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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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Gifted

Mr. Samuel Scherr was a very successful businessman who generously gave of his wealth to others.

On his twentieth wedding anniversary, two of his married nephews came to visit him. Shlomo had a comfortable job, while Dan was in a difficult financial state. Mr. Scherr served some drinks and they shared a l'chaim.

Mr. Scherr was in a good mood. "Come back tomorrow and I'll give you each a check for \$10,000," he said to his two nephews. "Ten and ten is twenty, just like the years of our harmonious marriage!"

"Thanks, Uncle Sam," Dan and Shlomo exclaimed. "That's really nice of you!" They walked out happily, each dreaming of how they might spend the sudden windfall.

The following day, Shlomo and Dan returned to Mr. Scherr's office. After talking a

little, Shlomo said, "Yesterday you said that each of us would receive \$10,000."

"I know, but when I reviewed my accounts last night, I decided that it was too much," Mr. Scherr replied apologetically. "And how will my other nephews feel when they hear about this? I'm going to have to cut it down to \$3,000 each."

"You're backing out?" asked Dan. "We were hoping to use this to cover the kids' summer programs!"

"But I only said that I was going to give it to you," said Mr. Scherr. "I didn't confirm it with any contract, handshake or other means of kinyan (act of acquisition)."

"What about upholding your word?" said Shlomo. "You're known from your business dealings to be a man of your word!"

"I think this is a little different," said Mr. Scherr. "It's not a mutual business agree-

ment; it's all from the good of my heart."

"What's the difference?" asked Dan. "A word is a word whether it's a gift or a business deal."

"It feels different to me," said Mr. Scherr.

"I heard that you started attending the business halacha shiurim given by Rabbi Dayan," said Shlomo. "What would he say about this?"

"I wonder also," said Mr. Scherr. "Why don't you join me this week, and we can ask him." "Will do," said Shlomo and Dan. "See you there."

After the shiur, the three went over to Rabbi Dayan.

Mr. Scherr asked: "Am I required to uphold my commitment to give each nephew \$10,000?"

"You are required to give Dan the full \$10,000," replied Rabbi Dayan, "but you can recant from giving Shlomo if you feel it

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Medical Claim

My friend Moshe became drunk on Purim and fainted, and I couldn't wake him. I became concerned for his health and called an ambulance to take him to the emergency room.

As it turned out, there was nothing to do other than wait for him to sober up.

Moshe received a bill from the ambulance company and the hospital, which his insurance company refuses to pay. I received a bill from the ambulance company as well.

Q: Does Moshe have a claim against me for calling an ambulance? If I am forced to pay for the ambulance, is Moshe obligated to reimburse me? We mutually agreed to consult with you about this matter.

A: Regarding your first question, Moshe does not have grounds to demand payment from you for calling the ambulance. You did not harm Moshe; at worst, you indirectly caused

Moshe to incur an expense (grama, perhaps even garmi); since it was done inadvertently, you are exempt, even morally (latzeis Shamayim), from having to reimburse Moshe (Shach 386:6; Maharit 95).

The issue that requires clarification is whether Moshe is responsible to reimburse you for expenses that you incurred for calling the ambulance. The halacha is that if Reuven unsuccessfully attempts to salvage Shimon's property that was about to become lost, he

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appropriate.”
 “That doesn’t seem fair,” said Shlomo. “Why is that?”
 “For any transaction to be legally binding, there must be an appropriate kinyan; usually, verbal agreements alone are not legally enforceable,” explained Rabbi Dayan. “However, a person is expected to uphold even his verbal commitments. If he does not do so, he is called ‘mechusar amanah’ - untrustworthy (C.M. 204:7).”
 “I don’t want to be considered ‘untrustworthy,’” said Mr. Scherr. “Does this apply also to gifts?”
 “Since gifts are one-sided, there is a difference between a small gift and a large gift,” answered Rabbi Dayan. “When a person commits to a small gift, the recipient fully expects the donor to provide the gift. Therefore, if the donor recants, he is called ‘untrustworthy.’ However, if the person committed to a large gift,

the recipient remains doubtful whether the donor will, in fact, carry through. Ten thousand dollars is a large gift, so you would not be considered ‘untrustworthy’ if you recant (C.M. 204:8; 249:1). A person may not speak deceitfully, though, and offer something when he is not sincere at the time about giving it (Pischei Choshen, Kinyanim 15:4[4]).”
 “So why must Uncle Sam give me the full \$10,000?” asked Dan.
 “When the recipient is needy, the promise of a gift is considered a commitment to tzedakah,” replied Rabbi Dayan. “There is a separate requirement to uphold a tzedakah pledge, derived from the word ‘b’ficha’ (R.H. 6a). Therefore, a person who committed even a large gift to a poor person may not recant (Y.D. 259:12; C.M. 125:5).”

is reimbursed for the time he invested in trying to save that item (C.M. 264:4). However, this is true only if there was agreement between the two parties. If Reuven, without first consulting with Shimon, attempted to salvage Shimon’s property and failed, Reuven is not obligated to pay him anything (Rema). Similarly, in your circumstance, since you called the ambulance to assist Moshe, who did not benefit from those efforts, he is not obligated to reimburse you for the expenses you incurred. However, an important additional qualification to this halacha is that if Shimon is not present when Reuven attempts to save his property, it is treated as though there was an agreement in place and Reuven may demand payment. Accordingly, in your case, since it was reasonable for you to be concerned when Moshe fainted

and would not wake up, it is as if it was stipulated that he would pay for his medical care and he must pay the bill that you received (Tzvi Tiferes 32). Even if Moshe had protested, his protest is disregarded if the circumstance warranted an examination by a medical professional (Chavatzeles Hasharon, vol. 2, C.M. 24). This is similar to a medical practitioner who provided care for an ill person who later died. The children are obligated to pay the expenses that were incurred from their father’s estate and cannot exempt themselves from paying from their father’s estate because their father did not authorize payments for treatments that did not heal him; he was not of sound mind when decisions regarding his medical care arose (Teshuvos HaRosh 85:2, C.M. 108:1, see also Tzitz Eliezer 18:77).

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Damages #30

Q: 1) I lit my Chanukah candles outdoors. Someone overturned them, starting a fire. Who is liable?

2) At a wedding, someone juggled with fire. The torch fell and burned a guest’s suit. Is the juggler liable?

A: 1) Even though it is a mitzvah to leave the Chanukah candles outside, you are responsible to look after them and ensure that they

are secure (C.M. 418:12).

If an adult bumped into the candles and caused the fire, he is liable for the damage. However, if a child or an animal overturned them accidentally, you are responsible, since it is expected that children and animals will walk by outside (see C.M. 418:7-8; Pischei Choshen, Nezikin 9:[51]).

2) The Rema cites the common practice of exempting one who accidentally injures

another during the joy of a mitzvah, such as on Purim or while dancing at a wedding (O.C. 695:2; C.M. 378:9), though this seems to apply only when the damaged party actively participates in the celebration.

However, a person who performs must take care not to damage the spectators, even when done for simchas chassan v’kallah, so the juggler would be liable.

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