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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

PARTNERS DISBANDING

Mr. Weiss lived in a small co-op apartment that he owned. He was an elderly man, well into his 90s, and had lost his wife a few years earlier. After a long and fulfilled life, Mr. Weiss also passed away. In his will, he granted the apartment in equal shares to his two sons, Reuven and Shimon.

Reuven, of meager means, lived in a rented apartment not far from his father. Shimon already owned a house elsewhere.

The two brothers discussed what to do with the apartment. Unfortunately, their relationship was somewhat strained, so they could not come to a mutual agreement.

Reuven was happy to keep the apartment in the family's possession. He considered moving into the apartment, but was unsure whether he could afford to buy Shimon's half. On the other hand, Shimon preferred to sell the apartment on the open market, where he thought he could get a better price than anything Shimon could offer.

At one point, Reuven began using the apartment. Shimon approached him and demanded that he authorize selling it on the open market.

"I'm not interested in doing anything with the apartment," said Reuven. "If you're my partner in the apartment, you're welcome to use it with me!"

"That's not a realistic option," said Shimon. "You realize that the apartment is not appropriate for two families!"

After a number of months of bickering, and the beginnings of legal proceedings, Reuven suggested that they approach Rabbi Dayan and ask what Halachah has to say about the issue.

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"What should we do with our father's apartment?" asked Reuven. "What form of division is appropriate according to Halachah?"

"Halachah offers three legal options for property that partners do not want to use jointly, but can neither divide nor come to a mutual agreement about," answered Rabbi Dayan. "The preferred option is known as 'gode o agode — take or I will take.' One party buys the other party's share. The party interested

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GAS METER MIXUP (PART II)

Two neighbors in a building, a grandfather and his grandson, presented the following inquiry: After 10 years of living there and paying their utility bills they realized that the gas company had made a mistake and sent 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.

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

A: In last week's issue we explained that since the grandfather never instructed his grandson to pay his gas bill, he cannot be forced to repay him. The basis of this exemption is the principle that when Reuven voluntarily pays Shimon's debt, Shimon is not obligated to reimburse him. However, in this circumstance, in addition to a moral obligation for the grandfather to repay his grandson, there is an actual halachic obligation to do so, as we will explain.

1. There is a halachic principle called shibuda d'Rabi Nasan. According to this principle, when Reuven lends $100 to Shimon and Shimon lends $100 to Levi, Levi is obligated to pay directly to Reuven as if he borrowed the money from him. Technically, the gas company must repay the grandson the amount he was overcharged and the grandfather owes the gas company the amount he was undercharged. Accordingly, the principle of shibuda d'Rabi Nasan indicates that the grandson may demand payment from the

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in disbanding the partnership sets a price, and can force the other party to either buy or sell the other half for that price. According to many authorities, he can set a price even above the objective, assessed value, but cannot set one below it. If both parties are interested in selling, they should sell to a third party" (C.M. 171:6-7).

"What if one party is not interested in buying the other half," asked Shimon, "but wants to sell the property on the open market to the highest bidder?"

"There appears to be a dispute on this issue," replied Rabbi Dayan. "According to the Rambam and Shulchan Aruch one can demand gode o agode to sell at a high price to a third party, whereas the Rosh and Rema disagree. The Beis Yosef suggests, though, that the Rosh disagrees only if the other party is at least willing to buy the property at its assessed price. Conversely, Nesivos Hamishpat suggests that the Rambam only allows claiming gode o agode to sell to a third party if one will suffer a great loss otherwise, such as if he is unable to use the property" (C.M. 171:6; Nesivos 171:9; Pischei Choshen, Shutfim 6:27[67]).

"What other options are there?" asked Shimon.

"If neither party is interested in selling and the property can be rented, it should be rented to others or to one of the parties," responded Rabbi Dayan. "If it is not intended for renting, they should time-share the property; each party should use it for a reasonable time, alternating. It is preferable, though, that one party acquire it completely through gode o agode" (C.M. 171:8).

MONEY MATTERS

PARTNERSHIP # 6

Forming a Binding Partnership

Q: What forms a binding partnership?

A: The Rambam maintains that forming a binding partnership requires an appropriate act of kinyan (act of acquisition) for each of the joint assets. This includes a common commercial practice (situmta), such as a valid contract. An agreement between two people to share their earnings does not form a binding partnership, even if they made a kinyan sudar, since their earnings are davar shelo ba la'olam and not subject to a kinyan (C.M. 176:1-3; see Pischei Teshuvah 201:2).

The Raavad disagrees, since making a kinyan sudar to share their earnings is like committing themselves to work on behalf of each other; the kinyan applies to their bodies (Shach 176:9).

The Mordechai maintains that mutual reliance, even with a verbal agreement alone, forms a binding partnership for the stipulated time. Others maintain that verbal reliance requires them only to share what they earned meanwhile, but they can retract from sharing future earnings (Rema, C.M. 176:3).

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grandfather. Even though one of the debts involves a gentile, many poskim maintain that this principle still applies (Nesivos 128:5; 130:1).

2. In this case one could argue that the grandson did, in fact, provide the grandfather with material benefit since by paying his bill, the grandfather was able to continue to receive gas service. If his bill had not been paid, the gas company would not have continued to provide gas service and the intent of paying the bill was to have continued service. In this case, the grandson provided his grandfather with a tangible benefit (even though it was unintentional) and thus deserves to be reimbursed (see Nesivos 130:4).

3. According to some authorities, if Shimon informed others that he intends to pay his debt and Reuven pays the debt on his behalf, Shimon is obligated to repay Reuven (Divrei Chaim, C.M. 2:11). In this circumstance it is clear that the grandfather intended to pay his bill since he paid the bill that he received (even though ultimately it was the wrong bill) and thus he must reimburse his grandson for paying his bill.

4. Upon further research, we discovered that the grandfather owns the building and both meters are registered in his name and the arrangement was for the grandson to pay the gas bill for his part of the house. Accordingly, it is clear that the grandfather must repay his grandson since he instructed the grandson to pay for his usage, and now that we realize that he paid for the grandfather's usage rather than his own, the grandfather must refund to him that difference.

For questions on monetary matters,
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