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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Timely Delivery

The colorful advertisement attracted Mr. Freilich's attention. "Mishloach Manos Express!" it proclaimed. "This year, Purim is on Sunday. Most services won't deliver. We will prepare and deliver your mishloach manos nationwide, on Purim!"

Mr. Freilich's son Mordechai had moved to Chicago five years ago. Each year Mr. Freilich sent mishloach manos through FedEx 24-hour delivery, to ensure that it would arrive on Purim day, but was wondering what to do this year. He contacted the number listed in the ad, and ordered mishloach manos for Mordechai.

Over the weekend, though, a tremendous snowstorm hit Chicago, bringing the city to a standstill. Needless to say, the mishloach manos could not be delivered on Purim.

The day after Purim Mordechai Freilich received the package with a note: "This pack-

age was meant to be delivered on Purim but was delayed due to the storm. Please accept our apologies."

When Mr. Freilich heard that the delivery was a day late, he called Mishloach Manos Express (MME) to complain. "You promised delivery on Purim," Mr. Feilich said. "That was the whole point. I'd like a refund."

"We understand your disappointment," MME replied. "However, you clearly understand that the delay was due to circumstances beyond our control."

"I'm not blaming you," said Mr. Freilich, "but you didn't fulfill the terms of our agreement. You promised delivery on Purim and it didn't happen!"

"We also did not expect this," said MME. "We cannot take responsibility for acts of G-d."

"I would like to ask Rabbi Dayan about

this," said Mr. Freilich. "Is that acceptable?" "We're willing to accept Rabbi Dayan's ruling," said MME. "You can ask him and we will abide by his ruling."

Mr. Freilich contacted Rabbi Dayan. "I arranged for mishloach manos to be delivered on Purim through Mishloach Manos Express," he said. "Due to the storm, they were not able to deliver on Purim. Must they refund my money?"

"The Taz (Y.D. 236:13) writes that if someone ordered timely merchandise, with an agreement that delivery must be by a certain time, and the delivery was delayed — even on account of uncontrollable circumstances — the customer can refuse the order and cancel the agreement," replied Rabbi Dayan. "However, if the time element was not an essential aspect of the order, the customer cannot revoke the sale when

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Working to Pay Off a Debt

Q: I borrowed money and do not have the resources to repay the loan. Am I obligated to find another job to repay the loan?

A: There is a dispute (Tosafos Kesubos 63a) whether a husband must to find employment to satisfy his commitment in the kesubah to support his wife. Some maintain that the kesubah obligates a husband to find employment, if necessary, to financially support his wife (Rema, E.H. 70:3), whereas others maintain that his obligation is limited to pro-

viding support from the income generated by the assets he owns but he is not required to seek employment from others (Gra ibid. 9; Tur, C.M. 99:19).

Regarding other debts: When the debtor did not commit to work to repay his debt, all opinions agree that beis din does not obligate him to find employment to pay his debt (C.M. 97:15). The Torah decrees we are "slaves" only to Hashem and are not obliged to become "slaves" to people, and thus we cannot be forced into employment against

our will (Rosh 78 and Sma 97:29).

Although beis din cannot force a debtor to find employment, later authorities discuss whether a debtor is obligated, on his own, to find employment to repay his debt, since he is obligated to repay his loan. According to Tosafos (B.M. 10a) the distinction between employment and "slavery" is that a slave can be compelled to work, whereas an employee retains the option to quit at any time.

Accordingly, if a debtor is obligated to find employment to repay his debt he would be

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the delivery was delayed because of uncontrollable circumstances.”

“Why is the seller penalized if he could not deliver due to uncontrollable circumstance?” asked Mr. Freilich.

“Oness, an uncontrollable circumstance, exempts a person from punishment or fines, or from an obligation that affects only him,” explained Rabbi Dayan. “However, when there is a mutual agreement, which affects two parties, the second party can claim that he also committed only on the basis of the agreed terms. He should not lose if the terms were not upheld — for any reason! Uncontrollable circumstances can exempt the first person, but cannot obligate the second party. Thus, MME must refund the money” (Mishpat Shalom, C.M. 200:7).

“What if the time element was not stipulated, but clearly understood?” asked Mr. Freilich.

“Presumably, the same would be true,” answered Rabbi

Dayan. “If the delay makes the merchandise unusable, it’s tantamount to damaged merchandise” (See Darchei Misphat 13:14).

“What if the time element wasn’t critical, but mentioned as a stipulation for the order?” asked Mr. Freilich.

“The Taz might not allow cancelling such an order,” replied Rabbi Dayan. “However, the Shach (Nekudos Hakesef, Y.D. 263:3-7; C.M. 21:3) writes that if the delivery arrangement was mentioned as a stipulation, the customer can refuse the shipment if it was not upheld, even due to uncontrollable circumstances. Only if the terms of delivery were not presented as a stipulation for the sale, or if the order was initially placed without stipulation, and the terms of delivery were added later, is a claim of oness valid. His position is accepted by later authorities” (see Nesivos, C.M. 21:3; Pischei Teshuvah 207:2).

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considered a slave. Others (Maharam Rottenberg, cited in Rema, C.M. 333:3) maintain that the distinction between employment and slavery is the duration of the work. Employment, by definition, is for fewer than three years. Once an employment goes beyond three years, it is considered slavery. Therefore if the debtor could earn enough money in fewer than three years he must do so, since it would not categorize him as a slave (Pischei Teshuvah, C.M. 97:5, Ahavas Chessed 1:7; see also Chazon Ish, B.K. 53:28).

Nowadays, it is difficult to adopt a lenient position regarding these matters since in most instances a borrower has valuable possessions that he must sell to generate funds to repay his debts. Moreover, when necessary, beis din will sell a borrower’s property, leaving him with the bare necessities (food for thirty days and clothing for a year — see C.M. 97). Although beis din no longer sells a debtor’s property to generate funds to

repay a debt, a debtor must find employment to avoid having to sell his possessions to repay his debt. Therefore, finding employment would not be considered slavery since the purpose is not to repay his debt, it is to avoid having to sell his possessions.

Additionally, Poskim (S.A., Harav Halvaah 5) write that a borrower should find additional employment to repay his debt to avoid becoming wicked — a rasha — by not paying his debt (Tehillim 37:21). Minimally, it is an expression of appreciation to the lender who benevolently lent him the money.

Another consideration is that some authorities maintain that a debtor who does not plan to repay a loan is considered a thief — gazlan. Since it is clear that the lender would not have lent money had he known that the borrower would not repay the loan, it turns out that he obtained the money by fraud and is thus considered a gazlan (Shu”t Imrei Binah 3).

Lost and Found #34

Q: What should I do with an aveidah item that I found on Shabbos or Yom Tov?

A: : If the aveidah is not muktzeh and was found in a building (or there is an eruv) you should tend to it. You may even announce the aveidah on Shabbos. If there is no siman, you may take the aveidah for yourself (O.C. 306:12; Shemiras Shabbos

K’hilchasah 29:32).

If there is no eruv, you may not carry the item. If there is a questionable eruv, which you generally avoid using but rely on when necessary, you should consider whether you would rely on the eruv had this been your own object (see C.M. 263:1).

If the aveidah is muktzeh, even if only a kli shemelachto l’issur, you cannot pick it

up, but can move it aside with your foot to a safe place and collect it after Shabbos (O.C. 266:13).

On Yom Tov you may pick up any item that is not muktzeh. On Chol Hamoed you are allowed to write and post a sign. The owner may be visiting just for Yom Tov, so it is considered a davar ha’avud (Hashavas Aveidah K’halachah 11:3-4).

MONEY MATTERS

DID YOU KNOW?

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