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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

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PICKING LETTUCE

Menachem was a produce supplier. He wanted to expand his business and become the premier supplier of lettuce for Maror on Pesach.

He contacted a large number of farmers who grew lettuce, some Jewish and some non-Jewish, and entered business contracts with them. The contracts stipulated various kashrus requirements, including those related to bug infestation.

As Pesach approached, Menachem was extremely busy. He traveled around, checking the various farms where the lettuce was grown.

He arrived at a certain farm, owned by a non-Jew. "Look at this lettuce," the farmer said with pride. "Have you ever seen such a fine crop?"

Menachem examined the lettuce, and saw, indeed, that it was high quality. "The heads are truly beautiful," he said. "I'd be happy to use one myself on Pesach."

"If you have time, you can come just before Pesach!" the farmer laughed. "You can even pick a head straight from the ground, fresh for the Seder!"

"I might just take you up on that!" Menachem replied.

A few days later Menachem heard that the farmer was involved in litigation. Upon checking into the matter, he discovered that there was a question about his ownership of the land. A Jew claimed that the land belonged to him, and the farmer had stolen it from him.

"Can I buy the lettuce from this farmer when there is a question about ownership of the land?" he wondered.

He turned to Rabbi Dayan.

"Is there any issue about the lettuce?" Menachem asked. "Does it make a difference who picks it?"

"The Gemara (Sukkos 30a) teaches that a Jew should not cut hadassim from the land of a non-Jew, since the land might be stolen from a Jew," replied Rabbi Dayan. "Stolen land remains in the ownership of its owner even if he despairs of reclaiming it, so that when a Jew cuts the hadassim himself it is considered stealing from the rightful owner, and the hadassim would be disqualified as mitzvah habaah baaveirah. Rather, the non-Jew should cut those hadassim so that they will become detached already in his hands, and then the Jew can acquire the hadassim when he takes possession of them" (O.C. 649:1).

"Would the same apply therefore to lettuce for Maror and wheat for matzah?" asked Menachem.

DID YOU KNOW?

Did you know that signing a service contract that includes a late fee that accrues monthly is a Ribbis violation?

BHI HOTLINE

SEIZE, OR CEASE: THE FOLLOW-UP

In last week's column, you responded to the person whose friend rented a car on his credit card and did not return it at the prearranged time. At the rental agency's suggestion, he returned the car directly to the agency and kept his friend's computer, which was in the car, as a *mashkon* (collateral) to ensure his friend would repay the debt he racked up on the credit card. He asked whether he was permitted to seize it as a *mashkon*, and you responded that he was.

I have two questions on your ruling:

Q1: I've heard that the *Ketzos Hachoshen* states that if something was given to a person as a *pikadon* (for safekeeping), he should not keep that item as a *mashkon*. Shouldn't that *halachah* apply to his seizure of the computer?

A: According to the letter of the law, a person is permitted to seize a *pikadon* as a *mashkon* (*Shulchan Aruch, C.M.* 4:1). You are correct, however, in your assertion that the *Ketzos Hachoshen* warns against this practice. Citing the *Zohar* (vol. 3, 119a), the Ketzos (4:1) writes that we are "in debt" to Hashem because of our misdeeds, yet when we entrust our *neshamos* to Him each night for safekeeping, He returns them to us in the morning and does not keep them as a *mashkon*. The Ketzos writes that a person should do the same in his interactions with other people and return a *pikadon* even if the person who gave it to him owes him money, and he adds a very severe condemnation for someone who fails to do so.

According to the Ketzos, then, even if a person doesn't transgress the prohibition of *"Lo savo el beiso laavot avoto"* by keeping a *mashkon* under such circumstances (as explained last week), it still is incorrect to hold onto the item.

Now, some *poskim* limit this injunction to cases that directly parallel Hashem's interaction with us – namely, cases in which the loan precedes the *pikadon*, just as our debt to Hashem is incurred before we place our *neshamos* into His Hands for safekeeping. If the *pikadon* was placed in the *shomer*'s care before the loan, however, this injunction does not apply (*Pischei Teshuvah* 4:1).

STORY LINE

"Magen Avraham (473:14) cites from Mahari Weil (#193) that Rav Anshel raised this question and remained uncertain," replied Rabbi Dayan. "However, Mahari Weil rejects the analogy since, unlike the hadas that stays in the ground and therefore is like the ground, maror does not stay in the ground."

"Magen Avraham interprets this to mean that therefore the maror is considered detached, even while growing, so that the non-Jew can acquire it, and when the Jew harvests, it is considered a change of hands into his possession," continued Rabbi Dayan. "Magen Avraham rejects this notion, though, since anything attached to the ground is considered like the ground, certainly things rooted in the ground such as maror. He suggests that perhaps Mahari Weil's intention was that the maror was already fully grown and ready to be picked, and he maintains that produce that is ready to be detached is considered detached and possible to be acquired (see C.M. 95:2, 193:1)."

"Then the problem of mitzvah habaah baaveirah would not apply to maror and wheat," noted Menachem.

"Chasam Sofer (O.C. 473; Responsa, O.C. 128) suggests further that since the non-Jew plants the lettuce and wheat yearly, and they grow from his efforts," added Rabbi Dayan, "They are therefore considered his, despite that fact that the land may be stolen, unlike a tree that grows on its own and endures, and may have already been on the ground when the non-Jew stole it (Pischei Choshen, Geneivah 6:16).

"The wheat, in any case, is ground into flour and baked and changes form, so that there is no concern," added Rabbi Dayan.

MONEY MATTERS

(Based on writings of Harav Chaim Kohn, shlita)

WEIGHTS AND MEASURES #8

Mark-Up and Profit Limits

Q: In certain industries, the mark-up can reach 300 percent. Is there any profit limit in *Halachah*?

A: *Chazal* instituted a 1/6 profit margin for basic food items such as wine, oil and flour, bread and meat. This means a 20-percent mark-up, 1/6 profit from the final price. The base cost for calculating the 1/6 profit margin includes the seller's expenses and consideration for his time as a simple worker (*C.M.* 231:20; *Aruch Hashulchan* 231:20; *Shulchan Aruch Harav*, *Hil. Middos* #17).

Nonetheless, in places where *beis din* does not have authority to control the market, and others sell at a higher profit margin, whether non-Jews or Jews who flout the halachic obligation, the individual Jewish seller is not required to limit his profit margin. Furthermore, if the market value rose significantly, one is allowed to sell at the current market price (*Sma* 231:38; *Pischei Choshen, Geneivah* 14:11).

Some write that the mark-up for other food items such as spices, is limited to 100 percent. (*Sma* 231:36).

BHI HOTLINE

In our case, although the credit-card debt preceded the confiscation of the computer, the Ketzos's injunction would not apply, because the *Zohar* is referring only to an item received as a *pikadon*. When a *shomer* receives such an item, he is implicitly agreeing to return it whenever the person who gave it to him asks for it, and when he retains it – even as collateral for an outstanding debt – he is reneging on that implicit agreement.

Since in our case, the computer was not handed over to the credit-card owner for safekeeping, this injunction does not apply.

Q2: You wrote that before returning the car to the rental agency, the credit-card owner was obligated, under the rubric of *hashavas aveidah*, to retrieve his friend's belongings, to avoid the possibility of an unscrupulous employee at the rental agency taking those items and denying having found them.

If the card owner returned the car without retrieving those belongings, and his friend was not able to get them back, would he be liable for the loss?

A. Generally speaking, a person who sees a lost item and does not return it is *not* liable for the loss (*Ramban, Kuntrus Dina D'garmi; Ketzos Hachoshen* 61:21, see *Business Weekly* #449). Nevertheless, in this case, there are several reasons why the cardholder might have been liable had he not removed the computer from the car.

First, once someone takes possession of a lost object, he becomes a *shomer* and is liable for negligence. It is possible that when the cardholder took control of the car with the computer in it, he became a *shomer* of the computer, and handing it over to the rental agency would therefore have been considered negligence (see *C.M.* 348:7; *Shaar Mishpat* 354:1; *Pischei Choshen, Geneivah* p.47).

Second, even if someone doesn't become an actual *shomer* of a lost object, if he takes that object and leaves it in a place where it can easily be damaged, he is considered a *mazik*, as though he had inflicted direct damage to it (*Nesivos* 25:1, 291:7 and 301:2; *Avnei Nezer, C.M.* 12; see, however, *Sma* 291:48 and *Shu"t Imrei Shefer* [Kletzkin] 240).

Finally, a person who hands his friend's possession to someone who will unlawfully keep it is required to pay for it (see *Shulchan Aruch* 388:2).

It would appear, then, that had the cardholder left the computer in the car, rendering it irretrievable, he would be liable for it.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos,
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