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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

RED CALF

Several weeks ago, a pure red (i.e., auburn) calf was born on a milk farm in the Galil. The foreign worker attached an ear tag to the calf, following standard protocol.

A Jewish worker noticed the calf, recognizing its potential suitability as a *parah adumah*, should we be privileged to the rebuilding of the *Beis Hamikdsh* and the restoration of *taharah* (ritual purity). The ear tag was removed, the blemish hole is healing, and the calf was aptly named "Temimah".

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Shai made the rounds in his barn, inspecting the newly born calves. "Looks like a good season," he said to Thai, the foreign worker.

"Yes, a lot of cows have calved," replied Thai. "I attached ear tags to all the newborns."

"Hey, look at this one!" exclaimed Shai, pointing to an auburn calf lying in the corner. "It looks like a purebred Red Angus!"

"It sure stands out from the other white and black calves," agreed Thai.

"I want to take a closer look," said Shai. He looked over the calf, and did not notice any black or white hairs.

"Indeed, it's a beauty!" announced Shai. "Some farmers have recently tried to breed a calf like this for use as a *parah adumah* when the Temple will be rebuilt, may it be speedily in our days!"

"I hope it's good..." replied Thai.

A dark cloud of concern suddenly swept across Shai's face. He immediately removed the ear tag. "What the matter?" asked Thai, worried.

"You may have ruined everything and cost the farm a fortune," said Shai. "This calf alone could be worth hundreds of thousands if it's good! The ear tag made a hole in the calf's ear, though. If the hole does not heal properly, the blemish disqualifies it!

"Really?!" gasped Thai. "I hope you're not going to hold me liable. I had no way of knowing."

"Don't worry," said Shai. "You followed the regulations of the farm, discharging your duties responsibly. But I am interested in learning the halacha." He called Rabbi Dayan and asked:

"Is someone who blemishes a red calf liable for the potential monetary damage?"

"The Mishna (*Gittin* 52b) addresses halachic damage that is not physically discernible, *hezek she'aino nikar*, such as one who mixed prohibited *yayin nescech* in another's wine," replied Rabbi Dayan. "If done with intent to damage, the person is liable, but if done accidentally he is exempt" (*C.M.* 385:1).

"A hole in the cartilage of the ear, though, is not just halachic damage, but rather damage that is physically discernible, for which one can be liable even without intent to damage (*C.M.* 378:1).

"Nonetheless, Rabah (*B.K.* 98a) exempts one who minimally blemishes another's animal, since its value as a regular animal remains unaffected, and animals are generally not destined to become sacrifices.

Despite this, Rambam (*Hil. Chovel U'mazik* 7:11), followed by Shulchan Aruch (*C.M.* 386:1), rules against Rabah and obligates in such cases as *garmi*, directly caused damage. Rema, however, followed by most

BHI HOTLINE

Submitted by the Beis Hora'ah

PARTNER'S DEFAULT

Q. Reuven and Shimon planned to open a store as partners, and they hired me to renovate the store, with payment due upon completion of the work.

On the day I finished, Reuven paid me his half, but Shimon excused himself, saying that all of his money was invested in the business, and he would only be able to pay me in two months.

May I demand payment from Reuven for Shimon's portion, on the grounds that each partner had obligated himself to pay the full amount (how they split that payment between themselves was not my concern), and that if he doesn't pay Shimon's portion, he transgresses *bal talin* (the prohibition against withholding wages)?

A. The halachah is that when partners take a loan together or make a joint purchase, each party is considered to have borrowed or obligated himself to pay half of the total amount, and is also considered a guarantor for the other half (*Shulchan Aruch, Choshen Mishpat* 77:1). This is because the lender or seller relied on the integrity of each partner individually when extending the loan or credit, with the understanding that if he could not collect from one partner, he would collect from the other (*Sma* ibid. 2).

As we have discussed numerous times, however, there are two types of *areivim* (guarantors): an *areiv stam*, and an *areiv kablan*.

An *areiv stam* can be approached for payment only if the lender attempted to collect payment from the borrower in *beis din* and the borrower defaulted. An *areiv kablan* may be approached for payment even if the lender never asked the borrower for payment first.

The question is how partners are categorized in relation to each other. According to some *Rishonim*, each partner is an *areiv stam* for the other. According to other *Rishonim*, each partner is considered even more than an *areiv kablan* — he is actually a borrower on the entire amount, so the lender or creditor may collect the full amount from either one.

Halachah ultimately categorizes each partner as an

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authorities, considers this *grama*, indirectly caused damage, for which one is legally exempt, but carries a heavenly obligation (*chayav b'dinei shamayim*) when done maliciously (*Shach* 386:18; *C.M.* 418:16; *Pischei Choshen*, *Nezikin* 3:2[3], 3:18[48]).

However, Tosfos (*B.K.* 98a) distinguishes that while regular animals are not destined for sacrifices, a red cow is destined for use as *parah adumah*, which is valuable.

Even so, this calf is not currently fit to be a *parah adumah*. It must reach at least two full years without additional blemishes, without sprouting two nearby black or white hairs, and without being worked (Hil. Parah Adumah 1:1-7).

Furthermore, we pray for the hasty coming of *Mashiach*, but might not return to the state of purity during the usable lifetime of this calf. Thus, Shulchan Aruch omits the case of one who blemishes the ear of an animal, since nowadays we cannot offer sacrifices.

"At most," concluded Rabbi Dayan, "the damage would be the amount that an organization interested in pursuing the feasibility of *parah adumah*, which exists, would pay for the calf – beyond its regular value – based on the speculation that it will remain fit when it matures and that we will merit seeing the rebuilding of the Temple speedily."

Verdict: According to most *Poskim*, a person who minimally blemishes an animal is not liable, since its value as a regular animal is unaffected. However, blemishing an animal fit for a *parah adumah* can carry liability, which would have to be evaluated considering the speculation of its potential use.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Onaas Devarim, Falsehood and Geneivas Daas #10
Children

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

Q: To quiet my child, can I say that I'll give him something later, expecting that he will forget about it and then not give him?

A: The prohibition of falsehood applies also when talking to children.

Furthermore, the Gemara (Sukkah 46b) teaches that you should not falsely tell a child that you will give him something, because this can teach him to lie, as Yirmiyahu rebukes: "They trained their tongues to speak falsehood" (9:4).

Rambam (Hil. Sh'vuos 12:8) further writes that parents and teachers must be very careful and are obligated to teach their children to speak truthfully and without swearing.

Additionally, the Gemara derives from the verse, *'hin tzedek'* that a person should be sincere in his statements and commitments, particularly business matters, and not speak without intention to fulfill. Moreover, even when initially stated with sincerity, some derive from this verse the requirement to follow through and uphold one's words afterwards (Rambam, Hil. De'os 2:6; Sha'arei Teshuva 3:182-183; Shulchan Aruch Harav, Mechira U'matana #2).

Poskim write that the prohibition of falsehood is both in speaking and writing; writing may be more severe, in that it entails physical action.

Thus, you should not tell your child that you will give him something unless you truly intend to.

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areiv stam, so the lender may not collect payment from the partner-guarantor until he attempts to collect from the other partner in *beis din* and is unable to do so (see *Shach* ibid. 5).

This is not so simple, however, because there is another dispute among the *poskim* to consider. Some *poskim* rule that partners are never considered more than an *areiv stam* for the other half of the loan, regardless of the circumstances (*Beis Yosef*, ibid. 2). Other *poskim* maintain that this applies only when partners take a loan but then split to use individually. If, however, they take a loan to invest into the partnership, each partner is considered to have borrowed the entire amount, since each one benefits from the full sum (see *Shach* ibid. 3; *Tumim* ibid. 3).

In your case, too, both partners benefit from the entirety of your renovation of the store, so you are considered to have done the work for each one throughout the project. According to the latter approach, then, you are entitled to collect your full payment from Reuven, because you are considered his employee for the entire job. But since the former opinion differs, you may collect from Reuven only if Shimon is unable to pay. In practice, this will be difficult, because you would have to prove that Shimon is *unable* to pay, not merely that he claims he can't. This would require an investigation into all of his assets and an attempt to collect from them (see BHI #635).

Regarding *bal talin*, if Reuven's obligation to pay would be as an *areiv* (whether an ordinary *areiv* or a *kablan*), he would not be subject to *bal talin*, because his obligation is to cover Shimon's debt, not to pay wages that Shimon owes you. As such, Reuven does not transgress *bal talin* by failing to pay Shimon's portion. But according to the *poskim* who consider each party responsible for your entire wage (see *Ketzos Hachoshen* 77:1), Reuven does transgress *bal talin* if he does not pay Shimon's portion.

Ultimately, since this matter is subject to dispute, Reuven is not obligated to follow the *poskim* who rule stringently to avoid a theoretical transgression of *bal talin*, since it is possible that he was not considered your employer for Shimon's portion to begin with (see *Mishpitei Hachoshen* 339:12. If only one of the partners is actively involved in running the business and he hired you, see ibid. 44 as to whether the prohibition of *bal talin* would apply to him for the full amount).