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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

WHICH ONE STOLE?

Shlomie was sitting with two of his friends in the school cafeteria. After finishing their meal, they decided to go get dessert. Shlomie left a see-through envelope on the table with a \$50 bill in it.

As Shlomie and his friends were choosing dessert, from the distance they saw two other students walk by the table. One of them reached out and grabbed the money; the two then hurried to the elevator and were gone. Shlomie and his friends ran up the stairs. They caught the two students outside the building and confronted them. Both were the same height and dressed similarly, so Shlomie could not discern which one had taken the money. "One of you took \$50 that was on our table!" he said. "Please give it back."

"I didn't take any money," said the first.

"Nor did I," said the second.

Shlomie's eyes darkened. "That can't be!" he exclaimed. "I saw one of you take the money. So did my two friends over here. One of you stole it!"

"Well, it wasn't me," said the first.

"Nor was it me," said the second.

"Are you willing to show me your wallets?" asked Shlomie.

"Sure, but I have my own money in it," said the first. He opened his wallet. In it were a number of \$50 bills.

"Same with me," said the second. His wallet also contained a few \$50 bills.

"Well, I have witnesses who saw one of you take the \$50 that was on the table," said Shlomie. "One of you stole it and is lying." He got their names and said that he would be in contact with them.

Shlomie went to Rabbi Dayan. "I have witnesses that I left money on the table in the cafeteria and that one of two students stole it," he said. "How can I collect payment? Does each one have to pay half?"

"Although only one of the two students stole, we cannot obligate either one," replied Rabbi Dayan. "Each one denies the claim. The halachic principle of *hamotzi meichaveiro alav haraayah* — the plaintiff has the burden of proof — applies here. Neither student can be implicated, since there is no proof that he stole and the other one may be the thief. The *Mishnah* (B.K.



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MAJORITY DECISION. PART III

Our condo association invited all the members to a meeting. A number of

people did not attend.

Q: Is it possible to make decisions if some of the members do not attend the meeting? Some of those who could not attend sent in their vote on a card. Does that count as a vote?

A: In our previous articles we wrote that nowadays decisions are determined by a majority vote and a unanimous decision is not necessary. We also mentioned the dispute about whether all the partners must vote or whether that requirement is reserved for *beis din*. Your question, however, involves another factor. Let's say that 60 percent of the members came to the meeting and a decision was made with a simple majority of those present. That would mean that less than 50 percent of the total members voted in favor of the issue. Is a decision reached under such circumstances binding?

Poskim debate about how to reckon those who did not show up at the scheduled meeting to vote. Some maintain that those who do not attend the meeting forgo their voting rights and the matter is decided by the majority of those who did attend (*Chasam Sofer*, C.M. 116). Others maintain that decisions cannot be made when members of the group are absent, even if the group in attendance votes unanimously in favor of the proposed change (*Maharit* 1:58; *Mishpat Shalom* 231; *Kuntres Tikkun Olam* 6).

Common custom is that the decision made by the majority who attend the meeting is binding, because if decisions could only be made when there is

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35a-b) addresses a case in which damage was done, but we are not sure who is responsible, so that all are exempt."

"Can I at least impose an oath upon them?" asked Shlomie. "Let each one swear that he didn't steal; this might make the thief confess!"

"In order to impose an oath, the plaintiff must make a definitive, or firmly based, claim," replied Rabbi Dayan. "In your case, though, each person can be accused only with doubt. Thus, even a *heses* (Rabbinic) oath cannot be imposed" (C.M. 75:17).

"In a similar case," continued Rabbi Dayan, "the *Gemara* (B.M. 26b) teaches that if a person who is traveling with two other people loses money, someone else who finds the money can keep it, since the loser abandons hope of reclaiming it. He assumes that one of his two colleagues found it, yet he has no way of accusing either one. However, if he traveled with only one other person, we do not assume that he abandons hope. He assumes that the other person who was accompanying him took it, and he can accuse him. He can impose an oath upon him or shame him into confessing" (C.M. 262:4; *Sma* 262:10).

"Is there anything that *beis din* can do in a situation where the identity of the perpetrator is unclear?" asked Shlomie.

"In such cases of questionable claim," replied Rabbi Dayan, "the *Geonim* instituted that *beis din* can impose a general ban (*cherem stam*), without mentioning a name, on whoever knows the truth but does not admit it" (C.M. 75:17; *Gra*, E.H. 68:15).



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a majority of total residents voting in favor of the decision it would be almost impossible to make decisions. People are busy and it is difficult to schedule a meeting when such a large percentage of the members would be present. Therefore, it is assumed that it is sufficient to inform everyone of the upcoming scheduled meeting and that decisions will be made based on the majority vote of those in attendance (*Igros Moshe*, C.M. 2:20).

Those members' votes that were submitted in writing are not counted since they did not attend the meeting. Since they were not present to hear the debate they may not realize that others maintained a different opinion. Even if they are aware that there are different perspectives, they are not qualified to formulate an informed opinion since they did not hear anyone argue in favor of another position, which is the purpose of holding a public meeting before taking a vote. (Seemingly, if someone who could not physically attend listened to the meeting by phone, he should be able to vote since he would have an informed opinion about the matter.)

Obviously, if the bylaws allow absentee voting or if common custom is to accept absentee voting, the absentee votes would count (*Igros Moshe*, *ibid.*). Clearly, if some of the members were not informed in advance of the meeting, the meeting and vote would have no validity whatsoever. This is true if even *one member* was not informed about the scheduled meeting.

In summary, all the members must be informed of the scheduled meeting and then decisions can be made according to the majority of those who attend the meeting.

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MONEY MATTERS

RENTALS #26

Failed Transport

Q: I hired a rocket to launch a satellite. Due to a freak accident, the rocket and satellite exploded after launch. Must I pay the launch fee?

A: The *Gemara* (B.M. 79a-b) discusses a parallel case: Someone hired a ship to transport cargo and the ship sank. The ruling depends on the details of the agreement.

If the agreement specified the cargo, but not the ship, the renter must pay, since the shipper can still uphold the agreement with another ship, whereas the renter cannot provide the specified cargo.

Conversely, if the agreement specified the ship, but not the cargo, the shipper must refund any payment, since he cannot uphold the agreement, whereas the renter can provide other cargo. If both were specified, whoever holds the money retains it, since neither can uphold the agreement.

If neither was specified, both can uphold the agreement with another ship and cargo; if neither is interested, they split the rental fee; if only one party provides an alternate, he has the upper hand (C.M. 311:5; *Shach* 311:2).

The same is true in our case, unless the contract specified otherwise.

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