Business weekly

PARSHAS **KI SEITZEI**
FRIDAY, **SEPTEMBER 9, 2011**
10 ELUL 5771
ISSUE #**74**
under the auspices of
HaRav Chaim Kohn, shlita

a project of the **Business Halacha Institute**

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

STORYLINE not **listed**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

Yitz came home all excited, "We'll be having a class barbecue next month," he said. "I was chosen to say one of the divrei Torah."
"That's wonderful," said his mother. "Who's arranging the food?"
"Dan and two other boys were designated to buy the food," answered Yitz. "Everyone has to chip in $10."
Yitz's mother gave him $10, which he stuffed in his pocket.
"Please don't lose it!" his mother warned him.
A week later, a group of boys were playing ball together. One of them gave Dan his $10. "This is for the barbecue," he said.
"Thank you," said Dan. "Let me jot you down." He fumbled through his pad and wrote the boy's name on his list.
Dan looked over the list. "Yitz, according to my list, you still didn't pay," he said.
"That's strange," said Yitz. "I seem to remember giving the money to you or one of the other boys, but I don't remember clearly. Are you sure that I didn't pay?"
"You're not listed," said Dan. "It's possible, though, that you gave the money to one of the other boys and they forgot to tell me, or that I didn't write your name down when you paid me."
"What should we do?" said Yitz. "Neither of us remembers whether I paid or not."
"What should we do?!'" Dan smiled. "We should ask Rabbi Dayan!"
Dan and Yitz went over to Rabbi Dayan. "We collected money for a class party. Yitz is not listed as having paid, but has a recollection that he might have paid. Neither of us remembers clearly, though. Does he have to pay?"
"There are three issues to consider here," said Rabbi Dayan. "First, whether this case is considered a definite obligation or not. Second, whether Dan's list is reliable. Third, what is the halacha when both parties are in doubt?"
"What do you mean by a definite obligation?" asked Yitz.
"There is a difference between someone who is unsure whether he borrowed in the first place, and someone who definitely borrowed, but is unsure whether he repaid," explained Rabbi Dayan. "If neither party is sure whether there was a loan in the first place, there is generally not even a moral obligation to pay (C.M. 75:17; SM"A 75:22)."
"We already ordered the food," said Dan, "and everyone is expected to chip in for it."
"If so, this would seem to be considered a

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FROM THE BHI HOTLINE parameters of a **partnership**

Submitted by
N. J.

I am considering taking a partner in my real estate business, and I want to have the parameters of our partnership clearly documented. I would like to include a clause that states that in the event that we have a disagreement that must be resolved by Bais Din, the one who loses the din torah will be responsible for all the expenses involved in having a din torah. My reason for doing this is that I don't want to have to spend money defending myself against frivolous charges, and such an agreement would discourage petty lawsuits.

Q: Would halacha recognize such a condition as binding?

A: Your question revolves around the issue of asmachta – a conditional liability that one never intended as a genuine commitment. Say Reuven asks Shimon to allow him to test drive his new car. Shimon agrees, saying that in the event that the car is returned damaged, Reuven will pay double the cost of the repairs. This stipulation is an asmachta and is therefore not binding (C. M. 61:5).
Sema (61:12) explains that Reuven's agreement to pay twice the cost of the damage is, by definition, an asmachta, similar to a sharecropper who agrees that if he allows the field to lie fallow, he will pay an inflated amount (C.M. 207:13). This commitment is clearly exaggerated and therefore not binding.

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STORYLINE CONTINUED

case of definite obligation and questionable payment," said Rabbi Dayan. "So there may be some obligation."

"But is it 'questionable payment' if Yitz is not listed as having paid?" asked Dan.

"This brings us to the second issue," said Rabbi Dayan. "How reliable is your list?"

"Does that make a difference?" asked Yitz. "Can someone's own record ever be considered a proof?"

"It certainly makes a difference," replied Rabbi Dayan. "The Rosh writes in his responsa that if a storeowner is meticulous with his ledger and no mention of payment is recorded, although it's not considered absolute proof, he can claim in a definitive manner that the debt was not paid. However, if the storeowner sometime neglects to record transactions, he cannot claim definitively on the basis of his ledger (see C.M. 91:5 and commentaries)."

"It's possible that I missed his name," acknowledged Dan. "There was another boy who I know paid me and his name was not recorded. It's also possible that Yitz gave the money to one of the other boys in charge, and they forgot to mention his name."

"If so, this should be considered as doubt on both sides," said Rabbi Dayan. "This brings us to the third, and final, issue. What happens if someone definitely owed, but neither side remembers whether he paid?"

Dan and Yitz listened attentively.

"In this case, there is definitely no legal obligation to pay," continued Rabbi Dayan. "There is a dispute between the authorities whether there is a moral obligation to pay. Some maintain that even though there was a definite obligation, when the plaintiff is also unsure whether he was repaid, there is not even a moral obligation to pay (Taz 75:10). Others argue that there is a moral obligation to pay, or at least compromise with the other party (see Shach 75:65; Pischei Teshvua 75:21)."

"What should we do?" asked Yitz.

"While not obligatory, I would recommend compromising," replied Rabbi Dayan. "Paying a third of the amount would certainly seem sufficient, since it is not even clear that there is a moral obligation."

FROM THE BHI HOTLINE CONTINUED

If, however, one commits himself to a reasonable amount, e.g. to recover the other party's loss, it is not an asmachta and the agreement is binding. Your suggested clause that would obligate the party who loses the din torah to cover the other party's expenses seems to fit into the category of a reasonable, binding commitment.

R' Moshe Feinstein notes that there is another factor that must be considered when determining the validity of this type of agreement. Halachically, one who loses a din torah is not obligated to reimburse the other party for his expenses. An agreement that the loser should cover all costs of the din torah is therefore no different than any other inflated expense and is an asmachta. However, this applies only if the two parties already find themselves in a disagreement and they decide at that point that the losing party should cover the expenses of the winner. When two parties are still at the point of contemplating a business relationship, though, it is reasonable for them to protect themselves from any potential loss. For example, a stipulation that in the event of a din torah the winner should not suffer any losses is reasonable, particularly if it serves as a deterrent to prevent frivolous charges. As such, this agreement is no different than any other mutual condition of their partnership (Igros Moshe C. M. 2:26) and is therefore binding.

Since you and your partner plan to make this clause a part of your initial partnership agreement, it is binding.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

laws of interest week #14

Q: A dry cleaners has the following price arrangement: $1 per shirt if prepaid; $1.50 if paid at pickup. Is there a violation of ribbis in this arrangement?

A: There is no violation of ribbis; the customer can choose either option. This is because, in principle, payment for labor is due at the end. Therefore, the price of $1.50 is considered the "regular price" and not additional charge for delayed payment (Y. D. 176:6).

Furthermore, similar to rentals, it is permissible to provide a discount for prepayment of wages. This is because it is an equally legitimate option to pay for the services at the beginning of the work. Therefore the discount is viewed simply as accepting a lower wage (Y.D. 176:8).

However, unlike rentals, it is only permissible to offer a discount if the worker begins immediately and works on a continuous basis. It is not permissible to provide a discount for work that will only begin later, since there is no binding commitment yet. In the case of cleaners, though, when the cleaners take the shirt, they become obligated in the job, even if they do not actually begin cleaning it until later (see Rama C. M. 333:1; The Laws of Ribbis 10:27).

PLEASE BE AWARE

Using your friend's credit card for purchases or taking advantage of his special finance offers can involve serious ribbis (interest) issues.

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:

phone: 718-233-3845 x11 · email: ask@businesshalacha.com