BUSINESS WEEKLY
WERDIGER EDITION
Restoring the primacy of choshen mishpat

Issue #285 | Vayishlach | Friday, November 27, 2015 | 15 Kislev 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

## STORY LINE

By Rabbi Meir Orlian

### LEARN WITH YOUR SON!

Danny spent Shabbos with his in-laws, the Goodmans. "There's an Avos U'banim program on Motzoei Shabbos," Mr. Goodman said. "How about taking your son to learn there?"

"He learns at school," replied Danny. "I don't feel like going now."

"It's a very nice program," persisted Mr. Goodman. "It's a real loss to your son if you don't go!"

"If you'll pay me $1,000, I'll go learn with him," said Danny.

"OK," said Mr. Goodman. "Go, and I'll pay you $1,000."

Danny took his son to the Avos U'banim. They reviewed together what was learned in school during the previous week. "I feel much more ready for the upcoming test," his son said.

When they returned home, Danny said to Mr. Goodman: "I have to acknowledge that I was very impressed with the Avos U'banim. The sound of Torah reverberating through the shul was quite uplifting! In any case, you promised me $1,000 for the learning."

"I knew that you would find the learning enjoyable!" exclaimed Mr. Goodman. "But for the hour of learning with your son, $1,000 is unreasonable. I didn't mean it sincerely. At most, I'm willing to give you $100; that's reasonable."

"But you promised me $1,000," objected Danny. "It's like any other hiring agreement."

"Not exactly," said Mr. Goodman. "A father is required to teach his son Torah. You should be learning with your son without any additional incentive. It doesn't make sense that I hired you to do something you have a mitzvah to do anyway!"

"Why not?" argued Danny. "It's still an agreement between people to do something for pay!"

The two came to Rabbi Dayan. "Does Mr. Goodman have to pay me the $1,000 that he agreed to for learning with my son?" Danny asked.

"The Gemara (Yevamos 106a; B.K. 116a) teaches that if someone offers another person an exaggerated sum to perform a required mitzvah, he can claim that his commitment was insincere (meshateh)," answered Rabbi

## 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.**

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## BHI HOTLINE

### TOW TRUCK

I rented a car to drive round trip from New York to Toronto. The car broke down. I contacted the rental company and was told to call a towing company to tow the car to a mechanic.

**Q: Am I obligated to spend time arranging for the repair of the rental company's car, or have I fulfilled my responsibility by notifying them that the car broke down?**

**A:** Obviously, if the car-rental agreement specifies your responsibility, you are bound by the terms of the contract. Similarly, if there is a clear custom regarding this situation, you would be obligated to follow that custom since a well-known custom is comparable to an explicit condition.

Your question arises if the contract does not provide instruction for who is responsible and there is no well-known practice. The first consideration is who is responsible to pay for the towing, and the second issue is who must spend the time to make sure that the car is repaired.

The first point we will address is a circumstance in which your negligence caused the damage. If someone kills another's animal, the mazik (damager) must return the animal to the owner. For example, if Reuven digs a pit and Shimon's animal falls in and dies, Reuven must raise the animal from the pit and deliver it to Shimon (C.M. 403:3). Sma (403:2, 8) asserts that the mazik's responsibility is limited to the cost of taking the animal out of the pit, whereas Pischei Teshuvah (403:1) cites authorities who maintain that the mazik is also responsible for the related exertion.

Furthermore, there are authorities who maintain that there is no difference between an animal that died and a utensil that broke (Ketzos 386:10) and

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Dayan. "For example, if a woman offered her brother-in-law an exorbitant price to do a required chalitzah, she can claim that she did not commit sincerely to pay to have him do what was required anyway" (See Shach 81:5; Pischei Choshen, Sechirus 8:22-30).

"Maharam of Rottenburg ruled, based on this, that a person who told his son-in-law that he would pay him to teach his own child Torah, is exempt," continued Rabbi Dayan. "He can claim that he did not commit sincerely, since a father has a mitzvah to teach his son in any case" (Mordechai Sanhedrin #704; Rema, C.M. 81:1; 336:1; Shach 81:5).

"What if I meant it sincerely?" asked Mr. Goodman.

"If the person was sincere at the time, there is a dispute whether his commitment is legally binding like any other employment agreement," continued Rabbi Dayan. "The Ketzos (81:4) holds him liable, whereas the Nesivos (81:2) maintains that one who is 'hired' to do a mitzvah incumbent upon him — e.g., to put on tefillin or learn with his son — is not considered an employee at all.

"Nonetheless, it's possible that the Nesivos would agree in this case," concluded Rabbi Dayan. "The Nimukei Yosef (Nedarim 2a) points out that while a person has an obligation to learn Torah, learning one particular passage, as opposed to another, is not obligatory. Similarly, while a father has an obligation to teach his son Torah, he is not obligated to teach specific material or at a specific time. Thus, if someone 'hired' the father to teach his son specific material or to learn in a specific forum, such as Avos U'banim, it is not comparable to putting on tefillin."

## MONEY MATTERS

### PARTNERSHIP # 7
Business Decisions

**Q: Can I make business decisions affecting the partnership without consulting my partner?**

**A:** If your partner is readily available, you should consult him on any new decision (Aruch Hashulchan, C.M. 176:29).

If the partner is not available, you should act and make decisions according to the terms of the partnership agreement. In the absence of a specific agreement, you should conform to the common practice of that trade and not make decisions against the common practice without consulting the other party. If you did, and the decision resulted in a loss, you are solely liable (C.M. 176:10).

If a particular issue arose a number of times, and your partner agreed to deviate from the common practice without specifying that it was on a one-time basis, you may continue doing so without consulting (Mishmeres Shalom 176:1).

Verbal agreements at the beginning of the partnership are binding; afterwards, verbal agreements against the common practice without a kinyan are questionable (Rema 176:3; Mishpat Shalom 176:1).

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if one damaged a car, he is responsible to pay the towing costs. Others contend that a mazik's responsibility is limited to dead animals and the principle cannot be applied to one who broke a utensil. Accordingly, there is no precedent that a mazik must give the time and effort involved in repairing or salvaging a broken utensil. Therefore in the case of a car, the mazik is exempt, since the towing costs are an indirect result (grama) of the damage (Erech Shai 386:3; see also Even Ha'ezel, Geneivah 1:14). (However, it is possible that when the mazik is responsible to pay for the repairs [Shach 95:18 and 387:1] the towing costs are included because the car cannot be repaired unless it is towed to a repair shop.)

The above principles apply to a mazik, but a shomer — custodian — who was negligent is certainly responsible for the towing costs. The Gemara (B.K. 11a) rules that a shomer must transport the dead animal to beis din and commentators note that the same is true for a utensil (Erech Shai, ad loc.). On the other hand, when the shomer is exempt from liability, e.g., it broke in the normal course of use (maisah machmas melachah), he is not liable for the indirect costs and his sole responsibility is to inform the owner that the object broke (Nimukei Yosef to B.K. 11a).

Nevertheless, if the owner is not present to hire a towing company, the custodian is obligated to make these arrangements (Nimukei Yosef; see also C.M. 294:6). Although the owner could invest a significant amount of time and energy to arrange the repair, when it is significantly easier for the custodian to make the necessary arrangements, he is obligated to do so, and the owner must reimburse him (Beis Ephraim, C.M. 35; Meishiv B'Halachah 21).

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