

# BUSINESS WEEKLY

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Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Bumped

Rabbi Feld sat in the boarding lounge of the airport, learning his daf. He was traveling to the wedding of one of his congregants, Mr. Krauss, who had purchased him a complimentary ticket. Although the wedding was scheduled for late afternoon, he had booked an early flight to allow ample time. Rabbi Feld noticed Rabbi Dayan sitting across from him, waiting for the same flight. "I'm heading to a wedding in Chicago," Rabbi Feld said. "By any chance, are you also attending?"

"No," replied Rabbi Dayan. "I was invited to give a shiur."

As they talked, an announcement came over the loudspeaker: "Continental Flight 473 to Chicago is overbooked. There is an additional flight at 12:00 p.m. Passengers willing to be rescheduled to the 12 o'clock flight will be granted a free round-trip ticket

to anywhere that Continental flies. Please approach one of the Continental representatives near the boarding gate."

Rabbi Feld couldn't believe his ears. "A free ticket to anywhere that Continental flies!" He could get a free round-trip ticket to Israel in exchange for a few hours' delay! He looked at his watch. Even with the later flight, he should arrive at 3:00 p.m., just in time to make the wedding.

"Should I risk it?" he thought to himself.

Rabbi Feld asked himself another question: Since the Krauss family had sponsored the ticket, perhaps it was they who should be entitled to the bonus ticket. It was their money, after all.

Rabbi Feld needed to make a quick decision. He turned to Rabbi Dayan and explained the situation.

"Can I take the later flight?" he asked. "If I

do, who gets the ticket?"

"Whether you can take the later flight depends on what you expect Mr. Krauss would want," said Rabbi Dayan. "The bonus ticket would certainly belong to you, though."

Rabbi Feld decided that it would be irresponsible to risk arriving late for the wedding, despite the potential gain.

"Thank you. I'll stay with this flight," he said to Rabbi Dayan. "Now that we have some time, though, could you please explain the reason for what you said?"

"When a person gives a gift, we evaluate his intention in giving it," said Rabbi Dayan.

"Mr. Krauss clearly bought you a ticket so that you could participate in his simcha. You should therefore act in accordance with his intention. Presumably, he would not want you to arrive late for the wedding. If you were meant to lead the wedding (mesader

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## Caught on Tape, Part II

*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:** Last week, we explained that beis din

may utilize strong circumstantial evidence, such as a video recording, to influence their verdict, even to obligate the defendant to pay despite his current denial. But there is another point that must be addressed.

The principle of "hodaas baal din k'm'e'ah eidim dami" (lit. a defendant's admission is as good as 100 witnesses) teaches that a defendant's admission of liability in the presence of witnesses is accepted by beis din as a legally binding admission. However, if the defendant

was unaware of the presence of the witnesses at the time of his admission — e.g. the plaintiff had them hide — the defendant can claim that he did not take the claim seriously and thus responded mockingly. Nonetheless, the defendant must actually claim that the admission was said in jest, as it is otherwise assumed that his admission was sincere.

Furthermore, even if the defendant later denies that he ever made this admission and the witnesses contradict him, he is not ob-

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kiddushin) or take an important role in the chuppah, he would probably not be willing to have you take any risk (see Choshen Mishpat 241:5; 246:1)."

"What about the bonus ticket?" asked Rabbi Feld. "I know that in some cases, an agent who bought something and received a bonus must share it with the sender who paid the money. Here, Mr. Krauss paid for the ticket (C.M. 183:6)."

"Correct, but this does not apply here for a number of reasons," said Rabbi Dayan. "First, the bonus ticket would be issued under your name. Rashi explains that the bonus is shared because we are unsure to whom the seller intended to give it: the sender who paid the money or the agent who executed the purchase. Accordingly, when the bonus is explicitly designated to the agent, he is entitled to it (Rema 183:6)."

"But don't some later authori-

ties question this ruling?" asked Rabbi Feld (see Be'er Heiteiv 183:21; S.A. Harav, Mechirah #11).

"Yes, but the Rashba writes that if the agent received the bonus because he benefited the seller, everyone would agree that it belongs completely to the agent," said Rabbi Dayan. "Here, the bonus ticket is not because of the initial purchase, but because you were willing to be bumped from the early flight (Ketzos 183:7)."

"Furthermore, the commercial airline practice is to benefit the bumped individual, regardless of who paid for the ticket," Rabbi Dayan concluded. "Thus, the principle of hakol k'minhag hamedinah (everything in accordance with the common commercial practice) applies here (331:2)."

"Thank you," said Rabbi Feld. "This will make for an interesting shiur when I return home!"

ligated to pay, since he is not expected to remember a statement said in jest (C.M. 81:1). Unlike the previous case where the defendant remembers that he admitted to the claim but says that his admission was made in jest, in this case it is debatable whether the defendant is believed if he continues to deny ever admitting to the claim, since witnesses refute that assertion.

According to one opinion, since we do not expect people to remember statements made in jest, it is possible that he forgot his admission. In that case, when he maintains, against the testimony of the witnesses, that he never admitted to the claim, we should claim on his behalf that his admission was made in jest (Shach 81:3). Others argue that since witnesses testified that he issued an admission, it is sensible to assume that this would remind him that

he had made that admission, and he is responsible to claim that the admission had been made in jest, since otherwise (if he had been serious about the admission) he would have remembered that he had made it (Ketzos 81:2, Tiferes Shmuel 32:2).

Consequently, in our case, if Reuven claims that the recorded admission was made in jest, his claim would be accepted. If he denies the claim despite the recorded evidence to the contrary, it is subject to the above-discussed argument and beis din cannot force Reuven to pay (Imrei Binah, Toen 18). However, if the recording shows that after Reuven's admission, Shimon notified Reuven that their conversation had been recorded, and Reuven did not protest, his silence is interpreted to be an admission — shetikah k'hodaah — that he was not joking (C.M. 81:13).

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## Damages #6

**Q: Two people were running or walking on a sidewalk and accidentally collided, injuring each other and damaging their packages. Are they liable for the mutual damage?**

**A:** Two people who were both walking or both running in public property are liable if they actively injured or damaged each other, but not if they merely collided and

were injured or damaged incidentally. According to the Rambam, this means any unintentional damage, but according to Rashi and the Shulchan Aruch, they are liable for any active damaging (such as by swinging an arm or bag) even if unintentional (C.M. 378:7; Gra there).

If one person was running and the other was walking, the person who was running is liable, since he had no permission to run on the

sidewalk where people are walking (378:8). However, if the person was running on Friday afternoon to make arrangements for Shabbos, he is equivalent to the one who was walking, since he is permitted to run then. Thus, he would also be exempt if the two merely collided. The same is true regarding someone who was running to save another person's life (see Aruch Hashulchan 378:119; Pischei Choshen, Nezikin 1:[72].)

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