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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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A Powerful Question

A week after Hurricane Sandy swept through their state, the Blums still had no electricity. They had run extension cords to a neighbor's house to power some basic items, but the protracted living without power was taking its toll on the family.

"We need to buy a generator," Mrs. Blum said to her husband. "I saw them in the store two weeks ago for about \$750."

Mr. Blum drove to the store but didn't see any generators. He spoke to the manager, who said, "I'm sorry, but we sold out completely last week."

Mr. Blum tried a second and third store, but the answer was the same: "We sold out last week, and won't get restocked for at least another week."

"We can't go on like this," Mrs. Blum said. "We've got to do something!"

That afternoon, Mr. Blum saw an advertise-

ment that someone had procured a limited stock of generators that he was selling. He immediately drove over to the address listed.

As he entered, Mr. Blum saw a sign: "The generators are being sold for \$1,500 each. We apologize for the high price. No returns." "What?" exclaimed Mr. Blum to the seller. "That's twice the cost of local stores. Why so much?"

"It is much more than the stores here charge, but I can't sell for the regular price," said the seller. "I had to buy these from a store very far away and transport them here. That added a lot to my cost and labor."

"That may account for adding 50 percent to the price," said Mr. Blum, "but it doesn't justify charging double!"

"I'm not interested in bargaining," said the seller. "This is the price that I'm charging.

You want to buy for \$1,500 — fine; you don't want to — don't."

"But overcharging like that is a violation of the prohibition against ona'ah (unfair pricing)," argued Mr. Blum. "It even jeopardizes the validity of the sale!"

"How am I cheating you?" asked the seller. "I'm not deceiving you about the cost; I acknowledge that the price is high."

Not feeling that he had a choice, Mr. Blum bought the generator. On Shabbos, he met Rabbi Dayan and related what happened.

"Was the seller permitted to charge way more than the generators were worth?" asked Mr. Blum.

"In general, there is a prohibition of ona'ah to overcharge an unknowing customer," replied Rabbi Dayan. "Depending on the amount overcharged, the customer may be entitled to a refund or to return the purchase

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Caught on Tape

Submitted by C. K.

I have a claim against Reuven and am concerned that he will deny my claim in beis din. I have, however, a tape from a surveillance camera of his admission to my claim.

Q: Will beis din accept this tape as proof of my assertion?

A: The guidelines concerning the type of tes-

timony and acceptable evidence that may be acted upon by beis din are quite strict. In principle, the statements of two valid witnesses who testify or who are signed on a document are acceptable evidence in beis din. Similarly, if the defendant verbally admits or signed a document admitting the validity of the claim, beis din will force him to pay that claim (C.M. 69:1). Sometimes, even circumstantial evidence that strongly supports a claim may be taken into consideration even though it does

not qualify as valid testimony.

Shulchan Aruch (C.M. 15:5) states that technically, beis din may accept what they believe is reliable circumstantial evidence and include that as evidence when determining their verdict, even though it does not meet the Torah's strict guidelines of testimony. For example, if relatives of one of the litigants were to testify, their testimony is Biblically invalid, but it may constitute circumstantial evidence if beis din is assured of their integrity and it therefore influ-

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(see C.M. 227:2-4)."

"What if the seller stipulates, 'No returns'?" asked Mr. Blum.

"Even if the seller stipulates that the customer should have no ona'ah claim, the customer does not relinquish his legal recourse if the seller did not state that he is overcharging," replied Rabbi Dayan. "However, if the seller says: 'This item that I'm selling for \$200 is worth only \$100; I'm selling on condition that you have no onaah claim' — then the customer has no redress (C. M. 227:21; P.C., Onaah 10:18)."

"But still, is stating that the price is high sufficient to allow the seller to overcharge?" asked Mr. Blum. "What about the prohibition of 'lo sonu — do not agrieve'?"

"If the seller specifies the amount he is overcharging, there is no prohibition," answered Rabbi Dayan. "Since the seller is transparent about

overcharging, but only willing to sell for this price, and the customer decides that it is still worthwhile for him to buy and forgo the amount overcharged, the seller has not cheated him (see Pischei Choshen, Onaah 10:[34])."

"I still feel taken advantage of," Mr. Blum commented. "We were desperate!"

"Indeed, some indicate that a prohibition remains when taking advantage of an individual customer's circumstances," replied Rabbi Dayan (see Nesivos 264:8; Pischei Choshen, Onaah 10:[1,26]). "Nonetheless, the high price is justified here, as market price is determined by supply and demand. Since stores had sold out, there was a great demand and minimal supply. Many people were now willing to pay this high price, so even double the regular cost was considered a fair market value."

ences the verdict.

Shulchan Aruch, though, quotes the Rambam that nowadays a beis din should refrain from relying on circumstantial evidence, and when presented with it, they must exercise patience before reaching a verdict and thoroughly cross-examine the litigants to see if they will admit to the witnesses' statement.

Seemingly, a recording taken from a surveillance camera would, halachically, constitute only circumstantial evidence. Despite the fact that it is credible in other venues, it should not be sufficient to force a defendant to pay when he denies the claim (Nesivos 15:2). However, Poskim do recognize that "strong" circumstantial evidence may be considered when deciding the matter. Precedent to accept "strong" circumstantial evidence is found in numerous Rabbinic writings (Pischei Teshuvah 15:9; see also Kovetz Haposkim).

Consequently, if the beis din determines that the video from the surveillance camera is authentic, they have strong circumstantial evidence that the defendant owes the money that he is denying. Moreover, in most cases, the two litigants agree in the shtar birurin (arbitration agreement) that beis din may decide matters based on the weight of circumstantial evidence, and they further empower the beis din to reach a verdict according to their best judgment (Erech Shai, see Ritva, B.B. 58a). However, if there was only an audio recording of his admission, it may not be considered reliable evidence, as voices can be forged by imitation, as occurred with Yaakov and Esav (Chasam Sofer cited in Pischei Teshuvah, C.M. 81:2).

[Next week iy"H, we will discuss whether the defendant could be forced to pay when he did not realize that his admission was being recorded.]

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Damages #5

Q: Is a minor or someone who is mentally incompetent liable for damage they do?

A: A child under bar mitzvah or a mentally incompetent person who damaged is legally exempt, since he has no legal culpability. Even when the child matures, he is not legally accountable for the damages of his childhood (C.M. 424:8).

Beis din or his parents should discipline the

child for having damaged, though, so that he should not continue damaging (C.M. 349:3,5).

Nonetheless, Rav Ashi was made to pay for a loan document that he destroyed when he was a child (B.K. 98b; Rashi). Many authorities derive from this that the child has a moral responsibility to pay when he matures. Nowadays, the parents usually pay instead, to relieve him of that responsibility

(see Pischei Choshen, Nezikin 10:[115]). Rema (O.C. 343:1) also writes that if a child sinned, it is proper that he do something for atonement when he matures. Thus, if he damaged, it is proper to pay (Mishnah Berurah 343:9). Some infer that it is not necessary to pay the full amount, but Sefer Chassidim advocates paying fully to achieve complete atonement (Pischei Teshuvah, C.M. 349:2; Yechaveh Daas 8:6).

MONEY MATTERS

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