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STORYLINE

dashed dishes

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Mrs. Wilk was straightening her house when the doorbell rang. "Oh good!" she exclaimed. "Shaindy's here."

Mrs. Wilk opened the door. "Good morning, Shaindy," she said to her cleaning woman. "I sure need your help this morning. There are lots of dishes left over from the party last night, and I haven't had a chance to wash them. We used Bernie's favorite set of china, the one with the royal blue swirl."

"That set is lovely," Shaindy acknowledged. She had washed that china numerous times. "What's great is that the set came in service for 24, so we had enough for everybody," added Mrs. Wilk. "At least it used to have service for 24; over the years, we're down to 20." "That happens," said Shaindy. "We're always breaking dishes in my house, too."

"I wouldn't say it happens all the time," said

Mrs. Wilk, smiling. "I try to be very careful." Shaindy put on a cleaning apron. "I'll get started with the dishes," she said.

Shaindy put a load of dishes in the dish washer, and then went to clean the house. An hour later she returned to unload the dishwasher and stack the dishes on the counter. As she was stacking the plates, one of them slipped from her hands with a loud crash!

Mrs. Wilk came running.

"I'm so sorry," Shaindy said. "I was trying to be careful, but somehow the plate slipped." "There's nothing to do now," said Mrs. Wilk, "but I know that Bernie will be very upset. He gets upset every time one of these dishes break."

When Mr. Wilk returned home that evening, he noticed the broken pieces of china in the garbage. "What happened to the china

plate?" he asked his wife.

"Shaindy was stacking the dishes and one fell," Mrs. Wilk explained. "She was trying to be careful."

"I'd like to deduct \$10 from her pay," said Mr. Wilk.

"That's not fair," said his wife. "It was an accident; she didn't mean to break the plate."

"She has to be more careful," insisted Mr. Wilk. "There are times that we, too, break dishes when we wash them," protested Mrs. Wilk. "That's life!"

"But we're paying her good money for cleaning," argued Mr. Wilk. "There's no point in paying her and then having dishes broken."

"It seems unreasonable to me to hold her accountable for each broken dish!" said his wife. "How about we ask Rabbi Tzedek what he thinks?"

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FROM THE BHI HOTLINE

Submitted by
L. Z.

past due

I agreed to be a guarantor for a sum of money Reuven borrowed from Shimon. When the loan was due, Shimon did not ask to be repaid. Almost two years have passed. Shimon now approached me to repay the loan, as Reuven does not have the needed funds. When the loan was originally due, I was in a better financial position and could have repaid it in full, but my finances are much weaker now. It would be a great strain for me to repay the loan. Shimon and I agreed to consult with you on this matter.

Q: Am I still obligated to repay the loan?

A: Shulchan Aruch (C. M. 131:4) discusses the case of a guarantor who approaches the lender on the date that the loan was due and instructs him to make an effort to collect the loan from the borrower – otherwise, he will consider himself relieved from his liability as the guarantor. Shulchan Aruch (according to Rema's interpretation) writes that whether this statement can indeed relieve the guarantor of his liability

is a dispute between halachic opinions, and therefore suggests that a decision on such a case should only be reached with serious insightfulness. This ruling clearly indicates that, according to all opinions, a guarantor will not be absolved from his liabilities without a notice by the guarantor to the creditor to pursue the collection of the debt. If the guarantor did not give such notice, he is legally obligated to pay the creditor even if the loan's due date expired long ago. The interpretation of Rema is con-

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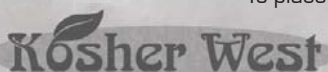
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STORYLINE CONTINUED

"Great idea," replied Mr. Wilk. "I'll give him a call."

Mr. Wilk called Rabbi Tzedek.

"Our cleaning lady broke a china plate while stacking the dishes," he said. "Is it fair to deduct \$10 from her salary on account of the damage?"

Rabbi Tzedek replied, "In principle, the cleaning woman is responsible for what she damages during her work. However, the general practice is not to be particular about damage like this, unless it was through gross negligence."

Rabbi Tzedek then explained: "The Talmud Yerushalmi addresses the case of a wife who damaged her husband's property during the course of her household chores. It exempts the woman based on the rationale that otherwise, 'ain lecha shalom habayis.' If the husband would be able to insist on payment, it would undermine the relationship between the husband and wife (Even Ha'ezer 80:17)."

"The implication of this statement is that, in principle, the woman is legally responsible for the damage, even though it occurred through fulfilling household chores. The reason is that the wife

has the legal status of a shomer sachar, a paid guardian, because she fulfills these chores in return for the husband's responsibilities and obligations towards her. As such, she should be responsible for the items that she handles – unless they are broken through circumstances beyond her control (oness) – were it not for the concern of shalom bayis."

"This refers to a wife, though," noted Mr. Wilk. "What about a cleaning woman?"

"Obviously, the exemption of shalom bayis does not apply to her," replied Rabbi Tzedek. "Therefore, a cleaning woman should be liable for what she damages in the course of her work. The same is true for other professionals who damage (with the exception of porters, who have another exemption; see C.M. 304:1).

"Nonetheless, since it is commonplace that dishes get broken occasionally in the course of household chores, the practice of most homeowners is not to be particular with their cleaning help over small items, unless they were grossly negligent (Pischei Teshuva C.M. 331:1; Aruch Hashulchan 331:7)."

FROM THE BHI HOTLINE CONTINUED

traversal. Teshuvos Chacham Tzvi (51) asserts that there are halachic opinions that absolve a guarantor from his obligations once the lender allows the due date to pass without making an effort to collect the loan, even if the guarantor did not give any notice to the creditor to collect his debt. According to those opinions, the guarantor only obligates himself to repay the loan if the borrower cannot repay it at the time it comes due. If, however, it is not established that the borrower cannot repay the loan at the due date and the lender does not attempt to collect the debt at that time, we assume that the creditor released the guarantor from his commitment. Chacham Tzvi rules that the guarantor may rely on this as a justification to release him from any obligations. Accordingly, since the lender allowed so much time to pass from the due date in your case, you should be exempt from liability. Other halachic authorities (see

Pischei Teshuva 131:3) maintain that the Rema's interpretation is correct: the commitment of the guarantor does not expire if the lender does not make an effort to collect the loan when it comes due, and the guarantor is only released from his responsibility if the lender did not collect the debt after being warned by the guarantor. According to this position, you remain liable to repay the loan. Practically, since the question of your liability is disputable, the lender cannot force you to repay the loan (see Pischei Teshuva ibid, but see Erech Shai & Pischei Choshen Halvaah 13/61) unless your agreement permitted the lender to collect his loan without approaching the borrower first (arev kablan). In such a case, you assumed the same status as the borrower, and the lender can collect his debt from you even if you warned him to collect from the borrower (Pischei Teshuva ibid from Chacham Tzvi ibid).

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MONEY MATTERS

laws of interest week #13

Q: My business is low on cash. Can I offer my workers a "bonus" if they agree to delay payment of wages for a month?

A: Once wages are due, it is prohibited to offer the workers an additional amount for delay of payment, because awaiting payment of owed wages is considered a "loan" to the employer and the "bonus" is considered ribbis on this loan (Y.D. 173:12). Therefore, the contract can-

not stipulate additional, increasing charges for delayed payment. Even if the employer withheld the wages without consent, the worker is not entitled to receive interest on the delayed wages (Shach 176:8; Bris Yehuda 2:17). However, after the salary is paid, some authorities permit a small bonus if it is not linked to the delay in salary. An employer may distribute a holiday bonus or issue the next paycheck ahead of schedule (Shach Y.D. 160:10; The Laws of

Ribbis 10:13). Also, if the wages are not due yet, it is permissible to extend the job and pay a higher amount at the end. For example, if a person hired a painter and wants to delay payment, he can suggest – before the work is finished – to also paint the pantry later and add for the delay till then. This is permitted because the homeowner has no obligation to pay until the job is finished, so awaiting payment until then is not considered a "loan" to him (Y.D. 173:12).

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