



BUSINESS WEEKLY

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Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

ROAST COST

During Chol Hamoed Mrs. Bloom called her neighbor Mrs. Fleisher. "Your daughter mentioned that you're going to the butcher shop soon," she said. "Would you mind picking up four roasts for me? We're having a lot of guests for the end of Yom Tov."

"With pleasure," said Mrs. Fleisher. "I'll drop them off on the way home."

At the butcher shop, Mrs. Fleisher got a separate receipt for Mrs. Bloom's roasts, which she put in her pocketbook. On the way home, she stopped off at the Blooms'.

A child answered the door. "My parents are not home," he said.

"Your mother asked me to buy these roasts," said Mrs. Fleisher. "Tell her that we'll settle the bill after Yom Tov."

After Pesach, Mrs. Bloom came over to pay. "How much were the roasts?" she asked Mrs. Fleisher.

"I don't remember," said Mrs. Fleisher, "but I have the bill in my pocketbook."

Mrs. Fleisher took out the bill. "It was..." she said, inspecting the bill closely.

"What's the matter?" asked Mrs. Bloom.

"I can't read what it says," Mrs. Fleisher replied. "The ink is smeared." She gave the bill to Mrs. Bloom to look at.

"I also can't tell," said Mrs. Bloom. "It's either \$65 or \$85. I'll give you \$85; you did me a favor and shouldn't lose out." She handed the money to Mrs. Fleisher.

"No, I can't take more than \$65," protested Mrs. Fleisher. "You may not owe me more than that."

Meanwhile, Mr. Fleisher overheard their discussion. "You should split the difference and pay \$75," he suggested.

"Why don't you ask Rabbi Dayan?" piped up their twelve-year-old son. "Maybe the case will make it into a coming issue!"

Everyone burst out laughing. "That's a good idea," they all agreed.

Mr. Fleisher called Rabbi Dayan and related what happened. "If the bill is unclear," he asked, "how much should the neighbor pay?"

"In a case where a loan document has an unclear amount, e.g., it says dollars and the amount was left out or erased and not legible, we assume the lesser amount of two," replied Rabbi Dayan. "This is based on the principle of hamotzi mechaveiro alav haraayah — the plaintiff has the burden of the proof. Since it is not clear how much the borrower owes, the lender is only entitled to the lower amount. Thus, Mrs. Bloom needs to pay only \$65"

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BHI HOTLINE

DOUBLE-DIPPING RENTAL

I own a vacation home that I occasionally rent to others for a couple of weeks at a time.

Someone rented the house for two weeks, and after the first week a business opportunity arose that required him to return home — but he had paid me for both weeks. Fortunately, that same day I received a call from someone looking to rent the house for the second week.

Q: Am I obligated to return to the first tenant one week's rent since I found another tenant who occupied the house for that week?

A: Renting property is essentially a purchase for a limited period of time. Consequently, when a tenant decides to leave in the middle of his lease he remains obligated to pay rent for the remainder of the lease. Furthermore, the tenant cannot prevent the owner from leasing the apartment to another person since it is better for a home to be occupied than to be abandoned (Rema, C.M. 316:1).

However, there is a disagreement as to who keeps the money the second tenant pays for his lease. One approach maintains that if the first tenant already paid the full amount, the money paid by the second tenant belongs to the owner, but if the first tenant did not yet pay the full amount to the owner, the monies received from the second tenant may be used to satisfy the first tenant's obligation (Sma 316:3). The rationale is that once the first tenant paid for the months that he will not occupy the house he has severed his relationship with the property and thus has no



STORY LINE

(C.M. 42:11)

"Perhaps I didn't clarify," said Mr. Fleisher. "Mrs. Bloom already handed my wife the \$85. Does that change the ruling, since now she is in possession of the money?"

"That is a fascinating question," replied Rabbi Dayan. "The Sma (42:32) indicates that, indeed, if the amount is unclear and the lender grabbed the higher amount, he does not have to return it.

"However, both the Shach (42:27) and the Taz (42:12) reject the opinion of the Sma," continued Rabbi Dayan. "In a situation where the amount in the document is erased or illegible, it is considered as if there is no document. Furthermore, a store receipt does not have the legal status of a loan document. We should treat the case as any other dispute without supporting evidence."

"So what is the ruling," asked Mr. Fleisher, "if my wife doesn't remember whether the roasts cost \$65 or \$85?"

"In a case where neither the lender nor the borrower remembers the amount of the loan, the lender only has to pay the amount that he is certain about," replied Rabbi Dayan. "There is not even a moral obligation (chiyuv b'dinei Shamayim) to pay the higher amount. Even if the lender grabbed the higher amount, he is required to return it. (C.M. 75:11; Shach 75:26).

"Of course, we addressed the halachic requirement," concluded Rabbi Dayan. "What your wife and her neighbor decide to do out of neighborly consideration in appreciation for a favor is up to them.



BHI HOTLINE

grounds to keep the rent paid by the second tenant. In contrast, not paying indicates that he is waiting to see if he can sublease the house to another tenant so that he can keep the money the second tenant pays him and utilize those funds to pay the owner (Igros Moshe, C.M. 1:74, explaining the above position).

Many other authorities disagree and argue that in all circumstances the first tenant remains in charge for the duration of his lease and the rent paid by the second tenant belongs to the first tenant (Beis Yosef 312, Ketzos and Nesivos 316:2). Since the disagreement cannot be definitively resolved if the money was not yet collected, it is preferable for the first tenant and owner to share the rent collected from the second tenant (Igros Moshe loc. cit.).

In your case, since the first tenant already paid for the two weeks you may follow the position that rules that you may lease the house to a second tenant and keep the rent for yourself. It must be emphasized that if the rental agreement restricts the tenant from subleasing the house or apartment, there is an additional argument that the owner would keep any rent paid by the second tenant because the first tenant does not have the right to sublease the apartment and thus obviously he would have no claim to the second tenant's rent (see Nesivos loc. cit. and Pischei Teshuvah 316:2).

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, shlit

BEIS DIN AND CIVIL COURT #6

Contractual Acceptance

Q: If a contract explicitly states that any associated disputes should be adjudicated before civil court, does that allow doing so?

A: Since it is generally prohibited to adjudicate before civil court, even if the two parties committed in the contract to do so, this agreement is not halachically binding. The rule of dina d'malchusa dina also does not apply here to require litigation before civil court (see C.M. 26:3-4; Shach 73:39).

The clause is understood to mean, instead, that if the litigant will refuse to adjudicate before beis din, he can be sued in civil court. Alternatively, it may be interpreted that the parties obligate themselves before beis din to monetary regulations that are rooted in civil law, such as corporate law, that makes only the corporation's assets liable (see Tur, C.M. 26; Sma 26:11; Aruch Hashulchan 26:4-5).

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— SUNDAY, MAY 17 2015 —