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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

In Case of Fire, Break Glass

Mr. Brand was walking home one evening, when he saw his neighbor, Mr. Moses, getting into the car with his family.

"Where are you heading with the whole family?" he asked.

"We've got a cousin's wedding this evening," replied Mr. Moses. He strapped the three youngest children into their car seats, while the rest of the family buckled themselves in.

Mr. Moses turned on the engine. Suddenly, there was a muffled explosion under the hood. Smoke began to curl up, followed by flames.

A passerby whipped out a phone and dialed 911. Meanwhile, Mr. Brand remembered that his other neighbor, Mr. Glick, kept a fire extinguisher in his van. Mr. Brand ran over to the van and smashed the window. He pulled out the fire extinguisher and quickly

extinguished the fire.

When Mr. Glick returned from work later that night, Mr. Brand related to him what happened. "I'm glad that you rescued Mr. Moses," he said, "but you broke my car window in doing so. Who's paying for it?"

"I was doing it for pikuach nefesh, a life-saving purpose," argued Mr. Brand. "Doesn't that supersede all mitzvos?"

"It certainly does," said Mr. Glick, "but you still damaged and should pay!"

"Actually, I think that Mr. Moses should pay," said Mr. Brand. "I broke your window to save his family!"

Mr. Glick called and asked Mr. Moses to pay, but Mr. Moses played dumb.

"I didn't do anything at all to your car," he said. "How can I be liable for damage?"

Mr. Glick returned to Mr. Brand. "Mr. Moses refuses to pay," he said. "So I'm back

to you. Regardless of your good intentions, you damaged — you're liable!"

"This is unfair," argued Mr. Brand. "I try to save someone's life, and then get a bill afterwards?"

"No doubt you'll get your reward in the World to Come," said Mr. Glick.

"We've got to talk this over with Rabbi Dayan," said Mr. Brand.

Mr. Brand related the entire case to Rabbi Dayan.

"Who has to pay?" he asked.

"None of you is liable," ruled Rabbi Dayan, "but it seems to me that common decency and gratitude would dictate that Mr. Moses compensate Mr. Glick."

"Why is Mr. Brand not liable?" asked Mr. Glick.

"The Gemara (B.K. 60b, 117a) teaches that a person cannot save himself through mon-

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Careless Collector

I collect tzedakah in a large shul for an institution that distributes funds to poor people. When it was time for me to daven, I placed the bag of money beneath my tallis bag. I left afterward without taking the money. When I went back to retrieve it, it was gone.

Q: Am I obligated to replace the money?

A: Let's assume that you were negligent in placing the money there. We will not address

whether forgetting is an act of negligence or if you are considered a shomer sachar.

Although the rules of shomrim (custodianship) do not apply to sacred property and, according to many authorities, the custodian is not liable even in a case of negligence (C.M. 95:1, 301:1), this exclusion is limited to items sanctified for Beis Hamikdash upkeep (bedek habayis). Nowadays, since pledges go to the poor, the rules of shomrim are in force (C.M. 95:1). However, another exemption applies in your

case: one who is given money to distribute to the poor is exempt from liability even if the deposited money was stolen due to his negligence. This exemption has two facets: A) the claim of the donors against the collector; and B) the claim of the poor against the collector:

A) Donors may not file a claim against a tzedakah collector whose negligence resulted in loss of the money (C.M. 301:6). However, this exemption may be limited to one who distributes money directly to the poor; a collector

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etary damage to others,” said Rabbi Dayan. “Tosafos explains that although a person may damage as necessary to save his life, he must intend to repay afterwards.

“Nonetheless, when someone rescues another person and causes monetary damage in the course of rescuing, Chazal instituted that the rescuer be exempt, to avoid discouraging people from rescuing others (C.M. 380:3; 388:2).”

“What if there is no pikuach nefesh involved?” asked Mr. Glick. “Is a person allowed to damage another’s property in order to protect his own property?”

“In general, preventing monetary loss through damaging another is not allowed,” said Rabbi Dayan, “even with intention to pay afterwards (see Pischei Choshen, Nezikin 12:22[53]).”

“...Even if my loss is great and his loss is minimal?” asked Mr. Brand.

“There is a dispute (B.K. 114a-b) whether Chazal permit a person faced with sudden loss to save himself through doing minimal damage to another and compensating him,” replied Rabbi Dayan. “For example, can a person whose horde of bees landed on another person’s tree cut off the branch to recover his bees?”

“Shulchan Aruch does not cite this leniency, suggesting that it is forbidden to damage even under such circumstances, unless it is clear that the other person would be willing,” concluded Rabbi Dayan. “Rema, however, cites the two opinions, with a slight preference to the lenient position.

“Thus, a G-d-fearing person should avoid doing so unless there is a great loss involved (see Rema 264:5, 274:1, 308:7; Pischei Choshen, Aveidah 8:21; Mishpetei Halevi, vol. I, 2:9; Shulchan Aruch Harav, She’eilah U’sechirus #6).”

who gives that money to another person to disburse is liable if the money gets lost as a result of his negligence (Rema ibid., Nesivos ibid. 5 and Pischei Tes-huvah ibid. 8).

B) If the recipients were not specified before the money was collected, they cannot claim that the collector caused them a loss. Although in such a case (Y.D. 61:15) the collector would have a non-enforceable obligation (latzeis yedei Shamayim) to repay the loss, some authorities maintain that that obligation applies only to one who damaged (mazik) the property intended to be distributed. If the loss resulted from the shomer’s negligence, he has no obligation to replace the missing funds, since he was excluded from the laws of custodianship (Maharam Shik, C.M. 14). In the event that the money was collected for a particular person or group he/they may demand that the collector replace the missing funds.

However, there is a definitive rationale to exempt you from liability. Halacha distinguishes between a guardian appointed by the orphans’ father and one

appointed by beis din. When a father appoints a guardian, the guardian is exempt from taking an oath that he was faithful to his fiduciary obligation, and according to many authorities he is exempt even if he was negligent in his responsibilities (Shach, C.M. 290:25), in order that potential candidates should not refrain from accepting the position.

Conversely, it is unnecessary to exempt a beis din-appointed guardian as candidates accept liability because the position conveys honor to the holder. Accordingly, if collecting for this organization is not an honored position, it is necessary to exempt the collectors from liability even in a circumstance of negligence in order to encourage people to accept the position (Shivas Tzion 99). Although there is a dispute whether guardians appointed by the father are exempt if they are negligent (C.M. 290:20), in this case, it is logical to assume that the administrators exempt their collectors from liability since people would likely not agree to collect funds if they were to be liable for missing funds.

Lost and Found #28

Q: 1) I took a book out of the library and found an envelope containing money inside it.

2) I found a perfectly usable item in the garbage.

May I keep either of them?

A: 1) The envelope likely belongs to the last person who borrowed the book. Thus, if you

can ascertain who it was, you should return the money to him if there are simanim. If you cannot ascertain who it was, you should publicize the item, as any other aveidah.

If the book is dusty and appears to have been sitting a long time, and the owner presumably abandoned hope by now, you may keep the money (C.M. 260:3, 262:5; Hashavas Aveidah K’halachah 12:9).

2) If it seems that the item was willfully put in the garbage, you may take it, even if there are simanim. However, if the item is a small one that may have inadvertently fallen in or been swept up, you should alert the owner. If it is a communal garbage bin, you should publicize the item if it has simanim; if there is no siman, you may keep it (C.M. 260:11; Hashavas Aveidah K’halachah 11:7).

MONEY MATTERS

DID YOU KNOW?

In times of cash flow difficulty, paying one’s employees on time takes precedence over paying vendors’ invoices.

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