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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

BIKE BASH The autumn air was crisp, but the sun was shining. "What a great day to get together in the park!" Asher said to himself. When he suggested the idea to some friends, they decided to meet in the afternoon to play ball and go bike riding.

Asher called Benny. "We're meeting at 2 o'clock this afternoon at the park with our bikes," he said. "Would you like to join us?"

"I'd love to," Benny said, "but my bike is not available."

"I have an extra bike," Asher said. "If you want, you can borrow it."

"That would be great," said Benny. "Count me in!"

At 2 o'clock the group met at the park. After enjoying some ball playing and a little nosh, they set out along the bike path.

Benny was riding along at a normal pace at the head of the group. He spotted another bicyclist racing towards him. He slowed down, but the other bicyclist kept zooming on; he careened into Benny, knocking the bike over. The bicyclist sped off and was gone before anyone had a chance to say anything to him.

Benny got up slowly.

"Are you OK?" Asher asked him.

"I think so," Benny said. "The bike is damaged, though. It can't be ridden and needs repair." Benny called his brother to pick him up with the car.

"I'm sorry, but you saw what happened," Benny apologized to Asher. "It wasn't my fault; I was riding normally."

"I saw that, but you could have been more careful," said Asher. "Had you stopped completely, it's possible that the accident might have been avoided."

"Maybe," acknowledged Benny. "But I didn't do anything wrong. I rode the bike in the normal manner, and then this accident occurred!"

"Still, you might have prevented it," argued Asher. "Anyway, you borrowed the bike and are liable for anything that happens, even oness (uncontrollable circumstances)."

The two agreed to ask Rabbi Dayan. "Benny borrowed my bike and it was damaged through an accident, mostly someone else's fault," said Asher. "Is he liable?"

"Chazal exempt a shoel (borrower) if meisah machmas melachah (an

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GAS METER MIXUP (PART I)

Two neighbors in a building, a grandfather and his grandson, presented to us the following inquiry. After 10 years of living there and paying their utility bills they realized that the gas company had been sending the grandson the bill for his grandfather's gas usage, and vice versa. The grandson made a calculation and it turns out that he paid thousands of dollars more than he was obligated to pay. The grandfather claimed he did not owe the grandson the difference.

Q: Is the grandfather obligated to repay his grandson for paying his gas bill all these years?

A: At first glance it seems that the grandfather's claim is well founded. Generally, if Reuven voluntarily pays Shimon's debt, Shimon is not obligated to reimburse him (C.M. 128:1; Shach 5). A number of reasons are given to explain this halachah.

One explanation is that it is assumed that Reuven intended to perform a mitzvah by paying Shimon's debt and it was meant to be a gift. Sometime later Reuven regretted giving this gift, but that regret does not obligate Shimon to now reimburse him (Rashi, B.K. 58a; Shach 128:8).

Another explanation is that Shimon could claim that he would have negotiated with his creditor to forgive the debt had he known. Even if the creditor is a difficult person, it is possible for Shimon to find a relative of his to plead or pay on his behalf. Accordingly, Shimon did not benefit from Reuven paying his debt and thus he is not obligated to reimburse him (C. M. 128:1).

A third explanation is that since Shimon did not receive anything



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animal died on account of work)," began Rabbi Dayan. "The Gemara (B.M. 96b) explains that this exemption is not based on a Scriptural inference, but rather on simple logic: The item was not borrowed to sit idle, but rather to be used. Since the damage was due to routine use, Benny is exempt" (C.M. 340:1).

"This damage wasn't exactly due to use, though," pointed out Asher. "How is it different from any other oness that occurred?"

"Good point!" replied Rabbi Dayan. "The Ramban and Shach (340:5) maintain that the exemption of meisah machmas melachah applies only to a malfunctioning of the borrowed item.

"However, Rambam, Shulchan Aruch and Sma (340:8) rule that any incident that occurred through the course of normal usage is included in meisah machmas melachah. Thus, Benny cannot be made to pay for the damage."

"What about the fact that Benny could have been more careful?" asked Asher. "Even if the accident was not his fault, it could have been avoided!"

"While it might seem that the exemption of meisah machmas melachah is only if an oness occurred, such as if the animal died, this is not so," replied Rabbi Dayan.

"The lender gave the item to the borrower to use in the normal manner. Therefore, as long as the borrower used the item in the normal fashion — was not negligent and did not use it in an unusual manner — he is not liable. The same is true for one who rented an item" (C.M. 340:1, 4; Pischei Choshen, Pikadon 10:9[18-19]).



MONEY MATTERS

PARTNERSHIP # 5

Reneging on the Agreement of a Partnership

Q: I entered an agreement to form a partnership, but have not yet begun the work. Am I allowed to renege?

A: The binding power of an agreement depends on the customary commercial practice. Thus, if, for example, you signed a contract and such a contract is considered binding in commercial practice, you are not permitted to renege without the customary penalties associated with this (see Responsa Rashba 3:397).

If the agreement was verbal, or in the absence of a clear commercial practice, there are numerous opinions as to what makes the agreement binding. The Rambam and Mechaber require a binding kinyan, whereas other Rishonim and the Rema maintain that even a verbal agreement can have legal significance. B'ezer Hashem, we will discuss these opinions in the coming weeks.

Regardless, one who reneges even from a verbal commitment is considered mechusar amanah, lacking trustworthiness. If there was a significant change of circumstances or change regarding agreements of davar shelo ba l'olam this may not apply (C.M. 204:7-8; Mishmeres Shalom 209:3; Yad Avraham, Y.D. 264:1)



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tangible from Reuven, nor did his property increase in value, Reuven did nothing more than prevent Shimon from a loss (mavri'ach ari minichsei chavairo) but that does not obligate Shimon to reimburse him (Tosafos, B.K. 58a d.h. "i-nami"; see also C.M. 128:2 regarding Shimon's exemption from having to reimburse Reuven, who was forced to pay Shimon's debt).

When we consider the above, the following emerges. According to the first reason, the grandfather must reimburse his grandson since it is clear that the grandson did not intend to perform a mitzvah by paying his grandfather's bill but paid by mistake. According to the second reason, although it is difficult for the grandfather to claim that he would have negotiated with the gas company to forgive his bill altogether, nonetheless, he may have found others who would have covered his bill, and this reason applies even though the grandson paid the bill in error. It would seem that the third explanation would also exempt the grandfather since he did not receive material benefit from the fact that his grandson paid his bill.

It must be emphasized that, although the grandfather could claim that he is exempt due to the two explanations that support his position (kim li), nevertheless, it is definitely ethical for him to reimburse the grandson. Moreover, beis din would certainly make a compromise between them and have the grandfather repay his grandson for at least some of the amount that he overpaid.

Next week, iy"H, we will explore reasons why the grandfather is halachically obligated to reimburse his grandson fully.

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