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

STORYLINE

relatively close

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"I've got a busy week," Rabbi Dayan told his wife. "There's a wedding every night except Wednesday."

"Mazal tov," she exclaimed. "It's a special zechus to see so many Jewish families being established!"

"I was also asked to serve as the mesader kiddushin (officiating rabbi) at a wedding next week," Rabbi Dayan added. "The chosson (bridegroom), Chaim, would like to meet with me. I'll have to see him on Wednesday." When Chaim came, Rabbi Dayan reviewed with him the various parts of the wedding ceremony. "One important part is the kesubah, a marriage document that promises the wife a lump-sum payment in the event of divorce or the husband's death," he said. "What are your full Hebrew names?"

"My name is Chaim ben Eliyahu and my kallah's name is Devorah bas Moshe Morde-

chai," replied Chaim. Rabbi Dayan wrote the names in his pad.

"The most important part of the ceremony is the kiddushin, giving the ring," continued Rabbi Dayan. "Do you know who will be the witnesses for the kiddushin?"

"We haven't decided yet," said Chaim. "Is it important to arrange this ahead of time?"

"It is most advisable," answered Rabbi Dayan. "The validity of the marriage is dependent mostly on these witnesses. Not everyone is halachically eligible to be a witness."

"Oh," said Chaim. "What criteria are necessary to be a valid witness?"

"There are two major criteria," explained Rabbi Dayan. "First, that the witnesses are religiously observant and monetarily honest (Choshen Mishpat 34:2, 7). Second, that they are not related to either of the parties. Witnesses who are only distantly related are

valid, but not if they are relatively close."

"How close is too close?" asked Chaim.

"Immediate relatives, such as siblings, parents, grandparents and even uncles are obviously too close," explained Rabbi Dayan.

"First cousins, whose parents are siblings, are also considered too close. However, second cousins, whose grandparents are siblings, are valid as witnesses (C. M. 33:2)."

"What about a first cousin once removed?" asked Chaim. "For example, Devorah's father has a cousin, Rabbi Karov, that we might like to honor as a witness."

"A first cousin once removed is called 'shelishi b'sheni' (third with second)," replied Rabbi Dayan. "He is valid as a witness."

"Why is he called shlishi b'sheni?" asked Chaim.

"This is because Devorah's grandfather and Rabbi Karov's father, who are siblings, are

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FROM THE BHI HOTLINE

Submitted by
B. C.

discount dispute

I lent Yehuda \$50,000 for two years and had a loan document drawn up. After some time, my finances took a major hit and I needed a large amount of cash. I asked my friend Binyomin if he would be interested in buying the loan for \$40,000. Binyomin was thrilled with the opportunity. Before Binyomin and I could make the necessary arrangements, Yehuda heard about our plan. He called me to say that if I am willing to take \$40,000

for the loan, he would be happy to pay me \$40,000 and buy out the loan.

For personal and business reasons, I would prefer to sell the loan to Binyomin.

Q: Am I allowed to sell the loan to Binyomin against Yehuda's wishes?

A: Shulchan Aruch (Choshen Mishpat 316:1) discusses the case of Reuven who rented

an apartment from Shimon, then decided to sublease it to someone else in accordance with the terms of his lease. Shimon says to Reuven, "I would prefer to release you from our current lease and rent out the apartment to someone else on my own, rather than having you sublease it." The halacha is that Shimon has the right to impose his will on Reuven in this case. The rationale behind this ruling is in Mishlei 3:27, "Al

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STORYLINE CONTINUED

first level relatives," Rabbi Dayan explained. "Her father and Rabbi Karov, who are cousins, are second level relatives. She is a third level relative. Therefore, Devorah and Rabbi Karov are called shlishi b'sheni, a third level with a second level relationship."

"What about a great-uncle?" asked Chaim. "My father is extremely close with his uncle and would love to honor him as one of the witnesses if he can."

"A great-uncle is called a shelishi b'rishon (third with first)," answered Rabbi Dayan. "This is because your great-uncle and your grandparent, who are siblings, are first level relatives, your father is a second level relative, and you are a third level relative. There is a dispute in the Gemara (Sanhedrin 28a) whether a great-uncle is allowed. The Shulchan Aruch also cites two opinions, but the Rama writes that we should rule according to the stringent opinion, not to accept a great-uncle as a valid witness." "What about relatives by marriage?" asked Chaim. "Such as the husband of a cousin?" "Generally speaking, a husband

and wife have the same status," said Rabbi Dayan. "The spouse of anyone too close to be a valid witness is also not valid, although there are some exceptions (C.M. 33:3-4)."

"So we can honor Rabbi Karov to serve as a witness?" asked Chaim.

"These are the rules of valid witnesses," said Rabbi Dayan. "However, in practice we are much more stringent for issues of marriage, so that people shouldn't accidentally mistake degrees of relatives. In practice, we don't even allow third cousins to sign together on a get (E.H. 154 Seder Haget:2). Contemporary poskim add that also for kiddushin and kesubah, one should avoid choosing even relatives who are valid witnesses. (Hanisuin K'hilchasam 8:24)."

"Let me summarize," said Chaim. "Relatives up to first cousins, and their spouses, are not valid; a great uncle is questionable. In practice, however, we shouldn't choose even relatives beyond that."

"Exactly," concluded Rabbi Dayan. "Mazal Tov!"

FROM THE BHI HOTLINE CONTINUED

timna tov m'ba'alav" do not withhold good from its owner. In other words, why should the tenant withhold potential benefit from the owner of the apartment who can rent out the apartment by himself?

The Mabit (vol. 1 #325) writes that the same principle is involved in our case. Why should the lender deny the borrower the right to pay off his loan at a discounted rate if the lender was willing to accept that smaller amount anyway? As such, the Mabit rules that the borrower may say that if the lender is willing to accept a lesser amount, he will pay that amount for the loan to be considered paid in full.

Shach (C.M. 66:73) rejects the parallel drawn by the Mabit. In the case of the apartment, the tenant is attempting to withhold benefit from the owner of

the apartment and we can apply the principle of "al timna tov m'ba'alav" in such a case. In contrast, in the case of the loan, the owner of the loan is the lender, not the borrower (however, see Chochmas Shlomo ibid). As such, the borrower may not invoke the privilege of the owner. Additionally, Shach (ibid. 175:55) writes that the lender has the right to say that he prefers to allow his friend to profit from the sale of the loan rather than the borrower.

Accordingly, if you prefer to sell the loan to your friend Binyomin rather than allowing Yehuda to buy out the loan, you may certainly do so - especially since one of your considerations is the fact that you think it would be a wiser business move to have a good relationship with Binyomin.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

payment of wages week #7

Q: Due to an erratic schedule, I don't remember the exact hours my babysitter worked and whether I paid her last week. What do I owe her now?

A: If the babysitter claims that she was not paid, you are obligated to pay her. Although the burden of the proof is generally on the plaintiff, in this case you definitely owed her

the wages. Therefore, the status quo of this obligation bolsters her definite claim, despite your doubt (C. M. 75:9).

Regarding the hours, you must pay for the hours you remember. If the sitter claims additional hours and you question her reckoning, you are not obligated to pay for those additional hours if you are prepared to pay immediately for the hours you acknowledge

(89:3). Nonetheless, it is meritorious to pay the amount she claims (75:9; Shach 88:36). If the babysitter also does not remember whether she was paid, you are exempt. If she does not remember the hours, you only need to pay for the hours you are sure of. Some say that it is proper for you to reach a compromise with the babysitter (see 75:18; Shach 75:58; Taz 75:10; Pischei Teshuva 75:18).

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