

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #186 / PARSHAS VAYECHI  
FRIDAY, DECEMBER 13, 2013  
10 TEVES 5774

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## STORY LINE

by Rabbi Meir Orlan

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## A Thud and a Split

Mr. Weiner was taking the garbage out when he realized that his garbage can was missing.

He finally spotted it. His neighbor, Mr. Fixler, was painting his house and had used a heavy wooden board to make a platform. He had propped it up with two garbage cans — the Fixlers' and the Weiners'.

"What chutzpah!" Mr. Weiner thought. "He had no right to use my garbage can without asking. It's not the first time he's used our things without permission."

Mr. Weiner walked over to his garbage can and pulled it out from under the board. The board fell to the ground with a thud and split.

"Serves him right!" thought Mr. Weiner. "I've warned him a hundred times not to take my things without permission!"

When Mr. Fixler returned, he saw that his

board had fallen and split.

"Do you know how my board broke?" he asked Mr. Weiner.

"I took my garbage can out from under it," replied Weiner serenely. "The board fell and split."

"So you broke it!" shouted Mr. Fixler. "That was a solid wooden board; it cost me \$50."

"It's your fault," replied Mr. Weiner. "You had no right to use my garbage can. I warned you about this many times."

"I acknowledge that it was wrong of me to take your garbage can," said Mr. Fixler, "but that doesn't give you the right to damage my property. You could have propped up the board with something else or lowered it gently."

"Why should I have to do that?" insisted Mr. Weiner. "You misappropriated my garbage can; I reclaimed it. Any ensuing damage is

your fault."

"Two wrongs don't make a right," said Mr. Fixler. "I didn't damage your garbage can, but you damaged my board! I want to ask Rabbi Dayan about this."

"Fine!" said Mr. Weiner. "I have no doubt he'll say it's your problem."

The two came to Rabbi Dayan.

"I used Mr. Weiner's garbage can to prop up my board," began Mr. Fixler. "He pulled his can out and my board fell and smashed. He owes me \$50 for the board."

"I didn't touch his board," argued Weiner. "I simply removed what was justly mine!"

"Without doubt, Mr. Fixler was wrong to use the Weiners' garbage can," ruled Rabbi Dayan. "However, since Mr. Weiner could have removed his garbage can and propped the board with something else or lowered the board gently, he is liable for the

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## Pilfered Paper, Part II

As discussed last week, a woman arrived in Israel after World War II to seek employment. Armed with a letter of recommendation from a well-known Gadol who knew her family, she applied for a job at an office. The business owner took the letter and asked her to return the following day. The next day, the owner not only informed her that there was no position available, but also refused to return the letter to her.

A number of years later, the business owner

sold the letter to a Judaica collector. We dealt with the issue of how much the businessman would need to pay the woman.

**Q: If the collector believes that the letter was stolen, is he obligated to return the letter to the woman or not?**

**A:** When the owner of a stolen object abandons hope of recovering his object (yei'ush) and the object is given or sold to a third party

(shinuy reshut) the recipient is not obligated to return the object to the owner because he performed a proprietary act through yei'ush and shinuy reshut (C.M. 353:3). It must be noted that when a thief bequeaths property to his heirs, that is not considered a third party, since the possession of an heir is not comparable to the possession of a purchaser. The heir must return the stolen object to the owner (C.M. 353:4).

On the other hand, if a thief gives the stolen

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damage to the board.”  
 “Why is that?” asked Mr. Weiner. “The Gemara (B.K. 28a) teaches that even when a person can take the law into his own hands to protect his property, he may not do so in a manner that damages the other person’s property unnecessarily,” explained Rabbi Dayan. “For example, if one animal jumps on another and attacks it, the owner can pull his animal out or remove the attacking animal. Nonetheless, if he can remove the attacking animal gently, but shoves it off and injures it, he is liable.”  
 “The Rosh extrapolates this to a case in which someone steadied his barrel with another person’s stone,” continued Rabbi Dayan. “The second person removed his stone; the barrel then rolled and broke. The Rosh holds him liable for the barrel, since he could have re-

placed his stone with another one, to prevent the barrel from rolling. Here, too, you could have propped the board with something else or lowered it gently (C.M. 383:2).”  
 “What if I needed the garbage can, and could not easily find something to replace it?” asked Mr. Weiner. “I’ve got a bad back and a hernia. I couldn’t lower the board easily.”  
 “There is a dispute between the later authorities in that case,” replied Rabbi Dayan. “A number of authorities exempt you if it is difficult to find a replacement. The Aruch Hashulchan maintains that you are still obligated, though. He considers an act such as pulling out the garbage can a manner of damage, unless it was getting ruined by the weight of the board and time was of the essence (Pischei Choshen, Nezikin 12:[60]; Aruch Hashulchan 383:7).”

merchandise to his heirs, either as a gift or through a halachic will (for example, a gift to take effect shortly before death), the heirs are considered a third party and would not be obligated to return it to the owner (Yam shel Shlomo, B.K. 9:6). This is true even if the transfer was done via kinyan sudar and the heirs never took physical possession of it (Chazon Ish, B.K. 16:4).  
 In your case, since the thief sold it to the Judaica collector, it has undergone a shinuy reshus and the collector is not obligated to return the letter to the woman. However, the practice nowadays is to return stolen objects to the owner even if there was yei’ush and shinuy reshus (Rema 356:7; see Ketzos 5). This is rooted in the recognition of the binding nature of the law of the land (dina d’malchusa dina) which mandates the return of stolen

property to its owner. However, the buyer is not required to return the stolen property to the owner unless the owner repays him what he spent to purchase it. The rationale behind this practice is to protect the free market (takanas hashuk). If buyers had to fear that purchases would be confiscated in the event that the merchandise was stolen, people would be very hesitant to purchase items from others. In order to maintain confidence in the market, it was enacted that the owner must repay the buyer what he spent to purchase the stolen merchandise (C.M. 356:2).  
 Consequently, if the woman wants to repay the collector what he spent when he purchased the letter (even if it subsequently increased in value and he will not realize that profit) the collector must return the letter to her.

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## Lost and Found #21

**Q: I found an item belonging to a child. Do the laws of hashavas aveidah apply to children’s possessions?**

**A:** If you find a child’s belonging with a siman, you should publicize it, as you would for any other aveidah.  
 If the item has no siman, where we presume yei’ush (despair), there is a distinction between something used by the child

but owned by the parent, and something owned by the child, since the yei’ush of a minor child is not valid (see Nesivos 260:11; Pischei Choshen, Aveidah 2:4).  
 Something used by the child but owned by a parent requires the yei’ush of the parent-owner. Thus, if the parent was likely to be aware of potential loss, e.g. of a pacifier or a baby’s clothing item or the like, you may keep the item, just as with any other aveidah

with no siman. If the parent is not likely to be aware of the loss, it is considered yei’ush shelo midaas, as discussed last week.  
 However, something that is likely to be owned by the child, e.g. children’s jewelry, a watch, a baseball card or stamp collection, is not subject to yei’ush. Thus, the halacha remains yehei munach ad sheyavo Eliyahu, as discussed last week (Hashavas Aveidah K’halachah, 9:1-2).

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