



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

CURRENCY EXCHANGE

Benjy returned from a visit to Israel with leftover shekels. He met his neighbor, Aharon, who was going there the following week.

"I have leftover shekels," Benjy said. "Are you interested in purchasing them?"

"Sure, it will save me the need to exchange dollars when I arrive," answered Aharon. "How many shekels do you have?"

"I have NIS3,000," replied Benjy. "I'll sell it for the current exchange rate (shaar yatzig)."

"Let me check how much that is," said Aharon. "Give me a minute..."

Aharon checked the exchange rate. "3.769 shekels to the dollar," he said. "That's \$796. We can round it off to \$800."

"I have the shekels at home," Benjy said. "I can bring them over in the evening."

"I won't be home this evening," Aharon said, "but I just came from the bank. I'll give you the \$800 now and you can leave the shekels with my family." He gave Benjy \$800.

When Benjy came home in the evening, he put the NIS3,000 in his wallet and headed over to Aharon's house. On the way, he was accosted by armed thugs, who threatened him: "Your money or your life!"

Benjy took out his wallet and handed it to the thugs. They emptied the wallet of all the cash and ran off.

The following day, Benjy came over to Aharon and related what happened. "I was mugged on the way," he said, "and the 3,000 shekels were stolen."

"I'm terribly sorry to hear," said Aharon empathically. "Thank G d you came out unscathed."

Aharon's son, who was learning Bava Metzta, overheard the conversation. "This raises a fascinating question!" he exclaimed. "Since my father already gave you dollars in exchange for the shekels, whose loss is it?"

Benjy and Aharon looked at each other. "Good question," they pondered. "Let's ask Rabbi Dayan!"

"As you know, an act of acquisition (kinyan) is needed to finalize a transaction," explained Rabbi Dayan. "According to most authorities, the Torah considers monetary payment as completing the transaction, but



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FREE HOTEL MEAL?

I had a meeting in a hotel with a business associate

who was a guest at the hotel. Since he could not eat the meal he was served due to health considerations, he offered the meal to me.

Q: Am I permitted to eat his hotel meal?

A: Rema rules (E.H. 28:17) that if a guest takes his host's food and gives it to a woman for kiddushin, the kiddushin is valid. The reason is that it is assumed that the host permits the guest to use the food according to his discretion. Taz (ibid. 34) questions this based on Shulchan Aruch's ruling (O.C. 170:19) that a guest may not take the host's food and share it with the host's children without authorization. If a guest may not give food to the host's children, it is certainly prohibited to give it for kiddushin. Therefore he rules that the kiddushin is questionable. Clearly the Taz maintains that the guest who uses his host's food for kiddushin (i.e., at his discretion) is behaving improperly.

Maharit (1:150, cited by Rabi Akiva Eiger in O.C. 170) cites support for Taz from the Gemara (B.M. 92a) that inquires whether an employee's right to eat the produce he is working with while he is working is part of his salary package [in addition to his wages] or whether it is a right granted to him by Hashem.

The practical difference between these two approaches is whether the employee can allow his family to eat the produce he would have eaten. If the right is Divine, he may not share it with his family, since he was granted permission to eat while working but not to share it with others. Seemingly,

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STORY LINE

the Sages rendered the sale of movable items incomplete until a kinyan is made on the item itself, such as by picking it up."

"Does that mean a person can simply renege after payment was made?" asked Benji incredulously.

"No; although it is halachically possible, the Sages imposed a ban (mi shepara) upon whichever party reneges after payment was made," replied Rabbi Dayan. "The One Who punished the generation of the deluge ... should punish one who reneges on his word. Nonetheless, when the purchased item was lost, as in our case, the customer can renege without the associated ban" (C.M. 204:2).

"When exchanging currencies, though," asked Aharon, "what is considered money and what is considered the item? Does giving dollars count as taking the item?"

"The currency that is more easily tendered is considered money, while the other currency is considered the item," answered Rabbi Dayan. "The Mishnah (B.M. 44a) addresses coexisting currencies in gold, silver and copper coins. The silver coins were most easily tendered and hence considered money relative to the gold and copper currencies" (C.M. 203:4).

"I guess that solves our question," said Benji.

"The local currency is considered payment vis-à-vis the other currency," continued Rabbi Dayan. "Thus, in Israel, giving dollars for shekels finalizes the transaction. However, in the United States, giving dollars is considered the money and does not finalize the transaction, so that the robbed shekels are Benji's loss."



BHI HOTLINE

guests should be in a similar category because the one who is Divinely granted permission to eat produce may not take that food home to share with his family. So even if the guest refrains from eating a full portion so that he can give it to others, it would constitute an act of theft.

Some authorities reference the Gemara (Chullin 94a) which indicates that the restriction against giving food to the host's son was the result of a specific incident that occurred and it is not otherwise considered an act of theft (see commentators to O.C. 170:19; Divrei Malkiel 3:53; Maharsham 3:291).

In your circumstance, however, all authorities agree that you may eat your business associate's meal. The above disagreement relates to a guest who is given a meal as a chessed and whether the host intends to convey the food to the guest to use as he wishes. A guest in a hotel has already paid for that meal and thus it is subject to his discretion whether he would like to share it with others.

This is similar to the view that an employee's right to eat produce is part of his salary package and he may share that food with his family (see Gur Aryeh Yehudah, C.M. 12), but this allowance is limited to a hotel guest who wishes to give away his portion. A hotel guest may not eat a meal and invite someone to join him based on the rationalization that he is entitled to take as much food as he wishes. His right is limited to what he will eat but does not authorize him to feed others.

Obviously, if a hotel has its own rules and conditions, one must comply with those terms and conditions.

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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

BEIS DIN AND CIVIL COURT #20

Standing in Beis Din

Q: Are the litigants and/or witnesses required to stand before the beis din?

A: The Torah states: "The two people who are the litigants should stand before the judges" (Devarim 19:17). We derive from this that both the litigants and witnesses should stand; the witnesses when testifying and the litigants when the decision is rendered.

During the proceedings and claims, the beis din can ask the litigants to stand or give them permission to sit, but must treat both litigants equally, both standing or both sitting. A Torah scholar coming before beis din should be respected and allowed to sit, together with his litigant. Some maintain that the litigants should not sit until they are granted permission by the beis din.

If the witnesses or litigants did not stand as required, the testimony and ruling is valid, regardless. Nowadays, it is customary that batei din ask the litigants and witness to sit throughout (C.M. 17:1-3; Pischei Teshuvah 17:4; Aruch Hashulchan 17:5).

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