

FROM THE FILES OF THE BETH DIN

Rabbi Michael Broyde
Chaver, Beth Din of America

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.

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 15 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 inpleads 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.

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Reuven and Shimon agree to enter into the food wholesale business in a partnership. They sign a simple partnership agreement, which states:

Reuven and Shimon agree that all profits of the business will be split evenly. Either side may end the partnership for any reason whenever they wish. Reuven and Shimon agree that Reuven will provide \$100,000 in start up capital for the business, and have no other responsibilities, and that Shimon will operate the business as best he can. Neither partner will receive any salary.

This short agreement is properly signed and witnessed and is agreed by both of them to be a valid agreement.

Sadly enough the food wholesale business does not succeed. After 26 weeks of business, the business has assets of only \$28,000 (mostly cash at hand) after paying off all of its debt -- it has lost \$72,000 in 26 weeks. Reuven announces that he wishes to end the partnership at this time as the business is failing and he wishes to cut his losses. Shimon responds that such is Reuven's right, and each of them will receive a payout from the partnership of \$14,000, as that splits evenly the business now. Reuven states that Shimon's division is not correct. Reuven claims that Shimon is liable for half the losses of the business -- the business lost \$72,000 during its 26 weeks in existence -- and that Shimon must pay \$36,000 to Reuven for the business loss, and in addition Reuven gets to keep the \$28,000 left in the business. Shimon and Reuven each lose \$36,000 in this view.

Who is correct? Why? Are there other possibilities? (See *Kovacik v. Reed*, 315 P.2d 314 (California Supreme Court, 1957) for one view of American law and the Uniform Partnership Act (1914) §§18(a) for a different view. This matter is in dispute in modern American law. See Also Shulchan Aruch 176(5).)

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Cases

1. Man and woman meet, court, and get engaged on Rosh Chodesh Adar. They expect to get married before Shavuot. On Lag Ba'Omer, boy and girl agree that this engagement was a mistake, and they both agree that they do not wish to marry.
2. Man and woman meet, court, and get engaged on Rosh Chodesh Adar. They expect to get married before Shavuot. On Lag Ba'Omer, boy decides that this engagement was a mistake, and he will not marry her. She objects and is hurt, but what can one do in these cases but agree. Girl is, however, deeply deeply humiliated and hurt.
3. Man and woman meet, court, and get engaged on Rosh Chodesh Adar. They expect to get married before Shavuot. On Lag Ba'Omer, girl decides that this engagement was a mistake, and she will not marry him. Boy objects and is hurt but what can one do in these cases, but agree. Boy is deeply, deeply humiliated and hurt.
4. Man and woman meet, court, and get engaged on Rosh Chodesh Adar. They expect to get married before Shavuot. On Lag Ba'Omer, girl is seriously injured and left wheelchair bound in a car accident. Boy calls off wedding in light of changing conditions.

Practical Issues

1. Boy gave girl a wedding ring that was a family heirloom, worth \$4,000. Does she have to return it?
2. Girl's parents spent \$3,700 on non-refundable wedding costs; boys expenses were fully refundable. Who should pay those costs? When they met to discuss finances, both sets of in-laws agreed that the total costs of the wedding would be split 50%-50% between the two sets of parents.
3. Are damages for emotional distress proper in these types of cases?

Theory Issues

1. Is an engagement ring a conditional gift, subject to the receiver marrying the giver? Trying to marry the giver? Is it merely a token of affection?
2. Have future in law's entered into a partnership to pay for the wedding?
3. Would any of these issues change if, instead of ending the engagement, one party had waited until the wedding is over to end?
4. What is the purpose of pre-wedding *tanaim*? Why do we no longer use them? Is this a wise idea?

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Wife is the executor of Husband's estate and she has called with the following question at 3:15 p.m.

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.

Questions to ponder:

Would it matter if:

The Husband had been on high doses of pain killer all month?

If the cancer had been brain cancer which can effect judgment?

If the husband had always mourned his first wife each year?

Kept up with his former in-laws?

Written this document 35 years ago, and never updated it?