

Studies From Beth Din Cases

CASE FILE PACKET

Rabbi Michael J. Broyde
mbroyde@emory.edu

Nishmat

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Like all the cases in this series, the names, some crucial details, and other relevant information that might allow you to identify the parties, have been changed to protect the innocent and the not-so-innocent.

Issues Related to Inheritance

1. **Question from one party:** My father died many years ago and my mother died last year. I have a brother and we were each given half of the estate, worth a total of \$900,000. In addition, my mother divided up the various pieces of jewelry and art in the household, marking each one with a post-it indicating whether I should get it, or my brother should: each of us got the pieces we or our children liked the most, as a way to remember our mother. I got seven paintings and so did he. Although we thought that all of the paintings were junk, one of the seven paintings I got was appraised as worth \$345,000. I sold it, and I want to know if I should give half the value to my brother. Please answer. (Would the answer be different in a *din torah*?)
2. Husband and second wife were in the process of getting divorced (initiated by husband) when husband was killed in a car accident. Will left wife with a life estate in the marital home, as well as \$25,000 a year from the estate for support. Children of husband argue that the filing of divorce indicated that husband wanted to change his will and wife should get nothing. The matter is now in front of the bet din for a din torah. Please give direction to the parties.
3. Father was very ill for a long time, and was cared for throughout his illness by his eldest son, Reuben, in whose house father lived for 12 years. Upon father's death, his estate was split evenly between his four sons. Reuben has presented the estate of his father with a bill for his services for the last twelve years taking care of father, including his time spent, his actual expenses (paying a contractor to build a handicap ramp, ect.) and other such costs. The other children contest this bill. Does the estate have to pay?

4. Molly and Jack have died and they left an independent trust fund with the mission of supporting the salary of the Head of School of the local Jewish high school they were deep supporters of. The head of school was always thus entitled “The Molly and Yechezkel Frankelstein Head of School.” The school recently merged with another school and the Trustee wishes to know if the Trust needs to continue to support the new headmaster. The new school has a mission that the trustee thinks neither Molly nor Jack would have liked, and both Molly and Jack opposed the merger in their lifetime. If the trust no longer has to support the new headmaster, what should the trust do with the money?

Breach of Contract Cases:

Wedding Case: Reuven and Rachel are seeking to get married, and they arrange with a florist to do the flowers for the wedding, at a cost of \$2,475, half in advance and half after the wedding. On the day of the wedding, the florist does not show up, and notwithstanding any number of frantic phone calls, the florist simply never shows up. The wedding proceeds anyway, and the couple are now happily married. After *sheva brachot*, the newlyweds contact the florist, who tells them that he is a sole proprietor, and the morning of the wedding his own father died, and thus he could not do the wedding. He was very sorry, and gladly offered to refund their down payment of \$1,237.50. The couple has contacted you to ask if they have any other remedy besides simply a refund. The wedding, they feel was bare, and it makes them unhappy that their wedding was without any flowers. They would like \$5,000 from the florist.

Questions to ponder:

1. Does it matter whether the florist’s excuse is true or not? Would the matter be resolved differently if the florist had told them that he was a sole proprietor, and that morning a wealthy person had contacted him and told them that they needed flowers urgently, and he gave that person the same flowers he had for their wedding, but for \$6,745?
2. What are the actual damages suffered by the couple?
3. Can they threaten the florist that they will tell people that he did a poor job at their wedding unless he gives them \$2,750?
4. Is the florist without blame, even if his story is true?

Bagel Sales: Reuven, also known as Rob, runs a small dairy bagel shop (known as Rob’s Bagel Place) in a large office complex. His shop is kosher, and is so certified. Roughly 70% of his business is a take-out business which comes from three interconnected office towers, which place breakfast and lunch orders. About half of those orders are standing orders, *i.e.*, the law firm always has bagel and spread for 30 at their Wednesday morning partners meeting. The remaining 30% percent is a kosher nosh and (*brit, pidyon haben, shul, lunch & learn*) crowd. On Yom Tovim and Pesach, Rob has historically closed his shop. This Pesach, however, he lost a large regular daily customer to another bagel shop in the area. Rob would like to consider the following arrangements, so as to avoid further loss of his customer base.

1. On Yom Tovim and Pesach, he would like to make an arrangement with another bagel store (Treif Bagels Associated, TBA) to deliver his standing orders for him, with the delivery being made in "Rob's Bagel Place" containers, but from the TBA bagel store. His regular delivery man (Gomez is his name) will work for (and be paid by) TBA on those days. (The goal is not to let his standing customers know that his store is closed now.)
2. His telephone calls will be forwarded to a back line of TBA, which will be answered by Gomez, who will take orders and fill them, from TBA food, but will place them in Rob's Bagel Place bags, and do the deliveries himself, whenever he can. (The goal is not to let his call-in crowd know that his store is closed now.)
3. Rob's Bagel Place will be closed during all of Pesach and all the Yom Tovim, but a big sign will read "**Call [Rob's Bagel Place telephone number] to place an order. Your order will be filled if you call.**"
4. All money made goes to TBA, and TBA has offered Reuven \$200 per day for the right to have this business.

Is this a breach of contract or something else?

Breach of Contract and Fraud: Reuven, a religious Jew living in Brazil, is an artist, who has a side line business of counterfeiting S\$10,000 Singapore dollar notes (worth about \$7,400 each) and after he has crafted enough of them, he purchases a piece of real estate with them in a Central or South American country. He has a policy (grounded in his understanding of *halacha*) of never using his counterfeit S\$10,000 notes to purchase real estate from Jews. In a recent transaction in Argentina, Reuven's activity was detected by the local authorities, and word circulated about what Reuven was doing. Reuven was contacted by a person in the Jewish community in Mexico (named Shimon) who Reuven had purchased a property from about a year ago, and he asked Reuven if Reuven had paid him in counterfeit currency also (since he too had been paid in S\$10,000 notes). Reuven stated that he had, but that had he known that the person was Jewish, he never would have purchased the property from him and he is sorry. Shimon states that he wants his property back, given the fact that he was not actually paid. The matter is now in front of you as *peshara kerova ledin* and the question is whether Shimon is entitled to his property back or is some other remedy proper?

Implied Contract: A Jew in a small rural town in the South dies. His son, who lives in Chicago, calls an Orthodox Rabbi who has never met his father or him and asks the Rabbi to conduct the funeral the next day. The Rabbi drives to the funeral home, conducts the funeral (does not give the eulogy) and drives back. He submits a bill to the son for \$1000. He worked a total of 6 hours, counting driving time. Son says this is much too high, and the customary fee is \$400. No discussion of fees occurred until this point. How much is the Rabbi entitled too?

Gain but no loss: Every day one of the secretaries at the office takes lunch order for her various colleagues. Food is ordered and charged at cost to the employees. Part of the secretary's job is to pick up the food and collect the money from the employees. This is a cash and carry service, in which you place your order with the secretary by 11:00 and she brings you your food at 12:30. You pay for it when delivered by her. At the local kosher

pizza place, pizza sells for \$1.75 per and \$12.25 for a pie of 8 slices. Whenever there are seven slices ordered, the secretary would order a pie, and have free slice of pizza for lunch. Is she allowed to do this? (When this matter came to light, her boss fired her, alleging that she violated the 'no theft or kickback policy' in the office, whose penalty, everyone knew, was immediate dismissal. Is he allowed to do this? Can the boss tell others that the secretary was terminated for violating the 'no theft or kickback policy'?)

Insurance Matters:

1. Reuven (age 63) and Shimon (age 47) are brothers. Shimon has been developmentally disabled his whole life, and has a host of medical difficulties. Reuven has been taking care of Shimon for more than 15 years, since their parents died. Since Reuven's wife died two years ago, Reuven has been personally taking care of Shimon, who now actually lives with him. In the last six months, Reuven's employer has offered domestic partners health insurance benefits. Reuven wishes to sign up Shimon as his domestic partner since he has a "loving, permanent, caring relationship" with Shimon, his brother, as required by his employer. This will save Reuven hundreds of dollars a month, as currently, Shimon has no health insurance, and will otherwise never get such insurance. **Reuven asks whether he may sign Shimon up as his domestic partner?**
2. Harry is engaged to be married to Harriet in 11 weeks. Harry recently lost his job, and Harriet suggested that they get civilly married now, and Harry be covered by Harriet's spousal health insurance, which is nearly free. Of course, they will not live together or otherwise have a marital relationship until their Jewish marriage. Otherwise, Harry will have to purchase private health insurance, at a cost of \$650 per month. **May they get civilly married now for the insurance benefits?**

Breach of Contract, Extortion and Fraud: Leah and Joseph are a happily married couple. They were recently the victim of a hard to detect, and small credit card fraud by local merchant who is part of the Orthodox community. (Since they are very mathematically inclined people who keep very very precise records of their transactions, they detected the fraud.) They went to the merchant and confronted him. He stonewalled them, and they said "okay, we are going to call the police, because we understand what you are doing and we are going to stop you!" They called the police, and the credit card fraud division is now involved and has contacted them to set up an interview. On Shabbat, during kiddish, a fellow congregant mentions to them that he thought it was wrong for them to have called the police, and they are calling the Beth Din to find out if that is so? Two days later Leah and Joseph are back, with an additional question. They were contacted by a person who told them that the police investigation would be a terrible *chillul hashem* and offered them \$10,000 in cash if they would agree to not cooperate with the police in the above investigation. They want to know if they can take the offer? Can they take the money and cooperate with the police in private? (If they simply explain to the police how the fraud worked technologically and mathematically, the police would be able to show, on their own, all the cases of fraud) Must they tell the police about this offer?

Torts, Self Help and Jewish Law: Reuven, a 55 year old middle-aged man, living in a mid-

sized Jewish community out-side of the New York area, comes to visit his high school friend Shimon from 35 years ago in the New York area -- they have been buddies since fourth grade. Reuven stays in Shimon's house. While staying with Shimon, Reuven seduces Shimon's 17 year old daughter, Leah, who attends the local religious girls' high school. When Shimon find this information out, he immediately calls his local Orthodox rabbi (LOR) and asks what to do, wondering if he should call the police and have Reuven arrested for statutory rape. The LOR instead tells Shimon that he (Shimon) as well as a number of Shimon's friends should go into the house immediately and severely beat Reuven, "paying particular attention during the beating to the body part of Reuven that committed this sin". Shimon and five of his friends severely beat Reuven that night, closely following the LOR's instructions. Reuven is badly hurt in this beating, and is hospitalized for 9 days because of this, with permanent damage inflicted. Reuven summons Shimon to a din torah seeking compensation from Shimon for the severe beating inflicted. Shimon counter-sues for damages done to Leah, and impleads the LOR into the case, claiming that if the beating was improper, LOR is liable; LOR has rabbinic malpractice insurance capable of paying for the damages. LOR maintains that the answer that he gave to the question was "the best given a very bad situation, and one that he would give again." All three parties are sitting in front of you at the din torah.

Mitzvah Lekayim Divrai Hamet: Wife is the executor of Husband's estate and she has called with the following question:

Husband died after a three month bout with cancer at the age of 57, this morning. The funeral is tomorrow at 11:00 a.m. Husband prepared his will and burial instructions himself, within the month of his death, aware of the fact that he was dying. To wife's shock and complete surprise, Husband directed that he be buried next to his first wife, who had died more than 35 year ago in a car accident three weeks after he married her. Both wife and children are stunned by this direction. As far as they know, husband never visited deceased wife's grave, and the family was not even aware of the location, until their father, in this documentation, provided the information, which is in a local Jewish cemetery. Upon examination of that grave site, there is a "husband and wife headstone" on that grave. In addition, Husband had purchased six family plots as well, through the local synagogue, which is what the wife expected to use as the grave site.)

Wife (and children) want to know whether she may ignore husband's (father's) instructions on the location of his burial? All of the children and the wife are in agreement on this matter that they would like to.

Questions to ponder: Would it matter if:

1. The Husband had been on high doses of pain killer all month?
2. If the cancer had been brain cancer which can effect judgment?
3. If the husband had always mourned his first wife each year?
4. Kept up with his former in-laws?
5. Written this document 35 years ago, and never updated it?