



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

WERDIGER EDITION

Issue #298

Ki Tisa

Friday, February 26, 2016

17 Adar I 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

SHADY WITNESS

Mr. Rubin and Mr. Jacobs came to Rabbi Dayan's beis din. Mr. Rubin, the plaintiff, presented his claim, which Mr. Jacobs refuted. "If your claim is true," concluded Mr. Jacobs, "present evidence of it!" Rabbi Dayan turned to Mr. Rubin. "Do you have any evidence for your claim?" he asked.

"I have no documents," said Mr. Rubin. "However, I have witnesses who can testify about it."

"Who are your witnesses?" asked Rabbi Dayan.

"Mr. Kahn and Mr. Weiss," answered Mr. Rubin.

"Mr. Weiss!" objected Mr. Jacobs. "He is disqualified from testifying!"

"Why?" asked Rabbi Dayan.

"Mr. Weiss is a thief!" exclaimed Mr. Jacobs.

"How do you know?" Rabbi Dayan asked.

"Mr. Weiss was convicted of theft in court two months ago," said Mr. Jacobs. "How can he testify?"

"Do you have witnesses to support this allegation?" asked Rabbi Dayan.

"Many people know about it," replied Mr. Jacobs. "I can bring people to attest to it."

"Are you aware of this?" Rabbi Dayan asked Mr. Rubin.

"Yes, but that was before," said Mr. Rubin. "Mr. Weiss was ordered to pay for the theft, which he did. At this point, he's honest. So why can't he testify?"

"If Mr. Weiss was a thief when the agreement was made," replied Rabbi Dayan, "he remains disqualified from testifying about it even if he becomes honest" (C.M. 33:13).

"That's not a problem," said Mr. Rubin. "The agreement was made after Mr. Weiss paid; he was honest already."

"I don't know how you can call him honest," said Mr. Rubin. "He denied the charge in court. Only after evidence was presented against him did he acknowledge guilt; he's not trustworthy."

"Once he returned the theft, he's no longer a thief," argued Mr. Jacobs. "He should be allowed to testify!"

The two turned to Rabbi Dayan to hear his ruling.

"The Shulchan Aruch (C.M. 34:7) writes that a thief is disqualified from testifying from the time he stole — even after returning what was stolen — until he does teshuvah," replied Rabbi Dayan. "He must indicate clearly that he is abandoning his illegal way of life. For example, a

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BHI HOTLINE

PREPAYMENT TUITION DISCOUNT

I am the financial administrator for a yeshivah.

A family inquired about receiving a discount for prepaying their remaining bill now, before Purim. I recall that there is a ribbis — interest — issue when one receives a discount for prepaying.

Q: Is it prohibited to give them a discount to prepay their remaining bill?

A: We will not address whether an institution (or any other corporate entity) is prohibited from borrowing money with interest when there is no individual who is responsible for the loan (see Igros Moshe, Y.D. 2:63; cf. Minchas Shlomo 28 and Bris Yehudah 7:26). We will discuss whether prepaying a bill violates the prohibition of ribbis. Chazal prohibited a merchant from offering two-tiered pricing. This involves offering one price for immediate payment and a higher price to pay at a later date or in installments (called "terms").

Generally, payment for merchandise is due upon delivery. When merchandise is delivered without taking payment, the merchant has extended a loan to the customer. Consequently, if the merchant charges more for granting terms, he is taking interest for the loan. However, the prohibition is violated only when the ribbis is noticeable in one of the following circumstances:

- 1) If the seller explicitly offers two-tiered pricing, whether in writing or verbally.
- 2) If the merchandise has a fixed cost so that it is evident that one is paying extra for those terms.
- 3) If the higher cost of buying on terms is significant. In circumstances where the extra charge is not noticeable, the prohibition against ribbis is not violated (Y.D. 173:1). Moreover, the prohibition is violated only when the merchant collects additional money for extending terms. If the customer pays the lower cost for the merchandise at the time of



STORY LINE

gambler is required to get rid of his gambling equipment; one who swore falsely is required to refrain even from honest oaths" (C.M. 34:29-35).

"The Rema (C.M. 34:29) qualifies this as pertaining to one who sinned on a regular basis," continued Rabbi Dayan. "Regarding a person who stole on a one-time basis, once he returns the money it is considered teshuvah — provided, however, that the thief returned the money of own initiative, not through legal enforcement. Thus, if Mr. Weiss paid only after being convicted, he remains disqualified until he indicates that he has truly repented.

"I should note," added Rabbi Dayan, "that some distinguish between a thief who returned the stolen item itself — who undoes the violation completely and therefore becomes qualified again even if forced to pay — and one who paid money in lieu of the theft, who becomes qualified only if he pays willingly. Others reject this distinction" (see Imrei Baruch 34:7; Imrei Binah, Eidus #31).

"What about one who steals from gentiles?" asked Mr. Rubin.

"It is prohibited to steal from gentiles," said Rabbi Dayan, "so that one who stole from gentiles should also be disqualified. However, some write that he is not disqualified since people are not aware of the severity of this" (Pischei Teshuvah 34:16).

"And what about one who damaged property intentionally?" asked Mr. Jacobs.

"Some say he is also disqualified, like a thief; others disagree," replied Rabbi Dayan (see Bach 34:12, based on B.K. 60b; Yam shel Shlomo, B.K., Hakones #30).



MONEY MATTERS

PARTNERSHIP # 20

Testifying for a Partner or Former Partner

Q: Can I testify on behalf of my partner or former partner?

A: A person with a vested interest — *nogei'a badavar* — cannot testify; however, once he is divested of interest, he can testify (C.M. 33:15).

Thus, while you are a partner, you cannot testify if you will gain from the testimony. However, you may testify if the testimony will not impact you, or is detrimental. Similarly, you may testify on issues unrelated to the partnership, where you have no vested interest (C.M. 37:6).

After you leave the partnership and are divested of interest, you can testify. According to most authorities, you can testify even about events that occurred while you were a partner. (This differs from inherently disqualified witnesses, such as relatives and thieves, who cannot testify on past events even after becoming qualified.) Some disagree with this, so that if the other party is in possession, he can claim *kim li* and refuse your testimony about events during the partnership (C.M. 37:6; Shach 37:32; Pischei Teshuvah 33:8).



BHI HOTLINE

the sale, the prohibition is not violated, since a loan was never extended (Y.D. 173:3). Therefore, if a store stipulates that their sale price is for customers who pay at checkout, they may not charge a higher price to customers who take the merchandise on credit. Halachically, the actual price is what is charged at the time of the transaction, and collecting more for buying on credit violates the Rabbinic prohibition against *ribbis*.

This issue applies when selling merchandise, since payment is due when taking the merchandise. It usually does not apply to rental or leasing charges, which are generally paid upon the completion of the lease (*ein sechirus mishtalemes ela l'basof*). Accordingly, when the lessee takes possession of the leased object without paying, the owner has not extended a loan, since the money is not due yet. Furthermore, if the lessee chooses to pay before the lease payment is due, e.g., a tenant pays in the middle of the month rather than at the end of the month when the rent is due, he is not lending money to the lessor. Once they are in the midst of the lease, prepayment is not a loan the lessee extends to the lessor; it is payment for the lease (see *Bris Yehudah* 26:[1]; *Divrei Sofrim* 176:35). Consequently, it is permitted for a lessor to offer a discount to a lessee who prepays since there is no loan. Therefore, in your case, since you are in the middle of the terms of the agreement, the family may be granted a discount to prepay the remainder of their bill.

However, if the lessor stipulates that payment is due at the outset of the lease [or if that is the common practice, as is the case in the U.S. with most real estate rentals], two-tiered pricing is prohibited. The stipulation or practice transforms the transaction and is similar to a sale where terms offered for additional payment is considered a loan and is subject to *ribbis*.

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