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STORY LINE

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Prime Suspect

"I arranged with Simon Kleinoff, the plumber, to clear the blockage in the kitchen sink this morning," Mr. Laks told his wife.
"Oh, great!" she replied.
Simon arrived at 10 o'clock. He worked for a half hour, going in and out of the house to bring tools from his car.
Mrs. Laks came into the kitchen and opened the drawer near the sink.
"Have you seen my ring?" she asked Simon suspiciously.
"No, I haven't," Simon responded in a surprised voice.
"I left my ring in the kitchen drawer when I cleaned the kitchen this morning," Mrs. Laks confided to her husband, panic-stricken. "There was no one else in the house other than Simon all morning, and he's been in and out to his car numerous times."
"Are you sure that you left it in the drawer?" Mr. Laks asked her.
"Absolutely positive," she said. "I also noticed that the drawer was ajar and had been rummaged through."
Mr. Laks went over to Simon.
"My wife is missing her ring," he said. "She is positive that she left it in the drawer near the sink this morning, and only you were in the house today."
"How dare you accuse me?" said Simon indignantly. "Your wife probably moved it and forgot where she put it."
"She is sure she left it in the drawer," said Mr. Laks emphatically.
"You have no evidence that I took it," said Simon, shaking his head angrily. "Anyway, I just finished clearing the sink blockage. You owe me $150 for the repair and I'll be off."
"I'm not paying anything," said Mr. Laks. "I'm holding the repair payment in lieu of the ring, until we discuss this with Rabbi Dayan."
"We'd better do that," retorted Simon. "Let's go right now!"
"My wife left her ring in the kitchen drawer, and it was taken," Mr. Laks said to Rabbi Dayan. "Mr. Kleinoff was working in the kitchen then and was the only other person in the house. What recourse do we have?"
"A person who makes a definite claim but has no evidence or testimony can impose an oath (shevuas heses) on the other party who denies the claim," answered Rabbi Dayan. "Although, in general, a person cannot impose an oath without a definite claim, Rema writes that a person can impose an oath if there is a strong basis (raglayim ladavar) for the claim, even if it is not definite (C.M. 75:17)."

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FROM THE BHI HOTLINE

The Useless Heater

Submitted by R. W.

In advance of my trip to Israel, I bought a heater and specified to the store owner that I needed a heater that runs on 220v. When I arrived, I opened the box and realized that he had given me a heater that runs on 110v. I contacted the merchant; he is ready to refund my money upon return of the heater.

Q: Am I responsible to spend time and effort to ship back the heater and pay the shipping costs?

A: The merchant must pay for the shipping, but you are obligated to ship it to him, assuming it does not require uncommon effort.When a customer specifies that he intends to use his purchase in a distant place and, upon arrival, discovers that the item is damaged or is not the item he ordered, the merchant must refund the customer's money and retrieve the faulty merchandise (C.M. 232:21). The rationale is that although a merchant may assume that his merchandise is not defective, if a defect would cause the customer a financial loss, he must exercise greater caution to assure that the merchandise is not defective.
This being the case, when a customer specifies that he will take the item to a different location, the merchant is aware that shipping back the defective merchandise will cause

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STORYLINE CONTINUED

"What is an example of something that is considered a strong basis?" asked Mr. Laks.

"Let's say someone was in your house. You find your money box broken and the contents stolen, and you suspect that person. You can impose an oath upon him," replied Rabbi Dayan. "However, the Shach (75:63) questions the Rema's ruling. He concludes that it depends on the evaluation of the beis din; if they see sufficient basis for the allegation, they can impose an oath upon the accused."

"I understand that nowadays beis din is wary about imposing an oath," said Mr. Laks. "Anyway, I want to withhold Mr. Kleinoff's wages!"

"This is a complicated issue," replied Rabbi Dayan. "The Sma (75:49) writes that if the plaintiff grabs payment from the suspected thief unobserved (so that there is no evidence that he grabbed), he can keep the payment. Shach (75:64) and Taz (75:17) vehemently disagree; a person cannot take money from another when there is an element of doubt. Pischei Teshuvah (75:20) cites varying opinions of later authorities.

"Bottom line: since the plaintiff is already in possession of the money, he can keep it when he has a clear basis for his claim (see Pischei Choshen, Geneivah 1:[13])."

"Then I should be able to withhold the wages," said Mr. Laks, "since I am in possession of the money."

"It would seem so, provided that no one else was in the house and, due to the circumstances, your wife is sure that Mr. Kleinoff stole and not just that there is a good chance (see 408:2; Pischei Teshuvah 75:20)."

FROM THE BHI HOTLINE CONTINUED

the customer a loss (Prishah 232:18) and must therefore pay the shipping costs. Additionally, the merchant is obligated to pay the shipping costs since he did not confirm that he was giving you the heater you requested.

However, concerning the shipping arrangements that do not require extraordinary effort, it is not sufficient to merely notify the merchant to retrieve it himself. The mitzvah of hashavas aveidah (returning a lost object) also obligates one to prevent a Jew from suffering unnecessary financial loss. It is therefore your responsibility to make the shipping arrangements.

Ostensibly, the merchant's behavior is considered aveidah midaas — one who negligently allowed his possession to become lost — and in such a case, the mitzvah of hashavas aveidah does not apply (C.M. 261:4). This principle, however, is not applicable.

Every time someone loses an object, there is an element of negligence, but it is not categorized as aveidah midaas unless the owner actively indicates that he is not concerned about the object. For example, a person who throws an object into the public domain has actively demonstrated that he is not interested in that object and it is considered an aveidah midaas.

In contrast, when an object was lost because one was not careful enough, it is not an aveidah midaas and the mitzvah of hashavas aveidah still applies.

The final ruling in your case is that the merchant is responsible to pay the shipping costs, but you are obligated to arrange to ship it back to him.

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Damages #2

MONEY MATTERS

Q: Is a person liable for damage that he did unintentionally?

A: The Mishnah (B.K. 26a) teaches: "A person is always considered mu'ad (prone to do damage), whether accidental or intended, whether awake or asleep." The Gemara (26b) adds that he is liable even for oness (uncontrollable actions) as for willing actions. Therefore, a person who was blown off a roof by an unusually strong gust of wind is liable if he caused damage (27a).

Some understand this rule literally, that a person is obligated even for circumstances beyond his control. This is the simple understanding of the Rambam (Hil. Chovel Umazik 6:1) and Shulchan Aruch (C.M. 378:1-2; Shach 378:1).

Tosafos (B.K. 27b), on the other hand, limits this rule to uncontrollable circumstances that contain an element of carelessness. However, a person is not liable for cases of oness when there is no element of fault. The Rema follows this opinion (378:1; 421:4).

Even according to the stringent view, a person is not liable for oness if the damaged party was negligent in leading to the damage (421:4) or if the incident was a great oness, totally beyond his control (378:3; Pischei Choshen, Nezikin 1:6-9).