



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

WERDIGER EDITION

Issue #288

Vayigash

Friday, December 18, 2015

6 Tevet 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

INSTALLMENT PAYMENT

"There are just too many expenses this month," Mr. Isaacs said with a sigh. He asked his neighbor, Mr. Adler, whether he would be willing to lend him \$2,000.

"When do you think you can return the money?" asked Mr. Adler.

"I should be able to return \$1,000 in three months," replied Mr. Isaacs, "and the remainder three months later."

"So you want two installments," Mr. Adler repeated, "\$1,000 in three months and another \$1,000 in six months."

"Correct," Mr. Isaacs confirmed.

"To make sure we don't run into misunderstandings later," Mr. Adler said, "I'd like to draft a loan document, signed properly by two witnesses."

The two drafted a loan document stating that Mr. Isaacs borrowed \$2,000, payable in two installments of \$1,000 each, and had witnesses sign.

Half a year later, Mr. Adler came to Mr. Isaacs and demanded that he pay him the \$2,000.

"I already paid you the first installment of \$1,000," said Mr. Isaacs. "It was due three months ago and I paid you on time."

"No, you didn't," said Mr. Adler. "I asked you for payment then, but you claimed that you didn't have the money yet. You asked for extra time. Do you have any receipt?"

"No, I trusted you," replied Mr. Isaacs. "I'm sure that I paid the first half, though."

"Then why do I still have the loan document?" argued Mr. Adler. "There's no adjustment to the sum."

"Obviously, because I still owe you the other half," replied Mr. Isaacs.

"The loan document doesn't prove, though, that I still owe you the full amount."

Mr. Adler summoned Mr. Isaacs to Rabbi Dayan's beis din. "Who is believed in this case?" asked Mr. Adler.

"The Gemara (B.M. 103a) takes for granted that a person who claims that he partially paid the amount written in a loan document is not believed without proof," replied Rabbi Dayan. "Since a loan is destined for collection, the borrower should have demanded a receipt or written on the loan document that it was partially paid,



BHI HOTLINE

CUSTOMER SERVICE (I)

Some stores assist customers in choosing the product that is best for them.

For example, clothing stores often have a salesperson who helps customers choose a size and style according to their form and taste. Sometimes customers spend time with the salesperson discussing a product they have no intention to purchase; they intend to purchase the product elsewhere where the prices are cheaper and are taking advantage of the customer service the store provides.

Q: Although it is self-understood that it is improper to use a store's customer service without intent to purchase from them, does this practice violate any prohibition?

A: There are numerous prohibitions that may be violated.

1. Onaas devarim – Verbal exploitation.

The Torah prohibits verbally exploiting another Jew by saying something that will anger, embarrass or cause him distress. One example given by Chazal (B.M. 58b) is to ask someone how much an item costs when he has no intention of purchasing it (C.M. 228:4). The simple explanation of the prohibition is that the merchant thought he was going to make a sale and when the sale does not occur, he is disappointed. Nowadays, merchants know that people visit many stores before making their purchase and are not distressed when a potential customer leaves without making a purchase, since the customer may yet return. Accordingly, it would seem that in such circumstances the prohibition would not be violated. This perspective is strengthened when it is employees who attend to the customers rather than the merchant.

However, there are authorities who maintain that taking a merchant's [or his employee's] time without the intent to purchase anything is included in the

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:

phone: 718-233-3845 x 201

email: ask@businesshalacha.com



STORY LINE

which is like a receipt" (Gra, C.M. 82:14; Sma 82:16).

"The Rashba was similarly asked in his responsa (1:1065) about a person who borrowed money to repay in installments," continued Rabbi Dayan. "Toward the end, the borrower claimed that he paid all the installments already due and that the loan document remained with the lender on account of the final payment."

"What did the Rashba rule?" asked Mr. Isaacs.

"He ruled that the borrower is not believed," answered Rabbi Dayan. "He should have asked for a receipt or written a new loan document" (see B.B. 170b).

"Is this ruling cited in Shulchan Aruch?" asked Mr. Isaacs.

"The Rema (C.M. 82:2) cites this ruling," replied Rabbi Dayan. "He adds that the lender can collect with an oath. The Shach (82:10) notes that an oath is required only if the borrower requests one, as with any loan document that the borrower contests and says that he already paid."

"What if the lender admits that some was paid, but they argue about how much?" asked Mr. Isaacs.

"In such a case, the lender is still believed, on account of the document in his hand," replied Rabbi Dayan. "However, he would be required to take an oath about the remainder that he claims is still due, even if the borrower did not request one. This applies also if there are receipts for part of the sum" (C.M. 84:1).

"We've already mentioned on numerous occasions that beis din almost never imposes an oath nowadays," concluded Rabbi Dayan. "Instead, it will usually impose a compromise, taking into account the need for the oath."



MONEY MATTERS

PARTNERSHIP # 10

Outside Work

Q: I am a partner in a firm. Can I do private work, outside of the practice?

A: Partners are required to act in accordance with their partnership agreement. Therefore if the initial understanding was that the partners would work only on behalf of the partnership, you may not take on private work. Even if the agreement does not restrict private work, you may not use the partnership's assets for private business or work privately in a manner that impinges upon your responsibilities to the partnership (C.M. 176:10).

Nonetheless, if one partner did private work, even if he shouldn't have, the earnings are his. However, if he used the partnership's assets for additional business, he must share the profits (C.M. 176:11; Shach 176:22).

Additionally, one partner may not sell his share to a third party without the other partners' consent, unless the decision-making control will remain with the initial partners, but if he did do so, the sale is valid (C.M. and Kesef Hakodashim 176:10; Aruch Hashulchan 176:50; Pischei Choshen, Shutfim 1:32).



BHI HOTLINE

prohibition of onaah (Meiri, Chofetz Chaim in Chovas Hashemirah ch. 14). Obviously, when a potential customer enters a store and subsequently decides not to purchase anything, he does not violate a prohibition. Merchants know that customers may decide not to purchase anything but nevertheless provide customer service with the hope that it will persuade the customer to make a purchase (Pischei Choshen, Onaah 15:[15]). On the other hand, a customer who takes the merchant's time with no intention to purchase anything violates this prohibition.

It must be emphasized that the prohibition of onaas devarim is very severe. Chazal (B.M. 58b) explain that people are generally more sensitive to insults than they are to a loss of money. Furthermore, one could rectify a transgression of monetary onaah by returning the extra money [or paying the money that is owed], whereas verbal exploitation cannot be reversed.

2. Geneivas daas - Deception. It is prohibited to deceive someone by giving him the impression that you intend to do him a favor when you have no intention of following up on it; for example, pressing a potential guest to accept an invitation when one knows that he cannot accept (C.M. 228:6). The reason is that the "guest" will feel a sense of appreciation for the offer when, in fact, the host had no intention of actually hosting the guest. Falsely presenting oneself as a customer in order to receive customer service is also a form of geneivas daas (Saviv Liyre'av on Sefer Yere'im 51:2).

Geneivas daas is also a very severe transgression. Rabbeinu Yonah (Shaarei Teshuvah 3:184) teaches that lying affects one's mindset and will have a detrimental effect on a person's thinking. Another factor that makes geneivas daas so despicable is that it is directed at the person rather than his money (Menoras Hama'or 1:46). Next week, iy"H, we will point to other prohibitions associated with this behavior.

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

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

BUSINESS WEEKLY INSPIRES & INFORMS THOUSANDS ACROSS THE WORLD. SPONSOR A WEEK TO JOIN US IN THIS MITZVAH.

email sponsor@businesshalacha.com to reserve your week.

LEASELAND
Since 1991
Auto Leasing & Sales Inc.
(800)223-5327
info@leaseand.com

GROSS & CO.
INSURANCE
(212) 620-4040

FDU-YESHIVA PROGRAM
Earn an FDU BA in 1 Year
Classes Begin Jan. 10, 2016
201-692-2738 jaskoll@fd�.edu

Sell with me, move for free!
Schmidt REALTY
Residential • Commercial • Sales • Rentals
718-853-HOME (4663)
info@schmidtrealtyinc.com