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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

NO-CHOICE COMPROMISE

"I'd like to remind you about the $10,000 that you borrowed last year," Mr. Naiman said to his neighbor, Mr. Shuker.

"What are you talking about?" replied Mr. Shuker. "I never borrowed such a sum!"

"Are you kidding or lying?" asked Mr. Naiman in disbelief.

"Neither," answered Mr. Shuker flatly. "I never borrowed. Is there any evidence of the loan?"

"You signed a loan document," Mr. Naiman responded, "but I can't find it at the moment."

"If you find it, we'll talk," said Mr. Shuker.

Mr. Naiman searched his files, but could not find the loan document. Mr. Shuker refused to pay without proof of the loan.

Finally, Mr. Naiman sued Mr. Shuker in beis din. In the absence of any proof, beis din recommended that the parties compromise on 30 percent of the claim. Mr. Shuker readily agreed; Mr. Naiman reluctantly agreed, having no better option. Beis din confirmed the compromise.

While cleaning for Pesach, Mr. Naiman found the loan document.

"I found the loan document," Mr. Naiman notified Mr. Shuker. "You clearly lied in beis din and owe the full amount that I claimed!"

"Even if what you're saying is true, it's too late," replied Mr. Shuker. "We agreed to a compromise that settled the claim. Beis din even made a kinyan confirming the compromise."

"But new evidence came to light," argued Mr. Naiman. "Now that I found the loan document, beis din should reconsider the issue; the compromise was in error."

"If beis din had issued a definitive ruling, I could hear you," said Mr. Shuker. "But who ever heard of redoing a compromise? Every compromise takes into account that the claim may or may not be true. Your claim is settled; there's nothing more to discuss."

Mr. Naiman brought Mr. Shuker before Rabbi Dayan and asked: "Is the compromise still standing, now that I found the loan document?"

"Like other transactions, a compromise based on error is null and void, even if a kinyan was made," answered Rabbi Dayan. "Shulchan Aruch gives the example of someone who was mistakenly told by beis din that he has to swear, and he compromised to avoid the oath" (C.M. 25:5; Gittin 14a).

"Similarly, if the plaintiff was forced to

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A SHARED CAR

A couple needed a ride from the airport and called a car service. Another woman asked whether they would be willing to share the ride. As they approached their destination they were uncertain how to divide the fare.

Q: Is the fare divided into thirds since three people had a ride, or perhaps it should be divided into two parts, since the couple counts as one since they intended to share a fare in any case, and the other woman is joining the couple, rather than two independent people?

A: The determining factor for these matters is the intent of the people involved. However, their intent is not always clear. We will present the relevant principles and some circumstances where their intent is evident.

There are many discussions in the Poskim regarding the correct way for groups, e.g., citizens of a town or residents of a courtyard, to divide expenses. Sometimes the expense is divided by income and wealthier people pay a greater share. For example, when paying for a wall around a city, wealthy people contribute more since they derive greater benefit from the protection since they have more possessions. Similarly, those who reside near the wall are at greater risk than others. In these examples, the amount each person pays is determined by his circumstance (C.M. 163:3).

Other times, expenses are divided equally between all partners. For example, when a caravan hires a guard to protect them from wild animals, they all contribute equally, since each person requires the same protection from wild animals (C.M. 272:15). In some instances the expense may be divided in two with one half divided equally and the second half divided by wealth. For example, if a caravan hires someone to protect them from animals and thieves, the cost is divided

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compromise because he had no available proof," added Rabbi Dayan, "and he later found witnesses or a document, or the defendant admitted the full amount, the compromise is null and void" (C.M. 12:14-15; Nesivos 205:9; Aruch Hashulchan 12:12).

"What is this based on?" asked Mr. Shuker.

"The Rashba (Responsa II:278) addresses such a case," explained Rabbi Dayan. "A person was entrusted with money to invest without proof and persistently denied having received the money. He agreed to pay partially if the plaintiff would forgo any further obligation in court and toward Hashem. The plaintiff was forced to agree in order to recoup part of his money. Rashba was asked whether the defendant was now morally exempt.

"Rashba rules that he was not exempt, since the plaintiff was forced to accept the agreement, which was void," continued Rabbi Dayan. "Furthermore, the compromise was in error, since the plaintiff thought that he did not have evidence, whereas Hashem knows that he did not forgo with a full heart.

"Even if the compromise document states that he forgoes 'without force and without error,' it is standard text and meaningless, unless the plaintiff explicitly acknowledges, 'I know that you owe more and am exempting you'" (Pischei Teshuvah 12:21).

"Thus, the compromise here was in error and is void," concluded Rabbi Dayan. "I should point out, though, that some of the binding arbitration forms filled out nowadays when adjudicating in beis din grant the beis din discretion whether to amend the ruling, depending on the circumstances and nature of the error."

MONEY MATTERS

PARTNERSHIP # 27

Jointly Owned Hazard

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

Q: I own a bike jointly with my roommate. The bike was lying on the sidewalk and someone tripped over it and was injured. Who is responsible?

A: A stationary hazard, such as this bike, is included in the damage category of bor (pit). Clearly, if one roommate used the bike and left it lying on the sidewalk, he created the hazard and is solely liable, even if the other roommate saw it lying there afterward (C.M. 410:25).

However, if the bike was left standing steadily in its place and fell over, or was knocked over by a passerby, whichever partner knew about it and neglected to take care of the hazard is liable.

Thus, if neither roommate knew about it, neither is liable until the hazard comes to his attention (C.M. 410:22, 26). If one roommate knew about it, he alone is liable. If both knew about the hazard and ignored it, both are liable (Pischei Choshen, Nezikin 7:19-20[53]).

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using the above formula (Sma 272:27).

In some situations there is a debate how the expense is divided. One example is when the gentile government outlawed shechitah and there were expenses involved to rescind the decree. Some Poskim maintain that the intent of the government was to extort money and thus the expense is divided according to income (Rema citing Rosh 163:3). Others contend that since it affects everyone, each person must contribute the same amount (Rema ibid. citing Rashba). Rema rules that each circumstance must be considered independently by the local beis din (see Sma 18).

In your case, since each person has the same benefit, a ride home, it seems that the expense should be divided equally by the three passengers. On the other hand, it would seem that since each group, the couple and the woman, intended to order their own car service, when they realized that they were traveling to the same place and decided to share the ride to save on the fare, it is logical that each group will pay half the expense rather than divide the fare by thirds.

When a group of girls orders a car service to take them from camp to their parents' bungalow colony, it is understood that each person is going to pay an equal share of the expense, even if two sisters are traveling together. The same applies when taking a car instead of public transportation where everyone was ready to pay their own fare.

Some contend that whenever two or more people pay as one, e.g., a couple, or a parent with children, they count as one rather than per head. As mentioned, each circumstance must be considered independently, and when there is no clear assumption of intent, the parties should either make an agreement up front or they will have to negotiate a compromise after the fact.

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