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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Banana Split

Mr. Frei finished his weekly fruit and vegetable shopping and headed outside to his car.

"I'm hungry," said his daughter, Bracha. "How about a banana?" offered Mr. Frei. He gave Bracha a banana and also took one for himself. He tossed the peels away; they landed in the street behind the car.

As Mr. Frei settled into his car, an older man, Mr. Polter, began crossing the street holding a package. He slipped on the banana peels and fell.

Mr. Frei helped Mr. Polter get up. "Are you all right?" he asked.

"I hope so," Mr. Polter gasped, limping badly. "I'll have to see the doctor. Some irresponsible person left banana peels on the street!"

"I'm sorry," Mr. Frei said. "I didn't expect that someone would slip on them."

"You shouldn't litter," said Mr. Polter. "You've got to make sure that garbage ends up in the trash can."

Mr. Polter opened his package and gasped sharply.

"What happened?" asked Mr. Frei.

"I bought a crystal vase for my wife's seventy-fifth birthday," Mr. Polter replied. "It's shattered!"

Three days later, Mr. Frei met Mr. Polter. "How are you?" he asked.

"Much better," said Mr. Polter. "Baruch Hashem it was just a bad bruise, but I have some bills for you: doctors' and medicine bills, a cleaner's bill for my suit, and the receipt for the crystal vase. It comes to \$829."

Mr. Frei looked at the bills. "I'm truly sorry that you fell, but you really should watch where you walk," he said. "Anyway, it wasn't even my property; it was in the street."

"Nonetheless," replied Mr. Polter, "they were your banana peels."

"When you slipped, though, they weren't mine anymore," countered Frei. "They became hefker (ownerless) when I threw them away."

"We'll take this up with Rabbi Tzedek," sighed Mr. Polter.

The two met with Rabbi Tzedek and asked, "Is Mr. Frei liable for all the damage?"

Rabbi Tzedek ruled: "Mr. Frei is legally liable for your injury. Some authorities maintain that he also has a moral obligation (chiyuv b'dinei Shamayim) to pay for the suit and vase."

Rabbi Tzedek then explained, "One of the four categories of damage is bor (pit), as it says: 'If a man ... shall dig a pit and not cover it, and an ox or a donkey falls into it, the owner of the pit shall pay (Shemos

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Borrowing Tzedakah

Submitted by N. B.

I sometimes borrow money from the tzedakah box of a local yeshiva in our shul. I put in a note as a reminder to replace it. I also occasionally get change for a dollar using this money.

Q: Is this permissible or is it geneivah?

A: Your question revolves around the issue

of who owns money placed in a pushka (charity collection box). Shulchan Aruch (Y.D. 259:1) rules that money pledged for tzedakah but not yet given to the gabbai may be borrowed for other purposes, but once it reaches the gabbai, it may not be borrowed for other purposes.

What is the status of money in a pushka in shul? Is it comparable to pledged money or did it already reach the custody of the gabbai?

One halachic proprietary act is kinyan chatzer, whereby someone's property or utensil can acquire items on his behalf (see C.M. 200:3). Some authorities consider a pushka belonging to a tzedakah organization a chatzer, and as such, once the money is placed inside, it is as if the gabbai took possession of the money and it may not be used for other purposes (Divrei Chaim, C.M. II:68, Ma'amar Mordechai 15). However, kinyan chatzer is effective only if

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21:33-34). The man is called the 'owner' of the pit even if he dug it in a public street, and he is liable.

"Damage inflicted by any stationary obstacle is included in the category of bor. The person responsible for the obstacle is liable for the ensuing damage. Whether he placed the obstacle there intentionally or through negligence, he remains liable, even if he disowned the obstacle and declared it hefker. Thus, the banana peel that Mr. Frei left in the street and which you slipped on is included in the category of bor (C.M. 410:1; Sm"a 412:9)." "But why is there no legal obligation for the suit and vase?" asked Mr. Polter.

"The Torah limits the liability of bor significantly, excluding damage to inanimate objects," answered Rabbi Tzedek. "There is legal liability only for an animal (e.g. ox or donkey), or for a person who was injured. Therefore, Mr. Frei is not legally liable for the damage to the suit and vase (410:19-21)."

"Why is the halacha so?" asked Mr. Frei.

"This is derived from the pasuk," replied Rabbi Tzedek, "which suggests that inanimate items do not move by themselves; the person who moves them should guide them to avoid the damage (Aruch Hashulchan 410:26)."

"Although there is no legal liability," said Mr. Polter, "you said that there might be a moral obligation?"

"Yes. Although the Torah excludes liability for inanimate objects, the Gemara (B.K. 29a; 56a) indicates that the perpetrator is chayav b'dinei Shamayim if he intended to damage," concluded Rabbi Dayan. "If he did not intend to damage, Rav S. Z. Auerbach, zt"l, maintains that there is no moral obligation (Minchas Shlomo, B.K. 29:4); the Chazon Ish remains doubtful; and Birkas Shmuel takes for granted that there is a chiyuv b'dinei Shamayim (Pischei Choshen, Nezikin 1:[1]; 9:[53])."

the content is secure in that place (chatzer mishtameres) and it is debatable if the money in a pushka is considered secure (see Nesivos 200:3, Avnei Choshen ibid. 6).

In the past, it was customary to lock up tzedakah boxes, and the gabbai was the only one with the key. That may qualify the pushka as a secure place that can acquire its contents for the institution (Beis Yitzchak, O.C. 21). This would obviously not apply to pushkas in one's home that are not closed with a lock. Since the status of such pushkas is questionable, it is preferable that you stipulate when putting money into a pushka that you do not intend to transfer the money into the possession of the tzedakah organization. This will allow you

to borrow money from it (Tzedakah U'mishpat 8:[25]).

Nowadays, when institutions send out hundreds of pushkas, it seems likely that the pushka merely serves as a reminder that one should give money to that institution and there is no intent that the organization will acquire its contents. It is therefore permissible to borrow money from such tzedakah boxes.

However, an open pushka in a shul may be considered a chatzer mishtameres that acquired the monies for tzedakah. Although borrowing money from such a tzedakah box should be prohibited, it may be assumed that the organization agrees that the content be used to exchange coins.

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Shomrim: Guardians #8

Q: Is the required manner of guarding the same for all shomrim?

A: A shomer sachar (paid guardian) has greater liability than a shomer chinam (unpaid guardian) in cases of theft or natural loss. According to many authorities, he also has a higher level of responsibility in the manner of watching. A shomer chinam is expected to guard the item under routine conditions, whereas a shomer sachar is paid to protect it well, even from unusual cir-

cumstances (C.M. 303:11; Pischei Choshen, Pikadon 2:2[5]). For example, a shomer chinam can suffice with a door that can withstand normal wind, whereas a shomer sachar must have a door that withstands even unusual wind (Rabi Akiva Eiger, C.M. 303:2, based on 396:1, 8). A shomer chinam can leave the item unattended for short, customary (e.g. coffee) breaks, whereas a shomer sachar is expected to actively tend to the item continuously (291:12; 303:10). A shomer sachar is required to lay out needed

money (for which he is entitled to reimbursement), to protect the entrusted item, whereas a shomer chinam is not (303:8).

According to some authorities, this applies only to an actual shomer sachar, who is paid to watch the item. However, other people who have the liability of a shomer sachar because of benefit they receive (e.g., a sales agent, employee, partner, renter, etc.) are not required to guard beyond the usual manner (Pischei Teshuvah 303:1; P.C., ibid).

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