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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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Glistening Glass

Yair was always looking for spare jobs to earn some extra money. One evening, he received a call from Mrs. Glazer.

"Our fridge and oven have gotten really filthy over the summer and need a serious cleaning," she said. "I heard that you sometimes do this kind of cleaning."

"Sure - usually Pesach time," he laughed, "but I'll do it for you." He arranged to come the following afternoon.

Yair showed up the next day with his cleaning supplies. He removed the parts that could be easily taken off for more effective cleaning, including the doors of the oven. When everything was clean, he began to re-assemble the pieces he had removed.

As he picked up one of the oven doors, the metal guard holding the glass fell off. The glistening glass fell to the floor and shattered!

Yair stood there, stunned. "How did that happen?" he asked himself.

He realized that he had picked up the door upside down. "That shouldn't make a difference," he thought. "I've done this many times!" He picked up the other door and carefully turned it upside down. The glass remained securely in its place.

When Yair gathered the shattered glass and the metal piece, he saw that the screws which had held the metal piece in place had corroded. He called over Mr. Glazer and showed him what happened.

"I picked up the oven door to return it to its place, but the screws fell out," he apologized. "The glass slipped out and broke."

"How could it have fallen out?" asked Mr. Glazer. "I see that the bottom guard is in place."

"The top guard was loose, and I acciden-

tally picked up the door up upside down," explained Yair. "That shouldn't make a difference, though. I'll show you." He picked up the other door upside down, and the glass remained securely in place.

"Still, had you picked up the door the right way, it wouldn't have happened," said Mr. Glazer. "So you are partly to blame."

"Well, you didn't warn me that the oven had loose, rusty parts," countered Yair.

"We need to consult with someone on this," said Mr. Glazer. "We can ask Rabbi Dayan." The two went to Rabbi Dayan and asked: "Is Yair liable for the glass that broke?"

"In principle, a worker who is entrusted to work on an item is considered a shomer sachar on it," replied Rabbi Dayan. "He is not liable for circumstances beyond his control (oness), but is liable for preventable loss (geneivah va'aveidah)."

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Philanthropist List

I am a fundraiser and have formed an extensive database of generous donors, which includes the best way to get in touch with some benefactors who are very difficult to contact. A fellow fundraiser asked if I could share this information with him.

Q: Am I permitted to share this information with him, or do I need to be concerned that the donors would not want this information made public?

A: The Gemara Erachin (16a) speaks negatively of one who publicizes to others how hospitable his host was, since it will lead others to take advantage of him. Rashi offers two explanations for this concern.

The first explanation is that thieves will hear that he is wealthy and will forcibly take money from him. Accordingly, this restriction is limited to praising the host in the presence of those who may forcibly take money from others, but it is permitted in the presence of

upright people (Tosafos, B.M. 23b).

The second explanation is that publicizing a host's generous hospitality will encourage people to invite themselves as guests and could lead to the host's resources becoming depleted. In other words, the host will be embarrassed to tell people that he can't host them. (Sefer Chassidim 1042 writes that it is considered to be a form of theft to benefit from a person's property that the owner gives away grudgingly.) Iggras Moshe (Y.D.

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"What is our case considered?" asked Yair.

"Yair is not completely free of blame, since he held the door upside down," said Rabbi Dayan. "On the other hand, picking up the door upside down is not supposed to pose any problem. Furthermore, he was entrusted with a defective door that had corroded screws without being warned.

"In a similar case, Chazal instituted that a porter who stumbles and damages his load is exempt unless he was negligent, such as if he tried to carry a heavy load that requires two people," continued Rabbi Dayan. "If the porter tried carrying a load that was somewhat heavy for one person but doesn't usually require two people, he is liable for half the amount. It can't be called negligence, since often a single person does carry

it, but it cannot be called uncontrollable, since the load was somewhat heavy for an individual (C.M. 304:1-4)."

"This isn't a case of porters, though," commented Mr. Glazer.

"Although this institution was said about porters, perhaps a similar idea could be applied to our case, since it's difficult to ascertain clear responsibility," said Rabbi Dayan. "Considering also that the glass door was defective and old, it would seem best to compromise that Yair cover a quarter to a third of the cost of the new glass."

"What about Yair's salary?" asked Mr. Glazer.

"There is a dispute in the case of the porters," replied Rabbi Dayan (Sma and Taz 304:1). "Here, in any case, most of the salary is for the cleaning of the fridge and the rest of the oven."

3:95) explains that the second concern is limited to people looking for a meal from a potential host who cannot afford to give it. The concern does not apply when people ask for large sums of money from a potential donor, since the benefactor will not be embarrassed to tell the fundraiser that he is unable to contribute such a large sum.

Even when it is known that if someone of great stature were to ask for a large donation, the potential donor would not be able to refuse - and even though generally it is prohibited to ask for a donation if it is known that the donor will be embarrassed (Y.D. 248:7), nevertheless, in this case it is permitted. If the potential donor did not yet fulfill his maaser obligation, it is certainly permitted. Although some authorities maintain that we cannot force a person to give tzedakah against his will (Tosafos, B.B.

8b), causing a donor to give in such a fashion is permitted.

Even if a person fulfilled his maaser obligation (of a tenth) it is permitted, since there is an enhanced fulfillment of the mitzvah to give 20 percent of one's income to tzedakah. In the event that he already donated 20% of his income, one may assume that he will not be embarrassed to refuse with the explanation that he already gave 20 percent. Therefore, there is no concern for wrongdoing; in fact there is a mitzvah to inform others - Chazal teach that one who causes others to perform a mitzvah is greater than one who actually fulfills the mitzvah (B.B. 9a).

In your case, however, your employer may restrict you from sharing the names of their donors with other organizations out of concern that it will diminish the success of their own fund-raising efforts.

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Lost and Found #7

Q: A simple watch was left on my table in shul for two weeks. What should I do?

A: We mentioned last week that an item which was hidden away should not be touched. What if you are unsure whether the item was left there intentionally?

If the place is secure, you should not take the item. Conversely, if the place is not secure,

you should not leave the item there. With no siman - you may keep the item; with a siman - you should take it home and publicize it (Rema 260:10). Where the place is partially secure: With no siman - you should leave the item there. With a siman - the Shulchan Aruch rules that you should not touch the item, but the Rema and most other authorities rule that you should take it and publicize

it (Shach 260:24). However, Harav Y.S. Eliyashiv zt"l ruled that nowadays, when people rarely check signs on nonvaluable items, it is preferable to leave such an item, even with a siman; perhaps the owner will return and see it (Hashavas Aveidah K'halachah 1:9[26]). Thus, you should leave the watch there until you can assume that the owner abandoned hope of reclaiming it (yei'ush).

MONEY MATTERS

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