



# Business weekly

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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל  
by his son, R' Shlomo Werdiger

## STORYLINE

### snow job

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Mr. and Mrs. Winter were spending a lovely Shabbos with their children. "It's starting to snow again!" exclaimed their granddaughter, Shoshana, during lunch.

The rest of the family looked out the window. "I heard that there might be another storm coming," said Mr. Winter.

By the time Shabbos was over, there were five inches of snow on the ground. "Snow will continue through the night and will taper off at dawn," the weatherman reported.

"I guess we'll stay," Mrs. Winter announced. "By mid-morning they should have the roads cleaned."

In the morning, the Winters built snowmen and sledged with the grandchildren. Afterwards, they packed up and headed home. When the Winters arrived home, they were met with a pleasant surprise. The sidewalk, walkway to the house, and entire length of

the driveway had been shoveled!

"Wow!" exclaimed Mr. Winter. "I wonder who did that!"

He pulled into the driveway and unloaded the car. As he opened the door to the house, he saw a note, left by two boys from around the corner: "Since you were away, we shoveled your snow. We charge \$40 for the job. Zvi & David."

"It was nice of them to shovel," said Mr. Winter with a huff, "but I never agreed to pay them! Who asked them to shovel?!"

"They did help us," his wife replied calmly. "Lots of people pay boys to shovel snow."

"But those people hire them," Mr. Winter responded. "If the boys do work they weren't hired to do, how can they ask for payment?"

"You might check with Rabbi Dayan before you decide by yourself," his wife suggested. Mr. Winter called Rabbi Dayan and asked

whether he had to pay. "There are numerous factors to consider," said Rabbi Dayan, "but if it is common to hire boys to shovel, they are entitled to charge you in many situations."

"On what basis?" asked Mr. Winter.

"The Gemara (B.M. 101a) addresses the case of yored l'sdei chaveiro, a person who planted trees in another person's field," explained Rabbi Dayan. "If the land owner decides to keep the trees, he has to pay the person who planted them for his efforts. If the field was a'suya lita (suitable for planting trees) the owner has to pay the planter the going rate for such work; if the field was not suitable for trees, the owner has to pay only a minimal amount (C.M. 375:1-2)."

"But why should the owner pay if he didn't hire the person to plant?" asked Mr. Winter. "Since the owner received a benefit and fi-

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## FROM OUR HOTLINE conditional commitment

Submitted by  
T. B.

I needed a loan of \$10,000. Shimon told me that he could not afford to lend that sum of money, but he would be willing to co-sign for a loan. As a gesture of sincerity, he wrote out a check that I could give to anyone who would lend to me, on condition that it would be cashed only if I didn't repay the loan. Armed with his check, I convinced Levi to lend me \$10,000. Unfortunately, I am presently unable to repay the loan. Levi notified

me that if I don't pay by the end of the month, he will deposit Shimon's check. I called Shimon to inform him, but he is now reneging on his commitment. He says that he didn't believe that anyone would accept him as a guarantor without consulting with him first - and that he will cancel the check.

**Q: Can I tell Shimon that he must keep to his commitment?**

**A:** A conditional commitment made by one who is not confident that he will have to honor his commitment is an 'asmachta' (lit. reliance) and not halachically binding. Thus, in principle, the obligation of any guarantor should be questionable. However, Ketzos HaChoshen (129:1) explains that a guarantor's obligation is binding because he designates the lender to act as his agent to loan the borrower money. Based on this principle,

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## STORYLINE CONTINUED

nancial gain that he would normally pay for, he must pay the planter for providing that benefit," said Rabbi Dayan. "Furthermore, in a field suitable for planting trees, the planter is considered like an employee (po'el), since the owner is interested in having this work done (Ketzos Hachoshen 246:1; Chazon Ish B.B. 2:6)."

"I can understand this halacha when planting a tree, since the field is now worth more and the owner received a capital gain," argued Mr. Winter. "But I had no financial gain from having the snow shoveled!"

"Some make this distinction," said Rabbi Dayan. "Nonetheless, the Rama (C.M. 264:4) extends this law to any person who performs a service that benefits another, even if there is no actual capital gain (see Talmudic Encyclopedia 23:442). He also rejects the possible claim that the job was done as a favor since the person wasn't instructed to do it."

"You distinguished between a field that is suitable for planting

and one that is not," said Mr. Winter. "How does this apply to shoveling snow?"

"The sidewalk and the walkway to the house, which everyone needs cleared, are comparable to a field suitable for planting," replied Rabbi Dayan. "The front part of the driveway and access to the street are also important for most people. The back of the driveway or a path around the side of the house, though, seem comparable to a field not suitable for planting."

"So I have to pay the going rate for the sidewalk, walkway, and front part of the driveway," said Mr. Winter. "But prices range from \$30-50!"

"Since there was no price agreement," responded Rabbi Dayan, "you have to pay only the lower end of the range, \$30 (Tumim 89:8; Rama C.M. 332:4)."

"I still have a question," said Mr. Winter. "I often shovel myself and would have shoveled when I came home, so why should I pay?"

"If you often shovel yourself, that's a different story," said Rabbi Dayan.

*To be continued in Issue #48*

## FROM OUR HOTLINE CONTINUED

Shach (C.M. 129:6) rules that one who merely declares, "I guarantee the loan for whoever lends money to Ploni" is not responsible for the loan. Since the guarantor did not specify the lender, he did not assign him as his agent to lend: the commitment remains an asmachta. In your case, Shimon never contacted Levi and did not designate him as his agent. As such, his commitment is an asmachta, and he is not liable to pay (but see Nesivos 129:1, Maharshag 3:98).

However, there is another setting that obligates the guarantor. In a case that he obligated himself with a binding kinyan (legal act of acquisition) to guarantee the loan, he is liable even if he didn't specify the lender and make him his agent. Shach (C.M. 50:8) therefore writes that someone who commits in a document

to guarantee a loan for whoever lends money to a particular person is liable - even though he did not designate a lender to act as his agent. The delivery of the document creates a direct legal commitment between the lender and the guarantor, who is therefore liable, despite the fact that he did not specify the lender and make him his agent (see Pa'monei Zahav 129:1, Imrei Yosher 1:144).

Based on this, since Shimon wrote a check to be given to a lender, he is considered to have made a kinyan with the lender that obligates him to repay the loan - even though he did not designate an agent. This is based on the fact that most Poskim consider a check to be a binding commitment to pay the amount recorded in the check (see Hilchos Mishpat 227:29, 33-35).

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## MONEY MATTERS

### payment of wages week #1

#### Q: What are the mitzvos and prohibitions related to payment of wages?

**A:** Payment of wages is no less a mitzvah than payment of any other monetary obligation. Therefore, withholding due wages from a worker or employee is tantamount to stealing from him (C.M. 339:1-2, SM"A 339:4). In addition, there are specific prohibitions that relate to withholding wages: "Lo

sa'ashok es rei'acha - You shall not cheat [i.e. withhold wages from] your fellow (Vayikra 19:13)." If the employee is poor there is an additional prohibition, "Lo sa'ashok sachir ani v'evyon - You shall not cheat a hired person who is poor or destitute (Devarim 24:14)."

Furthermore, the prohibition does not relate only to withholding wages entirely. There is a mitzvah to pay wages in a timely man-

ner and prohibitions against delaying payment: "B'yomo siten scharo, v'lo savo alav hashemesh - On that day you shall pay his hire; the sun shall not set upon it (Devarim 24:15)"; "Lo salin pe'ulas sachir itecha ad boker - A worker's wage should not remain with you overnight (Vayikra 19:13)."

These many verses underscore the importance that the Torah attributes to proper payment of wages.

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