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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

NEW EVIDENCE

Rabbi Dayan was concluding the fifth session in a protracted case. "We will convene once more in thirty days," Rabbi Dayan informed the litigants. "Any proof that you want to bring must be submitted before that. Afterward we will issue a ruling."

At the final session, Mr. Shemtov continued to claim that he had paid whatever he owed. "Do you have any additional proof?" Rabbi Dayan asked him.

"No," replied Mr. Shemtov.

In the absence of sufficient receipts, the beis din ruled in favor of the plaintiff and Mr. Shemtov paid.

A year later, Mr. Shemtov met his parents' lawyer, who mentioned that he had come across a file containing records related to the case, including various receipts.

Mr. Shemtov returned to the beis din. "I found new evidence relating to my case from last year," he said to the secretary. "I'd like to schedule another session."

"What do you mean?" asked the secretary. "We already issued a ruling and closed the case."

"New evidence just became available that can overturn the ruling," said Mr. Shemtov. "I'd like to reopen the case and present the new evidence."

"I'm not sure that you can do that," said the secretary. "Did you already pay?"

"Yes, I paid promptly after the ruling," said Mr. Shemtov. "But based on the new evidence, the whole ruling was in error and should be rescinded."

"It don't know if there's anything to be done now," said the secretary. "A final ruling was issued. Certainly after you paid and accepted the ruling, I don't see how you can reopen the case and try to overturn it."

"Could you please check?" he asked.

"I'll ask Rabbi Dayan," said the secretary. "Please have a seat."

The secretary went into Rabbi Dayan's office. "Mr. Shemtov is here," he said. "We ruled last year that he is liable, but he claims that new evidence became available that can overturn the ruling. Should we reopen the case?"

"The Mishnah (Sanhedrin 31a) teaches that anytime a litigant brings new proof he can overturn the ruling," answered Rabbi Dayan. "This is true even if beis din instructed the litigant to bring any proof within thirty days. The halachic scope of newly found evidence is broader than the legal one, which accepts only newly found

DID YOU KNOW?

In times of cash flow difficulty, paying one's employees on time takes precedence over paying vendors' invoices.

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SEFER FROM SHUL

Many years ago I "borrowed" a Chumash with commentaries from a local beis medrash. I forgot to return it and eventually misplaced the sefer and I do not recall which volume I borrowed.

Q: Am I obligated to purchase the entire set so that I am certain I return the missing sefer?

A: The first issue to discuss is whether borrowing a sefer from a shul without permission is allowed. There are authorities who maintain that there is an ancient takanah (enactment) against removing sefarim from a beis medrash (Gra, C.M. 163:105; Aruch Hashulchan, C.M. 163:17; and Dvar Shmuel 91). Many actually write that there is a cherem (ostracism) in force from previous generations that prohibits removing sefarim from a beis medrash without permission; however, such a cherem has no source or halachic force (Ohel Yehoshua 122).

Nevertheless, the existence of such a cherem is irrelevant since one who borrows something without permission — shoel shelo midaas — is categorized as a thief (C.M. 359:5 [292:1 and 363:5]). Accordingly, regardless of whether the beis medrash is privately owned or community owned, there is no doubt that the owner does not want sefarim removed without permission. Taking a sefer without permission is therefore an act of theft.

Sefarim are purchased for the beis medrash with the intention that they will be available for use there; when a person takes sefarim home he denies

STORY LINE

evidence that could not have been uncovered through due diligence. Similarly, the Sma (20:1) writes that beis din cannot set a time after which additional claims will not be heard, unless they made a kinyan with the litigant that he forfeits any rights after this time."

"But Mr. Shemtov stated that he had no more proof," the secretary pointed out. "Does that change things?"

"In general, once the litigant declared that he has no more proof or witnesses, he can no longer bring them. We are concerned that after losing the case he produced false evidence," replied Rabbi Dayan. "Nonetheless, the Gemara qualifies that if witnesses arrived from abroad, or documents that were held by others became accessible, the litigant can overturn the ruling, even if he declared that he has no further proof. Under these circumstances, we no longer have any basis to suspect that the evidence is false" (Sma 20:3).

"Is this the accepted halachah?" asked the secretary.

"Yes, the Shulchan Aruch (C.M. 20:1) codifies these rules," said Rabbi Dayan. "He adds that the litigant's declaration that he has no further proof can be understood to mean that he has no further proof available. However, if he explicitly stated that he has no proof 'at all, anywhere,' he cannot bring proof that became available later, since he disqualified it through his admission."

MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlita

BEIS DIN AND CIVIL COURT #13

Selling a Debt to Gentiles

Q: Can I sell a debt from another Jew to a gentile who will sue him in civil court?

A: This is not recommended, but if a Jew sold to a gentile a debt document from another Jew, the sale is valid. The seller must accept upon himself (in a halachically acceptable manner) to reimburse the Jewish borrower for any damage arising from the sale, such as if the gentile will collect more than he is entitled to according to Torah law (C.M. 66:25; Shach 66:85; Chiddushei Rabbi Akiva Eiger 66:25).

However, if the borrower refuses to adjudicate in beis din, it is permissible to sell the document to a gentile to collect in civil court, or to give it to him as payment of a debt to the gentile. Some allow this even if the gentile will collect rights not consonant with Torah law, such as interest penalties (see C.M. 26:4; Shaar Mishpat 26:2).

BHI HOTLINE

others the ability to use them. This is true even when the gabbaim do not protest such forbidden borrowing. A common justification is the principle of neicha leih l'inish l'me'evad mitzvah b'mamonei (people are happy to allow others to use their possessions to fulfill a mitzvah). However, the principle does not apply if the "borrowed" item could become ruined while it is being used to fulfill a mitzvah. Since "borrowed" sefarim often become ruined or lost, the principle is not applicable.

Even the gabbaim may only authorize loans of a sefer for short periods of time, since extended loans prevent others from using it (Ohel Yehoshua, ad loc.).

Someone who "borrowed" a sefer without permission is obligated to return the sefer, the same as any other thief. Even if the owner despaired of retrieving it, e.g., he bought a new set, the obligation to return it remains in force (C.M. 354:2 and 360:5). If the sefer's condition changed dramatically (shinui) or if it was lost altogether, the "borrower" is obligated to repay the value of the sefer (C.M. 360:5).

In your case, since the sefer you borrowed is missing, there is no obligation to replace the actual sefer. Your obligation is to repay the beis medrash the sefer's value at the time you "borrowed" it. In other words, you would pay the value of a used sefer rather than a new sefer, and there is no need to pay for a complete set.

For questions on monetary matters,
Please contact our confidential hotline at 877.845.8455
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