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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

CHAMETZ REPURCHASE

"I'll be in Israel from Rosh Chodesh Nisan until Chol Hamoed Pesach," Mr. Laufer said to his Rav, Rabbi Goldman. "I'd like to sell my *chametz* before leaving."

"I'm usually happy to sell the *chametz* for you, but not this year," replied Rabbi Goldman. "When I sell the *chametz* here late morning, it will be late afternoon in Israel. According to many authorities you need to dispose of your *chametz* earlier, according to Israeli time."

"So what should I do?" asked Mr. Laufer.

"I can give you the number of a Rav who sells *chametz* twice, once for those here and once earlier for those going to Israel," replied Rabbi Goldman. "Or, you can sell your *chametz* through a Rav in Israel when you're there."

"I'll sell when I get there," Mr. Laufer said. "Anyway, I don't know yet what *chametz* I'll have there."

After arriving in Israel, Mr. Laufer sold his *chametz* through the Rav of the community where he was staying. He and his wife experienced a wonderful *Seder* with their daughter and grandchildren who lived there. On Chol Hamoed they went to the Old City and *davened* at the Kosel.

The Laufers returned to the States and celebrated the end of Yom Tov with their family living there. "We sold our *chametz* through a Rav in Israel because of the time difference," Mr. Laufer related at the table.

"That solved the problem at the beginning of Yom Tov, but what about the end?" asked one of his grandchildren. "When the Rav in Israel buys the *chametz* back after Yom Tov, it will still be Pesach here!"

Mr. Laufer thought for a moment. "I didn't consider that," he acknowledged. "I don't know."

Mr. Laufer met Rabbi Dayan towards the very end of Yom Tov. "I sold my *chametz* through a Rav in Israel," he said. "My grandchild asked, though, what did I gain? The Rav already purchased the *chametz* back from the gentile, while it's still Pesach here!"

"That is not a problem," answered Rabbi Dayan. "Although the Rav in Israel purchased the *chametz* back from the gentile, who expressed his willingness to sell it, nothing requires you to acquire the *chametz* back at this time. A person cannot be forced to acquire something against his will" (B.K. 138a; C.M. 245:10).

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A TAILOR'S RESPONSIBILITY

I gave my trousers to a tailor to repair

a hem. The tailor works without a computer and relies solely on his memory. My trousers were missing and the tailor concluded that another customer must have taken my trousers that were on the counter beneath his.

Q: Is the tailor responsible for the lost trousers?

A: An *uman* (craftsman) who takes an object to repair it is a *shomer sachar* (paid custodian) and is liable even if the object is stolen or becomes lost. He remains a *shomer sachar* until the object's owner is informed that the repair was completed (C.M. 306:1). The question is why an *uman* is categorized as a *shomer sachar* when he is paid to repair the object, not to be a custodian. A number of explanations for this *halachah* are offered (see B.M. 80b).

1.) Since the *uman* repairs the object on his property, he may retain it as collateral until he is paid. That allowance is sufficient benefit to categorize the *uman* as a *shomer sachar*. [It is possible that this rationale applies only when the *uman* indicated his intent to retain the object as collateral (see *Tosafos*, B.M. 81a, *d"h hu*.) Accordingly, if the customer prepaid for the repair, the *uman* would be categorized as a *shomer chinam* — unpaid custodian (*Machaneh Ephraim*, *Shomrim* 41, cited by *Pischei Teshuvah* 306:1).

2.) His position as a *shomer sachar* is due to the fact that the customer chose him rather than someone else who is qualified to make the repair (*Sma* 306:1, *Tumim* 72:3). Therefore, if there is no one else to make the repair, the *uman* would be categorized as a *shomer chinam* (*Har Hakarmel*, C.M. 2 and *Kol Eliyahu* 2:28).

3.) Anytime a custodian has another person's object in his possession for his own benefit, he is categorized as a *shomer sachar*. Thus someone who rents an object



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"Thus, *Shulchan Aruch* writes that if a gentile brings a *chametz* gift to a Jew on Pesach, he should not receive it from him nor indicate that he intends to take possession," continued Rabbi Dayan. "It is preferable that he state explicitly that he does not want his property to acquire for him" (*O.C.* 448:2; *Mishnah Berurah* 448:5-6).

"But doesn't a person's property acquire for him, even without his awareness?" asked Mr. Laufer. "Since the *chametz* is sitting in my house, wouldn't I acquire it automatically?"

"A person's property acquires only if the owner wants it to," replied Rabbi Dayan. "However, the owner can decide that he does not want the property to acquire for him. This is certainly true where the acquisition would entail a prohibition, or if the person himself does not have the ability to acquire, since the property is considered like an agent of the owner" (*Machaneh Ephraim, Kinyan Chatzer #4; Pischei Choshen, Kinyanim* 8:[1]).

"The same is true in a case where one person acquired on behalf of another without his knowledge," added Rabbi Dayan. "This is possible based on the principle *zachin l'adam shelo b'fanav* (one can acquire for another not in his presence), but the recipient can state that he did not want the person to have acquired for him" (*C.M.* 243:20).

"I should note," concluded Rabbi Dayan, "that some Rabbanim stipulate with the gentile that they do not want to repurchase the *chametz* until the proper time comes for those from abroad" (see *Mikra'ei Kodesh, Pesach* 1:76).



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is categorized as a *shomer sachar* since he has use of the object, even though he pays for that right. Similarly, since the *uman* has possession of the object to repair it to earn money, he is categorized as a *shomer sachar*. This rationale applies even if the *uman* is prepaid and is the only *uman* in town (*Nesivos* 72:7; *Aruch HaShulchan* 306:1; cf. *Machaneh Ephraim, Shomrim* 41).

All opinions agree, however, that once the customer is informed that the repair was completed, the *uman* is only a *shomer chinam* since he no longer benefits by retaining the object after the repair was completed and he is not retaining it as collateral for his fee (*C.M.* 306:1). In many instances, it is not even necessary for the *uman* to inform the customer that he completed the repair. Whenever the customer knows that the repair was completed, the *uman* is only a *shomer chinam* (See Rashi, *B.M.* 81a, *d'h aval; Machaneh Ephraim, Shomrim* 23; and *Har Hakarmel*). Therefore, if the tailor committed to complete the repair by a particular day, the customer realized that from that date and onward the tailor would only be a *shomer chinam*. One could suggest that nowadays, since craftsmen do not return repaired items until the customer pays, it is similar to the *uman* who informs the customer that he will retain the object as collateral and would remain a *shomer sachar*. On the other hand, perhaps it is necessary for the *uman* to actually verbalize his intent to retain the object as collateral (see *Nesivos Sachir* 36:[13] and *Maaseh Uman* 5:8).

Even when the tailor is categorized as a *shomer chinam* he is still obligated to pay if, depending on the circumstances, he was negligent (*poshe'a*).

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MONEY MATTERS

RENTALS # 1

Definition of Rental

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

Q: Does rental grant the renter aspects of ownership?

A: Rental is the acquisition of usage rights in another's property, whether real estate or movable, for compensation.

"Rental is a sale for that day" (*B.M.* 56b), but this does not mean that the renter acquires temporary ownership of the rented item. Thus, a *Kohen* may not feed *terumah* to an animal that he rented. Similarly, one may not rent a house to a gentile who will bring idols into it, since the Jewish owner will still violate the prohibition "*lo savi to'eivah el beisecha*" (*Mishnah Terumos* 11:9; *Y.D.* 151:1; see, however, *Shach* 151:17).

The *Rishonim* dispute whether rental acquires only the usage rights, or also rights in the item itself for its usage. Thus, if a person betroths a woman with a rented ring, some say that he has no rights in the item itself, while others maintain that it is considered his for this use (*Rambam, Hil. Sechirus* 7:1; *She'eilah U'pikadon* 1:5; *Maharsham* 7:205; *E.H.* 28:19).

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