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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

The Missing Money

"We're flying to Israel tonight for a month's stay to visit our children who live there," Mr. Hirsch told his neighbor, Mr. Feiner.

"My son, Shmuli, is learning there for the year," replied Mr. Feiner. "Would you mind taking an envelope with money for him?" "I'd be happy to," said Mr. Hirsch. "Bring it over."

Mr. Feiner came by with a sealed envelope and wished Mr. Hirsch a safe flight.

When Mr. Hirsch arrived in Israel, he called Shmuli to let him know that he could pick up the money.

"I can meet you on Friday afternoon," Shmuli said. "Is that okay with you?"

"We'll be all around town on Friday, so I don't know where I'll be," said Mr. Hirsch. "I can take the envelope with me, though, and you'll give me a call when you're ready."

On Friday morning, Mr. Hirsch put the envelope in his coat and headed out. As the day wore on, the sun shone strongly and it became warm, so he slung the coat over his arm.

At 12 o'clock, Shmuli called. "Hello, this is Shmuli Feiner," he said. "Where can I meet you?"

Mr. Hirsch suddenly realized that he no longer had his coat! He had lost it somewhere along the way. Horrified, he apologized profusely.

"I put the envelope in my coat this morning, but left it somewhere along the way," he said to Shmuli. "Do you know how much was in the envelope?"

"I spoke with my father yesterday, and he said \$200 or \$300," replied Shmuli. "He didn't remember, exactly, though."

"If you can wait for the money, let me see if

I can find the coat," said Mr. Hirsch. "We'll be here for another three weeks."

"I'm okay meanwhile," said Shmuli.

Two weeks went by, with no news of the missing coat and envelope. Mr. Hirsch abandoned hope of retrieving his coat. "It seems that the coat and envelope are gone," he said to his wife. "I'll have to buy a new coat when we get home."

A few days later, Mr. Hirsch received a phone call. "Shalom, this is Amram speaking," the caller said. "I just found a blue coat in the park that had papers with your name and number on them."

"Was there an envelope in the coat?" asked Mr. Hirsch hopefully.

"No," said the caller, "just the papers with your information on them."

"Thank you for notifying me," said Mr. Hirsch. "I'll come by this evening."

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Quitter

Submitted by M. T.

My friend is hosting a sheva brachos and I, being a caterer, offered to help him without charging for my services.

In the morning, we went shopping to purchase the ingredients we needed and agreed to meet again at 1:00 to start cooking the food.

Now an important business deal came up that cannot be delayed. I know that my

friend is relying on my assistance with the cooking; nonetheless, I don't want to lose out on this time-sensitive business opportunity.

Q: Am I permitted to back out of my commitment, even though he will have to hire someone who will charge him?

A: Generally, a salaried employee has the Biblical right to quit in the middle of his pe-

riod of employment, provided that quitting will not cause his employer a loss. Accordingly, it seems that you may not cancel your agreement to help since it will cause your friend a financial loss.

However, Rema (C.M. 333:5) explains that this is true only for an employee who was going to be paid, but someone working as a volunteer may quit even if it will cause a loss to his "employer." The intent of Rema's ruling is debated.

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Mr. Hirsch picked up the phone and called Rabbi Dayan. He related the story and asked: "Am I liable for the missing money?"

"Since the money was in a sealed envelope, you have the status of a shomer chinam, an unpaid guardian, on the money," replied Rabbi Dayan (C.M. 292:7). "As such, you are liable for negligence, but not for theft or loss."

"However, the exemption for loss does not include a case where the guardian does not know where he left the item; that is considered negligence! Therefore, you are liable for the money, even though it seems to have been stolen subsequently (C.M. 291:6-7)."

"How much am I liable for," asked Mr. Hirsch, "since I don't know how much was in the envelope?"

"If Mr. Feiner were certain that he had put \$300 in the envelope, you would likely have to pay that amount," answered Rabbi Dayan. "However, because he also is unsure how much he put in the envelope, \$200 or \$300, you only have to pay the \$200 that he is sure of (C.M. 298:2; 90:10; Shach 90:16)."

"One final question," added Mr. Hirsch. "I had already abandoned hope (yei'ush) of retrieving the coat. Does Amram still have to return it to me?"

"Amram is not legally required to return the coat if he found it after yei'ush," Rabbi Dayan responded. "Nonetheless, he should certainly go beyond the letter of the law (lifnim mishuras hadin) and return it, even after yei'ush, unless he is needy and the loser is wealthy (C.M. 262:5; 259:5)."

As one approach, Rema refers to one who no longer wants to work for free and now wishes to be paid for the job. If the "employer" does not want to pay him, the volunteer may quit, but if the "employer" is now willing to pay him for the job, he may not quit. Since the "employer" is willing to pay him for the job and will lose money if the volunteer quits, the volunteer may not quit since he will indirectly (garmi) cause the employer a loss (see Shach 333:31).

According to a second approach, the volunteer may quit even if the "employer" is

now offering him a salary. The reason is that the "employer" created this circumstance since he should have realized that one cannot rely on an unpaid volunteer who may decide to quit at any time (Nesivos 333:12).

Later authorities follow the first approach. Therefore, in your case, if your friend offers to pay the regular fee for such a job, you are halachically obligated to finish helping him prepare the sheva brachos; if he is not willing to pay, you have the right to quit (Chazon Ish, B.K. 22:2).

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Damages #14

Q: My friend was carrying some groceries. I hid and shouted, "Boo!" when he passed, startling him. He dropped a bag, breaking the eggs. Must I pay for them?

A: Frightening someone without physical contact, which caused him to become sick or injure himself, is considered grama (C.M. 420:32; Rama 386:3; Shach 386:24). We previously mentioned that grama is not an

enforceable obligation but is certainly prohibited, and there is a nonenforceable responsibility to pay (chiyuv b'dinei Shamayim; B.K. 56a).

If there was also physical contact, e.g. you grabbed him when startling him, it is considered direct damage and you are legally liable for the eggs (C.M. 420:25,32).

The same laws apply if you chased after someone and he tripped while attempting to

escape (Pischei Choshen, Nezikin 3:[37]).

A person is often liable for damage done by his animal, but it is questionable whether he has any obligation to pay for the grama of his animal. Thus, if your animal startled someone, there might not even be a chiyuv b'dinei Shamayim to pay. [Nonetheless, a person should not keep a pet that can scare people or is a nuisance to neighbors (P.C., Nezikin 5:43).]

MONEY MATTERS

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