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STORYLINE

little lamb

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

The Becker family owned a small home-
stead and kept a few animals as a petting
zoo. The children's favorite animal was a
young sheep they named Rachel. There
was much excitement as time approached
for Rachel to bear her first lamb.

"What should we call it?" asked little Miriam.
"If it's male, we'll call it Tzoni," suggested
Chaim, "and if it's female, we'll call it Kisba."
Mr. Becker, meanwhile, seemed lost in
thought. "We just finished learning Maseches
Bechoros in the Daf Yomi shiur," he said.
"If Rachel has a male lamb, then he's a
bechor (firstborn). We would have to give
him to a kohen."

"What?" said Miriam shocked. "Give Tzoni
away? After waiting five months for him?"

"I've heard about a pidyon haben for a first-
born son," said Mrs. Becker, "but not about

giving a firstborn lamb to the kohen."

"A firstborn lamb is sacred even nowadays,"
said Mr. Becker. "We can't offer it now as a
sacrifice, but it still has sanctity. You have
to let the animal graze until it gets a blem-
ish and then you give it to the kohen to eat
(Bechoros 26b)."

"You mean we'll have a holy sheep roam-
ing around the farm?!" asked Mrs. Becker.
"What do we do with it?"

"Absolutely nothing," said Mr. Becker. "Since
it's sacred, you can't use it for anything or
shear it."

"How about if I just make a blemish in it?"
said Chaim. "Then we can give the lamb im-
mediately to the kohen."

"That won't work, either," said Mr. Becker.
"You're not allowed to intentionally cause a
blemish in a sacred firstborn animal. You just

have to let it roam until it develops a blemish
on its own."

"That can become a problem if it doesn't get
a blemish for a long time," said Mrs. Becker.
"I think I heard something about selling it to
a gentile," said Chaim.

"I don't see how I can sell a sacred lamb,"
Mr. Becker said. "I'll have to speak with Rabbi
Tzedek about this."

Mr. Becker called Rabbi Tzedek. "We have a
sheep about to deliver its first lamb," he said.
"What do we do if the lamb turns out male?"
Rabbi Tzedek answered, "You should sell
part of the mother sheep to a gentile before-
hand, typically the ear, by receiving a cash
payment and also having the gentile lead
the animal into his property."

Rabbi Tzedek then explained, "Nowa-
days, when it is not possible to sacrifice a

continued on reverse side

FROM THE BHI HOTLINE

Submitted by
P. A.

clause in the contract

I entered into a contract to sell some prop-
erty with a penalty clause. The buyer put
\$10,000 in escrow, with the understanding
that if he would not close on the property
by the specified date, the money would be
mine. We worded the clause in a way that
was also halachically binding.

I never contacted the buyer to remind him
that the target date was approaching. When
he finally called - after the deadline - to com-
plete the transaction, I told him that I have

the right to collect the \$10,000 that is in the
escrow account. He responded that since I
hadn't contacted him, he had figured that
I was no longer in a rush to close on the
property, and he instead became busy with
other transactions.

**Q: Does the buyer, who assumed that my
silence indicated that I forgave the con-
dition, have a right to the money, or is my
claim correct?**

A: The core issue is the nature of a time-
related stipulation between two parties. Is
the stipulation enforceable only if the one
who stipulated asks for it to be fulfilled, or
is such a stipulation enforceable automati-
cally once the two parties agree to it?

One perspective is that the stipulation re-
mains in a dormant state until it is activated
by the one who made the stipulation. At
that moment, the other party is obligated
to carry out the stipulation. If the one who

continued on reverse side

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STORYLINE CONTINUED

bechor, there is concern that a person will violate the prohibitions against using the bechor before it becomes blemished. Therefore, it is recommended to make a gentile a joint partner in the mother, so that the firstborn will not become sacred (Y.D. 320:6)."

"Why isn't it enough for me to receive cash?" asked Mr. Becker. "Why is it also necessary for the gentile to lead the animal?"

"This is because every transaction requires a kinyan, an act of transaction, to be of halachic validity," said Rabbi Tzedek. "There is a dispute regarding the manner in which a gentile acquires movable items from a Jew. The Rambam rules that either cash payment or taking the item suffices (Hil. Zechiya 1:14). However, Rashi writes that a gentile acquires only through cash payment (A.Z. 71a). On the other hand, Rabbeinu Tam and many other authorities maintain that a gentile acquires only through taking the item (C.M. 194:3; SM"A 194:1; Shach 194:1,4).

"In order to make the sale valid according to both Rashi and

Rabbeinu Tam, the practice is to do both forms of kinyan – a cash payment and having the gentile lead the animal into his property."

"What if a person did only one of these forms of transaction?" asked Mr. Becker.

"Since there is a dispute which kinyan is valid, many authorities maintain that the firstborn lamb remains holy out of doubt," replied Rabbi Tzedek. "Others maintain, though, that the primary transaction is taking the animal, like Rabbeinu Tam; if the gentile only gave cash, the lamb would remain holy, whereas if he led the lamb, it would not be. (Shach Y.D. 320:8; Pischei Teshuva 320:6).

"Alternatively, the gentile can make a token cash payment to rent the area where the animal is standing and thereby acquire a share in the mother (Y.D. 320:6)," concluded Rabbi Tzedek. "There is much discussion in the achronim as to the exact nature of this method, whether through chatzer, agav, or meshicha (see Ketzos Hachoshen 194:3; Nesivos Hamishpat 200:Intro.)."

FROM THE BHI HOTLINE CONTINUED

added the stipulation does not activate it, the other party is not obligated to carry out the stipulation. This is similar to the halacha that states that an employer does not violate the prohibition against delaying payment of an employee's wages until the employee demands payment for his employment (C.M. 339:10). Even if the details of the salary were worked out, the employee must first ask for payment in order to activate the employer's obligation to pay without delay (Avodas HaGershuni 7, cited in Pischei Teshuvah 73:10).

The other perspective is that once a stipulation is agreed upon, it is immediately binding, and it is not necessary for one of the parties to activate it. An employer does not violate the prohibition

against delaying payment of wages to an employee until the employee demands payment because as long as the employee does not demand payment, the employer may assume that the employee is willing to wait for his salary. In cases involving penalty clauses, silence is not an indication that the stipulation was forgiven; it is likely that the party is silent in order to be able to collect the penalty (Erech Shai C.M. 73:6).

In conclusion, there is a debate whether a time-based stipulation becomes activated immediately or whether the one who made the stipulation must demand compliance. Since the matter is subject to debate, it is not possible to force the party that is in possession of the disputed money to pay the penalty.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

borrowing and lending week #13

Q: Under what conditions can I ask to freeze the assets of my debtor?

A: If the creditor suspects that the debtor will hide his assets so that it will not be possible to collect the loan when it becomes due, beis din should freeze the assets if the concern seems real. Similarly, if the borrower is squandering his assets or wants to leave the country before the loan is due, the lender

can demand that the borrower pay him or establish a guarantor (C.M. 73:10).

The Shach (73:34) cites the Maharshal, however, that if the borrower is not squandering his assets but experiencing great financial difficulties, the creditor cannot do so before the loan is due. [Once the loan is due, though, Aruch Hashulchan (73:15) writes that we freeze even in this circumstance.] The Shach concludes that the application of freezing as-

sets varies from place to place and depends on the determination of the beis din.

Some authorities permit freezing assets in a secular court when there is clear basis and there is concern for loss, such as if the borrower will squander his assets before there is chance to adjudicate in beis din (Pischei Choshen, Halva'ah 6:nt. 12). It is preferable, though, to get permission first from beis din when possible.

COMMON RIBBIS ISSUES

I borrowed an onion from my neighbor. Do I have to be careful to return an onion of equal size?

Sunday mornings at Cong. Kneseth Yisroel (White shul)

Shacharis 8:30 am, Breakfast 9:15 am

Prep Shiur/R' Ari Bergman 9:20 - 10:15 am

Halacha Shiur/R' Moishe Kaufman 10:15 - 10:45 am

For more info, contact R' Ari Bergman at 516-305-2815 or choshenmishpat@crefacorp.com

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