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

STORYLINE

a burning question

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

A new student transferred to Ateres Bachurim Yeshiva. He was greeted by the Mashgiach, Rabbi Goldhart. "Baruch Hashem, the Yeshiva is full," Rabbi Goldhart said. "Only one bed is available. I should mention that the two other boys in that room smoke."

"There are boys in the Yeshiva who smoke?!" Asher asked incredulously.

"Almost no one smokes anymore; it's just those two boys," the Mashgiach responded. "Of course, they are not allowed to smoke in the Beis Medrash, only in their room."

"I suppose I'll manage," said Asher hesitantly. "I'm not in the room that much anyway." Asher brought his suitcase up to the room. One of the boys opened the door and greeted him with an inquisitive look. "Hello!"

"My name is Asher Singer," the newcomer said. "I just transferred to Ateres Bachurim

and was assigned to this room."

"Welcome!" the boy said, extending his hand. "My name is Shimon and this is Gad." Asher put his belongings down on the unoccupied bed. The lingering smell of smoke was evident; Asher rubbed his nose.

"We smoke," Gad said apologetically. "Rabbi Goldhart mentioned that," said Asher. "Would you mind if I open a window?" "Go ahead," said Gad.

Asher unpacked and then went to learn in the Beis Midrash. When he returned to his room late at night, he found Shimon and Gad smoking.

He tried to ignore the smoke for the first few days, but finally could not bear it.

"Could I ask you to put out your cigarettes?" he asked politely one night.

"All right," said Gad, as he put out his.

"I thought you were getting used to the smell..."

Each subsequent evening, Asher asked Shimon and Gad to put out their cigarettes. "You're not being fair," Shimon finally said to him. "We're not allowed to smoke in the Beis Medrash during the day. Now you're asking us to stop also in our room."

Asher asked the Mashgiach whether there was another room available.

"I'm sorry," Rabbi Goldhart replied, "but the yeshiva is absolutely full!"

"Shimon and Gad are getting annoyed that I ask them to stop smoking each night," said Asher. "Is it fair of me to do so?"

"Why don't the three of you discuss the issue with Rabbi Tzedek?" the Mashgiach suggested.

The three boys met with Rabbi Tzedek.

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FROM THE BHI HOTLINE

Submitted by
R. P.

counterfeit coins

I went to a restaurant supply store last week to buy some new equipment for my café. I paid for my purchases in cash.

A few days later, the supplier called me to say that there were a number of counterfeit \$20 bills among the bills that I gave him, and he wants me to replace them. I doubted the truth of his claim, so he came to my café and showed me some counterfeit bills.

Q: Am I obligated to believe his claim that

I gave him these counterfeit bills? [Both parties agreed to submit the question to the Bais Hora'ah for a response.]

A: A case similar to your dispute is discussed in Shulchan Aruch (C.M. 75:9). If Reuven files a claim against Shimon regarding an outstanding debt and Shimon agrees that he borrowed the money but does not recall whether he paid, the presumption is that he still owes the debt. In contrast, if Shimon

claims that he does not know whether there was ever a debt, the presumption is that there is no debt and Bais Din cannot require him to pay. However, since Reuven claims with certainty that he is owed this money, there is an obligation to discharge his spiritual liability (latzes yidei shamayim).

Taz (C.M. 75) discusses a case of a lender who claims that a borrower repaid him with counterfeit coins. In his opinion, the presumption is that the coins that were used

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"First of all, we are the majority in the room," Shimon said. "Second, we're talking about only two cigarettes a night. Third, we've been smoking in the room all year, and Asher just joined recently; he didn't even say anything the first few nights."

"Just because you're the majority in the room doesn't give you permission to harm me," replied Asher. "I find even one cigarette extremely unpleasant and unhealthful. And while you were in the room the whole year, I was now assigned here. I thought I could manage but I can't anymore."

Rabbi Tzedek ruled, "Shimon and Gad are obligated to avoid smoking when Asher is in the room."

Rabbi Tzedek then explained each issue: "When people are partners, whether roommates, townspeople, or business partners, they have a mutual responsibility to one another. When there is a difference of opinion among partners, the majority can usually enforce its decision on the minority (Rama C.M. 163:1). However, when one position is clearly more correct, even a single person can insist on this position against a hundred others (Pe'ah 4:1-2). There is no

doubt nowadays that smoking is dangerous and is harmful also to bystanders. Many Gedolim have already expressed the position that smoking is prohibited. Therefore, if even one roommate opposes smoking – we listen to him (Tzitz Eliezer 15:39; 17:22)! The Yeshiva also did not guarantee them a room that would allow smoking in all situations.

"Furthermore, Chazal mention smoke as something unpleasant and damaging to neighbors. According to many opinions, they can protest against someone who is producing even occasional smoke. If the smoke is consistent, even if he has been producing smoke for years uncontested, the neighbors can still claim that they cannot bear it any longer (C.M. 155:36-37; Shach 155:19).

"Finally, if a person is known to be particularly sensitive to a certain odor, sound, or filth, he can stop neighbors from continuing to engage in such activities (C.M. 155:39,41). This certainly applies to cigarette smoking if someone is repulsed by the smell, not to mention the potential harm (Igros Moshe, C.M. 2:18)."

to repay the loan were valid coins, unless the lender can prove otherwise. Therefore, the case is similar to one in which Shimon claims that he doesn't know if he owes Reuven money, and the borrower cannot be forced to pay again. However, Shach (232:15) cites Maharashdam, who maintains that a case of possible counterfeit currency is equated to a case in which one does not know if he repaid a loan – and thus the borrower is obligated to replace the counterfeit coins.

Many later authorities accept Taz's position that the borrower is not obligated to replace the counterfeit coins, but since the matter is not definitively decided, it is appropriate for the two parties to reach a mutually accepted compromise. Accordingly, it would seem that a compromise should be the proper ruling in your case.

However, some authorities (see Pischei Teshuvah 75:27) contend that there is a distinction between the purchase of merchandise and the repayment of a loan. If Shimon agrees with certainty that he borrowed money but doesn't know whether he repaid it, he is liable as long as we are unsure whether the debt was repaid. Similarly, one who claims that he paid for merchandise is, in fact, saying that he never had a debt to pay, and he is exempt (see, however, Teshuvah Chasam Sofer C.M. 187). Furthermore, in this case, since the buyer was not expected to know whether some of the bills were counterfeit, he is exempt from paying even to discharge his spiritual liability (see Urim 88:38 and Minchas Pitim 75:9). Accordingly, you are not obligated to replace the counterfeit bills.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

laws of interest week #1

Q: What are the prohibitions of ribbis (charging interest)? Who violates them?

A: The Mishna (B.M. 75b) teaches that the lender, borrower, guarantor, witnesses, and even the scribe (lawyer) violate when engaging in an interest-bearing loan. This is true even if the borrower is wealthy and willingly agrees to pay the interest (Yoreh De'ah 160:1,4). The lender violates the prohibi-

tions, "Do not take interest from him ... Do not give him your money for interest" (Vayikra 25:35-36); the borrower violates, "Do not provide interest to your brother" (Devarim 23:20); the guarantor and witnesses violate, "Do not place interest upon him" (Shemot 22:24); and the scribe (lawyer) violates, "You shall not place a stumbling block before the blind" (Vayikra 19:14).

The Torah prohibition includes any loan of

money, food or other items with a fixed-return interest (ribbis ketzutta). The Sages prohibited other transactions that include elements of interest (avak ribbis), including: floating-rate or non-guaranteed returns (ribbis she'aina ketzutta), business arrangements that contain elements of interest (ribbis derech mekach u'memkar) or resemble interest (mechzei k'ribbis), and even favors performed on account of the loan (ribbis devarim).

IMPORTANT NOTICE

"Early Bird Specials" often involve serious ribbis (interest) issues.

This is especially true with day camps that offer perks or discounts for early payment.

For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at:
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