

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #138 / PARSHAS VAYECHI  
FRIDAY, DECEMBER 28, 2012  
15 TEVES 5773

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Loose Change

Yosef, Gad, and Benji headed down to the dining hall in their high school. As they walked along the corridor, they noticed that a new vending machine had been installed. "I wonder who the machine belongs to," mused Yosef. "Do you think it belongs to the school?"

"I doubt it," said Gad. "Look, it says here: 'Operated by Tuv Taam, Inc.' Let's return after lunch and get a snack for dessert."

After lunch, the three boys returned to the vending machine. "I'm going to get a large chocolate bar," declared Yosef. "We can all share it."

Yosef inserted two one-dollar coins into the machine and made his selection. The chocolate bar fell to the bottom, and he heard two quarters drop into the change compartment with a "Clink, clink." He reached in to take out his two quarters and was surprised

to find two additional quarters there.

"Wow! There's extra change," he exclaimed.

"That saved me 50 cents!"

"Who says you can keep it?" asked Gad.

"You need to place a sign for hashavas aveidah."

"What's the point of hashavas aveidah?" asked Benji. "There's no identification on the money. But maybe you should give the money back to the vending company rep. I heard he comes on Tuesday mornings to restock the machine."

A bit of a commotion began as other students joined in the discussion.

While they were arguing, Rabbi Dayan walked by. "What's going on?" he asked.

"I found extra change in the vending machine," said Yosef. "We were arguing about what to do with the money."

"It is usually permissible to take the change

for yourself," replied Rabbi Dayan.

"Why can I keep it?" asked Yosef.

"At first glance, this seems to be a case of hashavas aveidah (returning lost property) to the previous customer, who lost his change," explained Rabbi Dayan. "Since we can presume that the customer already became aware that he did not receive his change, and either he likely does not know the exact form of the change or has abandoned hope of retrieving it (yei'ush), the finder is permitted to keep it (see Hashavas Aveidah K'halachah 12:8)."

"Wouldn't the vending operator automatically acquire the lost money that sits in his machine?" asked Benji.

"A person's property can acquire a lost item on his behalf, even without his knowledge," said Rabbi Dayan. "However, this is only if the property is secure and if the owner is

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## Uncertainty

*Submitted by P. N.*

Yaakov died, leaving two sons, Reuven and Shimon. As they were going through their father's documents, they found a promissory note that stated that Shimon borrowed \$50,000 from their father.

The issue in question is whether Shimon is obligated to pay half of that money to Reuven as repayment of the loan. Although Yaakov and Shimon discussed the possibil-

ity of Yaakov forgiving the loan, a few years later, both were uncertain whether the debt was actually forgiven - a fact that Reuven is also aware of.

**Q: Is Shimon obligated to share half of the money with Reuven?**

**A:** Generally, when a claimant is certain that he is owed money and the defendant admits to the debt but is uncertain whether

he paid the debt, the defendant must pay. Since he acknowledges the debt and is uncertain whether he repaid it, his obligation remains intact (C.M. 75:9).

However, if the claimant is also uncertain whether the debt is still in effect, the defendant is exempt, although according to some opinions, the latter has a moral obligation to pay (see Shach, C.M. 75:65, 67; Tumim 19 and Pischei Teshuvah 21).

These rules apply when there is no docu-

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likely to find the item left in his property (C.M. 268:3). In this case, the change compartment is not secure, nor is the operator likely to find the money, since it would probably be taken by someone else first."

"Why did you say 'At first glance'?" asked Gad. "Is this not a typical case of lost money?"

"Actually, although the change was probably dispensed for the previous customer, he never acquired it, since he did not take possession of it," explained Rabbi Dayan (C.M. 203:7). "Therefore, upon further reflection, this case is similar to a borrower who placed the money he is returning before the lender, with his permission, but the lender did not take the money. While the lender has no further claim on the borrower, what is the status of the money?"

"Rabbi Akiva Eiger (C.M. 120:1) writes that the money becomes

hefker, since the borrower relinquished his claim to the money and the lender did not take it. Here, too, the untaken change becomes hefker.

"In truth, the Nesivos (123:1) disagrees with Rabbi Akiva Eiger and maintains that the money does not become hefker but remains owned by the borrower," continued Rabbi Dayan, "but even he would likely agree here. Since the vending operator expects the machine to dispense the change to an unsecure place, where it can be taken by anybody, he effectively renders it hefker or expresses yei'ush (C.M. 260:6, 261:4; Shach 261:3). Thus, it is usually permissible to take the extra change."

*For a more detailed treatment of this topic, contact BHI for the article by Rabbi Tzvi Price, "What to Do When You Find Money in a Vending Machine."*

mentation of the debt, but if the claimant has documentation of his claim, the debt is still in effect. The uncertainty of the parties involved is not enough to diminish the force of the documentation as proof that the debt was not repaid (C.M. 82:2), and the defendant is obligated to pay the debt.

Accordingly, in this case, since there is documentation of the loan and the parties were uncertain whether the loan remained in force, we should assume that the loan remained active and Shimon should be obligated to pay \$25,000 to Reuven for his portion of the loan.

There is, however, a fundamental difference between an uncertainty whether a loan was repaid and an uncertainty whether a loan was forgiven.

When there is an uncertainty whether a loan was repaid, the loan remains in force. It is unreasonable to think that a debtor would repay a debt, leave the documentation for his debt in the possession of his creditor, and risk having to repay the debt a second time (shtarcha b'yadi mai ba'ei). However, if the uncertainty is whether a creditor forgave a debt, that principle does not apply, since it is not unreasonable to consider that the debtor never demanded the creditor to return the documentation after the loan was forgiven.

Accordingly, since your case involves an uncertainty whether the loan was forgiven, Shimon is not obligated to pay Reuven \$25,000 (see Beis Meir cited in Pischei Teshuvah, C.M. 82:10).

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

## Damages #8

**Q: What types of damage can beis din adjudicate nowadays?**

**A:** In principle, adjudicating requires dayanim who maintain an unbroken chain of authority back to Moshe Rabbeinu. Although we lack this nowadays, the Sages authorized adjudicating cases that are considered common and entail a loss of principal (C.M. 1:1). Thus, beis din today can adjudicate a per-

son who damaged another's property (adam hamazik). Injury to another person (chovel) cannot be adjudicated fully, since it is not considered common, nor does it entail loss of principal (ibid. 1:2). They can adjudicate cases of an animal that damaged through eating (shein) or regular walking (regel), but not through unexpected aggressive behavior (keren [ibid. 1:3]). There is a dispute whether beis din can adjudicate cases of fire (eish)

and stationary items that damaged (bor) (see Shach and Pischei Teshuvah 1:2). Even when beis din is not legally authorized to adjudicate, the damaging party has a personal obligation to pay. Beis din can impose a ban on him until he pays, and if the victim grabs payment, he is entitled to keep it. Some say that beis din can even assess the damage to determine how much is owed (C.M. 1:5; Pischei Choshen, Nezikin 10:4).

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