



# 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 part II

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Mr. and Mrs. Winter had returned from Shabbos after a snowstorm, and found their sidewalk, walkway and driveway shoveled... and a note from two neighborhood boys, Zvi and David, asking for \$40.

Mr. Winter felt that he shouldn't have to pay the boys since he hadn't hired them, but Rabbi Dayan explained that if it is common to hire people to shovel, he would have to pay, since he benefited from their service.

"It's not fair," Mr. Winter protested. "I often shovel by myself and would have shoveled when I came home!"

"That changes things," agreed Rabbi Dayan. "However, the issue is somewhat intricate, so it would be best that we all meet." When they met, Rabbi Dayan told Zvi and David, "I previously explained to Mr. Winter that you are entitled to payment based on the law of yored l'sdei chaveiro. If a per-

son plants trees in a field that was suitable for planting, the land owner has to pay the planter the minimum going rate for such work, since he provided the owner benefit. Here, Mr. Winter would have to pay you the minimum going rate for shoveling, \$30.

"However, if the owner normally plants his own trees, he does not have to pay the planter for his professional services," continued Rabbi Dayan. "Since the owner does not need the work, this case is treated like a field that is not suitable for planting, so he has to pay only a minimal amount for having been spared the time and effort of planting (Rama 375:4; Aruch Hashulchan 375:8). Therefore, since Mr. Winter often shovels by himself, he has to pay you only a minimal amount, let's say \$15, for sparing him the time and effort of shoveling."

"We learned in Yeshiva, though," said Zvi,

"that even if the field is not suitable for planting, if the owner demonstrates that he wants the work, he has to pay the going rate (C.M. 375:3). Here, Mr. Winter pulled into the cleared driveway when he came home! Doesn't that demonstrate that he wanted the work we did?"

"I see that you remember what you learn," smiled Rabbi Dayan. "However, this only applies when the owner demonstrates willingness to pay or expends additional effort for the same benefit, such as widening the path."

"I still think that Mr. Winter should pay us the full rate," said David. "He didn't come home until Sunday afternoon and could have gotten a fine meanwhile. Also, someone could have slipped on his sidewalk and he would face a lawsuit!"

"That touches upon a whole other topic

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## FROM OUR HOTLINE

Submitted by  
F. J.

### a gift on the ground

I found a \$200 gift certificate to a local bookstore on the ground at a shopping mall. There were no identifying marks on the certificate, and it looked as if it had been there for a while. I took it home with me.

**Q: Can I use the gift certificate for myself?**

**A:** Your case involves numerous halachic issues. The first question concerns the status

of a debt when the creditor abandons hope of collecting it (yiush). According to many opinions, the debt is not relinquished and the borrower - in your case, the store owner - still owes the debt (see Chacham Tzvi in Taz 163:3, but see Ketzos & Nesivos ibid).

The question here is if you, the finder, became the owner of the document and, as such, of the debt as well. The halachic mechanism of transferring ownership of a

document that does not have inherent value, like a loan document, requires two actions. One is the handing over of the document by the owner to the recipient. The second is the writing of another document by the creditor that confirms the transfer of the lien. This method is known as kesivah umesirah (C.M. 66:1). An exception to this rule is a loan document that does not specify the creditor, but states that the signee will honor

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## STORYLINE CONTINUED

called mavriach ari, one who chases away a lion," said Rabbi Dayan. "The Gemara (B.K. 58a) teaches that if a person lays out money of his own volition to spare his friend a possible loss, such as to ward off a lion threatening his flock, he cannot legally demand reimbursement (C.M. 128:1). Therefore, the fact that you spared Mr. Winter a potential fine or lawsuit is not sufficient grounds to obligate him (Nesivos 264:1)."

"How is this any different from the law of yored that we began with?" asked Zvi.

"In this case, the owner did not receive any positive gain; he was just spared a possible loss," answered Rabbi Dayan. "The obligation to pay a yored is for the gain that the planter provided (Tosfos s.v. e nami). Furthermore, Mr. Winter might not have gotten a fine anyway. Therefore, he has to pay for the gained benefit of having a clean, usable area, but not for being spared the potential loss of a fine or lawsuit."

"According to this," said Mr. Win-

ter, "if I went away for the winter and someone shoveled the snow without my asking, would he not be able to charge me, since I received no benefit?"

"That seems correct," replied Rabbi Dayan, "although it would be irresponsible to leave for a long time without making an arrangement for someone to shovel the sidewalk."

"If Mr. Winter had hired someone else to shovel when necessary and we shoveled instead," David asked, "could we then demand payment since he indicated willingness to pay?"

"Certainly not," argued Mr. Winter. "You would be taking the job away from the person whom I hired!"

"You're correct that it is prohibited to encroach upon another person's livelihood and a person who does so is called 'wicked' (ani hamehapech b'charara)," said Rabbi Dayan. "However, if the boys wrongfully did so, Mr. Winter would have to pay the minimum going rate, since he indicated willingness to pay for the service (Rama C.M. 156:5)."

## FROM OUR HOTLINE CONTINUED

it for anyone who presents it (Shach 66:10). This includes a gift certificate that does not specify the name of the owner. In this case, no written document confirming the transfer is required. As such, it seems that you may make use of the certificate.

A question remains: must such a document be directly handed from one person to another, a condition that was obviously not met in finding a lost certificate? This issue is debated (Ketzos HaChoshen and Nesivos HaMishpat 64:1), but according to some opinions, this requirement does not apply in your case since the original owner abandoned hope of recovering it (Ketzos HaChoshen 66:1). Then again, some opinions maintain that by taking possession of the loan document after yiush, the finder only possesses the paper but does not take ownership of

the debt (Nesivos 66:1).

To summarize, some rule that you may redeem the gift certificate. The question is if you are permitted to rely on those opinions in light of other disputing authorities. To this end, the claim of "kim li" (lit. "it is evident to me") may be applied. In cases of unresolved disputes between halachic authorities, it allows the possessor of the disputed item to make use of it. You may exercise the claim of "kim li" to use the gift certificate (see Chazon Ish Bava Basra 13:10). However, if the store owner becomes aware that the gift certificate was lost and found by another party he also has the right to claim "kim li" and may refuse to honor the certificate.

*Our discussion assumes that the document did not state that it could not be transferred. If it did contain such a statement, the finder would not be allowed to use the gift certificate.*

**Please contact our confidential hotline with your questions & comments**

877.845.8455 [ask@businesshalacha.com](mailto:ask@businesshalacha.com)

## MONEY MATTERS

### payment of wages week #3

**Q: If someone did a job and the fee was not set beforehand, how much is owed?**

**A:** We mentioned last week that it advisable to agree on wages before starting a job. If nothing was stipulated, but it is customary for the worker or employer to have a set fee scale, that amount is binding on the other party.

If the worker and employer do not have a set scale, the job has to be evaluated according to the going rate of such a job. This includes not only the actual wages, but also any benefits that are typically given for this job (C. M. 331:2). We must also take into consideration the quality of the job done and the professional training and qualifications of the employee (Pischei Choshen, Sechirus,

ch. 8 fnt. 11).

In the likely situation that the going rate has a range, the employee is entitled only to the lower end of the range, even if most workers charge more. This is based on the basic principle of monetary law that the party in possession of the money has the upper hand, even against the majority (Ketzos HaChoshen 331:3).

## FIRST ANNUAL DINNER

*the Business Halacha Institute's inaugural dinner and accompanying journal commemorating the first anniversary of Business Weekly*

**Next Sunday, March 13th, 2011**

**Agudah of Avenue L**

2913 Ave L, Brooklyn, NY

**Reception 6:30 pm | Dinner 7:00 pm**

**Dinner Chairman:** Shlomo Werdiger

**Honoring**

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