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Restoring the Primacy of Choshen Mishpat

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STORY LINE

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Four for a Hundred

In commemoration of 19 Kislev - the anniversary of the release of the Baal HaTanya, the founder of Chabad, from prison in Russia 215 years ago - a sale of chassidic sefarim took place in Yerushalayim. Sefarim and discs of chassidic music were sold at a flat rate of four for NIS100, but you had to buy in blocs of four.

Menachem was interested in purchasing two discs. "Do you know anyone going to the sefarim sale?" he asked his friend Mendel.

"I'm going," replied Mendel. "Do you want me to buy something?"

"I'd like two discs," said Menachem. He gave Mendel NIS50, and Mendel agreed to get two extra books and add another NIS50 to make up Menachem's bloc.

At the sale, Mendel chose ten sefarim: eight for his own NIS200, and two more to complete Menachem's bloc, totaling NIS

250. He then got the discs for Menachem and was pleased to see that the two discs counted only as one sefer.

"Great!" Mendel said. "I can get an additional free sefer for myself." He added an eleventh sefer to his cart.

When Mendel returned, he gave the discs to Menachem. "Thank you," said Menachem. "What sefarim did you buy?"

"I bought a new nine-volume edition of Sfas Emes," replied Mendel, "and two other sefarim."

"Eleven sefarim?" asked Menachem, puzzled. "Your two discs counted as a single sefer," replied Mendel, "so I was able to get another one for myself."

"What do you mean, for yourself?" said Menachem. "You owe me NIS25 change!"

"But we agreed that you would pay 50 for the two discs," said Mendel. "If it was less,

that's my gain!"

"Why?" argued Menachem. "I made a mistake. I didn't know the discs cost only 25."

"I only agreed to add 50," countered Mendel. "I don't know that I would have spent another 75. Anyway, you couldn't have gotten the discs for 25. They sold only in blocks of 100. If not for my other 50, your discs alone would still cost 100!"

"By the same logic, your two sefarim would also have cost 100," retorted Menachem. "They required my discs."

"I wonder what Rabbi Dayan has to say about this," said Mendel. "Let's ask him!"

"You should split the cost of the third sefer," answered Rabbi Dayan when they approached him.

"Why shouldn't I be entitled to the full NIS25 change?" asked Menachem.

"Had it been possible to purchase the discs

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Grocery Bill

My bill at the local grocer is close to \$1,000. I suspect that he did not record some of my payments. Although he does not recall whether I made those payments, he claims that his computer records are very precise.

Q: Must I pay what he claims that I owe?

A: If the question relates to the credibility of the grocer, e.g. whether he sent the merchandise for which he is billing or recorded

all customer payments, the grocer does have the credibility to obligate the customer to pay, without even taking an oath regarding his claim. The customer invests the grocer with the trust to send him a bill without having to prove the veracity of his claim (C.M. 91:7; Nesivos 5, 6 and Tumim 11).

The customer in this case is not claiming that the grocer is intentionally overcharging; his concern is that the grocer erred when he put information into the computer.

Does the customer's claim have merit?

The answer to this question can be derived from the following halacha: When a gift is given with a condition, there is a difference depending on whether the condition is something the recipient must do or whether it is something he must refrain from doing. When the condition obligates the recipient to do something, it is his responsibility to prove that he fulfilled the condition, whereas when the condition is that the recipient will not do

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alone for NIS25, Mendel would have to return the full 25 to you,” explained Rabbi Dayan. “He was simply your agent to purchase the discs, at whatever price they cost. However, Mendel correctly pointed out that the discs alone could not be purchased for 25 without his sefarim. At the same time, the two sefarim that Mendel wanted to buy could also not be purchased for 50 without your discs. Between your money for the discs and his money for two sefarim, you were entitled to a fourth sefer.”

“So why split it?” asked Mendel. “There are two reasons,” replied Rabbi Dayan. “First, in the case of two people who were partners in an endeavor, and the capital of both was necessary to earn profit, the Gemara (Kesubos 93a-b) rules to split the profit equally. Some explain that this applies even if the part-

ners did not have equal shares in the capital, especially if the profit is a single item not fit to divide (C.M. 176:5; Pischei Tes-huvah 176:3; Pischei Choshen, Shutfim 3:17).

“Second, in the case of someone who bought something on behalf of his friend and the storeowner added a bonus, the Gemara (Kesubos 98b) rules that the customer whose money it is and the agent who came to the store should split the bonus (C.M. 183:6).

“Thus, since the extra sefer was due to the purchase of both the discs and the other two sefarim, and since Mendel was the agent to buy the discs, you should split the extra sefer. Mendel should return 12.5 NIS.

“Alternatively,” concluded Rabbi Dayan, “since Menachem was willing to spend 50 anyway, Mendel could have bought him a sefer with the extra money.”

something, the donor must prove that the condition was not fulfilled (C.M. 241:10).

The difference is rooted in who can produce the necessary evidence of the condition’s fulfillment. When the condition is that the recipient should not do something, it is nearly impossible for him to prove that he did not, so the donor must prove that the recipient violated the condition. In contrast, when the condition is for the recipient to do something, he can easily produce evidence to prove condition fulfilled (Ket-zos 8, citing Maharit 1:152).

In your case, since you did not keep records of the payments that you made, there is a presumption that you agree that it is your responsibility to prove that the grocer’s claim is not accurate, for if this were not the case, it would be nearly impossible for a grocer to collect since customers can always claim that the records are inaccurate.

Also, since you don’t recall if you paid the grocer, you are obligated to pay based on the principle that one who does not recall whether he repaid his debt is obligated to pay when the plaintiff makes a definitive claim against him (eini yodea im peraticha) (C.M. 75:9). Although he is only obligated when there is a definite claim that he owes the money (75:18), since the grocer claims that he usually immediately and precisely records all transactions and payments in his computer, his claim qualifies as definite.

However, in this case, even if there was a question whether the customer ever received the merchandise for which he is being charged, he is obligated to pay since, as mentioned, the understanding between the grocer and customer is that the customer has the responsibility to disprove the grocer’s claim (Maharsham 2: Index to 185).

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Lost and Found #22

MONEY MATTERS

Q: My child found a lost item. Is he responsible for hashavas aveidah? Am I responsible? If there is no siman, does the item become his?

A: Chazal instituted that if a child who is supported by his father, even if he is a bar mitzvah, found an item without a siman, his father is entitled to it. The reason is to avoid animosity with the father who is supporting

him. The father can allow the child to keep it, though (C.M.270:2).

Therefore, if the child found something requiring declaration, some say that the father becomes responsible for hashavas aveidah. If he wants to train his son to declare the aveidah, the father should make sure it is done properly (Hashavas Aveidah K’halachah 9:3-4).

If the child is not supported by his father,

an aveidah without a siman belongs to the child, whereas an aveidah with a siman should be declared. If the child is bar mitzvah, he has a full obligation of hashavas aveidah; if under bar mitzvah, he has a chinuch obligation, as with any other mitzvah. However, some say that if the owner subsequently had yei’ush, the young child can keep it (see C.M. 349:3; Pischei Choshen, Aveidah 2:8, 9:26).

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