

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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BUSINESS WEEKLY FOR THE MONTH
OF TEVES HAS BEEN DEDICATED

לעלוי נשמת
מיכל שרה אידל בת ר' יוסף
BY SHAMMAI BIENENSTOCK

STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Delayed Delivery

Mr. Sofer sent in his book order by email. The vendor offered special, fast shipping for an additional cost, but Mr. Sofer opted for the regular, free shipping. "Delivery within three weeks," the advertisement promised. Three weeks passed and the order still had not arrived. Mr. Sofer contacted the vendor's customer service by email.

"I ordered a book which was supposed to arrive last week," he wrote. "Can you please verify that the order was shipped?"

"We shipped the book promptly," the vendor replied. "Mail is at its busy season, though. Please give it another week and contact us again if the order doesn't arrive."

Mr. Sofer waited another week, but the book still did not arrive. He contacted the company again.

"The order still hasn't arrived," he wrote, "even though a full month has passed."

"We apologize for the inconvenience," the vendor replied. "Would you like us to re-send the order or refund your money?"

"I'd like to have another book sent," answered Mr. Sofer.

"We will send another copy immediately," the company replied.

Three days later, the original order arrived in the mail. Shortly afterwards, the additional copy also came.

"Well, I've got two copies of the book now," Mr. Sofer said to his wife. "Maybe I'll give the spare copy to the library."

"What do you mean?" Mrs. Sofer said. "You have to return the extra copy!"

"They decided to send the extra copy," reasoned Mr. Sofer. "They didn't tell me I would have to return it."

"Clearly, they sent you the extra copy only because the original order was lost in the

mail," responded Mrs. Sofer. "If you keep it, you're stealing from the company!"

"How can this be stealing?" Mr. Sofer insisted. "They chose to send the extra copy to make good on their delivery!"

"It would be best to ask Rabbi Dayan," suggested Mrs. Sofer.

Mr. Sofer called Rabbi Dayan.

"I ordered a book and shipment was delayed," he said. "The company sent another copy, and both arrived. What should I do with the extra copy?"

"You should notify the company that the original shipment arrived," answered Rabbi Dayan. "Ask them what they would like you to do. They will either ignore the notice, ask you to return the extra book, or tell you that you can keep it."

"Why should I have an obligation to do this?" asked Mr. Sofer.

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Limitations

In secular law, the statute of limitations rules that if a creditor didn't seek payment for a certain period of time (varying from state to state and depending on debt type) he may no longer demand payment from the debtor.

Q: Is there a statute of limitations in halacha? Does d'malchusa dina (the laws of the host country are binding) apply here?

A: Admittedly, there is a halacha that resem-

bles this concept. The Gemara (Kesubos 104a; codified in E.H. 101:1) rules that a widow who does not collect what is owed to her in her kesubah for 25 years and no longer possesses the document, forfeits her right to collect the debt. Even if her husband's heirs admit that she never received payment, they are exempt from paying, since her silence for this extended period of time proves that she forgave the debt. Each time she files to collect from the amount owed in her kes-

ubah, the 25-year clock is reset.

This does not establish precedent for a halachic statute of limitations, because there are specific reasons to believe that the widow's silence constituted forgiveness of the debt. First, it is assumed that she forgave the debt to her husband's heirs since they financially supported her for such a long period of time. Second, forgiving this debt does not cause her a loss of principal, as opposed to other debts (Rashi ibid., d"h almanah).

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Zev Goldstein, ESQ

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"It is a form of hashavas aveidah," said Rabbi Dayan. "Thus, if the company is Jewish-owned, there is a requirement of hashavas aveidah. If not, it is still proper to return the item as a kiddush Hashem, with your note indicating that you are Jewish (C.M. 266:1)."

"If they want me to return the extra copy," asked Mr. Sofer, "am I expected to cover the postage cost?"

"Your primary responsibility is to notify the company that you have their item," replied Rabbi Dayan. "Although the shipping cost for returned items is usually the responsibility of the customer, costs incurred for hashavas aveidah are not the finder's, but that of the owner of the item. If he is not willing to cover the cost, you are not required to expend it in order to return the lost item to him. Nonetheless, if the postage cost is small, it is proper to do so

(C.M. 264:1; see Hashavas Aveidah K'halachah 10:3)."

"What if they ignore my email?" asked Sofer. "Do I have to send the extra copy back to them?"

"If they ignore your notice, it would be proper to contact them a second time," said Rabbi Dayan. "Beyond that, you would be allowed to keep what they sent. There is a concept of 'aveidah midaas' — willful loss. They knowingly sent the extra item, and if they don't follow up afterward, this indicates disinterest in the item. This exempts you from having to return it to them and even allows taking it for yourself (C.M. 261:4).

"Furthermore, part of the customer service policy of the company is to guarantee prompt delivery, and they are willing to forgo the item as a compensation for the delayed delivery. It's part of their calculated risk in regular shipping."

Since these rationales do not apply to other debts, there is no presumption that a creditor forgave the loan/debt. Therefore, when a lender produces a certified loan document, the borrower must repay the loan regardless of how old the loan is. If the borrower admits that he never repaid, the lender is not even required to produce the document (C.M. 98:1).

Still, when an old loan document is presented to beis din for collection, they will investigate whether the claim is fraudulent (C.M. 61:9, 98:2). Beis din will require the creditor to explain why he delayed collection. If he offers a reasonable explanation, the loan remains in force, but if he does not, beis din will write on the document that it is no longer in force (see Divrei Geonim 102:24).

Some authorities mention an enactment that a standard loan document more than three years overdue, or a profit-generating loan that is more than

six years overdue, invalidates the document and the debt is considered an undocumented loan (Nesivos, end of 61; Beis Shlomo, C.M. 39), but nowadays that is not followed.

Although the statute of limitations legally restricts a creditor from claiming money from a debtor, it does not cancel the halachic rights of the debtor. A secular law that contradicts a halacha of interpersonal relationships does not have jurisdiction (Shach, C.M. 73:39). Also, even according to secular law the loan is not canceled; the creditor is merely restricted from turning to the court for assistance in collecting the loan. Moreover, if the debtor does not invoke the statute of limitations when the creditor seeks collection, he loses the right to invoke the principle, and the debt is fully enforceable.

In summary, there is no statute of limitations in halacha, but beis din must confirm that the claim is authentic.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM

Lost and Found #23

Q: What is the status of lost items that make their way into my yard?

A: A person's yard (chatzer) or property can acquire for him even without his knowledge, provided that the property is secure (or that the owner's home is adjacent) and that the item is likely to be found by the person. Thus, if the lost item is one that the finder can keep, e.g. it has no siman

or is in a place where mostly gentiles live, the owner of the chatzer acquires the item (C.M. 268:3).

Conversely, if the lost item needs to be publicized and returned, you are required to do so.

If there was no siman, but the item fell into your property before the owner was aware of the loss, according to some authorities it is considered yei'ush shelo midaas and you

cannot acquire the item even after its owner became aware of the loss and abandoned hope.

However, you can declare ahead of time that you do not want your chatzer to acquire such lost items until after the owner abandons hope, and then you can take the aveidah after sufficient time passes (Shach 268:2; Nesivos 262:1; Hashavas Aveidah K'halachah 5:8).

MONEY MATTERS

CHECKS IN HALACHA

**Can one fulfill the mitzva of matanos l'evyonim with a check?
Can one give a check for kiddushin?**

Sunday mornings at Bais Moshe Shmiel

(Rabbi Rottenberg's shul: 1782 East 28th, btwn Quentin and R)

Seder Limud 9:00 - 9:45 am

Shiur: R' Moishe Bergman, Rosh Chabura 9:45 - 10:30 am

Refreshments served

Stipends are available to participants of the seder limud

For more information, contact Rabbi Rottenberg: 347-533-2299 or rottenberg@btinternet.com

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