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Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

RAMPART REEL

Mendy Morris, the electrician, had rewired a house. "OK, I'm finished," he said to the homeowner. "I checked all the wiring and everything is installed properly."

Mr. Morris began taking his equipment, tools and reels of wire out of the house. He left some reels of wire in the street next to his van while he went inside to get the remaining tools.

Meanwhile, a big dog ran by and got entangled in one of the reels. The dog ran down the street with the wire caught in its coat and the reel bouncing around behind it.

Half a block away was a restaurant with outdoor seating. Many people were eating outside. As the dog ran by, the reel bounced up and knocked a plate and glasses off one of the tables.

"What was *that*?" exclaimed the surprised patron, Mr. Jacobs. "There goes my lunch!"

"Don't worry, I'll bring you a new one," said the waiter politely. He went to the kitchen to order a new serving and returned with a broom and mop to clean up the mess.

"It was nice of the waiter to bring a new serving, but this is a very interesting question," Mr. Jacobs said to his colleague. "Who is liable for the damage?"

"I don't know that anybody can be held accountable," said his colleague. "Nobody actually did the damage. The dog simply got stuck in the wire."

"I'm not convinced," said Mr. Jacobs. "People need to be careful with their animals and their property!"

The following week, Mr. Jacobs met Rabbi Dayan. "I encountered an interesting monetary question last week," Mr. Jacobs said. He related the story and asked: "Who is liable for the damage?"

"The electrician who left the wire outside is liable," answered Rabbi Dayan. "If the dog is owned and the table was on the private property of the restaurant, the dog's owner also shares in half the liability."

"Could you please elaborate?" asked Mr. Jacobs.

"The *Gemara* (B.K. 3b, 6a) teaches that if a person left his belongings outside and they were flung about by the wind, he is liable for damage



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WITNESS SIGNATURE ON KESUBAH PART II

Last week, we discussed the *halachah* of a witness's signature on a *kesubah* who omitted *Hakohen* after his name. The two wit-

nesses were called back after the *chuppah* to sign a new *kesubah* so that the witness could include *Hakohen*. We noted that the new *kesubah* may be invalid.

Q: Is there an issue for witnesses to sign a second kesubah?

A: It is clear that one should not make decisions regarding such weighty matters without consulting with a Rav who is an expert in these matters. This situation perfectly illustrates this, since one who is not experienced or knowledgeable may not realize that there is an issue in replacing the original *kesubah*.

Witnesses may not sign an obligatory document unless they were instructed to do so by the party who will become obligated. In our case, this means that the husband must instruct the witnesses to sign the *kesubah* since it contains the husband's financial obligations toward his wife. The *kinyan* made with the groom empowers the witnesses as agents to draft a *kesubah*. Once witnesses sign and deliver a valid *kesubah*, their agency is completed and they may no longer act on behalf of the husband.

A replacement document may be signed only if the original document was invalid. For example, if they made an invalidating error in a loan document, they must destroy the invalid loan document and a replacement may be signed by the witnesses. Since the original document was invalid, the witnesses have not yet fulfilled their agency and thus remain empowered to sign a loan document. On the other hand, if the original document was valid and delivered to the lender, their agency was completed and they are not empowered to sign a replacement (C.M. 49:6). [For a discussion whether a valid document

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STORY LINE

they caused," explained Rabbi Dayan. "This is an extension of *esh* (fire), which typifies damage that moves. The same is true of items that were dragged around inadvertently by animals. Thus, the electrician who left wire in the street that was dragged by the dog is liable for the damage that it caused" (*Rema*, C.M. 390:10; *Sma* 390:21, 25).

"And why is the dog's owner also responsible?" asked Mr. Jacobs.

"Damage caused by an animal in the course of walking is called *regel* (foot)," replied Rabbi Dayan. "Items attached to the animal are included in *regel*. Thus, the dog's owner is also liable for the damage done by the reel attached to his dog. However, *regel* is exempt in public property, so that the dog's owner is liable only if the table was in the restaurant's private property" (C.M. 390:1-3, 411:4; *Shach* 411:1; see *Pischei Choshen*, *Nezikin* 6:21[46]).

"But if the dog is partly responsible, why is the electrician fully liable when the dog is stray or if the damage was in a public domain?" asked Mr. Jacobs.

"This is a principle of Rabi Nassan (B.K. 53a)," replied Rabbi Dayan. "When two parties are responsible for damage and one party cannot be held liable, the other party bears the full liability. Therefore, if the dog has an owner, he shares the liability with the electrician. However, if the dog is a stray or the damage was in a public domain, the electrician bears full liability" (*Gra* 390:21; *Pischei Teshuvah* 390:1).



MONEY MATTERS

PARTNERSHIP # 26

Partnership in *Chametz*

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

Q: In a partnership with a non-religious Jew or gentile, is chametz merchandise permissible after Pesach?

A: There are a number of cases of partnership (see *Pischei Choshen*, *Shutfim* 10:14[35]):

A Jew who sold his *chametz* whose partner with a gentile — the merchandise is certainly permissible, since all the *chametz* was owned by gentiles on Pesach.

A Jew who did not sell his *chametz* whose partner is a gentile — *Shaagas Aryeh* (#89-91) addresses this question at length. He concludes that there is a dispute about the application here of *breirah* (retroactive clarification), so regarding the Rabbinic prohibition of *chametz* after Pesach, we can be lenient and allow even the share of the Jew. Others disagree. Some allow only if the majority belongs to the gentile.

A Jew who sold his *chametz* whose Jewish partner did not sell it — *Shaagas Aryeh* permits the share of the Jew who sold the *chametz* (if they subsequently divide).

If a gentile partner bought *chametz* on Pesach it does not become prohibited, since the Jewish partner does not want him to purchase *chametz* on his behalf.



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may be replaced if already signed but not yet delivered, see *Nesivos* 49:3 and 4.]

Poskim debate whether a document may be replaced if its validity is questionable (*safek pasul*). Some maintain that since it is possible that the document is valid the witnesses have fulfilled their agency. Even though the document may not be usable for collection, nevertheless, the witnesses may not sign a replacement document (*Shach* 49:6). Others contend that if the document cannot be used for collection, regardless of whether that is due to the document being definitely invalid or even possibly invalid, they have not fulfilled their agency and may sign a replacement document (*Ketzos* 49:3).

In our case, where one of the witnesses omitted *Hakohen* from his name, the witnesses certainly fulfilled their agency and are not authorized to replace the original *kesubah* unless they receive permission from the *chassan* to do so. If he grants permission, a new agency begins and they may sign another *kesubah*.

If witnesses signed another *kesubah* without authorization but secured authorization before it was given to the *kallah*, there are authorities who maintain that the *kesubah* is valid since the task is not completed until the *kesubah* is delivered to her. Therefore, as long as they received authorization before that point, the *kesubah* is valid (*Nesivos* 39:13). *L'chat'chilah*, however, they should not even sign a replacement *kesubah* without first receiving authorization to do so from the *chassan* since there are authorities who maintain that they need permission to even sign the *kesubah* (*Imrei Baruch*, *Yeshuos Yisrael* 16 and *Miktzoa BaTorah* 34). [Although one could contend that a *kesubah* is different from other documents and it can be assumed (*umdana*) that the *chassan* agrees to whatever the *mesader kiddushin* thinks is necessary, nevertheless, it is difficult to rely on that rationale *l'chat'chilah* (see *Yeshuos Yisrael* 41:2).]

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