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Restoring the Primacy of Choshen Mishpat

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BY R' SHLOME WERDIGER IN MEMORY
OF HIS FATHER
הרה"ח ר' נחמיה
ב"ר שלמה אלימלך ז"ל

STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Oh, Nuts!

At 12:00 a.m. someone placed a box of nougat chocolate bars in the beis medrash for the talmidim who had stayed late to learn. Moshe was on a diet but went to get one for his chavrusa, David, who had gone back to his dorm room for a few minutes to get a sefer.

While he was standing there, Moshe got into a discussion with one of his friends. He put the chocolate bar down on the table next to the box. Meanwhile, Aryeh came by. He looked in the box, but it was already empty. He saw the bar lying next to the box and took it.

Moshe noticed him taking it. "I'm sorry," he said to Aryeh. "I already took that bar for my chavrusa, David."

Aryeh looked at him skeptically. "I'm not sure it was fair to take for him when there weren't enough for the people who are

here now!" he said. He put the chocolate bar down.

"David is also entitled, since he is also learning," Moshe replied. "He'll be back in a few minutes. Anyway, I didn't take one for myself, so I don't see any problem taking for him."

David returned five minutes later. "They put out nougat chocolate bars for the bachurim while you were gone," Moshe said to him. "I took one for you."

"Oh, thank you," said David, "but I don't want it. I'm allergic to nuts."

Zvi, who was sitting nearby, overheard them. "I didn't get one," he said. "Can I have it?"

"Sure," said David. He reached over and passed the chocolate bar to Zvi.

"Actually, Aryeh had wanted that bar,"

Moshe commented. "He even picked it up, but I told him that I had taken it for you. Maybe he should get it?"

"Oh, I didn't realize," said David. "But I already gave it to Zvi. It's his now."

"I'm not sure," said Moshe. "If you don't want it, then maybe Aryeh has first rights."

"Rabbi Dayan is still learning here," said David. "Let's ask him!"

Moshe, David, Aryeh and Zvi went over to Rabbi Dayan. Moshe related the story to Rabbi Dayan and asked, "Who does the chocolate bar belong to — Aryeh or Zvi?"

"In your case, the chocolate bar belongs to Aryeh," Rabbi Dayan ruled. "Since David did not want the chocolate, it remained available for anyone to take and Aryeh's acquisition is valid retroactively."

"Can you explain more?" asked Aryeh.

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Communal Funds

I am the administrator of a communal charity organization. We recently fired one of our employees, who is claiming that he deserves a severance package. I don't know whether that is true. I hope to resolve the matter without having to go to beis din but have the following question:

Q: First, are we halachically obligated to provide severance pay? If there is no obligation to pay but employers customarily grant this lifnim mishuras hadin — beyond what is halachically

required — do we, as a community organization, have the right to give away communal funds when it is not halachically mandated?

A: Severance pay is not an employee's right unless there is a well-established custom to that effect and it forms a self-understood provision of employment. Even in places where there is no binding custom, severance pay is considered an act of lifnim mishuras hadin. Some trace the practice to Sefer Hachinuch (482),

which states that this is an extension of the Biblical mitzvah to give an eved Ivri gifts when he returns home as an expression of appreciation for his efforts (Even Shoham 121; Minchas Yitzchak 6:167).

Therefore our focus will be whether you are allowed to go beyond the letter of the law, since you are responsible for community money. Interestingly, the Poskim rule that a communal institution is, in fact, obligated to do so, as we will explain.

The Gemara (B.M. 83a) relates that Rabba

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"When the box of chocolate was put out to take from," explained Rabbi Dayan, "Moshe was able to acquire a bar on behalf of David based on the principle of zachin l'adam shelo b'fanav — acquiring on behalf of someone even when he is not present. Thus, it would be David's if he were interested in getting the chocolate" (C.M. and Shach 269:1).

"However, you cannot force someone to accept something that he does not want," continued Rabbi Dayan. "If the recipient expresses disinterest in the item and says that he does not want it, the acquisition on his behalf is null and void retroactively. Thus, the chocolate bar was available when Aryeh initially picked it up, so he acquired it" (C.M. 243:1).

"What if Aryeh hadn't picked it up?" asked Moshe. "Let's say

he had just asked me about it while it was sitting on the table."

"Then it would remain hefker and be available to whoever takes it now," replied Rabbi Dayan. "It would then belong to Zvi, who has it now."

"What about a slightly different case," said Moshe. "Let's say that the box was not left out as hefker, but someone had given me the chocolate bar for David and he didn't want it. Could I then keep it for myself?"

"In that case, when you accepted a gift from someone on behalf of David and he didn't want it, you should return it to the giver," replied Rabbi Dayan. "He did not make it available to everyone, only to the intended recipient. If the recipient doesn't want it, it remains the property of the giver" (C.M. 245:10; Pischei Choshen, Kinyanim 15:27).

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bar bar Chana hired porters who, as a result of negligence, broke his barrels of wine. Rav, nevertheless, obligated Rabba to pay them their wages, and when he inquired whether he was halachically obligated to do so, Rav confirmed that he was. Rashi explains that the obligation to pay them after their negligence was only lifnim mishuras hadin, but nonetheless Rav answered Rabba that he was indeed obligated to pay. This establishes a principle that an important person must behave lifnim mishuras hadin, although there is debate how this is enforced (Bach, C.M. 12:4; Pischei Teshuvah ibid:6; and Heishiv Moshe, Y.D. 48). Poskim demonstrate that a community has the same status as an important person and a wealthy person, both of whom are obligated to follow the path that is lifnim mishuras hadin. Even if the coffers of the community-supported organization are strained, they have the ability to raise the

funds and are not considered poor (Minchas Yitzchak 5:121). Your concern that you do not have the right to go beyond what is mandated since you oversee communal funds is unnecessary because even in a circumstance in which the community is technically exempt, they are obligated to go lifnim mishuras hadin (Teshuvos Ramatz, O.C., 16, cited By Machazah Avraham, C.M. 1).

Furthermore, halachically, as the administrator of the organization, you do not have to consult about the matter with your donors because the disbursement of those donations is subject to the discretion of the empowered administrators (Teshuvos Avnei Shoham, op. cit.).

Obviously, while you must act lifnim mishuras hadin, the extent to which you must satisfy that obligation should be carefully considered because you are dealing with community funds (Meishiv B'Halachah 24).

Completing the Transaction # 10

Q: I agreed to arbitration in beis din but am now convinced that the halachah is in my favor. Before the arbitration is finalized, can I refuse compromise and demand that the beis din rule based on the absolute law?

A: In theory, a person can withdraw his agreement to arbitration until the verdict is given, but it is not possible in practice nowadays. This is because at the

beginning of the arbitration process, the beis din makes a kinyan sudar, otherwise known as chalipin (symbolic exchange), with each of the parties. The secretary of the beis din asks each party, in turn, to grasp his handkerchief or take his pen as a symbolic exchange. This act creates a binding commitment to either pay or forgo the amount determined by beis din (C.M. 12:7). Thus, the agreement to arbitration is finalized through the kinyan

sudar.

It is possible to use kinyan sudar as a convenient method to finalize almost any kind of transaction or commitment (C.M. 195:1). It is commonly done at weddings, to obligate the chassan in the commitments of the kesubah, and when selling chametz, to strengthen the agency of the Rabbi (Rambam, Hil. Mechirah 5:12).

MONEY MATTERS

DID YOU KNOW?

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