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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Fowl Play

Rabbi Dayan was learning the daf in his study when his phone rang.

"Hello, this is Shmuel," said the caller. "My children found some eggs in our backyard. They did shiluach haken (the Jewish law that enjoins one to send away a Kosher mother bird before taking her young or her eggs) with the chickens and brought the eggs home. Can we eat them?"

"Eggs? Shiluach haken? Chickens?" repeated Rabbi Dayan, bewildered. "What are you talking about?"

"My children, Yaakov and Yosef, were playing in our backyard today," explained Shmuel. "We have a large open property, with trees and lots of grass. I was resting in the house, and the kids burst in, waving two eggs! 'We just did shiluach haken and took these eggs,' they said. 'Can we eat them?' they wanted to know."

"Where were the eggs?' I asked them. 'These look exactly like regular chicken eggs.'

"Yes, there were a couple of chickens roaming around the backyard," said Yaakov. "Then we saw this hen sitting there on the grass, in the corner of the yard. We shooed the mother hen away and took the eggs. That was shiluach haken, wasn't it?"

"Usually, shiluach haken does not apply to domesticated birds," Rabbi Dayan interjected, "but that's a side point (Y.D. 292:2)."

"In any case, I put the eggs in the fridge," continued Shmuel. "Can we eat them?"

"As far as kashrus is concerned, you can eat them, provided they are clearly chicken eggs," replied Rabbi Dayan (Y.D. 86:2).

"The question, though, is one of hashavas aveidah (returning lost items). Do you have to return the eggs to their owner?"

"Return the eggs?" asked Shmuel. "Who owns chickens around here?"

"I heard that Dov Shechter recently acquired a few chickens for kapparos on Erev Yom Kippur," replied Rabbi Dayan. "They're almost certainly his."

"Still, if the owner lets his chickens roam freely," asked Shmuel, "do I have an obligation of hashavas aveidah to return them?"

"If the owner lets his hens roam freely, you have no obligation to expend effort to return them or their eggs," replied Rabbi Dayan.

"However, Mr. Shechter's chickens are usually locked up and must have slipped out, so you are required to do hashavas aveidah also on their eggs. Only if the hens escaped and ran away wild, so that he could not catch them, would the hens become hefker (see C.M. 261:4; Rema 259:7)."

"Funny story, isn't it?" commented Shmuel.

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Emergency!

A Hatzolah responder received an emergency call for someone who required immediate medical care. The quickest way to respond was to borrow a friend's car. While rushing out of the crowded parking lot, he sideswiped another car and also scratched the car he borrowed.

Q: Is the driver liable for the damage he caused to the two cars while responding to the Hatzolah call?

A: Chazal (B.K. 117b) teach that if Reuven notices Shimon pursuing Levi to kill him, and in the process of saving Levi, Reuven damages Shimon's or someone else's property, he is exempt from liability (C.M. 380:3). Reuven's exemption is a Rabbinic enactment to assure that Reuven does not refrain from saving Levi out of fear of liability for property he damages in the course of this lifesaving mission.

Although Reuven may not wantonly dam-

age other people's possessions, he is absolved of liability for damage he causes in the process of saving Levi (Pilpula Charifta, B.K. 6:8).

Therefore, someone responding to a Hatzolah call who damages someone else's property while rushing to save a life is exempt from liability (Shevet Halevi 9:293).

There is, however, a disagreement whether one responding to a lifesaving mission is exempt from liability for the damage he

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"There's a fascinating story like this in the Gemara (Taanis 25a) regarding Rabi Chanina ben Dosa," said Rabbi Dayan. "A person left two hens outside his door and his wife found them. Rabi Chanina told her not to eat the eggs they laid but to look after them. As the number of eggs and subsequent chickens increased and became difficult to handle, Rabi Chanina sold them and bought some goats.

"Some later time, the person who left the hens passed by and inquired about his lost hens. Rabi Chanina ben Dosa verified that he had simanim (identification of the lost item), and gave him the goats that he had amassed!"

"Wow!" exclaimed Shmuel. "Is a person really required to tend to lost items to such a degree?" "No," answered Rabbi Dayan, "but Rabi Chanina was known

to be extremely pious and acted in a manner beyond the requirements of halacha."

"What is required in such a case?" asked Shmuel.

"The Mishna (B.M. 28b) teaches that if you find an animal that needs to be fed, but produces, such as hens — you are allowed to use the eggs in exchange for tending to the hens," replied Rabbi Dayan. "Even so, you are not obligated to tend to them for more than a year. Other animals, which are more difficult to tend to, have a shorter period."

"What if I found roosters, which do not lay eggs?"

"You have to tend to them for only a short time and then can sell them and return their value," said Rabbi Dayan. "Otherwise, the cost of feeding the roosters for an extended time would almost negate the value of returning them (C.M. 267:22-24)."

caused to an item he borrowed for that mission. One position asserts that the same enactment that exempts one from liability for damaging another person's property also exempts him from damage that he inflicts on an object borrowed for the lifesaving mission (Nesivos 72:17, 340:6; Pnei Yehoshua, B.K. 60b).

Others contend that the enactment is limited in its scope. The exemption is from liability, specifically from damages (nezikin), but does not exempt one from liability that stems from other obligations. Thus, for example, this enactment does not give one license to steal property in order to save a life. Similarly, it does not release a borrower from his liability as a custodian.

Thus, when a lifesaver borrows an object for a lifesaving mission and damages a borrowed object while carrying

out that mission, although he is exempt from liability as a mazik (damager), his liability as a custodian remains in force and obligates him to pay for the damage to the borrowed object (Hagahas Meshovev Nesivos 72; Teshuvah Amudei Or 116:10; and Igros Moshe, C.M. 2:63).

In summary, the Hatzolah member is indisputably exempt from paying for the car that he sideswiped, but his liability for damage to the borrowed car is subject to debate.

Practically, the Hatzolah responder cannot be forced to pay for the damage that he caused to the borrowed car since there are authorities who maintain that this is also included in Chazal's exemption. Otherwise, his liability might deter a potential lifesaver from saving someone's life (see Beis Aharon V'Yisrael 145 pg. 99).

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Lost and Found #8

Q: After playing tennis in the local JCC, my friend left some balls on the court and went home. Am I required to return the balls to him?

A: The Gemara (B.M. 25b; 31a) teaches that when someone is careless with his property and knowingly leaves it in an insecure place, it is called aveidah midaas (knowing loss) and you are not required to do hashavas

aveidah (C.M. 261:4).

Nonetheless, the Shulchan Aruch writes that the item does not become hefker (ownerless). Although you are not required to collect and return the balls, you may not take them for yourself. The Tur and Rema write, on the other hand, that a person who recklessly abandons his items renders them hefker and you may take them.

Machane Ephraim (Hil. Zechiyah Mihefker

#6) explains that this depends on the evaluation of the circumstances. For example, if the balls were old and worn, they certainly would be hefker, whereas balls in good condition would depend on this dispute (see Pischei Choshen, Aveidah 4:12). If the balls were not abandoned, even if not left securely, e.g. a can of balls was left in the locker room, they do not become hefker.

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