



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

WERDIGER EDITION

Issue #269

| Vaeschanan

| Friday, July 31, 2015

| 15 Av 5775

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlan

### CONQUERED TERRITORY

The last few parshiyos have mentioned wars between nations and Bnei Yisrael's conquest of the eastern bank of the Jordan. One Shabbos, after davening, a debate arose between some congregants. "A nation that invades and conquers territory of another nation is no different from a thief," argued Shalom. "Military might does not make right!"

"World history proves otherwise, though," argued David. "Throughout history, nations conquered territories and expanded their land, exiling the local inhabitants. Can the Native Americans claim rights to their settlements of 300 years ago? According to you, if you don't live in Manhattan, which was purchased from them, you're living in illegal, conquered territory!"

"What nations did proves nothing," replied Shalom. "Many wars were waged by immoral leaders. Who says that there is legal or halachic validity to their conquest? Are you claiming that once a country conquers territory, it becomes theirs and the original nation has no right to demand it back?"

"It can demand, and if they achieve the means to reclaim it, it becomes theirs again," replied David. "But as long as the territory is in the hands of the conquering nation, they own and rule it. This has been the history of Europe for centuries, with tracts of lands going back and forth between warring nations."

"And what about Bnei Yisrael's conquest of the Land of Canaan," added David. "Would you also say that it has no legal validity?"

"That's different, because Hashem commanded them to conquer the Land," countered Shalom. "Conversely, in your view, when the Romans conquered Eretz Yisrael 2,000 years ago, and all the other nations afterward, did it become theirs?"

"Maybe," said David thoughtfully.

The two decided to approach Rabbi Dayan. "What is the halachic status of captured territory?" asked Shalom.

"In general, acquisition of stolen real estate has no validity," replied Rabbi Dayan. "Even if the owner despaired of reclaiming his property (yei'ush) and the thief sold it to others, the others do not acquire it (unless the original ownership has been completely forgotten). The rightful owner can demand his property back, and the buyer is entitled to reimbursement from the one who

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## BHI HOTLINE

### FOUND: LOST PIKADON

The cleaners lost my suit and paid me for it. A week later I received a call that they found my suit and want me to take it back and return their money.

**Q: Am I obligated to return the money and take back the suit?**

**A:** It would seem that you are not obligated to take back the suit and return the money. The Gemara (B.M. 33b) teaches that if a custodian loses the object in his care and voluntarily pays the owner for the object, we look at it as though the owner conveyed ownership to the custodian when he initially deposited the object with him, even if the object increases in value and the custodian will profit from the arrangement (see Shach 295:11). However, it would seem that the custodian may choose what is in his best interest, since if the object deposited in his care decreases in value, he is not required to suffer a loss, and this is especially true regarding personal items that have little value to others (see Dibros Moshe, B.M. 41 [4]). The main issue here is whether accepting payment for the suit is a binding transaction that cannot be reversed, or one that can be reversed once we realize that payment was made in error due to the erroneous assumption that the suit was lost, and therefore the owner must return the money and take back his suit.

The Gemara (B.M. 35a) rules that a custodian who loses earrings must pay the owner immediately and may not demand time to search for them (C.M. 291:7 with Shach 16). The Gemara relates that a custodian refused to pay for the earrings that he lost and Rav Nachman confiscated the custodian's



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sold it to him" (C.M. 371:1; Y.D. 276:6; Nesivos 371:1).

"So it would seem that conquered territory should have to be returned!" noted Shalom.

"There is a difference between theft on a private level and land conquered through war," replied Rabbi Dayan. "Am Yisrael was not allowed to attack Moav, but they took possession of Cheshbon, a Moabite city that was conquered earlier by Sichon. The Gemara (Gittin 38a; Chullin 60b) derives from this that although there is no legal acquisition of stolen land, there is legal acquisition of land conquered through war. Thus Cheshbon was no longer considered Moabite territory, but Emorite, so Am Yisrael was able to possess it" (see Rambam, Hil. Melachim 4:10; Hil. Avadim 9:4; Y.D. 267:18).

"What is the logical basis, though, for this distinction?" asked David.

"Some base it on dina d'malchusa dina, the law of the land," replied Rabbi Dayan. "Others base it on avudah mimenu umikol adam (irretrievable loss), which becomes hekfer (ownerless), or explain it as a special case of yei'ush. It's interesting to consider, according to each reason, what would occur if international conventions stated otherwise" (Encyclopedia Talmudis, vol. 27, pp. 123-135).

"What about gentiles who captured territory in Eretz Yisrael?" asked Shalom.

"According to many authorities, they do not acquire full ownership," replied Rabbi Dayan. "Hashem promised Eretz Yisrael eternally to Avraham and his descendants. Thus foreign conquest of the Land does not revoke the eternal rights of the Jewish people to their Land" (Chazon Ish, C.M. 1:27).



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house as payment for those earrings. Ultimately, the earrings were found and had increased in value. Rav Nachman ruled that since his confiscation was done in error, the owner takes back his earrings and returns the house to the custodian. We see that a payment made in error is reversed and it does not matter whether the payment was made with money, real estate or some other object (Tur 295, cited by Rav Akiva Eiger 103:11 and Ohr Same'ach, She'eilah 8:3). Therefore, in your case, when your suit was found you must take it back and return the money to the cleaners.

However, some authorities contend that mistaken payment is limited to where the deposited item was ultimately found in the possession of the custodian. If the object was lost elsewhere and beis din obligated the custodian to pay for the lost object, there was no error when payment for the lost object was made and even if the object is subsequently found, the owner is not required to take it back (Tur cited by Sema 103:29). Although most authorities dispute this distinction (C.M. 103:11), it is difficult to force someone to give back either the object or the money if he does not wish to do so (See Taz, ibid.).

Morally, however, the owner should take back his object since the custodian, in your case the cleaners, will not be able to use the lost object if found, but you, the owner, can continue to use it as you did before depositing it with the custodian. However, all opinions agree that the cleaners cannot demand back the money if, by the time the suit was found, you had already purchased a replacement suit (Dibros Moshe, B.M. 41 [12]).

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## MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit'a

### BEIS DIN AND CIVIL COURT #21

#### Friend or Foe

**Q: Is a Dayan allowed to judge a litigant with whom he is friendly, or with whom he is at odds?**

**A:** The Shulchan Aruch rules that a Dayan may not judge a litigant who is his friend, even if not extremely close, or one with whom he is at odds, even if not his enemy. Although a friend may testify, this is because a witness reports objective evidence, whereas a Dayan must apply reasoning and is more likely to be unintentionally influenced in his thinking. Some allow the Dayan to judge if he is friendly with both parties (C.M. 7:7; Sma 33:1; Pischei Teshuvah 7:11; Aruch Hashulchan 7:14).

The Rema, however, rules that the Dayan may judge if he is not a very close friend or an enemy, although some refrain from judging any friend as a stringency. Furthermore, the litigant must bring evidence if he wants to disqualify a Dayan on the basis of friendship or enmity.

If the litigant willingly accepted the Dayan or willingly came before him, he certainly may rule (C.M. 22:1; Shach 7:15).

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