



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



CASE FILE

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PARTNERSHIP OF INTEREST

John McNally ran a loan business. His Jewish neighbor, David Birnbaum, was an investor who also maintained a large *gemach* (interest-free loan fund).

"I'd like to expand my business," John said to David. "I'm looking to add a partner. I know you're involved in lending. Would you consider joining me?"

"I'm not sure that I can," said David. "There is a problem lending with interest to other Jews."

"I have no problem, though," said John. "If we lend to Jews you can 'blame it' on me."

"It doesn't work that way!" David laughed. "If we're partners, when the partnership lends, I've got a share in the prohibited loan."

"You mean that Jews really lend without any interest?!" exclaimed John.

"Very often we do on a personal level," said David. "In most Jewish communities there is a charity fund for providing interest-free loans, like the one I operate."

"That's very thoughtful," said John. "I wish we had something like that, but I've never heard of anyone lending on a significant scale without interest. Do you provide interest-free loans also to non-Jews?"

"Interest-free loans are a special brotherly arrangement between Jews," replied David. "Just as you charge interest when you lend to a Jew, you are expected to pay interest when a Jew lends to you." (Y.D. 159:1).

"How do businesses operate, though?" asked John. "There are Jewish banks and loan businesses, even owned by observant Jews."

"There is something called *heter iska*, which enables a return on the capital," said David. "It redefines the loan as an investment. If it becomes relevant, I can explain it in further detail."

"Can you find out whether there is an option?" asked John. "Is there a Rabbi you can ask?"

"There is," replied David. "I'll consult with him."

David called Rabbi Dayan and asked:

"Can a non-Jew and a Jew who have a partnership lend to Jews with interest? Does a heter iska work?"

"*Melamed L'hoil* (Y.D. #59, by Rabbi D.Z. Hoffman, zt"l, 1843-1921) addressed this question," replied Rabbi Dayan. "He cites from responsa of Maharit that if a Jew invests money with a non-Jew as a silent partner, he may share the interest profit that the non-Jew earns, even from Jewish clients. This is because the non-Jew operates on his own and the invested money is under his control, so that the Jew cannot restrain him from lending as he wishes.

However, *Melamed L'hoil* concludes that if the



BHI HOTLINE

CONTRACTOR COLLAPSE

Q. I hired a contractor to renovate my house, and he hired workers to do the actual labor. After they had worked for him for a long time, he declared bankruptcy. Since he is not planning to pay the workers, they turned to me and demanded payment for their work. Am I required to pay them, or can I tell them to sue the contractor for payment and leave me out of it?

A. The basic question here is whether someone who has not directly hired a worker, but has benefited from his labor, is required to pay for the benefit he derived.

The *poskim* discuss a case in which a homeowner asked an agent to hire workers for him, and the agent tells the workers that he (i.e., the agent) is responsible for their payment. Some *poskim* say that the workers nevertheless assume that the agent is merely an intermediary and they are actually working for the homeowner (*Avnei Hachoshen* 332:1; *Yisron Haohr*, *Bava Metzia* perek 6). Others maintain that the workers agreed to work for the agent, not for the homeowner (*Lechikrei Halachos Lehagrach Heller* 6; *Ulam Hamishpat* 315:4; see *Mishpatei Hachoshen* 336 fn. 18).

Some maintain that since the standard practice nowadays is that the homeowner hires a contractor who directs the workers, takes responsibility for the work, and hires subcontractors to do the labor under his supervision, all the aforementioned *poskim* would agree that the laborers are working only for the contractor, not for the homeowner.

DID YOU KNOW?

Did you know that having a Partnership Agreement that is not properly structured might have ribbis concerns?

Ask your Rav or email
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CASE FILE

Jew is an active partner in the business and the money is also under his control, it is not permissible for them to lend with interest to Jewish clients."

"Does he provide any solution?" asked Mr. Birnbaum.

"Melamed L'hoil provides two options," answered Rabbi Dayan. "One is that the non-Jew accept full liability to the partnership for the loan to a Jew. In this case, it is like as if the non-Jew took money from the partnership, and he alone lent to the Jew. Conversely, if the partners want to borrow money from a Jew, the non-Jew must take full liability to the Jewish lender, so that he alone is borrowing.

"The second option is that for the partners to arrange from the beginning that all loans to Jews should be from the share of the non-Jew, and that loans to non-Jews from the share of the Jew. A similar arrangement is mentioned regarding Shabbos, that whereby partners can arrange that all profits from Shabbos belong to the non-Jew, and from Sunday belong to the Jew. If the partners didn't do so initially, they can dissolve the partnership and reformulate it as such. (O.C. 245:1-4).

"In addition, if the Jewish partner arranged a heter iska for the partnership, it is permissible. The terms are binding also on the non-Jewish partner who agreed to it." (Bris Yehuda, Ikrei Dinim 20:[29])."

Ruling: The partnership may not lend to Jews with interest, unless the non-Jew undertakes full liability for those loans, the initial partnership was formulated so that loans to Jews are from the non-Jew, or there is a heter iska.



MONEY MATTERS

BROKERS #18 Integrity of Brokers

(Based on writings of Harav Chaim Kohn, shlita)

Question: I am serving as a real estate agent to sell a house, which I know has a significant defect. Am I required to alert the potential customer?

Answer: A broker may not mislead or provide false information. On the other hand, he does not have to reveal everything that he knows, unless the buyer relies on him or the defect can void the sale. When the practice is that the buyer inspects the item, the broker can rely on the likelihood that he will discover the defect (see Sma 232:10).

When the price entails ona'ah, or the item is sold "as is" and the broker knows that it has hidden defects that would otherwise void the sale - even though the seller said nothing and did not actively mislead the buyer, who will not be able to void the sale legally - the broker is required to inform the buyer. Otherwise, he violates, "lo sa'amod al dam rei'echa" (see Chofetz Chaim, Rechilus 9:1; Mishpat Shalom 232:7; Maharsham 3:128).



BHI HOTLINE

On a practical level, the halachah depends on whether you already paid the contractor.

If you did not pay the contractor, then this becomes a case of shibuda d'Rav Nosson, which means that if Reuven lends money to Shimon, and Shimon lends money to Levi, Reuven may demand payment directly from Levi (Shulchan Aruch Choshen Mishpat 86:1). Similarly, since you owe money to the contractor and he owes money to the workers, the workers may demand payment directly from you.

[An exception to shibuda d'Rav Nosson is in cases in which the second borrower (Levi) might lose out by paying directly to the first lender (Reuven); see Shulchan Aruch (ibid. 9) with Pischei Teshuvah 7.]

If you already paid the contractor, you definitely don't have to make a second payment to the workers, even according to the poskim who hold that they were employed by you as well as the contractor. When you remitted payment to the contractor, who was supposed to use your funds to pay the workers, it was akin to the case of a lender who instructs a borrower to repay the loan to his agent. Just as in that case, once the borrower made the payment to the agent, he is no longer responsible for it reaching the lender (ibid. 121), so, too, in your case, since you paid the contractor, who was the workers' "agent," you are no longer responsible for paying them.

The halachah would be more complicated, however, if the workers had specifically cautioned you not to remit their wages to the contractor, because they knew he was in financial distress, and you didn't follow their instructions. In such a case, shibuda d'Rav Nosson actually requires you to pay the workers directly, and your payment to the contractor is not considered a valid method of paying the workers. Therefore, if the workers cannot extract payment from the contractor, you would be required to pay them (see Shach 86:14).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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