement whether one may renege on his commitment applies when one should have anticipated a possible change in circumstances but not when the change was completely unanticipated (Harav Chaim Kohn, Masa U'Matan, ed. 35; Piskei Dinim §12, also see Shevet HaLevi 4:206).

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