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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Unmarked

Mr. Spitz was going through the mail. He picked up a large envelope, a wedding invitation.

"Can I soak the stamps off that envelope for my stamp collection?" asked his son, Pinchas.

"Of course," said Mr. Spitz.

The invitation was heavy and had required three stamps. Pinchas noticed that only two stamps were postmarked; the third was not marked at all.

"Look at this," Pinchas said to his father. "This stamp is still good; you can reuse it."

"I don't think the post office allows you to reuse the stamp," replied Mr. Spitz. "Using it would be considered cheating the government."

"How is it cheating them?" argued Pinchas. "If they didn't bother canceling the stamp, that's their problem! Anyway, the post office

has no way of knowing whether it was already used or not."

"Reusing the stamp means that you're not paying for the letter that you will send," explained Mr. Spitz.

"Why not?" asked Pinchas. "As long as you put on a stamp, it's like paying. What if the post office had lost money and you found it and bought a stamp? Would that be considered not paying?"

"I don't know if that's the same," responded Mr. Spitz. "Money that was found has inherent value; the stamp is simply an indication that you paid the postal service for delivering the letter."

"Rabbi Dayan once gave a shiur in our yeshiva," said Pinchas. "He invited us to discuss business halacha issues with him. Would you mind if we asked him?"

"I'd love to," replied Mr. Spitz. "I enjoy read-

ing his *Business Weekly*!"

Mr. Spitz and Pinchas met with Rabbi Dayan. "If a stamp was not postmarked," asked Pinchas, "is it permitted to reuse it?"

"Reusing a stamp that was not postmarked is illegal and even punishable with a prison term," said Rabbi Dayan. "It is also problematic halachically for one of three reasons, which may differ between the U.S. and Israel.

"Since reusing the stamp is illegal, many authorities consider this issue one of dina d'malchusa, the law of the land," explained Rabbi Dayan. "The government is entitled to pass laws relating to taxes and the financial functioning of the government. These laws achieve halachic authority as well and are binding on the Jewish citizens of the country also (see Mishneh Halachos 6:288)."

"How might the U.S. and Israel be differ-

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Paying for the Past

When I was an eleven-year-old in camp, I broke an air conditioning unit. No one knew that I was the one who'd broken it.

Q: I am now past bar mitzvah. Am I obligated to repay the camp?

A: The Gemara (Bava Kama 98b) relates that Rav Ashi burned someone's loan document and Rafram instructed him to repay the lender the amount the document autho-

rized him to collect. Even though destroying a loan document is not considered direct damage, nevertheless, since it immediately prevents the lender from being able to collect his debt, there is an obligation to reimburse him (garmi).

Rashi explains that the incident took place when Rav Ashi was a child, since it is absurd to consider that as an adult he would have destroyed someone's document. Some authorities (Hagahos Ashri, B.K. 8:9) derive

from here that one is obligated to pay for damages he caused as a minor.

Others contend that technically Rav Ashi was exempt from paying for the damages he caused as a minor, since the Mishnah clearly indicates that one cannot collect damages from a child. When Rafram instructed Rav Ashi to pay, he was telling him go beyond the letter of the law — lifnim mishuras hadin (Taz, O.C. 343:2; C.M. 349:3; Mishnah Berurah ibid. 9; cf. Igros Moshe,

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ent?" asked Mr. Spitz. "There is a major dispute between contemporary authorities whether dina d'malchusa applies in Israel," answered Rabbi Dayan. "Some say it applies. Others disagree, because they base dina d'malchusa on the government's consent for you to live in the land, whereas all Jews are rightful partners in Eretz Yisrael and are entitled to live there with or without the government's consent (see Pischei Choshen, Geneivah 1:[4]; Yechaveh Daas 5:63). "On the other hand, when dealing with a Jewish postal service, there may be an additional element of hashavas aveidah (returning lost items)," continued Rabbi Dayan. "The unmarked stamp is like a lost item of the postal service which should be 'returned' by not using it. Some consider the lost stamp abandoned property (yei'ush),

though, which you are not required to return." (See also Shevet Halevi 5:173.) "What is the third issue?" asked Mr. Spitz. "Beyond the issues of dina d'malchusa and hashavas aveidah, some authorities suggest that there may be an element of theft here," replied Rabbi Dayan. "The stamp is not a government tax or a lost item of inherent value, but rather an indication that you paid for the service of delivering the letter. By reusing an unmarked stamp you are deceiving the postal service to deliver the letter and perform a service without paying them. This may be a form of theft, which is prohibited whether to Jew or gentile, private delivery service or governmental." (See C.M. 348:3; Shach 348:3; P.C., Geneivah 1:[1]; Oz Nidberu 6:74.)

C.M. 88:9). Shulchan Aruch (C.M. 424:8) subscribes to this position and rules that a child does not have to pay for damages even after he is an adult (see Gra 424:15). Shevus Yaakov (1:177, cited in Pischei Teshuvah 349:2) suggests that the exemption is limited to where the child did not receive personal benefit from the object that was damaged. However, in the event that the child derived personal benefit, e.g. he ate food that belonged to someone else, he is obligated to pay for that benefit once he becomes an adult. (However, Maharam Shick, Y.D. 375, and Erech Shai disagree with this distinction). Additionally, even when he did not derive personal benefit from the property that was damaged and there is only a moral obligation to pay the owner, one is not obligated to pay the full value of the damaged item. His moral

responsibility is to appease the owner. In other words, he must pay the owner something to secure forgiveness from the owner, and only as an expression of piety (mid-das chassidus) would he repay the owner the full value of the damaged item. Thus, you are exempt from paying. Still, there is a moral obligation to approach the director of the camp and ask for forgiveness. Even though one is not responsible for transgressions committed as a child, nevertheless, transgression is not healthy for the soul and it is appropriate for one to repent upon becoming an adult (Bach, O.C. 343). It is also important to note that parents are not obligated to pay for damages inflicted by their children unless, for example, the camp stipulates to the parents that they will be responsible for damage inflicted by their children.

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Lost and Found #2

Q: When am I required to return a lost item, and when am I not required to do so?

A: The Shulchan Aruch writes that a person is obligated to return a lost item only if eight conditions are met. If any one condition is lacking, you are not obligated to return the item, although in many situations it is still meritorious to do so (C.M. 259:2). The item

has to be found:

1. in a place where there is an obligation to return it (e.g. where the majority of people are Jewish);
2. in a place where it seems lost (i.e. in an insecure place);
3. in a manner that indicates it is lost (i.e. does not seem placed there intentionally);
4. when the item was not willfully abandoned;

5. when it is worth the minimal amount of a prutah;
6. when there is some siman, identifying feature, in the item or place where it was found;
7. when the person who found the item would bother tending to it had it been his own;
8. when it belongs to a Jewish person to whom we are required to return it.

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