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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

to lend or to give

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Heshy Rubin finished reviewing his financial summary.

"The economic downturn took its toll on us," he said, "but not nearly as much as it has affected others."

"We need to help those in need," his wife agreed.

Heshy always tried to honor most of the charity requests he received, but recently he had begun getting many requests for loans from people affected by the recession.

The requests came from all sides. His brother approached him and asked, "Can you lend me \$5,000 towards Yoni's bar-mitzvah?"

The neighbor down the block, who had been laid off almost two years ago and remained unemployed, also approached him confidentially: "We've depleted our savings. Can you lend us \$10,000 to cover our bills

for the coming months?"

In addition, a business associate approached him. "Heshy, I'm at a crisis point with my cash-flow," he pleaded. "The bank is being extremely tight with my credit line, and without \$25,000 cash I won't be able to restock for the coming season."

Heshy had lent money to people in the past. Most paid him back, but some never made good on the money.

His head was swirling with the many new requests. Is it better to give more charity or loans? How much should he lend? Who should he lend to? What risks should he take? What about the potential interest he could earn in the bank?

"I'd better talk with Rabbi Tzedek," he said to his wife after much discussion. "Hopefully, he can help me sort out this issue."

At their arranged appointment, Rabbi Tze-

dek opened the Shulchan Aruch and invited Heshy to read: "It is a positive commandment to lend to the Jewish poor; it is a mitzvah greater than charity. One's poor relative takes precedence to other poor people, and the poor people of his city take precedence over the poor of other cities. It is even a mitzvah to lend a rich person who needs to borrow for the moment, to benefit him with words and to give him proper advice (C.M. 97:1)."

Rabbi Tzedek then explained, "Granting a loan is greater than charity because it protects the person's dignity while helping him. Furthermore, someone who accepts charity is already used to turning to many people for help, whereas a person requesting a loan is often not accustomed to this (Prisha C.M. 97:1)."

"The Chofetz Chaim dedicated his work,

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FROM OUR HOTLINE

Submitted by
G. Tennenbaum

the unpaid custodian

Before the end of the zman, my yeshiva roommate asked me to put his stuff into storage so that it wouldn't be thrown away during bein hazemanim. I agreed to do so, but in the end, I was lazy and didn't do it – and everything was thrown out. He insists that I pay for all of it. I agreed to do him a favor, but I never intended to take responsibility for his things and be liable for their value.

Q: Am I required to compensate him?

A: The fundamental obligation of a custodian (shomer) is to protect the object that was given to him for safekeeping. There are different categories of custodians and each has a different degree of liability (see Shevuos 49a). The case that you describe is that of a shomer chinam, an unpaid watch-

man, who is only liable when he is negligent with the object in his care. As such, since you were negligent with his belongings, it would seem that you are liable.

However, the question that must be addressed in this case is whether you became an unpaid custodian in the first place. Shulchan Aruch (Choshen Mishpat 291:1) writes that one becomes an unpaid custodi-

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STORYLINE CONTINUED

Ahavas Chesed, to the mitzvah of gemilus chasadim,” continued Rabbi Tzedek. “Most of it deals with the mitzvah of granting interest-free loans. He addresses the question: How much is a person obligated to lend, and for how long a time period? He concludes that this is an individual matter. Each person should lend according to his ability and do whatever he can to benefit his friend. This depends on your available assets, the time frame of your projected expenditures, and the financial needs of the borrower (Ahavas Chesed 1:4-7).

“If you do not have confidence in the borrower, you are entitled to request means to guarantee repayment of the loan, through collateral, post-dated checks, or co-signers. If the borrower does not provide sufficient guarantees, you are not obligated to lend, although you should not be overly cautious.

“If you expect that the borrower will not repay you, it is better not to lend than to lend and constantly pressure him to pay when he is unable. In this situa-

tion, it is best to give the money as charity or to stipulate that if borrower does not pay it will count it towards your charity requirement (A.C. 1:9; Rama Y.D. 247:5).

“Priority is given to your relatives and neighbors. However, a poor person who provides guarantees takes priority over a wealthy relative momentarily in need of a loan.

“On the other hand, there is an extra mitzvah to lend someone who needs a loan to keep his business from faltering (A.C. 6:1; II, ch. 21).

“Must I liquidate my assets in order to grant a loan?” asked Heshy.

“No, you do not,” replied Rabbi Tzedek. “However, if money is readily available in a checking, savings or money market account, there is a mitzvah to lend even if it is earning a small percentage (A.C. 1:12; 5:5). If you are concerned about the lost percentage or the erosion of your money through inflation, it is better to lend at a percentage with a heter iska than not to lend at all (Bris Yehuda 40[1]).”

FROM OUR HOTLINE CONTINUED

an when he verbally accepts the responsibility of an unpaid custodian. Seemingly, when you agreed to put your friend's stuff into storage, you became an unpaid custodian and therefore are liable since you were negligent with his things. However, Shulchan Aruch (C. M. 291:5) mentions an opinion who holds that one does not become an unpaid custodian if he does not perform a proprietary act (kinyan) on the object. According to this opinion, since you did not physically take your friend's things, you never truly took the responsibility of an unpaid watchman and therefore are not responsible to reimburse your friend for the loss that resulted from your negligence. Since this dispute is not resolved, the

principle of kim li applies. Kim li represents the right of the defendant to claim that he may subscribe to the opinion that exonerates him and the burden of proof is upon the plaintiff that halacha follows the other opinion. In this case, it means that you are following the opinion that maintains that one does not become an unpaid custodian without a kinyan. However, since you didn't keep your promise, you should consider discussing the matter with a rebbi to determine whether it would be appropriate for you to go beyond the letter of the law and pay your friend some amount for his loss.

(See Aruch Hashulchan 291:15-16 & Machaneh Ephraim Hilchos Shomrim 7 - 8 who discuss whether a “custodian” who did not make a kinyan is liable if he is negligent.)

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

defective merchandise week #5

Q: I ordered a new bed set, and noticed at night that one of the mattresses was damaged. Can I sleep on it meanwhile until the mattress is replaced?

A: The Shulchan Aruch writes that defective merchandise can be returned, provided that you did not use the item after noticing the defect. However, if you use it after-

wards, this indicates that you accept the defect and wish to uphold the sale, and you thereby forego your right to return the mattress (C.M. 232:3). Many authorities maintain that even if you were unaware of this halacha and thought that you are allowed to use the item meanwhile, you still forfeit your right for redress (Pischei Teshuva 232:1.) Of course, the seller may elect to replace the

mattress anyway. If you notified the seller of the defect before using the mattress, some authorities maintain that you do not forfeit your right for redress, since you clearly did not accept the defect (Ibid.). Even so, since the sale is void, you have no right to use the mattress without permission from the seller, unless it is absolutely clear that he does not mind or that he will simply discard it.

WEEKLY STUDY GROUP

Rabbi Chaim Kohn, dean of the Business Halacha Institute, will present the final shiur of the summer on the topic of *Ona'ah*.

**Monsey Night Seder Bais Medrash/B”M Shaarei Tefilla 29 Parker Boulevard
Sunday, September 5**

Shacharis 8:40 am, Chavrusos/Prep Shiur: 9:30 - 10:45 am

Shiur: 10:30 - 11:15 am, followed by a Q&A session

**For more information, please contact Aron Subar at
845-558-8734, or monseybusinesshalacha@gmail.com**

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