



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

❧ *Bava Metzia* ❧

PEREK GIMMEL

A project of the
Business Halacha Institute
Under the auspices of
HaRav Chaim Kohn, shlita

Chametz Delivery

Bava Metzia 33b - Davar Shelo Ba LeOlam

Mrs. Levine was cooking up a storm for Pesach. After a couple of hours in the kitchen, the meat was on the fire, the chicken in the oven, and some kugels already out on the table. Mrs. Levine took a break to tend to some household errands. In the mail was a colorful flyer from "Baker's Best." She had often seen their products in the supermarket, but they were not certified kosher.

"Baker's Best just became kosher," the flyer announced. "Try our new line of delicious cookies. For free samples of our products, please fill out the attached postcard."

"How nice," thought Mrs. Levine. She detached the postcard, filled it out, and dropped it in the mailbox. Then she returned to her Pesach cooking.

On Chol Hamoed, the Levine family went out for the day to the park. When they came home, there was a notice from the mailman that a parcel had arrived for Mrs. Levine, but no one was home to accept delivery.

Mr. Levine looked at the notice and saw that the parcel was from "Baker's Best." "What is Baker's Best sending us on Pesach? Did you order matzos from them?" he joked.

"I can't believe it!" his wife exclaimed. "They were just certified kosher, and offered free samples. I ordered them before Pesach, but never expected them to arrive so fast."

"What are we going to do with the samples on Pesach?" asked Mr. Levine.

"I guess we tell the mailman to dump them in the garbage," said his wife.

"I wonder if we can put them in the pantry," said Mr. Levine. "We sell all the chametz in the pantry anyway. If we put it there, it will be included in the sale."

"Can we include new chametz in the sale?" asked Mrs. Levine.

"Perhaps," said her husband. "We don't give the Rav an exact inventory of the chametz anyway. The chametz samples will never be ours; they will go straight from Baker's Best to the non-Jew who bought the chametz."

"It still seems funny to me," said Mrs. Levine. "You should consult Rabbi Dayan on this. We don't want to risk having chametz in our possession over Pesach."

"Of course," agreed her husband.

Mr. Levine called Rabbi Dayan. "Gut Mo'ed, Rabbi Dayan. Can I ask you a funny Pesach question?"

Chametz Delivery, cont.

"Certainly," answered Rabbi Dayan.

Mr. Levine explained what had happened with the chametz samples. "The mailman will bring the parcel again tomorrow, so we need to know what to do. I thought that perhaps we could just put it away with the chametz that we sold, but my wife wasn't sure about it."

"Your wife is correct that a chametz delivery cannot be included in the sale of chametz," said Rabbi Dayan, "because usually a person is not able to sell something that does not yet exist. Similarly, he is not able to sell something that is not yet his. (C.M. 209:4-5) Since the chametz was not yet yours at the time of sale on Erev Pesach, it cannot be included in the sale."

"I guess that means telling the mailman to throw the parcel away," said Mr. Levine. "We clearly don't want to violate the prohibition of owning chametz!"

"Not necessarily," explained Rabbi Dayan. "Although the delivery was not included in the sale of chametz, a person cannot be forced to acquire something against his will. Don't sign for the package. Leave it in the post office until after Pesach." (O.C. 448:1)

"What if the mailman does not want to take the package back?" asked Mr. Levine.

"If need be, you can ask him to deliver the parcel to a non-Jewish neighbor and collect it after Pesach," said Rabbi Dayan. (Sha'ar Hatziyun 448:7)

"And what if the mailman simply leaves it at the house without asking?" asked Mr. Levine.

"You can still declare that you intend not to take possession of it until after Pesach," answered Rabbi Dayan. "Although it is not included in the sale, it does not become yours either; it remains the sender's meanwhile. Nonetheless, it should be covered securely so that you will not accidentally eat it." (Mishna Berura 448:5-6)

Mr. Levine thanked Rabbi Dayan. "I'll let you know what happens. And, after Pesach, how would you like a sample?" 

Sooner or Later

Bava Metzia 35a - Lo Yodana Peshiusa

Shlomo was sitting on the bottom bunk and writing an obligatory letter from camp to his grandmother when Moshe's face appeared, upside down, from above.

"Would you like to go swimming with me?" Moshe asked him, hanging onto his yarmulke with one hand. "My cousin is the head lifeguard, and he told me I could use the pool during rest hour today with the staff kids."

"Sure!" said Shlomo. "I'm almost finished with my letter."

They were on their way out, towels around their necks, when Shlomo decided to turn back to get his goggles. Moshe said, "If you're going back anyway, can you take my watch? It isn't waterproof." Shlomo took the watch, ran into the bunkhouse, and tossed it onto his bed.

The fact that all of the other swimmers stayed in the shallow end of the pool made their swim very enjoyable. When they returned to their cabin, Moshe asked Shlomo for his watch.

Shlomo clambered up to his bed and froze.

"I thought I left it right here!" he exclaimed. He lifted the mattress. He shook out the quilt. He fished around inside his pillowcase.

No watch.

"I can't find it," he told Moshe apologetically.

Yisrael, Pinny, and Chaim joined the search. Soon the whole bunk was involved.

A debate began among the bunkmates: was Shlomo responsible for the missing watch?

Yisrael claimed that Shlomo was just doing Moshe a favor by holding the watch and shouldn't be held responsible.

Chaim, on the other hand, insisted, "This is a classic case of shomer chinam (a guard without pay)! He isn't responsible for loss or theft, but he is accountable for negligence. He has to pay for it."

Yisrael shot back that this was a case of loss, for which a shomer chinam is exempt. Furthermore, the watch would probably turn up sooner or later.

"Maybe since the watch was not put away safely, it should be considered negligence on Shlomo's part, and he is accountable," Pinny put in. "Anyway, we're having a special shiur with Rabbi Dayan today. We can ask him."

Sooner or Later, cont.

“Great!” Shlomo and Moshe were pleased with the idea.

After the shiur, the boys related the story to the rav. Rabbi Dayan listened attentively, and said, "This case is addressed in Gemara Bava Metzia, which you have in front of you. Open up to page 35a, where Rav Nachman rules that a shomer chinam who says, 'I don't know where I put the item,' is considered negligent. Therefore, Shlomo, you have to pay for the watch, and cannot say, 'I'll find it at some point.'"

Ten months later, Shlomo was eagerly packing for camp again when he suddenly let out a shout. He pulled out his old camp list and called Moshe at his home in Cleveland.

“Shlomo!” Moshe was excited to hear his friend’s voice. “Are you going back to camp this summer?”

“I sure am. I put your name on my bunkmate request form. But guess what – I just found your watch!” said Shlomo. “It must have slipped off my bed that day and fallen into my suitcase pocket.”

“Wow,” Moshe laughed. “But what do we do now? I already used the money you gave me towards the purchase of a new watch. I’ll call Rabbi Dayan and ask him what the halacha is.”

Rabbi Dayan told him that in the continuation of the Gemara, Rav Nachman revoked the collected payment when the item was later found

He added, "If the missing item was there the whole time, the payment was made in error, and should be returned. However, Rav Moshe Feinstein zt"l differentiates between something found shortly afterwards, in which case the payment is considered in error, and something found long afterwards, in which case there is a need to collect payment meanwhile (Dibros Moshe Bava Metzia 41:12). Had you found the watch shortly afterwards, perhaps we could have considered the payment in error. [In truth, Rav Feinstein maintains that the payment is revoked only if it was forcibly collected by court, not if willingly paid, but others argue.] However, since you cannot be expected to wait until now without a watch, the payment is not considered in error, and you do not have to return the money." 

A Seat at the Siyum

Bava Metzia 35b - Sechora BePara Chaveiro

Excitement was in the air as the twelfth Siyum Hashas of the Daf Yomi cycle approached. Mendy, who had joined the Daf seven and a half years earlier, eagerly anticipated taking part in the major event at MetLife Stadium, along with 90,000 other participants.

Ten days before the Siyum, Mendy was blessed with a baby boy. He didn't expect that this would affect his attendance at the Siyum, but the baby was yellow and the bris had to be delayed for a few days.

The night before the Siyum, the mohel checked the baby and informed Mendy that the bris could probably take place the following afternoon.

In the morning, at the Daf group, Mendy told his neighbor Ezra, "I bought a \$180 ticket to the Siyum tonight, but will not be able to make it. Do you know of anyone who is still looking for a ticket?"

"Rabbi Kurz is looking for an extra ticket," said Ezra. "He might be happy to buy it from you."

"If you can sell it for me, I would very much appreciate it," said Mendy, "It cost \$180, but I'll sell it for \$150, or even \$120."

Ezra called Rabbi Kurz. "Someone in our Daf group has a \$180 ticket to the Siyum that he won't be able to use," he said. "Are you interested?"

"Absolutely!" exclaimed Rabbi Kurz. "If you can bring me the ticket, I'll pay the \$180 immediately."

Ezra decided not to mention that Mendy had only asked for \$150. He put aside \$150 for Mendy and kept \$30 for himself.

"All's well that ends well," thought Ezra with satisfaction. "Rabbi Kurz got his ticket to the Siyum, Mendy recouped the \$150 he wanted, and I earned thirty dollars in the process!"

While driving to the Siyum, Ezra told his chavrusa, who learned regularly in a business halacha shiur, what had happened with the ticket.

"You had no right to charge Rabbi Kurz the extra \$30," said his chavrusa. "I think you should return it to him."

A lively discussion erupted in the car.

"Since you sold the ticket for Mendy, whatever you got for it is his!" said another

A Seat at the Siyum, cont.

person. “You have to give him the full \$180.”

“I don’t see any problem in what you did,” a third passenger said. “Mendy got his price, and the rest was given to you. You earned it!”

“You and Mendy should split the \$30,” a fourth person suggested, “since you both had a share in it.”

They debated the issue for twenty minutes. Finally, Ezra said, “Why don’t we ask Rabbi Dayan at tomorrow’s Daf?”

The following morning, when the Daf shiur finished, Ezra related the story to Rabbi Dayan.

“What should I do with the extra \$30?” he asked.

“This question was posed to the Rosh 700 years ago,” Rabbi Dayan replied. “The Rosh (Responsum 105:2), cited in the Tur and Shulchan Aruch (C.M. 185:1), ruled that if the seller stated a certain price and the agent sold the item for more, the additional money belongs to the seller. Thus, you should give the remaining \$30 to Mendy.”

“But why?” asked Ezra. “How is this different from any other business, where the middleman buys and sells for a profit?”

“The reason is that you never bought the ticket,” explained Rabbi Dayan. “You were simply Mendy’s agent to sell it. Rabbi Kurz gave you the \$180 for the ticket on behalf of Mendy.”

“And why not give the \$30 back to Rabbi Kurz?” asked Ezra.

“There was no mistake on his part,” said Rabbi Dayan. “He was aware of the item he was buying and of the price he was paying. You were a diligent agent in getting the full price for the seller.”

“But why shouldn’t I be entitled to the \$30 difference as a brokerage fee?” asked Ezra.

“A broker is entitled to a fee if he arranges it so ahead of time, or if that is the standard practice,” said Rabbi Dayan. “Similarly, had Mendy said, ‘Sell it for \$150 and keep any extra,’ you would get the difference. Here, however, you simply sold the ticket to Rabbi Kurz on Mendy’s behalf, so the entire sum of \$180 goes to him.” 

Windfall, Part II

Bava Metzia 35b - HaSocher Para VeHeshila

Mr. Bernstein hung up the phone and turned to his wife. "I just verified that the neighbor's tree that fell down in the storm last week and damaged our car and fence was declared dangerous by the municipality. They instructed him to cut it down months ago."

"It's a shame he didn't listen," said Mrs. Bernstein. "He could have prevented all this. Now what?"

"He should be responsible for the damage," said Mr. Bernstein. "If a person ignores authorities' warnings that his tree is unstable, he is liable for damage it causes (C.M. 416:1). I don't know if our neighbor's homeowner's insurance will pay for this third-party damage, since the tree was blown down by the storm. If they don't, he's going to have to pay us out-of-pocket."

"But we have comprehensive coverage on the car," said Mrs. Bernstein, "and our homeowner's insurance should cover the damage to the fence. So what should he pay? He didn't cause any loss!"

"First of all, there's a deductible on both policies," replied her husband. "Also, when we file a claim, our premium goes up. So he certainly caused us some damage. To be honest, I don't see why he shouldn't have to pay everything. His carelessness caused the damage. Why should our insurance have to pay for his negligence?"

"Well, isn't that what you have insurance for?"

"Not necessarily," countered Mr. Bernstein. "It's primarily for circumstances where no one else is liable."

"But it covers this also," replied his wife.

"We should speak with Rabbi Dayan," said Mr. Bernstein. "I asked him last time if we could meet after talking with the insurance company."

He called Rabbi Dayan and arranged to come over the next evening.

When they arrived, Mr. Bernstein summarized the case for Rabbi Dayan.

"This is a good question," said Rabbi Dayan. "The issue of insurance has been debated by the poskim during the last hundred years, beginning with such Torah giants as the Ohr Sameach (Hil. Sechirus 7:1) and Maharsham (Responsa IV:7). Both authorities viewed insurance coverage as an independent risk-payment contract between the insurer and the client unrelated to the personal liability of the one who

Windfall II, cont.

caused the damage."

"Does that mean that we could possibly collect double, from both the insurance company and the neighbor?" asked Mr. Bernstein.

"According to them, yes," answered Rabbi Dayan. "Chelkas Yoav (Responsa II:91) indicates that it was even possible to collect from multiple insurers for the same loss."

"Why should this be so?" asked Mrs. Bernstein.

"They considered insurance simply a 'business deal' in which the insurer promises payment in return for the premiums if the item is lost," explained Rabbi Dayan. "For this reason, the fact that the insurer pays coverage is no reason to exempt the one who caused the damage."

"But if the damage is covered," said Mr. Bernstein, "then the neighbor didn't cause any loss."

"Some argue this way," answered Rabbi Dayan. "Similarly, R' Elchanan Wasserman maintains that you can collect from either the insurer or the one who damaged, but not from both (Kovetz Shiurim Kesubos 217-8). However, most authorities maintain that since damage occurred, an external payment does not negate the damage liability. Imagine, for example, if a rich uncle decided to buy you a new car in place of the damaged one. Would that exempt your neighbor?"

"Clearly not," acknowledged Mrs. Bernstein.

"Nonetheless," continued the rabbi, "the halacha is somewhat different nowadays. Most insurance contracts stipulate that if the damage is caused by a third party and your insurance company covers the loss, the rights to sue the responsible party are transferred to the insurer. When you accept payment from your insurance company, it's with this understanding, so that subsequent payments by him or his insurance company will go to them. They typically limit their liability in the case of overlapping coverage."

"What about the deductible and increases in premium?" asked Mr. Bernstein.

"You are entitled to ask for that," answered Rabbi Dayan, "since the insurance policy usually states that the right to collect is transferred to the insurer in accordance with the amount they paid. The remainder of the damage remains yours." 

The Missing Gift

Bava Metzia 36a - Hahi Savta

“Do you realize that it’s Shaindy’s 30th birthday in a month?” Sara said to Penina. “It’s amazing how time flies.”

“I would like to get her something special,” Penina said. “It’s not common that high-school friends are close for so long. We still talk on the phone once a week.”

“Great idea,” said Sara. “We should also include Bracha. She was her closest neighbor before Shaindy moved away.”

“What should we get?” asked Penina.

“I know!” Sara’s face lit up. “My neighbor, Mrs. Saffer, makes jewelry. We can choose a necklace for Shaindy.”

“Fantastic!” exclaimed Penina. “I’ll call Bracha and ask her if she’s okay with the idea.”

The following day, Penina met Sara outside in the park. “I spoke with Bracha and she was eager to participate in the gift. She also offered to deliver the necklace to Shaindy.”

The next day, Sara and Penina bought a necklace from Mrs. Saffer. “Shaindy will love it,” Sara said. “It’s just her taste!”

“I’ll give Bracha the necklace next week,” said Penina, “so that she can deliver it to Shaindy.”

Penina brought the necklace over to Bracha.

“It’s lovely,” said Bracha. “I’ll make sure it gets to Shaindy in time for her birthday.”

A few weeks later, Sara and Penina were talking. “It’s strange,” Sara said. “Shaindy never said anything to me about the necklace.”

“I know,” Penina replied. “I also heard nothing. I finally asked Shaindy if she received the necklace, and she said that she hadn’t. I’ll ask Bracha what happened.”

“I sent the gift with my neighbor, who works with Shaindy,” Bracha said. “I’ll call her.”

Bracha called her neighbor. “Did you ever give that necklace to Shaindy?” she asked.

“I remember that you asked me about bringing it to her,” answered her friend, “but you never ended up giving it to me.”

Bracha called Penina back. “Somehow, my neighbor doesn’t recall that I gave her the necklace to deliver to Shaindy,” she said. “It seems there was a mix-up.”

Penina called Sara. “Bad news,” she said. “Bracha says that she gave the necklace to her neighbor, who works with Shaindy, but the neighbor claims that she never received it.”

The Missing Gift, cont.

“What do we do now?” asked Sara. “That necklace cost a lot of money! Bracha was supposed to get it to her.”

“I agree,” replied Penina. “But she says that she sent it to Shaindy with her neighbor.”

“Well, then, it’s her neighbor’s fault,” said Sara. “Maybe she lost it, or even worse...”

“I don’t think Bracha would give the necklace to someone who would steal it,” said Penina. “But her neighbor said that she doesn’t recall getting the necklace. It’s very strange.”

“Someone’s got to take responsibility for the necklace,” said Sara. “The question is: Who?”

“Maybe Rabbi Dayan can help,” suggested Penina. “My husband will ask if we can meet with him in his house.”

They all met with Rabbi Dayan. Penina related what happened and asked, “Who is responsible for the missing necklace?”

“If Bracha informed you and Sara that she was going to send the necklace with someone,” said Rabbi Dayan, “she is not responsible for it, since she followed the arrangement and you trusted that her neighbor was reliable (C.M. 176:10).”

“What about the neighbor?” asked Sara.

“The neighbor is also not held responsible,” said Rabbi Dayan, “since she denies ever having received the necklace (121:8).”

“I have to acknowledge,” Bracha said with a sigh, “that I never told Sara and Penina that I was going to deliver the necklace through my neighbor.”

“In that case, you are responsible for the necklace if you cannot ascertain what happened to it,” said Rabbi Dayan. “A person or partner who is entrusted with an item, and certainly one who is asked to deliver it, should not give it over to another, unless the other person is implicitly trusted by the owners. If she does, she carries liability if the item is lost (291:26; Pischei Choshen, Pikadon 4:ftnt. 8).”

“And if we had trusted the neighbor?” asked Penina.

“Bracha is responsible for the necklace in our case even if you had trusted her neighbor,” concluded Rabbi, “since Bracha cannot account for it and the neighbor denies having received it.”

A week later, Bracha called Penina. “Guess what happened?” she exclaimed. “My cousin, who also works with Shaindy, returned the necklace to me. I forgot that I gave it to her instead and she didn’t remember to whom she was supposed to give it!”



Shattered Glass

Bava Metzia 36b - Techilaso BePeshia

Chaim, Yosi and Dov were walking through Meah Shearim, choosing gifts to bring back with them from Yeshiva. Chaim and Yosi had already chosen theirs, but Dov kept browsing. It was his parents' 25th anniversary and he was looking for something really special.

Dov finally spotted an exquisite glass tray for Shabbos candlesticks with a delicate gold-tone design of Yerushalayim. "This is exactly what my parents like," he exclaimed. "With the silver candlesticks on it, every Shabbos will be special!"

Pleased with their purchases, the boys headed back to Yeshiva. "Let's stop off for falafel," Chaim suggested. "There's a mehadrin store two blocks away that has room outside to sit."

"Sorry, but I've got to run to a doctor's appointment," said Dov. "Would you mind taking the tray back to Yeshiva for me? I don't want to schlep it around."

"No problem," Yosi assured him. "I'll take good care of it."

Yosi and Chaim headed to the store and chose a table outside. They put the gifts down on the chairs and had falafel. After some time, the boys picked up their gifts and headed back to their Yeshiva.

Halfway there, Yosi stopped in his tracks and groaned, "Oh no! We forgot Dov's tray at the falafel store."

Chaim turned to him, "Do you think it's still there? Someone could have taken it by now!"

"I hope no one took it," said Yosi. "I'll go right back."

He ran back with his heart pounding. He was almost there when he saw a large stray dog bound by and bang into the chair which the tray was on. Yosi watched dumbfounded as the tray fell to the ground and shattered.

He picked up the box with the shattered tray, and returned to Yeshiva.

"Did you find the tray?" Chaim asked him.

"I did," said Yosi, "but a stray dog ran by and knocked it over. It's shattered!"

"Oh no!" exclaimed Chaim. "Just wait till Dov hears this!"

In the evening, Dov came by to get the tray. "I'm really sorry," explained Yosi. "I forgot the tray on a chair, and when I came back, a stray dog knocked the chair over and broke the tray." He gave Dov the box with the shattered tray.

Shattered Glass, cont.

Dov opened the box. "I spent a lot on this tray," he moaned. "I can't afford to buy another one. You assured me you'd take care of the tray!"

"But it's not my fault that it's broken," responded Yosi. "Who expects a wild dog to come bounding down the street?"

Dov walked out shaking his head. "I really don't know what I'll do."

Yosi went over to Chaim and said, "Dov is very upset at me."

"You did take responsibility for the tray," Chaim reminded him gently. "It was negligent of you to leave it at the store."

"I know," said Yosi, "but it's not my fault that it broke; it was that dog!"

"Whether it's your fault or not, you accepted responsibility," said Chaim. "You owe him for it."

"My parents mentioned that Rabbi Dayan is visiting Israel," said Yosi. "I'll give him a call."

Rabbi Dayan heard the story and said: "Had you been watching the tray when the stray dog ran by, you would not have been responsible. However, since you forgot the tray and left it unattended, you are responsible to pay fully for the tray, based on the principle of t'chilaso b'peshia v'sofo b'oness."

"What does that mean?" asked Yosi.

"Generally, a person who accepts responsibility for an item is responsible for negligence, p'shia, but not for an unexpected or uncontrollable circumstance, oness," explained Rabbi Dayan. "However, if the person was negligent and, in the end, an oness resulted from this, the person remains accountable (C.M. 291:1,6)."

"How does that apply here?" asked Yosi.

"When you forgot the tray at the falafel store, you were negligent," answered Rabbi Dayan. "Another customer could have easily walked off with the tray or accidentally knocked it off the chair. Although this did not happen, but rather something unexpected happened – since the oness resulted from leaving the tray outside unattended, you remain fully responsible."

"That's going to cost me a lot," said Yosi, "but Dov will be relieved that he'll be able to buy another tray." 

Sealed Envelope

Bava Metzia 42a - Tzararan

Mr. Meyers scurried around the wedding hall, making sure that everything was properly in place; his son was getting married.

“Could you please watch this envelope?” he asked his close friend, Mr. Koenig.

“Sure,” Mr. Koenig answered, taking the envelope.

Toward the end of the wedding, Mr. Meyers asked his friend for the envelope. Mr. Koenig reached into his shirt pocket for it, but found nothing.

“I put the envelope in my shirt pocket,” he said. “It must have fallen out during the dancing. What was in it?”

“There was over \$3,000 in cash to pay tips and other expenses,” Mr. Meyers said.

“You’re kidding me!” exclaimed Mr. Koenig. “You didn’t tell me there was money in the envelope.”

“I didn’t think it was necessary to tell you what it contained,” said Mr. Meyers. “Anyway, I assumed you would realize it was money.”

“I really had no idea what the envelope contained,” said Mr. Koenig.

“What, you don’t trust me?!” said Mr. Meyers. “I’m telling you there was over \$3,000 in cash in there.”

“I’m not denying what you say,” apologized Mr. Koenig. “However, if you want me to pay, you need some evidence. Furthermore, I’m not sure that I have to pay the \$3,000, since you never told me there was cash in the envelope!”

“I don’t see why not,” replied Mr. Meyers. “If you agreed to watch the envelope, you are responsible for whatever it contained.”

“On the other hand, I’m a shomer chinam (unpaid guardian),” argued Mr. Koenig. “I’m not responsible for loss in any case.”

“There are different kinds of loss,” countered Mr. Meyers. “Listen, Rabbi Dayan is here; we can ask him.”

When Rabbi Dayan saw them approaching, he greeted Mr. Meyers, “Mazel tov! What a beautiful simcha. May you merit to see true Yiddishe nachas from the couple!”

“Amen, thank you,” replied Mr. Meyers. “I have an issue here with my friend, though. Maybe you can help us.”

“Certainly,” offered Rabbi Dayan. “Sit down.”

Sealed Envelope, cont.

The two sat down. Mr. Meyers related what had happened and claimed that Mr. Koenig owed him the \$3,000 that was in the envelope.

“What a fascinating case,” replied Rabbi Dayan. “Let’s go through the issues one by one.

“Even an unpaid guardian is responsible if he lost the entrusted item through negligence,” he said. “Placing the envelope in a deep, secure jacket pocket would seem acceptable under the circumstances. However, placing it in a shirt pocket, where it can easily fall out, is considered negligence (Pischei Teshuvah, C.M. 291:5, 8).”

“What about the fact that I had no idea what was entrusted to me?” asked Mr. Koenig.

“If the owner misrepresented the contents, the guardian only has to pay the value of what he agreed to watch,” answered Rabbi Dayan (291:4). “For example, had Mr. Meyers told you it was just some receipts or a check, you would not have to pay the \$3,000, even if he had evidence that it contained cash. However, if the contents were not specified, you accepted responsibility for whatever was inside.”

“But how do I know what was actually inside?” Mr. Koenig asked. “There’s no evidence at all! Do I have to pay without evidence?”

“If you trust the word of Mr. Meyers completely, you must pay even without evidence,” said Rabbi Dayan. “If you doubt his word, the Shulchan Aruch rules that when the guardian was negligent, the Sages instituted that the owner should swear what was entrusted and collect that amount, if reasonable (90:10; see Shach 90:16).”

“Does this apply also if Mr. Koenig knew that there was money in the envelope, but didn’t know how much?” asked Mr. Meyers.

“In that case, since the guardian admits partially and cannot swear about the remainder, some maintain that he must pay even without an oath by the owner, based on the rule of ‘mitoch she’eino yachol lishava meshalem,” replied Rabbi Dayan. “Others maintain that this principle does not apply, though, since the guardian is not expected to know how much was inside, so an oath by Mr. Meyers is still required (90:10; 298:1).”



The Missing Gift

Bava Metzia 42a - Kol HaMafkid

“Do you realize that it’s Shaindy’s 30th birthday in a month?” Sara said to Penina. “It’s amazing how time flies.”

“I would like to get her something special,” Penina said. “It’s not common that high-school friends are close for so long. We still talk on the phone once a week.”

“Great idea,” said Sara. “We should also include Bracha. She was her closest neighbor before Shaindy moved away.”

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“I know!” Sara’s face lit up. “My neighbor, Mrs. Saffer, makes jewelry. We can choose a necklace for Shaindy.”

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“I sent the gift with my neighbor, who works with Shaindy,” Bracha said. “I’ll call her.”

Bracha called her neighbor. “Did you ever give that necklace to Shaindy?” she asked.

“I remember that you asked me about bringing it to her,” answered her friend, “but you never ended up giving it to me.”

Bracha called Penina back. “Somehow, my neighbor doesn’t recall that I gave her the necklace to deliver to Shaindy,” she said. “It seems there was a mix-up.”

Penina called Sara. “Bad news,” she said. “Bracha says that she gave the necklace to her neighbor, who works with Shaindy, but the neighbor claims that she never received it.”

The Missing Gift, cont.

“What do we do now?” asked Sara. “That necklace cost a lot of money! Bracha was supposed to get it to her.”

“I agree,” replied Penina. “But she says that she sent it to Shaindy with her neighbor.”

“Well, then, it’s her neighbor’s fault,” said Sara. “Maybe she lost it, or even worse...”

“I don’t think Bracha would give the necklace to someone who would steal it,” said Penina. “But her neighbor said that she doesn’t recall getting the necklace. It’s very strange.”

“Someone’s got to take responsibility for the necklace,” said Sara. “The question is: Who?”

“Maybe Rabbi Dayan can help,” suggested Penina. “My husband will ask if we can meet with him in his house.”

They all met with Rabbi Dayan. Penina related what happened and asked, “Who is responsible for the missing necklace?”

“If Bracha informed you and Sara that she was going to send the necklace with someone,” said Rabbi Dayan, “she is not responsible for it, since she followed the arrangement and you trusted that her neighbor was reliable (C.M. 176:10).”

“What about the neighbor?” asked Sara.

“The neighbor is also not held responsible,” said Rabbi Dayan, “since she denies ever having received the necklace (121:8).”

“I have to acknowledge,” Bracha said with a sigh, “that I never told Sara and Penina that I was going to deliver the necklace through my neighbor.”

“In that case, you are responsible for the necklace if you cannot ascertain what happened to it,” said Rabbi Dayan. “A person or partner who is entrusted with an item, and certainly one who is asked to deliver it, should not give it over to another, unless the other person is implicitly trusted by the owners. If she does, she carries liability if the item is lost (291:26; Pischei Choshen, Pikadon 4:ftnt. 8).”

“And if we had trusted the neighbor?” asked Penina.

“Bracha is responsible for the necklace in our case even if you had trusted her neighbor,” concluded Rabbi, “since Bracha cannot account for it and the neighbor denies having received it.”

A week later, Bracha called Penina. “Guess what happened?” she exclaimed. “My cousin, who also works with Shaindy, returned the necklace to me. I forgot that I gave it to her instead and she didn’t remember to whom she was supposed to give it!”



The Missing Money

Bava Metzia 42a - Techilaso BePeshia

“We’re flying to Israel tonight for a month’s stay to visit our children who live there,” Mr. Hirsch told his neighbor, Mr. Feiner.

“My son, Shmuli, is learning there for the year,” replied Mr. Feiner. “Would you mind taking an envelope with money for him?”

“I’d be happy to,” said Mr. Hirsch. “Bring it over.”

Mr. Feiner came by with a sealed envelope and wished Mr. Hirsch a safe flight.

When Mr. Hirsch arrived in Israel, he called Shmuli to let him know that he could pick up the money.

“I can meet you on Friday afternoon,” Shmuli said. “Is that okay with you?”

“We’ll be all around town on Friday, so I don’t know where I’ll be,” said Mr. Hirsch.

“I can take the envelope with me, though, and you’ll give me a call when you’re ready.”

On Friday morning, Mr. Hirsch put the envelope in his coat and headed out. As the day wore on, the sun shone strongly and it became warm, so he slung the coat over his arm.

At 12 o’clock, Shmuli called. “Hello, this is Shmuli Feiner,” he said. “Where can I meet you?”

Mr. Hirsch suddenly realized that he no longer had his coat! He had lost it somewhere along the way. Horrified, he apologized profusely.

“I put the envelope in my coat this morning, but left it somewhere along the way,” he said to Shmuli. “Do you know how much was in the envelope?”

“I spoke with my father yesterday, and he said \$200 or \$300,” replied Shmuli. “He didn’t remember, exactly, though.”

“If you can wait for the money, let me see if I can find the coat,” said Mr. Hirsch. “We’ll be here for another three weeks.”

“I’m okay meanwhile,” said Shmuli.

Two weeks went by, with no news of the missing coat and envelope. Mr. Hirsch abandoned hope of retrieving his coat. “It seems that the coat and envelope are gone,” he said to his wife. “I’ll have to buy a new coat when we get home.”

A few days later, Mr. Hirsch received a phone call. “Shalom, this is Amram speaking,” the caller said. “I just found a blue coat in the park that had papers with your name and number on them.”

The Missing Money, cont.

“Was there an envelope in the coat?” asked Mr. Hirsch hopefully.

“No,” said the caller, “just the papers with your information on them.”

“Thank you for notifying me,” said Mr. Hirsch. “I’ll come by this evening.”

Mr. Hirsch picked up the phone and called Rabbi Dayan.

He related the story and asked: “Am I liable for the missing money?”

“Since the money was in a sealed envelope, you have the status of a shomer chinam, an unpaid guardian, on the money,” replied Rabbi Dayan (C.M. 292:7). “As such, you are liable for negligence, but not for theft or loss.

“However, the exemption for loss does not include a case where the guardian does not know where he left the item; that is considered negligence! Therefore, you are liable for the money, even though it seems to have been stolen subsequently (C.M. 291:6-7).”

“How much am I liable for,” asked Mr. Hirsch, “since I don’t know how much was in the envelope?”

“If Mr. Feiner were certain that he had put \$300 in the envelope, you would likely have to pay that amount,” answered Rabbi Dayan. “However, because he also is unsure how much he put in the envelope, \$200 or \$300, you only have to pay the \$200 that he is sure of (C.M. 298:2; 90:10; Shach 90:16).”

“One final question,” added Mr. Hirsch. “I had already abandoned hope (yei’ush) of retrieving the coat. Does Amram still have to return it to me?”

“Amram is not legally required to return the coat if he found it after yei’ush,” Rabbi Dayan responded. “Nonetheless, he should certainly go beyond the letter of the law (lifnim mishuras hadin) and return it, even after yei’ush, unless he is needy and the loser is wealthy (C.M. 262:5; 259:5).” 

Giving a Gift

Bava Metzia 43a - Mafkid Maos

Rivka came home from school and handed her mother a note, which read:

“As class representative, I am collecting money for the annual end-of-year gift for the teacher, Mrs. Melamed. Each parent is asked to contribute \$30 for the gift, cash or check. Thank you in advance for your cooperation, Mrs. Roth.”

Rivka’s mother promptly put the money in an envelope and sent it over to Mrs. Roth.

During the course of the week, Mrs. Roth collected about \$1,000. She brought the money to the school and gave it to the school secretary, Mrs. Green.

“Thank you very much,” Mrs. Green told her. “The teachers look forward to this gift.”

“I’m glad that the parents were responsive,” said Mrs. Roth. “Sometimes it takes a while to collect all the money and that’s not fair to the teacher.”

Ten minutes later, the principal, Mr. Weinberg, returned from a round among the classes.

“One of the mothers brought in money for Mrs. Melamed’s gift,” Mrs. Green said. “Should I put it in her box?”

Mr. Weinberg sighed. “You know that we have been struggling to keep up with salaries,” he said. “In order to alleviate the financial strain, the board has voted to utilize the class gift this year to defray part of this month’s salary.”

“You mean you’re not going to give her the money as a gift?!” asked Mrs. Green, shocked.

“Unfortunately, no,” replied Mr. Weinberg. “The board felt that it is more important that the teachers receive a proper paycheck than get a gift.”

“I understand that,” said Mrs. Green, “but I don’t think it’s fair to the parents. They gave the money as a gift for the teacher, not as a donation to the school to fund salaries.”

“Their money will be going to the teacher in the end,” said Mr. Weinberg, “so I don’t see a problem with it.”

“But the parents expected this money to be an additional gift to the teacher to express their appreciation,” protested Mrs. Green.

“The parents don’t have to know exactly how the money was given,” replied Mr.

Giving a Gift, cont.

Weinberg. “The main point is that the teacher ends up receiving it.”

“I apologize for sticking my nose in, but if I were one of those parents, I would feel cheated,” said Mrs. Green. “Perhaps the school should consult with Rabbi Tzedek before doing this.”

“That’s a good idea,” said Mr. Weinberg. “I’ll give Rabbi Tzedek a call and check with him.”

Mr. Weinberg called Rabbi Tzedek and presented the issue to him. “Can we utilize the money that parents gave for the teacher’s gift to defray part of her salary?”

Rabbi Tzedek ruled: “If the money was collected with the intention to give it as a cash gift to the teacher, the money is already hers and cannot be used for another purpose. Even if the money was meant to buy a gift for the teacher, it cannot be used to pay payroll if this will cause a delay in giving the gift.”

Rabbi Tzedek then explained, “When a person accepts a gift on behalf of someone else, the recipient acquires it immediately based on the rule of *zachin l’adam shelo b’fanav* – it is possible to acquire for someone not in his presence. Therefore, if the money was meant to be given directly to the teacher, whenever Mrs. Roth received the money, the teacher immediately acquired it (C.M. 243:1).

“Nonetheless, it is not necessary to give these exact bills to the teacher. The class representative can exchange them for larger bills or utilize them and replace them immediately with her own money (see SM”A 183:12; Nesivos 183:4).

“If the money was meant to be used to buy the teacher a gift and not to be given in cash, the money does not become hers yet; rather, it still belongs to the parents. They entrusted it to the class representative or school to buy the gift for the teacher.

“There is a dispute amongst the authorities whether an agent who was given money to purchase something may borrow the money temporarily for his own needs (Shach 121:33; Nesivos 121:10). However, everyone agrees that to use the money for payroll and not to buy a gift, or to delay purchase of the gift, would be cheating the parents. Their intention was that the money should be used to purchase a gift at the end of the school year in addition to the regular salary (see also Pischei Choshen, Pikadon 5:20,21).”



Mugged!

Bava Metzia 43a - Mafkid Maos

Mr. Eric Roth lived in Israel.

“I’m flying to America next week,” he told his neighbor, Shraga. “My niece is getting married!”

“Mazal Tov!” said Shraga.

“Do you want anything while I’m there?” Eric offered.

“I need a new zoom lens for my Nikon camera,” said Shraga. “It’s hard to get that part here.”

“I’ll try,” said Eric. “How much does it cost?”

“Between \$150 and \$200,” said Shraga. “I’ll give you money.”

That evening, he brought \$200 cash to Mr. Roth.

“Do you want me to keep the money separate?” asked Eric. “I may prefer to use my credit card for the purchase and save the cash for other expenditures.”

“Either way is fine,” said Shraga. “You can use the money if you want.”

Mr. Roth put the money in his wallet. He wrote down the specifications of the lens that Shraga wanted.

When Mr. Roth landed, he took a taxi to his sister’s house.

“The ride will cost \$40,” said the taxi driver.

“That’s fine,” Mr. Roth said. He opened his wallet and pulled out two of the \$20 bills that he had received from Shraga.

The following day, Mr. Roth went shopping for the lens.

As he turned off the main avenue and walked onto a side street, two men accosted him. One of them pulled a knife. “Gimme your money!” he ordered.

Eric took out his wallet, shaking. The men grabbed the cash and ran off.

Eric flagged down the next police car and reported the mugging.

“There’s not much we can do other than taking a description of the men and fingerprints from the wallet,” said the policeman. “If we should later catch the muggers, we can possibly charge them for this also.”

Mr. Roth was dazed by the experience and decided to cut his day short. As he headed back to his sister’s house, he wondered, “What do I do about the \$200 that Shraga gave me? Do I have to buy the lens with my own money?”

That evening, Eric saw Rabbi Tzedek in shul. He related the whole story and asked,

Mugged!, cont.

“Am I responsible for the money that was stolen from me in the mugging?”

Rabbi Tzedek replied, “Since you requested permission to use the money for your own purposes and even used some of it for the taxi, you are responsible for the entire \$200.”

Rabbi Tzedek then explained. “An armed mugging is considered an oness, uncontrollable circumstance, for which only a borrower is responsible, not a shomer chinam (unpaid watchman) or shomer sachar (paid watchman) (303:3). However, if a person is entrusted with money that he is allowed to use and uses it, he is considered a borrower and is fully responsible, even if lost through oness (292:7).”

“I used only \$40 of the money,” argued Roth. “Why should I be responsible for the full amount?”

“A number of authorities write that by using even a small part of the money, you are considered a borrower of the entire entrusted amount,” replied Rabbi Tzedek. “The reason is that by spending some of it, you indicate readiness to use the money as your own (Nesivos 292:10; Pischei Choshen, Pikadon 5:17[63]).”

“What if I hadn’t used the money for the taxi?” asked Roth.

“That’s a complex issue,” answered Rabbi Tzedek. “When a person is entrusted with money in an open manner that implicitly indicates permission to use it, he is considered a shomer sachar because of the privilege of using the money, even if he did not use it. He is then responsible for regular theft, but not for armed mugging. If the person already had the status of a shomer sachar, it is questionable whether he now becomes a borrower on account of the privilege to use the money (292:7; 267:25; P.C., Pikadon 1:[14]).

“However, if someone entrusted money and then gave explicit permission to use it,” continued Rabbi Tzedek, “the Shach (72:31) writes that the guardian, whether a shomer chinam or shomer sachar, becomes fully responsible for the money as a borrower, even for circumstances beyond control. Other authorities disagree, but the Tumim (72:19) concludes that the dispute is only when the owner granted permission on his own. If the guardian initiated the request for permission, though, he is certainly liable. Here, you asked for permission to use the money; this is an additional reason to hold you liable (P.C., Pikadon 5:18).”

Mr. Roth thanked Rabbi Tzedek. The following day, he bought the lens with his credit card. 