



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

NEIGHBOR OR TENANT?

Mr. Laufer owned a semi-detached house, which he rented out. One day he mentioned to his tenant, Mr. Sorscher, that he was planning to sell his house.

"We are interested in buying your house," Mr. Sorscher said. "It will save you the need to advertise."

"How much are you offering?" asked Mr. Laufer.

Mr. Sorscher made a formal offer. Mr. Laufer gave his approval to the deal. The two worked out the details and signed a purchase agreement.

As the closing date approached, the owner of the adjacent half, attached to Mr. Laufer's house, came to visit Mr. Sorscher. After some casual conversation, he said, "I heard that you're planning to buy Mr. Laufer's house. Is that true?"

"Yes," replied Mr. Sorscher. "Why do you ask?"

"I didn't know that his house was for sale," said the neighbor. "Was it advertised?"

"No," replied Mr. Sorscher. "When Mr. Laufer mentioned that he planned to sell, I immediately made him an offer."

"Ah, I understand," said the neighbor. "There's something that I'd like to discuss with you, if you have a few minutes."

"Sure," said Mr. Sorscher. "Sit down."

The two sat down in the living room. "Thank G-d our family has grown," said the neighbor. "I've been thinking of expanding our house."

"That makes sense," said Mr. Sorscher. "How do you plan to do that?"

"The simplest way is by buying the attached house and joining the two," said the neighbor. "If Mr. Laufer's house is up for sale, I'd like to buy it. Have you heard of the concept 'dina d'bar metzra'?"

"No, I haven't," replied Mr. Sorscher. "What is that?"

"When a property is available for sale, Chazal instituted that the adjacent owner has first rights to buy it," explained the neighbor. "This is fair and just, as he can utilize the property most efficiently to expand, so he is the one to whom it is most valuable."

"I see where you're heading," said Mr. Sorscher, "but it's too late now. We already signed a purchase agreement and are about to close on the deal."

DID YOU KNOW?

If you sign an agreement, you are bound by its terms even if you do not fully understand what it says, such as portions written in a different language or in fine print.

For more information please speak to your Rav, or you may contact our Business Services Division at:

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BHI HOTLINE

ONE JOB - OR SEVEN?

I own a bungalow colony and hired a roofer to repair seven roofs. After

he completed three of the roofs I told him that I don't need him to repair the remaining four, since I found someone who will do it more cheaply. He claims that he was hired to repair seven roofs and I cannot fire him.

Q: Am I obligated to retain the roofer to complete the remaining four roofs?

A: We will not address the question of mechusar amanah (retracting an oral agreement), since we have done so many times in the past. The question we will address is whether you are obligated to retain his employment for the entire job that he began. There is a kinyan that applies when hiring employees called has'chalas melachah — lit., beginning the job. This means that once an employee begins his assigned job, his employer may not cancel that employment agreement unless the decision is due to circumstances beyond his control (oness). The question here is whether beginning to repair one of the seven roofs constitutes a kinyan for all seven roofs, or whether each roof is considered a separate job.

The Rema (C.M. 333:2) rules that a teacher or any other employee who accepts an employment agreement for two years and begins working the first year is considered to have a kinyan even for the second year. Therefore, even if the agreement is to pay the employee annually, monthly or weekly, we do not consider those payment periods to be independent periods of employment. It is a single employment agreement, and one kinyan at the outset suffices for the entire period (cf. Bais Shlomo C.M. 115 and Minchas Pitim 315).



STORY LINE

"Even so, the Sages required the buyer to retract his offer in favor of the adjacent owner," replied the neighbor. "Even after the sale, the neighbor has the right to demand that the buyer sell the property to him" (C.M. 175:6).

"But I'm already living in the house," said Mr. Sorscher. "Shouldn't that count? My rights should not be less valid than a neighbor's!"

"I don't think that makes a difference," replied the neighbor, "but let's ask Rabbi Dayan."

"The rights of dina d'bar metzra of a renter is subject to a dispute between the Rambam and the Rosh," replied Rabbi Dayan. "The Rambam maintains that a renter does not have these rights, whereas the Rosh maintains that he does, since a rental is like a purchase for that time."

"Whose opinion do we follow?" asked Mr. Sorscher.

"The Shulchan Aruch leans towards the opinion of the Rambam, whereas the Rema cites the opinion of the Rosh," replied Rabbi Dayan. "The Acharonim leave this issue unresolved, so the final ruling depends on who has the more certain claim or is in possession (muchzak). Thus, an adjacent renter has some rights relative to an outsider, and a current tenant even more, but still less than an adjacent owner. Nonetheless, if the renter already bought the house, an adjacent owner cannot claim dina d'bar metzra rights any more, since the renter is now in possession. It would seem that signing a purchase agreement should not suffice for a current tenant. Thus, Mr. Sorscher may not follow through on the deal" (C.M. 175:59-63; Pischei Teshuvah 175:27 28).



BHI HOTLINE

This is true regarding employees who were hired for a continuous period of time, so that the kinyan at the outset extends for the entire duration of the employment agreement. But when an employment agreement is to perform a series of tasks — for example, to publish different books or to manufacture different garments — and the payment is calculated per item that is produced, each item is considered a separate job and there is nothing that connects the production of one garment with the next. Since each object is an independent job, the kinyan of haschalas melachah for one item does not obligate the employer to keep the employee for the next job. On the other hand, if the agreement was to produce a particular number of books or garments and the parties agreed on a price for the total number of garments or books, it is considered a single employment agreement; once the job is commenced, neither party may cancel the remainder of the employment agreement (Mahariyaz Enzil 15).

Therefore, the following issues must be clarified to determine the halachah in your case: (a) whether there is an issue of mechusar amanah; (b) whether a contract was signed for the entire job, because if so, neither party may cancel the agreement; (c) whether the roofer rejected other jobs because he anticipated repairing all seven roofs (If he did, you may not cancel the agreement if he will not be able to find other jobs and thereby will suffer a loss due to your cancellation.); (d) whether the price was established for the set of all seven roofs, in which case you may not cancel; or whether the price was set individually, in which case you might be permitted to cancel the agreement.

For questions on monetary matters,
Please contact our confidential hotline at 877.845.8455
ask@businesshalacha.com



MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlitza

BEIS DIN AND CIVIL COURT #19

Written Decision

Q: Will I receive a written decision from the beis din?

A: Beis din will usually provide a written copy of the decision to serve as proof of the ruling. On a routine basis, beis din is not required to explain the reasons for their decision. However, if the ruling is surprising, and the litigant feels he was judged unjustly, they should explain the reason to him. (C.M. 14:4)

Similarly, if the litigant requests that beis din write the decision to verify it, they should provide a written summary of the claims and the final ruling. Beis din would have to indicate permission to review their ruling; otherwise another beis din should not intervene. Especially nowadays that litigants come of their own accord and willingly accept the ruling through signing a binding arbitration agreement beforehand, the ruling must be upheld without question (Aruch Hashulchan 14:8; Igros Moshe C.M. 1:76).

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