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Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

LEGAL EXPENSES

Mr. Weiss lent his downstairs neighbor Mr. Feder $25,000 for six months. During the loan period, a dispute arose over substantial water damage that Mr. Feder had suffered. Mr. Feder was emphatic that Mr. Weiss was liable for the damage, while Mr. Weiss denied responsibility.

When the six months were over, Mr. Weiss asked for repayment of the $25,000.

"I don't have to repay you," Mr. Feder said. "You owe me at least that much for damage that you caused!"

Mr. Weiss filed a suit for $25,000 in Rabbi Dayan's beis din, which sent Mr. Feder a summons to a din Torah. "I don't owe Mr. Weiss anything; he caused me corresponding damage," Mr. Feder replied. "I refuse to come."

Mr. Weiss, in consultation with the beis din, had a lawyer send a letter threatening legal action if Mr. Feder would not come before the beis din.

"I do not owe anything," Mr. Feder replied. "However, if I must come, I will."

The secretary of the beis din confirmed a date with both parties. Mr. Feder did not show up for the session, and did not provide notice beforehand.

The secretary contacted Mr. Feder. "Why did you not come?" he asked.

"It wasn't convenient for me that day," said Mr. Feder.

"We view this with great severity," the secretary replied. "We will reschedule, but expect you to appear."

Mr. Feder appeared at the following session. Meanwhile, Mr. Weiss had enlisted the services of an attorney to help him with the case.

Mr. Feder was not able to substantiate his claim that Mr. Weiss was responsible for the water damage. The beis din ruled in favor of Mr. Weiss and obligated Mr. Feder to repay the $25,000.

"What about expenses?" asked Mr. Weiss. "I missed two days of work for the two sessions, paid the lawyer to draft the letter, and employed the services of an attorney. Am I not entitled to reimbursement of my expenses?"

"Civil law often imposes expenses on the guilty party, but Halachah does not, in routine situations," answered Rabbi Dayan. "Even if the litigants had to travel to a distant city to adjudicate, the winning party cannot demand reimbursement of expenses" (C.M. 14:5).

"What is the logic?" asked Mr. Weiss. "He caused me unnecessary expense!"

"The desire to adjudicate a monetary disagreement before beis din is viewed as a legitimate right," explained Rabbi Dayan. "Even if the person loses the case,

"NEW" PASSAIC CHOSHEN MISHPAT CHABURA

Thursday evening
Chavrusa learning **9:15 - 10:15 PM**
Agudas Yisroel Birchas Yaakov
262 Terhune Ave, Passaic, NJ.
followed by a shiur on practical Halacha L'maaseh

10:15- 10:45

co-chabura heads:

Rabbi Avrum Guttman

Rabbi Mendy Weinberger

BHI HOTLINE

SELLING SOMEONE ELSE'S OIL

Someone set up a table to sell olive oil for Chanukah in my shul's foyer. He posted a sign stating that each bottle costs $5. I replaced it with a sign stating that each bottle costs $5.50, with the intention that after 10 people purchase oil I will take a bottle for myself and the seller will have $55 for eleven bottles, as he expected. My plan succeeded.

Q: Was it permitted for me to change the sign and charge more than the seller intended? He earned the sum he intended to earn for eleven bottles; customers willingly spent $5.50 for the oil.

A: The first point that must be emphasized is that it is the owner who determines how much he will charge to sell his items. Since you did not purchase any bottles of oil, you did not have the authority to charge customers $5.50. Accordingly, the customers agreeing to pay $5.50 was done in error and their mechilah in such a case is not binding.

Precedent for this is the case of Reuven, who leased an apartment to a tenant when in fact it belongs to Shimon. If Shimon never intended to lease the apartment, the tenant is not obligated to pay Shimon for the time he occupied it. This is true even though the tenant expected to pay, and already paid Reuven for renting the apartment. Since the tenant clearly did not intend to pay an unauthorized person for the lease, his agreement was made under false pretenses and is not binding.

If Shimon intended to find a tenant to lease the apartment, the present tenant would not have to pay any more than what Shimon intended to charge

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the expenses of the other party are not viewed as unnecessary damage. Furthermore, these expenses would be considered, at most, grama — indirect damage, for which there is no enforceable obligation."

"Does beis din ever impose reimbursement of legal expenses?" asked Mr. Weiss.

"The Shulchan Aruch writes that if the defendant refused to come to the beis din and the plaintiff suffered expenses to make him come, he is required to reimburse those expenses," responded Rabbi Dayan. "Similarly, if one party doesn't appear for the session as agreed, he is liable for expenses, e.g., travel, that he caused the other party."

"Why is that?" asked Mr. Feder.

"The defendant had no right to refuse the summons, so that expenses to make him come are damage that he did," answered Rabbi Dayan. "According to many authorities, this applies even if the defendant was acquitted (unless the claim was frivolous). Expenses generated by refusal to come are considered garmi, a more direct causation of damage. Therefore, if he was unable to come because he was sick, etc., he would not be liable. Similarly, not appearing for a session is a breach of the mutual commitment they made" (see Sma 14:27; Pischei Teshuvah 14:12; Aruch Hashulchan 14:10; V'shav Hakohen #99).

"Are there other cases in which beis din imposes legal expenses?" asked Mr. Weiss.

"Some say that if the claim was frivolous and had no basis whatsoever," replied Rabbi Dayan, "that party has to pay for the other's expenses, since there was no legitimate right to adjudicate" (Yeshuas Yisrael 14:5).

"Thus," concluded Rabbi Dayan, "Mr. Feder has to pay Mr. Weiss for the expenses of the first session that he missed and the lawyer's fee for the letter to make him come to beis din."

MONEY MATTERS

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Q: Is it permissible to buy OEM (original equipment manufacturer) software online?

A: OEM software is licensed to computer manufacturers and stores to install on computers they sell, not for direct sale to end-users. The license is granted to a "system builder," defined in Microsoft's OEM license as: "an original equipment manufacturer, an assembler, a refurbisher, or a software preinstaller that sells ... to a third party."

As mentioned previously, many authorities require honoring the licensing agreement. Generally, OEM software may not be resold, except for unopened copies to another "system builder." Thus, selling OEM software to an end-user without accompanying hardware, or selling used OEM secondhand, is a breach of the license. Purchasing it would then be lifnei iver, causing the seller to breach his agreement. Furthermore, sites offering "OEM versions" at great discounts (e.g., Adobe Photoshop) are often counterfeit copies.

In addition, OEM licenses are usually granted to the specific hardware (usually motherboard) to which the OEM software was initially installed ("Licensed Device"). Thus, according to the licensing terms (which must be accepted also by the end-user), when a person buys a new computer, he may not transfer his OEM software to the new machine.

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for the apartment. If Reuven charged the tenant more than Shimon intended to charge, the tenant is not obligated to pay the higher amount. If Shimon accepted the money from Reuven and claims that he would also have charged the higher amount, he may keep the money, but if he admits that he would not have charged the higher amount, he would be obligated to refund the extra amount to the tenant (C.M. 363:9-10 and Biur HaGra 28). This clearly demonstrates that if someone other than the owner sets a price, the agreement is not binding and the tenant does not have to pay the higher amount.

Consequently, $.50 must be returned to each of the customers who paid $5.50, and you are obligated to pay the seller for the bottle of oil that you took for yourself.

If you had purchased 10 bottles of oil and put $50 in the collection box [preferably, you should also lift the bottles so that the kinyan (proprietary act) should be effective according to all opinions (C.M. 198:1, 204:1. cf. Mishpat Shalom 201:2 and Imrei Yosher 2:178)] the bottles would belong to you and you could then charge what you wish for the oil, provided that by doing so you do not harm the original seller's financial interest.

In the event that you changed the sign to charge a higher amount and your intent was to generate a greater profit for the seller rather than to earn for yourself a bottle of oil, the seller has a right to keep the unanticipated earnings. This is based on the principle that one can act for the benefit of others even without obtaining their consent (zachin l'adam shelo b'fanav) and raising the price proved beneficial to the seller (C.M. 185:1 and 73:18).

For questions on monetary matters,
Please contact our confidential hotline at 877.845.8455
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