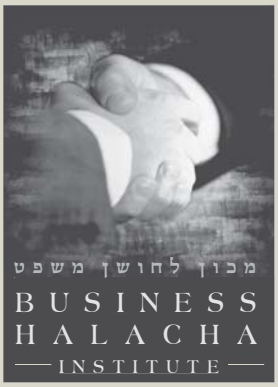

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STORYLINE

here **or there**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

Zvi Wein opened the official-looking letter, clearly sent by an attorney: "If your debt to Mr. Kraus is not paid fully within 30 days," it said, "my client will proceed with legal action. "

"I don't know what Kraus wants from me," Mr. Wein muttered under his breath. "We agreed to settle that loan ten months ago with a shipment of merchandise."

He sent back a letter that he considered the loan paid off with the merchandise, and added: "If Mr. Kraus desires to litigate, I would be interested in taking the case to a qualified beis din for a din Torah."

When Mr. Kraus received the response letter, he was irate. "That's not called settling the loan. The merchandise was poor quality, and I told him to take it all back."

His attorney was skeptical about litigating before beis din. "I can help you organize the material, but don't know enough to represent you in beis din. You'll have to decide."

Mr. Kraus debated the issue in his mind. He had recently begun attending a weekly shiur on business halacha and was starting to understand the prominent role of Jewish monetary law.

"I'll think about this over the weekend," he told his attorney.

After much back-and-forth discussion with Mr. Wein, Mr. Kraus was convinced.

The two men agreed to adjudicate in beis din.

"The big question, now," said Mr. Kraus, "is which beis din?" The issue was complicated by the fact that the two lived seven hundred miles apart, Mr. Kraus in Chicago and Mr. Wein in New York.

"There are many well-known batei din here in New York and New Jersey," suggested Mr. Wein.

"We also have a highly respected beis din here in Chicago," answered Mr. Kraus. "I expect you to come here to adjudicate."

"I'm holding the money," said Mr. Wein. "If you want to sue, come here and claim it."

"What chutzpah!" shot back Mr. Kraus. "I was nice enough to lend you the money. You refuse to pay, and now you want me to fly in to New York to adjudicate?"

"I repaid the loan," answered Mr. Wein tersely. "Why should I have to come out to Chicago because you backed out of an agreement?"

Mr. Kraus slammed down the phone. "I can't believe this!" he exclaimed. "There's got to be a rule in halacha where to adjudicate."

He called Rabbi Dayan for advice. "If I lent money to someone in another city and we need to litigate in beis din, who goes to

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FROM OUR HOTLINE

Submitted by
C. O.

a predatory **pet**

Reuven lives in Yerushalayim and Shimon lives in Bnei Brak. They decide to switch apartments for a month. Reuven has an aquarium, and he asks Shimon to feed the fish daily. Shimon agrees to do so. The first day, Shimon remembers to feed the fish… but for the next week, he neglects his chore. One of the fish dies as a result and he buys a replacement. A few days later, he looks at the fish tank and sees there is only one fish left – the one he bought! Apparently, the fish he bought devoured the other fish!

Q: Was Shimon obligated to buy the replacement fish? Is he liable for the fish that were eaten?

A: We must clarify if Shimon was a custodian (shomer) for the fish and was negligent in their care. One can argue that when one takes responsibility for another person's home, he automatically accepts responsibility for all the objects in that home (Pischei Choshen Hilchos Pikadon ch. 2 note 49). However, in order to be liable as a custodian, Shimon would have to have made a proprietary act (kinyan) on the fish (C.M.

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STORYLINE CONTINUED

whom?"

Rabbi Dayan said: "The Gemara (Sanhedrin 31b) teaches that, in certain respects, the borrower is subservient to the lender. However, the Rama rules that if the plaintiff and the defendant live in different cities, the plaintiff must go to the defendant's city (C.M. 14:1)."

"Why is that?" asked Mr. Kraus.

"There are a number of explanations," answered Rabbi Dayan. "The GR"A explains simply that since the plaintiff is the one interested in pursuing the case, he has to make the effort to go to the beis din. This explanation is somewhat questionable in the context of a lender and borrower, based on the Gemara that the borrower is subservient, but certainly understandable in other litigation."

"What are some of the other explanations?" asked Mr. Kraus.

"Many explain that, in principle, the borrower should have to go to the lender, as the Gemara indicates," continued Rabbi Dayan. "However, later generations instituted that the plaintiff should always go to the defendant. This was to prevent people from frivolously suing a wealthy person from another town in the hope that he would settle to avoid having to travel. Furthermore, the defendant's local beis din would likely be more effective in forcing him to pay if found guilty."

"Are there any situations in which the plaintiff can force the defendant to come and adjudicate in his city?" asked Mr. Kraus.

"If the defendant had assets there that the beis din saw good reason to freeze, then the plaintiff can force to defendant to come and litigate in the place where his assets were frozen (Cf. SM"A 14:15,17)," said Rabbi Dayan.

"What if the beis din in the plaintiff's city is more renowned?" asked Mr. Kraus.

"Even in this situation the Rama writes that the defendant can insist on litigating in his city," said Rabbi Dayan, "so long as the local beis din is competent."

Mr. Kraus thanked Rabbi Dayan, and went to book his flight to New York.

FROM OUR HOTLINE CONTINUED

291:5 and Shach 13). In this case, there are different proprietary acts that may have occurred that would make Shimon liable. One act that could obligate Shimon is called agav – whereby one performs a proprietary act on land and that act is effective to acquire movable objects as well. Accordingly, since Shimon made a proprietary act on the apartment, it is considered as though he became a custodian for the fish as well (Ketzos HaChoshen 95:4 and Nesivos HaMishpat 95:1). A second possibility is that once a proprietary act is performed on the apartment, the apartment "acquires" the fish, since one's land can acquire objects on his behalf (kinyan chatzer) (ibid.). Despite these reasons to hold Shimon liable for the first fish, Shimon could defend himself by claiming that none of these reasons rise to the bar of definitive proof that he is liable, due to conflicting opinions in halacha. Nevertheless, since the fish died due to his negligence, it is appropriate for him to appease Reuven by offering to partially compensate him for that fish. Shimon does bear responsibility for introducing the new fish into the tank that ate the remaining fish. Since it is normal for this fish to eat other fish and it was to that fish's benefit, it is categorized as shein – lit. teeth (C.M. 391:1, 6). Since Reuven certainly did not want a predatory fish in his tank, the fish remained Shimon's property. This is therefore a case where Shimon's fish killed Reuven's fish on Reuven's property, for which Shimon is liable (C.M. 391:7).

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

defective merchandise week #8

Q: A local clothing store advertised a clearance sale and stated: "All sales are final: no refunds or exchanges." I bought a packaged shirt that proved defective. Can I return it?

A: Shulchan Aruch writes that even if a seller stipulates that the customer is not entitled to a claim of defective merchandise, he is still entitled to claim, unless the defect was specified (C.M. 232:7). This is because of either of the following two reasons: a person has to be aware of what he is foregoing, or because the customer can claim that he did not really expect a defect and was not sincere in foregoing his rights (SM"A 232:16). Therefore, you should be able to return the shirt.

Despite this, you may not be able to return the shirt for a different reason. As mentioned last week, the common commercial practice supersedes the standard halacha. In case that the common practice considers such sales final even if merchandise proves defective, you cannot return it.

ACTIVITIES

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