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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

Refurbish or Retract?

Mr. Bloom was still using the tefillin from his bar mitzvah, even though he had already turned fifty. His father had invested in good-quality, mehudar tefillin. When Mr. Bloom looked at them recently, though, he noticed that the paint was beginning to chip and wear off, the corners were no longer pointy, the four sections of the shel rosh were separating slightly, and the base of the tefillin was starting to warp.

Mr. Bloom took them to his Rabbi to ask if they were still kosher.

"They are still usable," said his Rabbi, "but you should consider refurbishing them or getting new ones."

"Can they really be refurbished?" asked Mr. Bloom.

"Yes," replied his Rabbi. "A sofer (scribe) who deals with batim can do a full overhaul of the tefillin: sharpening the corners, tight-

ening and straightening the squares, and redoing the paint job."

Mr. Bloom brought the tefillin to his local sofer, Rabbi Stam.

"I can do a full refurbishing for \$200," Rabbi Stam said. "Or, if you prefer, you can buy new batim for about \$350. Think about it."

Mr. Bloom considered the issue. He decided that he would keep his original pair of tefillin and have them refurbished.

"I'd like you to refurbish the tefillin," Mr. Bloom said to Rabbi Stam.

The following day, Mr. Bloom was talking to another sofer. "I can get you high-quality batim for about \$275," the other sofer said. "I think they will last longer than refurbished old ones."

"But I already gave my tefillin to Rabbi Stam to be refurbished," said Mr. Bloom. "Can I change my mind now, after giving them to

him?"

"That I don't know," said the sofer. "You can ask Rabbi Dayan, though. He should be able to answer that question. I'll give you his number."

Mr. Bloom called Rabbi Dayan and asked: "If I gave my tefillin to Rabbi Stam to be refurbished, may I retract my decision and cancel the job? Does it make a difference whether he started working or not?"

"There are many rules about an employer and worker, when one of them wants to pull out of the agreement," said Rabbi Dayan. "There is also a difference between a salaried employee, called a po'el, and one who gets paid for the job, called a kaban or uman (C.M.333:1 ff.)."

"What would our case be considered?" asked Mr. Bloom.

"Since you agreed to pay Rabbi Stam a

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Court Costs

Submitted by G. B,

I have a financial claim against a client. In bringing him to a din Torah, I anticipate I will incur expenses.

Q: If I win the judgment, can the defendant be compelled to reimburse me for those costs so that I should be able to recover all the money owed to me? Also, if it is necessary to go to a secular court

to enforce beis din's judgment, can I collect my court costs from the defendant?

A: Generally, a plaintiff cannot demand reimbursement for the expenses involved in bringing a din Torah (C.M. 14:5). Since the defendant believes that he does not owe any money, he has the right to refuse to pay until beis din rules that he is obligated to do so. However, if the defendant knows that he owes the money and lies to avoid pay-

ing his debt, or if he employs stalling tactics to see if he can wear down the plaintiff, he is morally obligated to cover the plaintiff's expenses.

(See Yeshuos Yisrael 14:4, whether beis din can force him to pay those expenses as well.)

If a defendant refuses to comply with beis din's decision, the plaintiff can ask permission from beis din to bring the matter to secular court for reinforcement. Gener-

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flat fee of \$200 for the job," answered Rabbi Dayan, "he is considered a kaban."

"So what is the rule of a kaban?" asked Mr. Bloom.

"There is a dispute whether a kinyan with a kaban obligates him to do the job, even if he is willing to bear the monetary consequences of a change of mind," explained Rabbi Dayan. "The Shach (333:2,4) rules that it does, although the SM"A (333:16) maintains otherwise (see Rabi Akiva Eiger 333:1)."

"Where is there a kinyan here, though?" asked Mr. Bloom.

"The Ritva (B.M. 76b) writes that if the worker took the item that he is to work on, that constitutes a kinyan, like any other kinyan meshichah, so that the owner cannot cancel the job," replied Rabbi Dayan. "The Mordechai, however, indicates that the owner can still change his mind, with subsequent mone-

tary consequences if the worker has already begun, or if he gave up other opportunities on account of this job (see Machaneh Ephraim, Hil. Sechirus Po'alim #6; Pischei Choshen, Sechirus 7:2, 13:2)."

"How do we rule?" asked Mr. Bloom.

"The Ritva's position is generally not accepted," said Rabbi Dayan. "So long as Rabbi Stam hasn't started working yet, the owner has the legal option to retract, although it would often be morally improper (mechusar amanah). (See Chazon Ish, B.K. 23:26; P.C., Sechirus 7:[8].) However, if you pre-paid Rabbi Stam, this creates a greater commitment (Nesivos 333:1). Rabbi Stam would be entitled to withhold the entire amount that you paid him and insist that he be allowed to complete the job, also on account of the Ritva's position."

ally, as long as beis din followed standard arbitration guidelines, the courts will affirm its ruling, but most often one needs to hire a lawyer for this. If the plaintiff received permission from beis din to go to court for enforcement of its decision, the defendant must reimburse the plaintiff for those expenses. Although those expenses are an indirect consequence of the defendant's refusal to comply with beis din's ruling (grama), nevertheless, the principle of hefker beis din hefker applies, and beis din can obligate the defendant to cover those expenses (C.M. 14:5 and shu"t Rema 108).

It must be noted that it is worthwhile for the arbitration agreement (shtar birurin) to contain a clause that states that if the defendant does not comply with beis din's decision and the plaintiff has to bring the matter to court, the defendant will be responsible to cover the expenses involved.

In the event that this clause is not included, the courts might not obligate the defendant to cover those expenses. Therefore, a plaintiff who is concerned that the defendant will not comply with beis din's ruling if he loses the case should insist that the beis din include this clause in the arbitration agreement.

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Damages #22

Q: A neighbor's dog entered my yard. It trod on plants and chewed some rubber toys. Is the owner liable?

A: A person is liable for these two forms of damage done by his animal:

1) Regel refers to damage done by the animal in the course of normal walking, such as stepping on something or knocking it over. It also applies to damage done by items at-

tached to the animal, such as a leash, saddle, or cart (C.M. 390:1). If while walking the animal kicked pebbles that caused damage, there is an oral tradition (halacha l'Moshe mi-Sinai) that the owner pays only half the cost of the damage (390:3).

2) Shen refers to damage that the animal does for its enjoyment, such as eating, rubbing against a fence, or rolling on plants (391:1).

A person is not liable for regel and shen dam-

age occurring in a public domain, but only for damage done to or on a victim's property. If the animal ate in a public domain, the owner needs to pay only the amount of the minimal benefit that his animal is normally fed (390:2-3; 391:7-8).

Beis din is authorized even today to adjudicate cases of regel and shen, since they are common forms of damage that entail loss of capital (C.M. 1:3).

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