

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Take It or Leave It?

The winter was over, and the days began to get longer and warmer. Yeshiva Toras Mishpat decided to take advantage of the beautiful spring weather for an afternoon of exercise on the sprawling grounds of the local park.

After the shiur (class), the students headed to the park for a picnic lunch. Afterwards, they broke into groups and spent the remainder of the day playing ball and competing in races.

As the sun turned a glowing red, the students gathered their belongings and headed back to the yeshiva. A few teachers stayed behind with Rabbi Dayan to ensure that everything was in order and nothing had been left behind.

They came upon a T-shirt that had fallen in a puddle and had gotten wet and muddy, making it quite repulsive.

"Do we have to take this back and try to return it?" they asked each other.

"Of course we have to," said one. "It's the mitzvah of hashavas aveida, returning lost items."

"But it's disgusting," said another. "I wouldn't expect you to pick it up if I lost it."

"I heard there's no mitzvah until you actually pick it up," said a third. "So we can just leave it alone."

"Who says it's from our group, anyway?" said a fourth. "Maybe it belongs to somebody else."

They turned to Rabbi Dayan and asked: "Should we take it or leave it?"

"There are three mitzvos and prohibitions related to hashavas aveida," Rabbi Dayan replied. "The primary mitzvah is the positive command: 'Hashev teshivem' — return them. Second, there is a prohibition to ig-

nore a lost item: 'Lo suchal l'his'alem' — You may not ignore (Devarim 22:1-3). Third, if a person unlawfully takes a lost item for himself, he violates the prohibition 'Lo sig-zol' — Do not steal (Vayikra 19:13; B.M. 26b; C.M. 259:1; Sma and Taz)."

"Then what's the question?" said the first. "It's explicit that we must take it!"

"There are some situations in which a person can ignore a lost item," answered Rabbi Dayan. "One is 'zaken v'einah l'fi kvodo' — an honored person, whom this item would belittle (see C.M. 263:3). The principle is to be as concerned about other people's property as you would your own. Would you be willing to retrieve the item had it been your own? In addition, in cases when you are allowed to keep the lost item, you obviously have no obligation to return it, even if you don't want to keep it."

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## Without Warning

*Submitted by T. D.*

I hired a manager for my business and we signed a two-year contract.

While reviewing his time card recently, I was shocked to realize that he was absent many hours. When I confronted him, he apologized and explained that he just closed on his new apartment and was busy with the renovations, which were overwhelming. He assured me that now that everything was settled,

he would meticulously work his designated hours. I am very upset as it is impossible to know the damage his absence caused.

**Q: Can I fire him from his position, or am I still bound by the contract?**

**A:** Usually, an employee may not be dismissed in the middle of his term of employment, even when not performing according to expectation, unless he is warned that con-

tinued negligence will force the employer to dismiss him. However, when a worker is hired to do a job which, if neglected, will cause his employer a financial loss, he may be dismissed without warning. Since he is aware of the potential loss his negligence could cause, he is considered pre-warned. According to Shulchan Aruch (C.M. 306:8), this ruling is limited to someone who is an employee of the public; an employee of a private employer must be warned. Rema

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"So when must a person take a lost item to return it, and when can he leave it?" asked the teachers.

"The Shulchan Aruch writes that a person has an obligation to return a lost item only if eight conditions are met (C.M. 259:2). If any one of them is lacking, he is not obligated to return the item, although in many situations it is still meritorious to do so. The item has to be:

1. in a place where there is an obligation to return it (e.g. where the majority of people are Jewish);
2. in a place where it seems lost (not in a secure place);
3. left a manner that indicates it is lost (not placed there intentionally);
4. it was not willfully abandoned;
5. it is worth the minimal amount

of a perutah;

6. there is some siman (identifying feature);

7. the person who found it would tend to it had it been his own;

8. it belongs to someone to whom we are required to return.

"Thus, in this situation, you are not obligated to take the item in order to return it," concluded Rabbi Dayan, "because it is beneath your dignity to pick up such a filthy T-shirt and because the majority of people in this park are gentiles.

"There are also some situations in which it is not recommended, and some in which it is even prohibited, to take the item," concluded Rabbi Dayan, "which we will discuss next time, iy"H."

disagrees and rules that even one employed by a private employer may be dismissed without warning, if such is the case. In addition, the Rema writes that only when the employee was negligent several times (chazaka) can it be assumed that he will cause his employer additional loss and may be dismissed. However, if there is no such presumption, the employee must receive a warning before being dismissed.

If your manager was still in the process of remodeling his apartment, you would be justified, at least according to Rema, to dismiss him. However, since the remodeling was completed, you may not dismiss him. The allowance to dismiss an employee who is under contract is to prevent future loss, not a punitive measure because of past negligence. When there is a genuine concern that an

employee will continue to be negligent and cause his employer a loss, the employer has the right to dismiss him. However, when there is no ongoing concern that an employee will perform his job below par, thereby causing his employer a loss, there is no grounds for his dismissal (Igros Moshe, C.M. 1:47).

In your case, if your employee's excuse seems reasonable and his behavior up until this point is not indicative of how he will continue to perform as a manager, you must honor the contract that you signed. If there is reason to suspect that this incident is a harbinger of things to come and you can detect a pattern of irresponsibility/disregard for his obligations and the effects they have on your business, you are justified in dismissing him (see Rema, C.M. 421:6; Erech Shai and Pischei Teshuvah 232:5).

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## SPECIAL OFFER FOR MECHANCHIM

How do you create a relevancy that stimulates and engages your students - a relevancy that brings the Gemara to life - in their daily lives?

How does a world described in the Gemara that is so far removed in time from today's world of modern technology become integrated into your students' thought process?

Fortunately, there is a resource that could assist you with this issue. A resource that enables the talmidim to grasp the relevance and real-life implications of what they are learning. As such, the talmidim - even the weaker ones - are engaged and interactive. An end that is invaluable.

The Business Halacha Institute has now taken all the archived stories from our *Business Weekly* newsletter, indexed them, and compiled them in booklet form according to the perakim and daf that are commonly taught in yeshiva. A rebbi teaching elu metzios, hakones, hamafkid, and any of the other commonly taught perakim now will have scenarios to bring the gemara he is teaching to life, thus fostering further interactivity with the talmidim.

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