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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Pay the Pledge

Among the charities that Mr. Gottlieb regularly donated to was Yeshivas Ohr Israel. At the recent annual dinner, he had pledged \$10,000 toward the yeshivah's scholarship fund.

Two weeks later, Mr. Gottlieb passed away - before he had a chance to honor his pledge. His heir was his only child, Dov. After the shivah, Dov received a visit from the financial administrator of Ohr Israel, Mr. Goldin.

"Your father recently pledged \$10,000 to the yeshivah's scholarship fund," Mr. Goldin said. "Honoring your father's pledge promptly would be a great merit for his soul."

"I affiliate myself with other Torah institutions, and I am experiencing financial issues at the moment," replied Dov. "I don't see myself donating to Ohr Israel."

"But your father already pledged that amount," Mr. Goldin said. "You owe us the money."

"Did my father sign any agreement with the yeshivah?" asked Dov.

"It was a verbal pledge," acknowledged Mr. Goldin. "But verbal commitments also have to be honored, particularly charity pledges."

"My father pledged," said Dov. "I never pledged."

"But when your father pledged, he committed his money to the yeshivah," argued Mr. Goldin.

"That money is now mine," responded Dov. "If nothing was committed in writing, his pledge doesn't obligate me."

"Perhaps you don't share your father's enthusiasm for Ohr Israel," said Mr. Goldin.

"But, as his heir, you are obligated to honor

his verbal pledges."

"I am not convinced," said Dov. "I'll get back to you in a week."

"Thank you for your time," said Mr. Goldin. "We hope that you will decide to honor your father's pledge as a merit for his soul."

Dov called Rabbi Dayan and asked, "Am I required to honor my father's verbal pledge?"

"Whether an heir is obligated to honor the deceased's verbal pledge is the subject of an intricate dispute between the mechaber, Rav Yosef Karo, and the Rema," answered Rabbi Dayan. "A person pledged a sum of money to the poor of Eretz Yisrael in his will. The heirs challenged the will, claiming that it was not drafted properly, but Rav Karo upheld it for a number of reasons. One was that even if the will was not drafted properly, a verbal pledge to charity is also fully

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Without Consent

Submitted by
S. F. S.

My father became ill. He requires a caregiver but does not comprehend his medical condition to make this decision.

Q: I have power of attorney on his bank account to pay his ordinary expenses; may I also withdraw money to pay for his medical care without obtaining permission from him?

A: Shulchan Aruch (C.M. 348:1) rules that

the prohibition to steal applies even if one intends to benefit the victim; for instance, to steal money in a manner that obligates repayment of kefel, double the stolen amount (Sma ibid. 3). Seemingly, this principle applies in this case as well. Although your intent to withdraw money without permission is to pay for your father's medical care, it is prohibited to steal.

Nevertheless, there are several principles permitting you to spend your father's mon-

ey on his care. One is the halacha of an apotropos - a legal guardian. If a person does not have the faculties to make decisions for himself, one may become a self-appointed apotropos to oversee his needs (see C.M. 290:24). Since a child's obligation to honor his parents does not require him to spend his own money, a child can become the apotropos for his parents' needs and is permitted to spend his parents' money to provide for their needs

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binding. The Rema (Responsa #47-48:3) disagreed with him, arguing that a charity pledge is considered a vow that a person must fulfill, but does not obligate the heirs if not contractually binding. Interestingly, in that particular case, the Rema enforced the ruling of Rav Karo, out of his great respect for him.” “Is this dispute reflected in Shulchan Aruch?” asked Dov. “Yes,” replied Rabbi Dayan. “The Shulchan Aruch (C.M. 212:7) writes that if someone, before his death, pledged future income from his real estate to charity, it must be given to the poor - even though such a future agreement is not contractually binding. The Rema comments that only the person himself must fulfill his pledge as a vow, but it is not binding if he died in the interim. Ketzos Hachoshen (290:3) explains that the issue depends on whether the requirement to honor one’s charity

pledge generates a legal obligation, a lien, on the money.” “So I don’t have to honor my father’s verbal pledge according to the Rema?” said Dov. “You are not compelled to, although the issue is not simple,” replied Rabbi Dayan. “Some authorities maintain that even the Rema concedes that the vow creates a legal obligation when the assets exist (Sma 212:21; Pischei Teshuvah 212:9 citing Chasam Sofer). Furthermore, if the father already set aside the money, the heirs are required to give it (Nesivos 250:4; Tzedakah U’mishpat 4:28-29).” “What about the issue of honoring my father?” asked Dov. “If a person instructed his children to give the money, there is kibbud av in fulfilling his words,” replied Rabbi Dayan. “Fulfilling his charity pledge also brings him great merit and is a tribute to his neshamah (Pischei Teshuvah 252:3).”

(Pischei Choshen Geneivah 1:[15], Yerushah 5:[11]). In a circumstance in which a parent mistakenly thinks he can take care of his needs, there is another principle that permits the child to spend his parents’ money. The relevant principle is yored l’sdei chavero that obligates the beneficiary to pay for benefit he received even though it was not requested (C.M. 375). Since the caregiver provides benefit for the parent, he must be paid. The parent’s protest is irrelevant, since he is incapable of comprehending this need (Meishiv B’halachah 27). Another factor that permits a child to spend his parents’ money on their care is the embarrassment for the fam-

ily if the parent is not properly cared for (Y.D. 252:11). Finally, the Aruch Hashulchan (Y.D. 253:17) writes that if a well-to-do person does not care for himself such that he will become ill, one should provide him with food and then collect payment from him. Similarly, if a parent requires medical treatments but refuses to pay, the children may provide the treatment and collect money to cover those expenses (Tzedakah Umishpat 2:[56]). In summary, there is a solid halachic basis to permit you to spend your father’s money for his care as it is needed even if he resists paying for it. However, care must be taken to limit the expenditure for necessary care only.

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Shomrim: Guardians #7

Q: A friend asked me to watch his bicycle, rollerblades, and basketball for the day. Must I keep them in the house, or can I leave them in the backyard or unlocked garage?

A: Each item must be watched in the customary manner for that item. Some items are typically left in an open yard, some in an enclosed area, some in the house, some

in a locked cabinet, and some in a safe. Some food items need to be refrigerated and some do not (C.M. 291:13, 15). The customary manner varies with place and time (291:18). Thus, in one community it might suffice to leave the items in the backyard or unlocked garage, whereas in another it would be required to bring them into the house. Similarly, there can be a difference between daytime and nighttime.

If the guardian did not watch the item in the customary manner and it was stolen, it is considered as p’shiah (negligence) and he is liable even if he was a shomer chinam (unpaid guardian). Even if he tends to be lax about his own possessions, this does not relieve him of guarding the entrusted item in the customary manner, unless he so stipulated (291:14, 17).

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