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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Revalued Rental

With spring around the corner, the Coopers decided to do extensive gardening and landscaping work on their property. They contracted Hymie Ganz, a professional landscaper, to do the work, which was scheduled to take a full week.

At the end of the second day, satisfied with the work that had been done already, Mr. Cooper paid Hymie a partial payment of \$1,500.

On the third day, Hymie called.

"I won't be able to come today," he said to Mr. Cooper. "I hope I can make it tomorrow." The following day, however, Hymie called to say that he would not be able to make it again.

"When will you be able to come?" Mr. Cooper asked, somewhat irritated.

"Unfortunately, I can't say for sure," Hymie said. "It may not be for another week or two. I have a problem with my assistants, and it's

very difficult to work without them."

"You're kidding me," said Mr. Cooper. "I can't leave my property like this for another two weeks! My neighbor does gardening; maybe he can finish the job."

Mr. Cooper called back a few hours later to say, "I arranged with my neighbor to finish the job. Send me a revised bill for the work that you did. My neighbor also asked if he can use the gardening tools that you left here; I'll pay you their fair rental value."

"If that's what you decided, okay," said Mr. Ganz. "I'll add the rental value to the bill."

Hymie made a summary of the work and mailed the bill to Mr. Cooper: \$2,500 for two days' work, plus \$150 per day for the tools. When Mr. Cooper received the bill he threw a fit.

"Hymie messed me up, and is asking for so much!?" he exclaimed. "\$1,500 is more than enough for the work he did!"

He responded to Hymie that he felt he had already compensated him fairly, and refused to pay any more.

Hymie summoned Mr. Cooper to a din Torah before Rabbi Tzedek for the remainder of the money. Mr. Cooper, in return, accused Hymie of damaging his sun deck, for which he demanded reimbursement.

At the beis din, Hymie raised the value of the tool rental from \$150 a day to \$200. He submitted a price quote from a rental store, showing that the rental value of the tools was \$250.

Mr. Cooper objected to this increase.

"Hymie already set the price at \$150 per day," he said. "He can't raise the price now!" "Why not?" argued Hymie. "I can even ask for \$250 if I want!"

Rabbi Tzedek ruled, "If the discrepancy is significant, Mr. Ganz still has basis to raise the price to its fair value."

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Verify and Notify

Submitted by
S. F. H.

Shimon has a reliable reputation, but I have firsthand knowledge that he has exploited people in the past. Shimon is aware of the fact that I know this about him and had me promise that I wouldn't tell anyone. Reuven is considering investing with Shimon and asked me if I thought it was a safe investment. On the one hand, I promised Shimon that I wouldn't tell anyone; on the other hand, I don't want Reuven to lose money. Either way, I am concerned about any possible claims against me.

Q: What am I allowed to tell Reuven?

A: The prohibition of speaking lashon hora is well known, but at times, speaking negatively about someone is not only permitted, but even mandated. If a friend is about to suffer a loss, the Biblical prohibition of lo sa'amod al dam rei'echo (Vayikra 19:16), standing idly as another is harmed, instructs the bystander to prevent his friend from suffering that loss. Rambam explains that refusing

to testify violates this prohibition if the testimony could prevent a friend from suffering a financial loss. In addition, by giving testimony, one also fulfills the mitzvah of hashavas aveidah – returning a lost object to a friend (Rambam Sefer haMitzvos Prohibition 297). The same obligation is in force any time one can prevent a friend from suffering a loss (C.M.259:9, Pischei Teshuvah 28:1).

Although the prohibition of lashon hora is very severe, it is an even greater transgres-

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Rabbi Tzedek then explained. "It is advisable to set a clear price before renting or buying something. If a price was not fixed, but rather set at the 'fair rental value,' the renter pays the average going rate. This amount is at least \$200 per day, as Hymie now demands (C.M. 331:3)."

"This would be fine had Hymie billed me for \$200 at the outset," responded Mr. Cooper. "After he billed me for \$150, though, he established that as the price!"

"If Hymie was not aware of the average going rate," replied Rabbi Tzedek, "just as there is ona'ah (price fraud) for sales, there is also ona'ah for rentals of tools. If the rent varied significantly from the fair value, the aggrieved party can demand the differential (227:35; SM"A 227:65)."

"But Hymie's a professional; he probably knew the true rental value," said Mr. Cooper. "He was willing to forego the amount beyond \$150."

"First of all, we allow even a professional an ona'ah claim," said Rabbi Tzedek, "especially one who does not deal with tool rentals on a regular basis (227:14)."

"Furthermore, even if Mr. Ganz did know the true price and knowingly billed you a lower price, there is an additional factor here," Rabbi Tzedek continued. "Although he charged only \$150 for the tools, he was expecting that you would pay the full bill that he submitted for his labor. However, once you refused to pay the bill, and even submitted a counterclaim, Mr. Ganz can claim that he never intended to forego the full value of the rental under such conditions (see Shach 17:15; Minchas Pitim 17:12)."

"Therefore," concluded Rabbi Tzedek, "since the rental amount that Mr. Ganz initially billed is significantly less than the average going rate and you refused to pay the remainder of his bill, he can still ask for the full value of the rental."

sion to refuse, out of concern for the prohibition against lashon hora, to share information that could save someone from suffering a loss. Refusal in this instance violates the prohibition of lo sa'amod. As such, if one sees a person's employee or partner stealing from him, it is obligatory to apprise the victim of the theft. The same is true if one sees someone behaving dishonestly in a business transaction or someone about to lend money to an unreliable individual (Pischei Teshuvah O.C. 156).

It is clear that one must share negative information about someone to prevent another person from suffering a loss. However, the question in your case is whether your promise to Shimon that you would not tell anybody about his exploitations is similar to an oath. The issue of the binding nature of one's commitment not to share a secret is debated amongst Poskim. Most Poskim agree that

the obligation to prevent someone from suffering a financial loss outweighs a commitment not to share a secret. If one actually took a vow not to share information, the matter would require a consultation with an expert in this area of halacha (see Nesivos 28:1, Y.D. 239:7). In summary, you are not only permitted to share the information about Shimon with Reuven, but you are obligated to tell him even if he had not asked you. As such, Shimon has no claim on you that you caused him damage by sharing negative information with Reuven. However, you must not exaggerate and do your best to relay just the facts that occurred in the relevant incident(s) without including your own subjective attitude towards Shimon. It is advisable to review with a competent Rav what you should say and how to respond to follow-up questions that Reuven may have for you (see Chofetz Chaim vol. 2: 9).

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Shomrim: Guardians #4

Q: Someone allowed me to use his vacation home for the winter. During this time, a flood caused significant damage to the house. Do I carry liability for the damage?

A: A borrower is responsible even for damage beyond his control. However, the Gemara (B.M. 56a) derives from verses that a guardian is responsible only if he was entrusted with moveable items of inherent worth, but not if entrusted with real estate or documents,

which have no inherent worth (C.M. 301:1). For this reason, if you borrowed a house and it was damaged by flood or fire, you are not responsible according to most authorities, since a building is built into the ground (Rama 301:1; 95:1; Shach 95:1). [However, you would be responsible for the moveable furniture, at least that which you used (see Nesivos 340:8; 95:1 (end); Shach 202:3).] Despite this exemption, the Rambam rules that the guardian is responsible if he was

negligent, since this is considered damaging (Shach 301:3). However, most authorities rule that a guardian of real estate is legally exempt even from negligence, unless he actively damaged (SM"A 301:3; Pischei Teshuva 301:4). Even so, the guardian has a moral responsibility to pay (chiyuv b'dinei shamayim) if he was negligent (Pischei Choshen, Pikadon, 1:ftnt. 51). Furthermore, a paid guardian for real estate or documents forfeits his salary if he did not guard properly (C.M. 301:1).

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