

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #154 / PARSHAS EMOR
FRIDAY, APRIL 26, 2013
16 IYAR 5773

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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Fainted!

Alan Rosen had not been feeling well all week.

When he went to shul on Friday night, the heat in the room bothered him. In the middle of Kabbalas Shabbos, he headed out for a short break to get some fresh air.

As he reached the door, Mr. Rosen fainted, collapsing against the door and cracking the glass.

"Hatzolah!" people cried out, and called for an ambulance.

Two doctors, members of the shul, immediately raced over. They checked Mr. Rosen's vital signs and were relieved to find his pulse and breathing steady, although slightly weak, and didn't see any evident injury from his fall.

When Mr. Rosen was stable, they raised him onto a chair and gave him a cup of water to drink. He was still somewhat dazed by

the fall.

Within a few minutes, a Hatzolah ambulance pulled up. After checking his blood pressure, the medics helped Mr. Rosen to his feet and escorted him to the ambulance. Baruch Hashem, the tests in the hospital showed no significant injury, and Mr. Rosen returned home after Shabbos.

Meanwhile, the glass of the door had to be replaced. The glass was a special kind, though, so the bill amounted to a substantial sum.

The treasurer of the shul was not keen on paying for the repair, as the shul was struggling financially. He decided to consult with Rabbi Dayan about it.

"Does the shul have to pay for the repair of the glass door," he asked Rabbi Dayan, "or is it perhaps Mr. Rosen's liability? Although he didn't break the glass intentionally, still,

he was the one who damaged it. Isn't there a rule that adam mu'ad l'olam — a person is always accountable for damage he causes (B.M. 26a)?"

"This issue is the subject of a well-known dispute between Tosafos and the Ramban," replied Rabbi Dayan. "The Gemara (B.K. 27a) obligates a person who is blown off the roof, even by a strong wind, who causes damage when he falls. Nonetheless, Tosafos (B.K. 27b) maintain that a person is not responsible for damage that is beyond his control (oness gamur).

"The Ramban (B.M. 82b), on the other hand, maintains that a person is liable even if blown off the roof by a 'great wind of Elyahu!'" said Rabbi Dayan. "He exempts a person who damages only if the damaged party was negligent or helped bring the damage upon himself."

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A Baffling Raffle

Submitted by T. A.

An institution held a raffle and commissioned people to sell tickets. After the winner was chosen, one of the sellers realized he had not submitted a booklet of tickets sold to twenty people. The institution wants to refund the money to those 20 buyers.

Q: May the institution choose to refund the money, or must they redo the raffle with

all the tickets? What if the buyers agree to let the drawing of the raffle stand?

A: Chavos Yair (61, cited in Pischei Teshuvah, C.M. 175:1) discusses an incident in which twelve people held a raffle for a silver cup. After the winning ticket was drawn, it was discovered that one ticket had not been included. The winner offered a percentage of the winnings to the one whose ticket was left out, but the other group members wanted to redo

the raffle with all of the tickets. The winner of the raffle responded that they had already lost, and the additional ticket would have only decreased their chances of winning.

Chavos Yair rules that when a raffle is drawn incorrectly, it is null and void, and any of the participants has the right to demand it be redrawn. He explains that precedents for raffles are found throughout Tanach and represent a form of Divine providence (hashgacha Elyona). Therefore, when there is a flaw in the

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“What about other Rishonim, such as the Rambam?” asked the treasurer, who was quite learned.

“His opinion is not completely clear,” answered Rabbi Dayan. “The Rambam (Hilchos Chovel U’mazik 6:1) simply cites the Gemara that a person is always liable, even if he damages unintentionally and even if it is oness, without differentiating.

“The Kesef Mishneh notes, however, that later (6:4) the Rambam exempts what he terms makkah biyedei Shamayim (an act of G-d).”

“How do we rule?” asked the treasurer.

“The Mechaber (C.M. 378:1, 3) cites both statements of the Rambam almost verbatim; the Rema (377:1, 2) interjects that a person is not liable for oness

gamur,” said Rabbi Dayan. “The Mechaber, who does not differentiate, seemingly disagrees with the Rema, but he may actually agree, as indicated in the Kesef Mishneh regarding makkah biyedei Shamayim (see Shach 378:1; Gra 378:3).”

“Where does this leave us?” asked the treasurer.

“Our case would be in the category of oness gamur,” answered Rabbi Dayan. “According to the Rema, Mr. Rosen is exempt, and possibly also according to Shulchan Aruch, since this was ‘an act of G-d.’”

“Nonetheless,” concluded Rabbi Dayan, “it would be appropriate for Mr. Rosen to make a donation to the shul in appreciation for having helped him and as thanks to Hashem that he was not injured.”

raffle it no longer expresses Divine providence and has no validity. Based on this, it seems that the institution should have to redraw the raffle with all the tickets. This is true even if the people whose tickets were missing agree to let the raffle stand, since the raffle lacks the necessary hashgacha. For this reason, the ones who lost may also demand that the raffle be redrawn.

Nevertheless, there is a fundamental difference between the raffle discussed by Chavos Yair and your case. In Chavos Yair’s case, all the participants contributed money to purchase the cup; thus they were, in essence, equal partners in the cup and collectively decided that the raffle winner would become the exclusive owner of the cup by the method of a raffle guided by Divine providence. Accordingly, as explained above, if one of the participants was not included,

the raffle is void. In your case, the raffle participants are not partners who agreed that for the validity of the drawing, all ticket holders must participate in the drawing. The institution has obligated itself to give a prize to the one whose ticket is drawn. Thus, if some tickets were not included in the raffle, it does not undermine the validity of the raffle; it merely undermines the agreement between the institution and the individual ticket holders. Also, since people realize that it is likely that errors may occur in a large-scale raffle, it is reasonable that they understand that their ticket may not make it to the raffle and accept that risk. (Some institutions include language to this effect on the ticket.) Therefore, since the raffle was already drawn, the institution should return the monies of the donors who did not participate.

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Damages #24

MONEY MATTERS

Q: If some youngsters incite a dog, who goes and bites another dog or a person, who is liable — the dog’s owner or the youngsters?

A: Both carry an element of liability. The owner is legally liable for his animal’s damage, as any other case of keren (horn) — unusual behavior by the animal not for its pleasure (C.M. 395:1).

We mentioned previously that keren pays only half the damage and that beis din is not authorized to judge keren nowadays, but the victim can grab the amount owed.

Aruch Hashulchan (395:1) suggests that if the youngsters physically beat the dog, the owner does not carry liability, but other authorities do not make this distinction (Pischei Choshen, Nezikin 5:[92]).

If the dog bites one of the youngsters who

incited it, the owner is exempt, since the youngster brought the trouble upon himself. The youngsters — since they did not damage directly, but only caused it by inciting the dog — are considered grama. Therefore, they do not have an enforceable, legal liability but rather a chiyuv b’dinei Shamayim on the full amount. If the dog’s owner paid for the damage, their moral responsibility would be to reimburse him (P.C., ibid.).

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