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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

## Here, Take It

The Golds were packing to go away for Pesach.

"What should we do with my jewelry?" Mrs. Gold asked her husband. "I'm afraid to leave it unattended in the apartment. There has been a rash of robberies recently in the building."

"We can leave the jewelry with our neighbors, the Ehrlichs," suggested Mr. Gold. "They have a safe in their apartment."

"That would be good," said Mrs. Gold. "I would feel more secure knowing that the jewelry was stowed away."

Mr. Gold called the Ehrlichs and asked if he could put some jewelry in their safe over Pesach.

"That's fine," said Mr. Ehrlich. "We'll be happy to keep it in our safe."

Mrs. Gold gathered together the valuable jewelry she wasn't planning to take and

put it in a bag. Mr. Gold brought it over to the Ehrlichs. He quickly showed Mr. Ehrlich the contents of the bag and then knotted it carefully.

Mr. Ehrlich put the bag in his safe.

"Have a safe trip," Mr. Ehrlich wished Mr. Gold. "Chag kasher v'sameach!"

When the Golds returned two weeks later, Mr. Gold went to retrieve the bag of jewelry. Mr. Ehrlich took the bag out of the safe.

Mr. Gold took the bag and untied it. He perused the contents. With a concerned look, he said, "Would you mind if I examined the contents before retuning home?"

"You're welcome to," said Mr. Ehrlich, "but I assure you that nobody touched the bag while you were gone."

Mr. Gold took out the items one by one. "There was also a golden pin with a diamond tip that is missing!" he said.

"I have no idea whether there was or wasn't such a pin," said Mr. Ehrlich in an offended tone. "I didn't examine the contents of the bag carefully when you gave it to me. I assure you, though, that whatever you put in there is what you got back!"

"I am sure the pin was in the bag," said Mr. Gold softly. "You're obligated to swear a Torah oath of modeh b'miktzas, partial admission, or pay for the pin. We're going to have to take this up with Rabbi Dayan."

Mr. Gold and Mr. Ehrlich met with Rabbi Dayan.

"I gave Mr. Ehrlich a bag of jewelry to keep in his safe over Pesach and a diamond-tipped pin is missing from the bag," said Mr. Gold. "He doesn't know whether he received the pin, but claims that he returned the bag intact. Is this not a case of modeh b'miktzas, partial admission?"

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## Chametz Timing

*Submitted by S. S.*

**Q: I will be traveling from the U.S. to Israel for Pesach. Should I sell my chametz in the U.S. or Israel?**

**A:** A brief introduction is necessary to address your question. There is a time difference of six or more hours between Israel and the U.S. This means that when chametz becomes prohibited in Israel, it remains

permitted in the U.S. for at least another six hours. When chametz becomes permitted after Pesach in Israel, it remains prohibited in the U.S., due to the time zone difference and the observance of the eighth day, for another day and a half.

This raises a question concerning the timing of the sale of chametz. Should it be based on the owner's location (Chessed L'Avraham, O.C. 35) or the chametz's location (Oneg Yom Tov, O.C. 36)? Poskim main-

tain that chametz should be sold based on the owner's location, but when appropriate, it should be sold before the time it becomes prohibited in its location (Minchas Yitzchak 7:25; see Igros Moshe, O.C. 4:94-95). This approach, however, generates a dilemma. If an American Rav sells your chametz on Erev Pesach, it will already be a time when it is prohibited in Israel. It would seem that it is preferred to have an Israeli Rav sell your chametz. However, when he purchases it back,

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“At first glance, it might seem so,” replied Rabbi Dayan. “Mr. Ehrlich admits to having received a bag of jewelry, but denies having received that pin in the bag. If so, he would be obligated in a Torah oath to deny the claim.

“However, the truth is that Mr. Ehrlich is not required to make a Torah oath.”

“Why not?” asked Mr. Gold.

“There is a significant exception to the rule of partial admission known as *heilech*, ‘Here, take it,’” answered Rabbi Dayan. “If the defendant admits partially, but is prepared to return the admitted items — or to pay immediately in *beis din* the sum that he admits — we do not view the case as one of partial admission; he is not required to make the Torah oath of *modeh b’miktzas* (C.M. 87:1;

88:24).”

“I don’t quite follow,” said Mr. Ehrlich. “Why should that make a difference?”

“Since Mr. Ehrlich returned the remaining jewelry, the entire litigation revolves only around the gold pin,” explained Rabbi Dayan. “Mr. Gold claims that he entrusted a certain pin; Mr. Ehrlich denies it. Thus, there is no partial admission of the litigation claim. At most, Mr. Gold would be obligated to make a rabbinic oath (see also C.M. 88:23).”

“When would there be a case of partial admission?” asked Mr. Gold.

“Only if the defendant admits to owing, but is not in position to pay immediately,” said Rabbi Dayan. “Then the litigation relates to the entire amount, to which he admits partially (see *Shach* 87:3).”

it is still Pesach in the U.S. and chametz is prohibited there for another day and a half.

One approach is to authorize a Rav in Israel to sell your chametz. When he buys it back, he does so for those who are interested in purchasing it back at that time. If someone does not want to take possession of his chametz, it remains in the possession of the gentile until the Jew takes it back. It is permitted to use the chametz even though it is not formally purchased back from the gentile. The reason is that the gentile only made a down payment for the chametz but was obligated to pay the remainder. Since he did not pay for the chametz, one may take back his chametz for the unpaid amount. Formally buying back chametz is a stringency to avoid the appearance that the transaction is a ruse (*Biur*

*Halachah* 448:3).

Additionally, once the Rav purchases back the chametz, the gentile relinquishes ownership of it - even though some people do not want possession of the chametz at that time. It is therefore permitted to take the chametz that is ownerless (see also *Igros Moshe*, O.C. 4:94-95; *Minchas Yitachak* 6:45).

Another option (preferred by some) is to authorize a Rav in the U.S. to sell your chametz. American Rabbanim generally sell chametz to the gentile on two different days: One sale is on 14 Nisan and another on 13 Nisan for people who will be in a time zone further east, so that they should not own chametz when it becomes prohibited in that location. Therefore, you should inform your Rav that you will be in Israel for Pesach so that he sells your chametz on 13 Nisan.

*For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM*

## Damages #19

**Q: Two people got into a fight. One of them hit the other, who retaliated forcefully and injured the first person. Is the second person liable for the injury?**

**A:** A person is allowed to hit back to protect himself from an attacker. However, if he could protect himself by inflicting minimal injury and he injured the attacker seriously, he is liable for the excessive damage

(C.M. 421:13).

Similarly, once the parties have separated and the victim is no longer threatened, he may not hit the attacker back. If he subsequently hits and injures the attacker after cooling down, he is liable. There is a dispute whether he is liable if he hit back immediately after separating, while still heated by the fight, unless there is concern that the attacker might continue to hit him (see

*Sma* 421:24; *Taz* 421:13; *Pischei Choshen*, *Nezikin*, 2:[30].)

If two people willingly agree to a wrestling match and one injures the other while throwing him down, he is exempt. The reason is that the two willingly submit themselves to potential injury and forgo claims, and it is difficult to control exactly how one falls his opponent (421:5; see *P.C.*, *Nezikin* 2:10[34]).

## MONEY MATTERS

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