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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

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Renew Now!

For many years, the Schreibers maintained a subscription to Jewish Interest magazine. Recently, they added subscriptions to two other Jewish magazines. A month before their yearly subscription to Jewish Interest expired, the Schreibers received a subscription renewal notice.

"I don't think we need three magazines," Mrs. Schreiber said. "I find the other magazines more interesting, so unless you want to continue, I'm not going to renew." Mr. Schreiber agreed.

The final issue came with a large red notice: "This is your final issue! Subscribe now for a 33% discount!" Mrs. Schreiber reconsidered for a moment, but decided not to renew.

The following month, Mrs. Schreiber was surprised to find Jewish Interest in their mailbox, even though their subscription had expired. "Look what came in the mail," she

said to her husband. "What should I do with it?"

"Must have been a mistake," said Mr. Schreiber. "It's not ours — we shouldn't take it. Send it back to them." Mrs. Schreiber wrote "Return to sender" and dropped the magazine back in the postbox.

The following month, Mrs. Schreiber was shocked to see Jewish Interest once again in their mailbox. The cover story looked extremely interesting. There was also a pull-out section of summer activities for children. "What should I do now?" asked Mrs. Schreiber. "They're still sending it! Also, the cover article looks extremely interesting and there's a special section about summer activities for the children. What's the point of sending the magazine back?"

"I don't think we can keep it, but I'm not sure," said Mr. Schreiber. "I'll check with

Rabbi Dayan."

Mr. Schreiber called Rabbi Dayan. "Our subscription to Jewish Interest magazine expired, but they're continuing to send it," he said. "If we want to read the additional issues, do we have to pay for them?"

"If the subscription calls for automatic renewal, you are obligated until you cancel in the required manner," answered Rabbi Dayan. "However, if there is no automatic renewal, you may keep the additional issues that they send without paying."

"Why are we allowed to read the magazine without paying?" asked Mr. Schreiber. "Shouldn't there be a mitzvah of hashavas aveidah?"

"The magazine was aware that your subscription expired, yet knowingly sent additional issues," explained Rabbi Dayan. "The Gemara (B.M. 23b, 25b, 31a) teaches

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Lost Items in Summer Camp

We intend to open a camp this coming summer. We are preparing the contract to send to the families to sign and would like to include a clause that states that we are not responsible for items that are left behind once camp is over.

Q: What is the proper wording for this clause?

A: It is certainly appropriate for the camp to include a clause that contains such a condition since campers inevitably leave

behind items, and it raises many questions related to the obligation to return lost objects. According to many Poskim (Shach, C.M. 268:2), since the items were lost and entered the camp's possession before the owner despaired (yei'ush) of retrieving his lost item (issura asa l'yadei), the camp is obligated to return the object even if the owner subsequently despairs. Moreover, many times it takes the owner a long period of time to realize that it is lost, sometimes not until he begins to pack for the following

summer, and obviously he cannot despair if he is not even aware that it is missing.

Although Poskim struggle for options to alleviate the difficulties created by such a circumstance, they recommend being proactive and posting signs that declare that anyone who enters the camp grounds does so with the understanding that all possessions left behind are ownerless (Minchas Yitzchak 8:146; Igros Moshe, C.M. 2:45; Minchas Shlomo 3:106; and Shevet Halevi 9:308). One explanation for the

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that there is no obligation of hashavas aveidah when someone is knowingly reckless with his property (aveidah midaas). We do not have to take greater responsibility for his property than he does."

"Still, does that allow me to take it for myself?" asked Mr. Schreiber. "There is a dispute whether someone who is knowingly reckless with his property abandons ownership," replied Rabbi Dayan. "For example, one who throws his wallet into the street and leaves it there. The Rambam maintains that you have no responsibility to return it to the owner, but it is not hefker (ownerless) and you may not take the wallet. However, the Tur understands that anyone can take the wallet. The owner effectively renounced ownership of the wallet when he threw it in the street, so it becomes ownerless" (C.M. 261:4). "Wouldn't our case seem similar then?" asked Mr. Schreiber.

"According to the Rambam, at least, I wouldn't be able to take the magazine for myself!"

"Here, presumably even the Rambam would agree," said Rabbi Dayan. "The company has no interest in retrieving the magazine that was distributed. This is similar to a farmer who moved his grain and left some stalks behind, where everyone agrees that he forgoes them. He abandons them for takers, since it's not worth his while to collect them" (C.M. 260:7; Bach, C.M. 273).

"Furthermore, often companies continue to send issues to a subscriber intending that he read them," concluded Rabbi Dayan, "either with the hope that he will renew or to maintain circulation numbers for advertisers. Thus you are allowed to read the magazine and are not under any financial obligation to them. Nonetheless, if the company is Jewish-owned, you should notify them that your subscription expired in case there is an unintended error."

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effectiveness of such a sign is that a kehillah is empowered to make enactments for the good of the kehillah (Igros Moshe and Shevet Halevi). However, this may only be effective when dealing with a formal kehillah.

Alternatively, one could argue that the camp owner has the right to restrict entrance to the camp grounds unless one accepts all of his conditions, which include the stipulation that items left behind are ownerless (see also C.M. 380:1). In other words, it is then assumed that all campers agree to this condition and if they leave any items behind, these things are considered ownerless from the time they entered the camp grounds (Minchas Shlomo and Mishpetei HaTorah, Hashavas Aveidah 3:[10]).

Although no one expects to forget anything and the agreement should be considered an asmachta (a condition that is not binding since the obligated party did

not think that he would ever have to fulfill the condition), nevertheless, since one of the criteria to be considered an asmachta is that the condition should be considered extreme (guzmah), in our case declaring the forgotten items ownerless is perfectly reasonable, due to the imposition on the camp to have to track down the owners, thus it is not considered an asmachta.

A note of caution: When composing the wording for this declaration it is preferable that it should not only state "The administration is not liable for items left behind," or something to that effect, since this wording might not allow you to discard the forgotten items. It merely exempts you from the obligation to return those forgotten items (Keztos 72:14 and Nesivos 72: 23). Therefore, you should make sure that the wording you choose clearly conveys to the campers that any items left behind are hefker.

Completing the Transaction # 6

Q: Are orders binding that were placed via e-mail by clicking "confirm"?

A: According to almost all Poskim, such transactions are binding based on the concept of situmta. The Gemara (B.M. 74a) teaches that wine merchants would often make a mark on barrels that had been sold, to indicate that they were sold. If the common business practice is to consider the sale binding on the basis of this marking,

even if no other kinyan was made, the sale is binding.

The Poskim extend this idea to any common business practice, minhag hasocharim, as a binding form of kinyan (C.M. 201:1-2). Thus, if the common business practice is to consider e-mail transactions as binding by clicking on the "confirm" button, this action is also given halachic validity as a modern form of situmta.

The common practice is dependent on the current time and on that particular business sector. Other possible examples of situmta include affixing a signature on an order form, and saying "mazel and brachah" in the diamond business. Many Poskim even suggest that nowadays cash payment does finalize transactions based on situmta, since that is the common business practice (Pischei Choshen, Kinyanim 10:3).

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