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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

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Collecting a Loan

Shlomo decided to go through some papers that had accumulated during the previous months. He came across a memo he had written that Menashe owed him \$100.

"Right, I remember," Shlomo said to himself. "A few months ago Menashe needed \$100 and he still hasn't paid me back. I hope he still remembers the loan." Shlomo called Menashe. "Hello, Menashe, how are you?"

"Fine, thank G-d," replied Menashe. "What's up?"

"I lent you \$100 a few months ago," Shlomo said.

"What are you talking about?" said Menashe. "I never borrowed from you!"

"You don't remember?" Shlomo exclaimed. "You were doing some shopping just before Purim and were short of cash. You needed \$100 and

asked me to lend it to you."

"I don't remember such a thing at all," replied Menashe firmly.

Shlomo hung up. "How am I going to get the money back?" he wondered. "I don't have sufficient proof to win a case in beis din or court, but I have no doubt whatsoever that I lent him the money and he still owes it to me."

Shlomo pondered what to do. He spoke with a friend, who alluded to the possibility of Shlomo taking the loan back on his own.

"What are you suggesting?" asked Shlomo. "Is there some way that I can take the money from him?"

"Perhaps you can sneak into his house, or grab the money from him when no one's watching," said the friend. "After all, you are certain that he owes you."

"But I don't have any proof," objected

Shlomo. "He denies the loan."

"All the more reason for you to take matters into your own hands," said his friend. "You can't get recourse through beis din. Maybe consult with Rabbi Dayan; see what he has to say."

Shlomo called Rabbi Dayan. "I lent someone money, and now the borrower denies the loan," he began. "If the opportunity presents itself, am I allowed to grab money from him?"

"There are some situations in which a person can take the law into his own hands (oseh adam din l'atzmo), especially if he hasn't got proper recourse through beis din," said Rabbi Dayan. "However, there are serious limitations regarding collecting a loan, in contrast to other monetary obligations, such as retrieving a stolen item" (C.M. 4:1).

"Why are the rules for loans more

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Recording a Conversation

I observed a friend secretly hiding a recorder to record someone's private conversation.

Q: Obviously, it is improper to secretly record a conversation, but does doing so violate an actual prohibition? Would it be considered geneivas daas?

A: It is evident from your question that you are translating geneivas daas literally: to

steal someone's thoughts. However, in halachic literature (C.M. 228) it is classically described as the act of misleading and deceiving someone in a manner that will cause this person to mistakenly feel morally indebted, even though he is not actually indebted. Thus secretly recording someone does not violate the prohibition of geneivas daas. Nevertheless we do find authorities who would consider such an

act geneivas daas (see Chikekei Lev 1, Y.D. 49 and Pele Yo'etz, Geneivah).

But there are additional issues to consider. This act may possibly violate the Cherem D'Rabbeinu Gershom (Be'er Hagolah, Y.D. 334), who prohibits reading other people's correspondence. It is debatable whether this ban extends to all manner of communication or whether it is limited to written correspondence. It is obvious

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stringent?" asked Shlomo. "Regarding loans, there is a prohibition against going into the borrower's home and taking collateral," replied Rabbi Dayan. "Lo savo el beiso laavot avoto — Do not go into his house to collect his collateral." Even an agent of beis din may not do so. He must ask the borrower to bring out the collateral or grab something from him outside his house" (C.M. 97:6). "So can I take something from Menashe outside his house?" asked Shlomo. "The Sma (97:7) writes that only an agent of beis din is allowed to," replied Rabbi Dayan. "The lender is not allowed to grab from the borrower even outside his house!" "Then is there nothing to do?" asked Shlomo. "Does anyone allow it?" "There are two questionable leniencies," answered Rabbi Dayan. "Shaar Mishpat maintains that the lender is prohibited from grabbing only when he has recourse through

beis din, but if the borrower denies the loan and the lender has no recourse through beis din, he may grab. However, the Ketzos and others reject this distinction" (Pischei Teshuvah, C.M. 4:1). "What is the second possible leniency?" asked Shlomo. "Rabbeinu Tam maintains that taking an object as collateral is not allowed, but taking it in lieu of payment is allowed," replied Rabbi Dayan. "The Shulchan Aruch (C.M. 97:15) cites this opinion. However, the Ketzos Hachoshen questions this, as well. Furthermore, the Shulchan Aruch mentions Rabbeinu Tam's leniency only regarding an agent of beis din, but seemingly does not permit the lender to grab items even in lieu of payment. Thus, this leniency is also problematic. Nonetheless, one authority (Even Ha'ezel, Nizkei Mammon 8:13) permits the lender to grab cash as payment, but not other items that require evaluation" (see Mishpetei Tzedek, Hil. Dayanim 4:1).

that, at the very least, it constitutes a violation of v'ahavta l'rei'acha kamocha (see Chikekei Lev ibid., which suggests this as the underlying rationale behind Rabbeinu Gershom's cherem).

Additionally, some write that it is prohibited to reveal a friend's private concerns, which is an extension of the prohibition of tale-bearing (rechilus). If one may not tell tales to others, one may certainly not seek tales for himself (Halachos Ketanos 1:6).

Some contend that secretly recording conversations is a form of hezek re'iyah — the prohibition against causing damage by gazing at another. It is broadly defined as the prohibition against violating another person's privacy, even if he is aware of it, as he might be too embarrassed to

protest.

Chazal relate that when Bilam observed that placement of the tents of the Jews was done in a way that assured each one's privacy, he commented that that made them worthy to receive the Divine presence (see Shulchan Aruch Harav, Nizkei Mammon 11:13). The obvious extension of this principle is that secretly recording a conversation is a violation of privacy and represents a lack of tznius.

Nevertheless, for purposes of chinuch it may be permitted to secretly record a conversation when necessary (see Rashba 1:557), for example, to afford one the opportunity to prevent someone from sinning or to be able to recover money that is owed to him (Pele Yo'etz).

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Completing the Transaction # 9

MONEY MATTERS

Q: A company distributed complimentary samples of its product. I did not need that product, so I tossed the sample onto my neighbor's porch or walkway. If I later decide that I want the product, can I take it back before my neighbor comes home?

A: The Gemara (B.M. 11a) teaches that a person's property acquires for him items that are in it, even without his awareness.

This is known as kinyan chatzer. However, this applies only if the property is secure, or if the person is standing at his property (C.M. 200:1).

Thus, it depends where you tossed the sample. If you tossed it onto the neighbor's porch, it immediately becomes his, and you cannot take it back. [Of course, this is only if the neighbor ultimately expresses interest in

receiving the product.] However, if you tossed the product sample onto his open lawn or walkway and he is not present, his property does not acquire the sample, and you can still take it back.

A person's utensils can also "acquire," when resting in a place where he is permitted to leave them. Thus, placing something in a person's knapsack or car also acquires it for him (C.M. 200:3)

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