

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #189 / PARSHAS BO
FRIDAY, JANUARY 3, 2014
2 SHEVAT 5774

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STORY LINE

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Firing Line

Mrs. Simon had taught for seven years at Bnos Sarah elementary school. However, a competing school had opened two years ago, drawing away many students. Rumors of cutbacks began spreading through the teachers' room. Within two months, official word came from the board that "streamlining" was needed. Each grade would be consolidated into two classes, instead of three, so one teacher from each grade would be let go.

Shortly afterwards, Mrs. Simon was summoned to the principal's office for a meeting.

"We appreciate your teaching," began the principal. "However, the school needs to streamline for the coming year and we are hereby giving you notice."

When Mrs. Simon returned home, she shared the difficult news with her husband.

"Do you think there's any way we can convince the school to keep me on?"

"Isn't my Uncle Bernie one of the school's major supporters?" suggested her husband. "Perhaps he could put pressure on the board."

"You're right!" said Mrs. Simon. "He has also dealt a lot with the principal. Perhaps he can convince them to release a different teacher."

Mr. Simon called his uncle. "My wife was just given notice that she's being fired from Bnos Sarah for next year. They need to fire a teacher in each grade."

"Is there any way I can help?" asked Bernie. "I was hoping," said Mr. Simon, "that you might be able to use your influence to convince them not to release her."

"Is there a chance they would keep her without firing someone else?" asked Bernie.

"I don't think so," replied Mr. Simon. "They need to release a teacher from each grade, but it could be someone else, not her."

"I'd like to help you, but I'm not sure that this is allowed," replied Bernie. "You're in a tough situation, but if they keep your wife, another teacher will suffer from your gain."

"And if they fire my wife, another teacher will gain from our suffering!" replied Mr. Simon. "What's the difference?"

"Before I get involved with this," replied Bernie, "I need to consult with Rabbi Dayan."

"If you need to — okay," said Mr. Simon.

Bernie called Rabbi Dayan. "My nephew's wife is facing layoff from her school," he said. "Can I try to influence the board to keep her on, if it will cause them to fire someone else?"

"Is the issue still under discussion," asked Rabbi Dayan, "or was a final decision made

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A Particular Pledge

Someone came my door collecting money for a charity. I went to get some money, but when I returned to the door, he was gone.

Q: Am I obligated to search for the collector to give him the money?

A: There is a debate whether someone who pledges to give money to a particular poor person may change his mind and give that money to another poor person. It is certain that he must give that amount of money to tzedakah, since a pledge to give to the poor is comparable to

a vow (Y.D. 258:12). But must he give it to the original person, or will giving it to someone else fulfill his obligation?

One understanding of the Gemara (Arachin 6a) is that one who pledges money to tzedakah may "change it," i.e. give elsewhere, as long as the money did not yet reach the possession of the tzedakah administrator (see Tosafos Arachin 6b, d"h ad; Maharit 1:39). Others contend that the Gemara is merely permitting an exchange of one set of coins for another or

borrowing the pledged funds, but does not allow one to redirect the money to another poor person (see Tosafos ibid. and Ketzos 87:22).

The point of dispute is whether the principle amirah l'gavo'ah k'mesirah l'hedyot (just as an act of acquisition transfers ownership of an object between private people, so too a declaration to consecrate something to the Beis Hamikdash transfers ownership of that object), applies to a pledge of tzedakah.

Many authorities maintain that the principle

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to release her?"

"She was already given notice," replied Bernie. "What difference does that make?"

"A person is allowed to ward off potential, future damage, even if it will thereby fall on someone else," explained Rabbi Dayan. "However, once the damage is already present, a person cannot shift it to someone else (Rema, C.M. 388:2)."

"Interesting," commented Bernie. "What is that based on?"

"The Talmud Yerushalmi (B.K. 3:1) rules that if a person sees an approaching flood threatening his field, he can fence it in, even though the water will swamp his neighbor instead," replied Rabbi Dayan. "However, once the water already entered his field, he may not divert it to his neighbor."

"Similarly, if soldiers need to be

quartered in people's houses, before they arrive, a person can utilize his influence or pay officials to avoid having them quartered with him; once the soldiers have already arrived, he cannot do this so as to have them transferred to another house (Nimukei Yosef, B.B. 5a-b; Shach 163:18)."

"I gather that the same rationale applies here," said Bernie.

"Correct," concluded Rabbi Dayan. "Until a final decision is made, each teacher can use whatever influence or connections she has to avoid being fired."

"However, once a final decision was made to lay off Mrs. Simon, she cannot protect her own financial position by transferring the damage to another teacher (see Pischei Choshen, Nezikin 12:25-27)."

does not apply to tzedakah pledges (Ketzos 66:2, 255:2 and 257:1). Others maintain that the principle does apply to tzedakah pledges, and once one pledged to give tzedakah to a particular needy person, he is not permitted to give that money to someone else (Machaneh Ephraim, Tzedakah 7; Shach, C.M. 87:51; Ketzos 87:21; and Chasam Sofer, Y.D. 237).

Some authorities contend that this is true only when someone pledged a particular object to a particular recipient, which, when the pledge was made, transferred ownership of that object to the intended recipient. However, if he pledged money, he may give that amount of money to someone else, since there is no object for the recipient to acquire (Tumim 87:21).

Others disagree with this and maintain that the pledge to give money to a particular person generates a shibud (lien) on the donor's possessions that cannot be taken away from the recipient and given to someone else (Ketzos, ibid.; see Ketzos 212:4 and Pischei Teshuvah 212:9).

In your case, since you actually took out money for the col-

lector, the halacha is subject to the above question of amirah l'gavo'ah k'mesirah l'hedyot. Even according to the lenient opinion you must give that money to tzedakah. However, two considerations may permit you to keep the money for yourself. In cases of necessity, one may follow those authorities who rule that one may rely on the declaration of intent that we make before Rosh Hashanah, indicating that our vows should not be binding. Although one who makes a vow may not rely on that, in a case where one's pledge is treated by Chazal as a vow, it may be relied upon (Salmas Chaim 2:38; Minchas Shlomo 1:91:20). However, one should generally adopt a stringent position concerning this matter (Halichos Shlomo, Tishrei, pp. 7, 387). Accordingly, l'chat'chila one should avoid making a definitive decision to give a particular person tzedakah but rather intend that the money not transfer to that person until it physically reaches him.

Also, Kesef HaKodashim (125:5) suggests that it is understood that the donor only intends for the pledge to be binding once he finds the poor person.

Lost and Found #24

Q: To whom does money found in a store belong? What about other items left in a store?

A: Money found behind the checkout counter belongs to the storeowner. Since customers do not go there, any money found there must have been dropped by the owner or the cashier (C.M. 260:5). Money that is found in the store itself, or

even on the checkout counter, is not presumed to be the owner's. The storeowner also does not acquire the money through chatzer (being left in his yard), since this money is likely to be picked up by someone else before the storeowner finds it. Therefore, if the money has no siman or if the customers are mostly non-Jews, the finder can keep it (Shach 260:17-18).

As to items left in the store by customers: if

most of the customers are Jewish and the items have a siman, there is an obligation of hashavas aveidah, to publicize and return. It is advisable that the storeowner post a prominent sign that management is not responsible for items left in the store beyond a certain time. Afterward, he can keep or give them away as he wishes (Pischei Choshen, Aveidah 3:[35]; Hashavas Aveidah K'halachah 8:6,8).

MONEY MATTERS

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