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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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Funds Transfer

Tiferes Torah Synagogue embarked on a sefer Torah campaign among its members. "I'd like to donate the atzei chaim, the poles of the sefer Torah, in memory of my father," said Mr. Fine to the gabbai.

"The poles cost \$1,000," replied the gabbai. "We'll notify you when the writing nears completion."

Toward the end of the writing, a new member of the community approached the gabbai. "I'd like to donate \$5,000 to the sefer Torah campaign," he said.

"That's very generous of you," said the gabbai, "but we've pretty much covered the cost of the sefer Torah."

"That's fine," said the donor. "Let the money go for associated costs, like the crown, atzei chaim, yad (pointer), the mantles for Shabbos and Yamim Nora'im, etc."

The time for the hachnasas sefer Torah was

rapidly approaching, but Mr. Fine still hadn't heard from the gabbai about the money for the atzei chaim. He inquired about the matter.

"Oh, I apologize," said the gabbai. "Toward the end of the campaign, someone made a large donation that covered all the remaining costs."

"But I wanted to donate the atzei chaim," said Mr. Fine. "They are in memory of my father, z"l."

"I told the other donor that the atzei chaim would be included in his donation," said the gabbai. "I'll have to work it out with him."

"I'm not sure if there's really a point," said Mr. Fine, "if the entire cost was already covered. Give me a day to consider."

Meanwhile, a nearby shul where Mr. Fine davened occasionally also began a sefer Torah campaign.

"Maybe I'll transfer my donation of the atzei chaim to the other shul," suggested Mr. Fine to his wife.

"Are you allowed to do that?" asked Mrs. Fine. "You pledged the atzei chaim to Tiferes Torah."

"What's the big deal?" he replied. "I pledged atzei chaim. What difference does it make whether I give them to this shul or that?"

"I don't know," replied Mrs. Fine, "but give Rabbi Dayan a call."

Mr. Fine called Rabbi Dayan. "If I pledged atzei chaim in Tiferes Torah and someone else already donated money to cover them, can I transfer the pledge to another shul?"

"There is significant discussion whether a person who donated toward a certain cause can transfer his donation to another cause," answered Rabbi Dayan. "However, in this case, it is permissible to donate the atzei

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Her Husband's Hundred

I was shopping in a store when a woman lost a \$100 bill. After searching the store, she despaired of finding it (yei'ush) and left the store. Following her departure, I searched and found a \$100 bill.

Q: I have no way to contact the woman, so may I keep the money for myself, since I found it after she despaired of finding it? Or am I obligated to give it to the storeowner, because it was found on

his property (kinyan chatzer)?

A: If you are certain that the money belonged to the woman, you are not required to give it to the storeowner, since you found it after the woman despaired of finding it. Since it was found in a public place and the storeowner could not have protected it, his property does not acquire it on his behalf (C.M. 260:5 and Shach ibid. 18).

In your case, however, it may be that the

woman's despair of finding the money does not qualify as yei'ush. In many instances, a married woman's money is her husband's, and although a husband authorizes his wife to spend as she sees fit, the money remains his. One cannot despair of finding lost money that belongs to someone else. Moreover, it is clear that the husband would not want to give up on finding the money (Kesef Hakodoshim 262:5; Teshuvos Magen Shaul 162 quoting Harav Yitzchak Elchanan Spe-

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chaim to the other shul.”
 “Why is that?” asked Mr. Fine.
 “A pledge to a specified needy charity, according to many opinions, is binding with a verbal commitment alone,” explained Rabbi Dayan. “There is a further dispute regarding a donation to a shul. Some consider it tantamount to a charity pledge. They apply the rule of amiraso lagavohah kimesiraso lahedyot, a verbal pledge is like handing over (Y.D. 259:1-2; C.M. 125:5).
 “Others disagree with the analogy to charity,” continued Rabbi Dayan. “As the shul is a communal enterprise, we do not view it as needy, since the community as a whole is not needy. You may need hataras nedarim, though, to relieve you of your personal commitment to Tiferes Torah (see Tzedakah U’mishpat 9:[82]; Minchas Yitzchak 4:29).”
 “If some consider it tantamount to a charity pledge,” asked Mr.

Fine, “why do you say that here it is permissible to transfer the donation?”
 “There is a clear assumption (umdena) here that you pledged the atzei chaim with the intention that they should be used only with the sefer Torah,” answered Rabbi Dayan. “Once the community accepted the larger donation of the other person for the atzei chaim, you had no intention of donating under such conditions. Furthermore, the community seemingly is willing to forgo your donation. Therefore, you can give the atzei chaim to another shul (based on Shevet Halevi 5:145).
 “There is an additional factor to consider,” concluded Rabbi Dayan. “There is an opinion that shuls of the same community, which are shared by the city’s townspeople, are considered a similar entity, not a transfer (Mahari Hakohen, Y.D. #47).”

ktor, zt”l).
 A similar question arose (see Nachalas Tzvi 259) when a shaliach (agent) lost money that was found by a third party. In that case, beis din ruled that the finder must return the money to the agent because an agent is not authorized to despair of finding the money. Since the owner did not know the money was lost, it remains his.
 In other words, an agent is not empowered to dissolve the principal’s ownership when he (the agent) despairs of finding the lost item (see Shevet Halevi 3:140).
 On the other hand, there are numerous Poskim who maintain that once the principal empowered the agent to act

on his behalf, he accepts all decisions made by the agent, even to despair of finding the owner’s lost object (see Ulam Hamishpat 262; Maharil Diskin 1:189; Chayei Aryeh on Chullin 139a; and Igros Moshe, C.M. 1:82).
 Practically, since there are strong grounds to contend that yei’ush in your case is effective, even though you know who lost the money, you may keep the money for yourself (see Mishpetei HaTorah, B.M., “Hashavas Aveidah” 2:15).
 In the event that the finder is wealthy and the owner is poor, there are grounds to go beyond the letter of the law (lifnim mishuras hadin) and return the money to the one who lost it (C.M. 259:5).

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Lost and Found #3

Q: Am I required to return an item found on a street in New York City?

A: The mitzvah of hashavas aveidah requires returning an item lost by a fellow Jew. Nonetheless, it is praiseworthy to return also to a gentile if this will cause a kiddush Hashem. Moreover, if not returning the item to a gentile will cause a chillul Hashem, a person is obligated to return it

(C.M. 266:1).
 In principle, the requirement of hashavas aveidah applies only where the majority of passersby are Jewish. Otherwise, the item likely fell from a gentile, to whom there is no mitzvah to return. Furthermore, even if it belongs to a fellow Jew, the owner will likely assume that the item was found by a gentile who will not return it and abandon hope (yei’ush) of reclaiming it (C.M. 259:3).

However, there is still a mitzvah to return an item that is distinctly Jewish (sefer, tallis, tefillin) since it will ultimately make its way to a Jew, who will try to return it. Thus, the owner does not abandon hope of reclaiming it (Rema 259:3; Sma 259:8-9).
 ly”H, next week we will discuss whether dina d’malchusa (the law of the land) creates a halachic requirement to return the item or hand it in to the police.

DID YOU KNOW?

In times of cash flow difficulty, paying one’s employees on time takes precedence over paying vendors’ invoices.

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