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Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

STOLEN SILVER

I'd like to share with you a case that occurred a few weeks ago, during Chanukah," Rabbi Dayan said to his kollel students.

Yehuda and Dan shared a dwelling unit. Shortly before Chanukah, Dan began polishing his silver menorah. "That's a beautiful menorah," Yehuda said. "It will look really nice in the window."

"Actually, when I learned in Israel I got into the practice of lighting outside," Dan replied. "I have a special box to protect the menorah."

"But what about thieves?" asked Yehuda.

"Our neighborhood is relatively safe," replied Dan, "so for the hour or so I leave the menorah outside it should be fine."

One evening, Yehuda returned from work just as Dan's menorah was going out. "Can I use your menorah tonight?" Yehuda asked.

"Sure," said Dan. "I'll be leaving soon, though, so please bring it back inside when you're finished."

Yehuda replaced the oil and wicks and lit the menorah. He sang "Maoz Tzur" with Dan. Fifteen minutes later, as Dan left, he saw that the menorah was missing!

"Guess what?" Dan shouted. "The menorah was just stolen!"

"My tough luck!" exclaimed Yehuda. "I'll have to pay for it."

"I'm not sure," replied Dan. "I lent the menorah to you with the intention that it would be lit outside, and it was stolen while you were using it."

"What do you think?" Rabbi Dayan asked his students. "Is Yehuda liable for the menorah?"

"This seems a simple case of theft," noted one student. "A borrower is liable for theft, and even for oness (uncontrollable circumstances)!" (See C.M. 340:1.)

"On the other hand," objected another, "a borrower is exempt for meisah machmas melachah, where the item was ruined through normal usage of the item. Does the exemption of meisah machmas melachah apply also to theft during normal usage?"

"Perach Mateh Aharon, by Rabbi Aharon Perachia, addresses a similar case when jewelry was lost or stolen while being worn," answered Rabbi Dayan. "He links this question to a dispute cited in the Tur (C.M. 340), regarding a borrowed animal that was attacked while the borrower was traveling.

"The Ramah maintains that this is considered meisah machmas melachah, since the attack occurred on account of the travel," explained Rabbi Dayan. "The Rosh, however, disagrees, since the loss of the animal was not due to actual work

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Chavrusa learning **9:15 - 10:15 PM**
Agudas Yisroel Birchas Yaakov
262 Terhune Ave, Passaic, NJ.
followed by a shiur on practical Halacha L'maaseh
10:15- 10:45
co-chabura heads:
Rabbi Avrum Guttman
Rabbi Mendy Weinberger

BHI HOTLINE

MONEY VS. VALUABLES

Q: If one pledges money to a shul, can he pay with objects rather than money, such as sefarim, chairs, etc? The shul would prefer money, but it is easier for the member to give objects.

A: Halachah differentiates between paying for damages, paying wages and paying back a loan. Although one may reimburse for damages with items of value (shavah kesef) rather than cash (C.M. 419:1), an employer must give his employee money, even if that means he must sell his property in order to generate the money (C.M. 336:2).

Borrowers are obligated to repay a loan with money and may not give land or other items in lieu of money (C.M. 101:1). The rationale is that the lender gave him money and thus he must repay the loan in a similar manner [authorities debate whether the obligation to repay a loan with money is min haTorah (Nesivos 107:4; Divrei Mishpat 24:1) or Rabbinic (Ketzos 101:5, 107:3; Nachal Yitzchak 101)].

However, in the event that a borrower, in contrast to an employer, does not have money to repay the loan, a lender cannot force the borrower to sell his possessions to generate funds to repay the loan. The loan was issued with the understanding that that the borrower may not have money to repay the loan and the lender realized that he may have to accept repayment with items of value rather than money (Sema 101:1).

The above is true regarding loans, and Poskim debate whether the same is true for debts generated from the purchase of merchandise on credit. Some authorities contend that such debts are no different from loans, whereas others assert that debts generated from purchases are treated more stringently.

STORY LINE

usage, like breaking a leg would be. The animal could have been attacked even when not working, so this is an extraneous oness, for which the borrower is liable."

"What does the Shulchan Aruch rule?" asked the students.

"The Beis Yosef defends the Ramah, stating that wild animals and bandits are uncommon in the city, whereas the roads are dangerous, so that the attack is due to the travel," answered Rabbi Dayan. "Accordingly, he rules in the Shulchan Aruch that the borrower is exempt. However, the Rema cites the opinion of the Rosh that the borrower is liable; the Shach (340:5) concurs with this opinion."

"Perhaps there's a difference between that case, where the animal was attacked en route, and our case of theft?" the students asked.

"Indeed, Perach Mateh Aharon suggests that even the Ramah might exempt [the borrower] only if an oness occurred through the usage, but not theft, but he concedes that there is no source for this distinction," replied Rabbi Dayan. "However, the Nesivos (340:5) rules that if the animal was stolen during the night on the journey even the Shulchan Aruch would hold the borrower liable, since at night theft could occur just as easily in the city. Nonetheless, this might not apply in our case, since the menorah was lent with the intention of being used outside where there is increased risk of theft.

"Thus," concluded Rabbi Dayan, "Yehuda cannot be held liable for the menorah, on account of the lenient opinion of the Ramah and Shulchan Aruch. However, it would be proper to partially compensate Dan, in deference to the opinion of the Rosh, Rema, Shach and Nesivos."

MONEY MATTERS

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Q: Must I cite the source of divrei Torah?

A: The Mishnah (Avos 6:6) emphasizes the significance of citing sources: "Whoever repeats something in the name of the one who said it brings redemption to the world." Conversely, the Midrash (Tanchuma Bamidbar #22) states that one who does not cite a source is included in the verse "Do not steal from a poor person" (Mishlei 22:22).

The Machaneh Chaim (vol. II, C.M. 49) rules that a sofer who published the rulings of other Rabbanim under his own name is "a thief," for stealing the Torah knowledge of the originator. [This indicates that he recognizes ownership of intellectual property.] Others disagree that theft applies, but include this in geneivas daas or midvar sheker tirchak.

The Gemara (Nazir 56b) indicates that you should mention both the originator of the idea and the immediate source who told you, but you do not need to mention the intermediate chain of transmission. However, the Raavad writes (based on Avodah Zarah 16b) that the practice is to cite only the original source. Certainly, if you look up the source in the original sefer, there is no need to mention the secondary source that referred you there (see Emek Hamishpat, Zechuyos Yotzrim, intro. 31:1-7; ch. 2:5, 39:2-4).

BHI HOTLINE

Shulchan Aruch maintains that one who sells merchandise on credit need not accept property in lieu of money, even if the customer does not have the necessary funds to repay his debt (C.M. 101:6), because it is self-evident that he sold his possession with the understanding that he would be paid money, so it is as if it was stipulated. If it turns out that the customer does not have available funds it is his obligation to generate the necessary funds, since the merchant never intended to perform chessed, in contradistinction to a lender who had such an intent.

Others argue that merchants are no different from lenders and in both cases, if the debtor does not have funds readily available, he may use objects to repay his debt (Tumim). The only exception would be if the lender or merchant stipulated that the debt must be paid with money.

One who pledges money to receive an aliyah is essentially buying that aliyah. Thus, according to all opinions, one who has money available may not give items of value in lieu of money. But for one who pledges money as part of a Mi shebeirach after receiving an aliyah, or makes a general pledge to a beis haknesses, the above principles do not apply.

It would seem that the applicable principle in this case is the general halachah (Y.D. 217:1) that a person's vow is interpreted in accordance with the common understanding of his words. Consequently, when making a Mi shebeirach or pledging an amount to tzedakah it is commonly understood, unless otherwise specified, that he will give money rather than articles of value to fulfill that pledge. Therefore, if there is no definite understanding otherwise, one should pay with money.

For questions on monetary matters,
Please contact our confidential hotline at 877.845.8455
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