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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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BUSINESS WEEKLY FOR THE MONTH
OF KISLEV HAS BEEN DEDICATED

לעלוי נשמת
מיכל שרה אידל בת ר' יוסף
BY SHAMMAI BIENENSTOCK

STORY LINE

by Rabbi Meir Orlan

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Exercising Caution

The bell rang for afternoon break in Mishpat Emes High School. The boys, who had been learning intensely all morning, headed out to the schoolyard for a break to get some fresh air and stretch their muscles with physical activity.

Gabi and Sruli were engrossed in a tight four-on-four, half-court basketball game. Gabi passed the ball to Sruli, but overshot him.

At the same time, Eli, who was jogging around the yard, ran behind Sruli with a phone in his hand. The ball flew past Sruli and hit Eli, knocking the phone out of his hand! It fell to the ground with a thud. Eli picked it up and saw that the screen had cracked.

"Look what you did!" Eli shouted at Gabi. "You broke my phone!"

"It's your fault!" Gabi shouted back. "Why

did you run there? Didn't you see that we were playing ball here?"

"Even if you're playing, you've got to be careful not to cause damage," retorted Eli. The following day, Eli walked in to school.

"I took the phone to the repair store," he said to Gabi. "It will cost \$100 to fix the screen. I expect you to cover the repair."

"I didn't mean to break the phone. It's not my responsibility," said Gabi. "We were just playing basketball, as we always do. The ball went a little off; it was an accident."

"You don't think you owe me?" asked Eli incredulously.

"No," replied Gabi flatly. "You should have been careful where you ran. You saw that we were playing ball. Balls always get tossed around."

"Then we'll have to take it up with Rabbi Dayan," said Eli curtly. "OK with you?"

"Sure," said Gabi. "Whatever he says."

The two boys went into Rabbi Dayan's office.

"Gabi broke my phone," said Eli. "I want him to pay for the repair!"

"It's not my fault," objected Gabi.

"Let's hear the story from the beginning, with the relevant details," Rabbi Dayan calmed them. Eli related what happened, with Gabi adding his perspective.

"Does Gabi have to pay for the phone?" Eli asked.

"If Eli was standing on the side, even though Gabi damaged unintentionally, he would be liable for the damage to the phone," answered Rabbi Dayan. "However, if the boys were already playing in the area and Eli darted into their midst, Gabi would be exempt."

"Isn't there any consideration for acci-

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Customer Credit

I own a grocery store and one of my customers has run up a large bill.

Q: Am I permitted to ask him to pay his bill, or do I have to be concerned that by doing so I will violate the Torah prohibition of "Do not act toward him as a creditor" (Shemos 22:24)?

A: You are correct that the Torah prohibits a lender from pressing a borrower to repay

his loan when he knows that the borrower does not have the means to repay the loan (C.M. 97:2). Chazal further prohibited a lender from making his presence known to the borrower, since that will also cause the borrower distress (C.M. ibid.; Lechem Mishneh, Malveh 1:2).

However, the prohibition is in force only when the borrower does not have the means to repay the loan and will be distressed when pressed to repay the loan. It

is permitted to press a borrower to repay his loan if he either has the funds to repay the loan, or even if he has more possessions than necessary for his basic needs (which are minimal, as described in C.M. 97:23), as the surplus can be sold to generate the necessary funds to repay the loan (Shulchan Aruch Harav, Halvaah 13). Accordingly, if the borrower has money or property and the lender does not press him for more than what he owns to repay the

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dents?" asked Eli.

"There is a clear rule in the Mishnah (B.K. 26a) that a person is liable even for accidental damage," replied Rabbi Dayan. "Admittedly, some authorities curtail this rule and do not apply it to unusual or freak accidents. However, this limitation is not relevant here, since throwing a ball is certainly liable to cause damage (C.M. 378:1-3)."

"Why, then, is Gabi exempt if I darted into their midst?" asked Eli.

"In this case, since you were aware that the boys were playing ball in the area and ran there anyway, you brought the damage on yourself; Gabi had no way of preventing it," explained Rabbi Dayan. "The Talmud Yerushalmi (B.K. 2:8) makes a similar distinction regarding a person who damaged or injured during his sleep."

"Interesting," commented Gabi. "In what way?"

"If a person went to sleep with another person or another person's items near him, he is liable if he damages in his sleep; he should consider that he might roll over and bang into them," explained Rabbi Dayan. "However, if the person went to sleep and afterward someone lay down or put items on the bed near him, the first person is exempt. The other person created the problem, whereas the one sleeping had no way to prevent this (C.M. 421:4; Pischei Choshen, Nezikin 1:[27])."

"I would add, though," concluded Rabbi Dayan, "that if the boys were playing in an area where they had no right to be playing, such as in the hallway, and then Eli came, Gabi would be liable. Since Eli had a right to walk there and those playing were acting improperly, the latter have the greater responsibility to exercise caution (C.M. 378:7-8)."

loan, the lender does not violate the prohibition (Kesef HaKodashim).

Another leniency can be applied if one is uncertain whether the borrower has the means to repay the loan. In that case, we do not apply the principle that one must adopt a stringent position regarding uncertain Biblical matters (safek d'Oraisa l'chumra) and it is permitted to ask the borrower to repay the loan.

This is evident from Shulchan Aruch's words that the prohibition applies when "it is known that he [the borrower] does not have the means." Some draw this conclusion from the passuk that refers to the borrower as poor "with you," meaning that he is poor in your eyes. In other words, if it is certain in your eyes that the borrower is poor, the prohibition is in force, but if it is

not certain, the prohibition does not apply (Kesef HaKodashim 97:2; see Minchas Chinuch 67).

Moreover, there are authorities who contend that this prohibition is limited to debts that originated as a loan, but if the debt originated from unpaid rent or from merchandise purchased on credit, the prohibition does not apply (Kesef HaKodashim).

Other authorities question this assertion, but, as mentioned, as long as the possibility exists that your customer has the means to pay his outstanding balance, it is permitted to ask him to pay his debt.

However, if the borrower is known as an honorable person, it is laudable for one to go lifnim mishuras hadin (beyond the minimum halachic requirements) and not press him for the money.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM

Lost and Found #17

Q: I found money. Must I publicize it? If so, can I use it until it is claimed?

A: An individual bill or scattered money is generally considered a lost item without a siman, and you may keep it. Even if there is a name written on the bill, it does not serve as a siman, because the owner could have used the money to pay someone else. However, a number of bills bundled together,

a neat pile of coins, or money left in a specific location can serve as a siman, and you need to publicize it, as with any other aveidah (C.M. 262:11-13).

A person who finds money that he must publicize may not use it, but should keep it in a secure place (C.M. 267:25).

Nowadays, however, if you find a small sum and always have an equivalent amount readily available should the owner come to

claim it, some allow using the money and recording the amount and relevant identifying features. (Hashavas Aveidah K'halachah 6:3).

If you find a check that was already made out and signed, you should return it to the payee, if it is uncommon to transfer checks to third parties. However, if the sum was not written, return the check to the account owner (Hashavas Aveidah K'halachah 12:2).

DID YOU KNOW?

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