



BUSINESS WEEKLY

THE WERDIGER EDITION
Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

Rabbi Meir Orlan
Writer for the Business Halacha Institute

THEFT: UNAWARE

Unfortunately, Jeremy was not a scrupulous fellow. He was involved in various forms of theft, but always tried to evade responsibility.

One day he saw the *gabbai* of his shul, Mr. Prince, leave an envelope with money in his desk. "I left an envelope with money in shul today," Jeremy told his friend, Yossi. "Would you be able to stop off this evening and take it? It's in the *gabbai's* desk."

"No problem," said Yossi. In the evening, he went to the shul and took the envelope from the *gabbai's* desk.

The following day, the *gabbai* summoned Yossi to his office. "Last night someone stole money from the shul," he said. "The surveillance camera shows that you took it."

"Jeremy told me to take it," replied Yossi. "If anyone is liable, he is!"

Mr. Prince called Jeremy in. "I understand that you sent Yossi to steal money," he said. "You are responsible."

"How can you hold me responsible?" argued Jeremy. "I didn't do anything! Yossi didn't have to listen to me. He's responsible for his own actions."

"I had no idea that the money wasn't yours," replied Yossi. "You said that it was."

"You still can't call me a thief," insisted Jeremy. "I didn't do anything."

"Where is the money now?" asked Mr. Prince.

"I was mugged on the way to Jeremy," said Yossi. "The money's gone but I'm not guilty"

"You never got the money?" Mr. Prince asked Jeremy.

"No," said Jeremy. "I refuse to accept blame as a thief!"

"I'd like to discuss this with Rabbi Dayan," said Mr. Prince, "and I would like you both to come with me."

Mr. Prince took the two of them over to Rabbi Dayan.

"Jeremy told Yossi to take money from the shul," said Mr. Prince. "Yossi assumed it was Jeremy's, but it was not. Is Jeremy liable as a thief?"

"The *Gemara (Kiddushin 42b; B.M. 10b)* teaches that there is no agency for sin (*'ein shaliach lidvar aveirah*),"

replied Rabbi Dayan.

"Although a person's agent is like him, and

the agent's actions on

his behalf are legally

binding, this does not

apply to parties for

transgressions. Thus,

when someone sends

an 'agent' to steal or

damage, the sender is

not legally liable; the

thief himself is held

accountable" (Rema,

C.M. 182:1; 348:8).

"Why is that?" asked



BHI HOTLINE

FORGOTTEN SALE

Q: A grocery store owner signed a *mechiras chametz* contract authorizing the Rav of his shul to sell his *chametz* to a non-Jew. After Pesach, the Rav found this contract in his coat pocket, and realized that he had forgotten to sell the *chametz* in this grocery. Is the *chametz* now forbidden, and if it is, is the Rav responsible to pay for it?

A: The first thing we must determine is whether there was in fact no *mechirah* in this case.

Generally, the contract between a Rav who sells *chametz* and the non-Jewish purchaser states that the Rav is selling the *chametz* of all those who appointed him as their agent, even if he lost one of the *mechiras chametz* contracts or forgot to hand it over to the non-Jew.

In all likelihood, then, this grocer's *chametz* was sold.

But let's examine the hypothetical case in which a Rav did not include all the *chametz* of those who appointed him their agent to sell their *chametz*. Would he then be liable for the *chametz* he failed to sell?

Chazal decreed that *chametz* that belonged to a Jew during Pesach is prohibited, as a penalty for having transgressed the prohibitions of *bal yera'eh* and *bal yimatzei*. Although it would seem that this penalty should not apply to someone who kept *chametz* in his possession inadvertently (*shogeg*) or was forced to do so (*ones*), *Chazal* in fact did apply the penalty even to cases like these, out of fear that if they penalized only those who deliberately kept their *chametz*, people would be more lax about keeping *chametz* and more likely to transgress (O.C. 448:2). Therefore, although for the grocer it was *ones*, the *chametz* would be forbidden after Pesach if the Rav did not include it in his sale, and the grocer would have to destroy all of it.

YOU'RE INVITED!

JUSTICE, SERVED STRAIGHT

A CANDID CONVERSATION ABOUT CONTROVERSIAL ISSUES IN BEIS DIN AND COURT PROCESSES

BURNING QUESTIONS DESERVE REFRESHINGLY STRAIGHT ANSWERS.

Get concrete advice from dayanim and lawyers to mitigate the stress that parties in conflict often encounter.

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ANNUAL BRUNCH

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OPEN TO THE COMMUNITY

RECEPTION | 10:00
PROGRAM | 10:30

OPENING REMARKS

Rabbi Moshe Tuvia Liff
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Bais Binjamin

DIN TORAH IN 2019:

STATE OF AFFAIRS

Attainable in 2019

Harav Chaim Kohn
Dean, Business Halacha Institute

FASCINATING ANALYSIS

How the Gears Turn: Comparing
Beis Din and Court
Israel Vider, Esq.
Brooklyn, NY

PANEL DISCUSSION | 11:30

A *tolem* or a *lawyer*? Dina d'Matchava or Choshen Mishpat? Pshara or din?

How do I choose a Beis Din and where do courts come in?

PANELISTS:

HARAV CHAIM KOHN
Dean, Business Halacha
Institute

RABBI ZEV COHN
Rosh Beis Din of Choshen
Mishpat Kollel, Chicago

Israel Vider, Esq.
Brooklyn, NY

SHRAGIE GOLDSCHMIDT, Esq.
Carmelby's International
NY, NY

OPEN QUESTION FORUM

12:00

Resolve conflicts with confidence

Questions may be submitted in advance to info@businesshalachainstitute.org.

DAIRY BUFFET BRUNCH

WILL BE SERVED.

VALET PARKING





STORY LINE

Jeremy.

"The basic rationale is that each person is responsible to fulfill Hashem's commands," explained Rabbi Dayan. "Therefore, the excuse that 'So-and-so sent me to steal or damage' does not exempt the thief, since Hashem — Whose commands are superior — instructed him not to steal" (*Sma* 182:2).

"In this case, though," pointed out Yossi, "I had no idea that the money was not Jeremy's."

"Indeed, according to one opinion in the *Gemara*, if the agent did not have a choice whether or not to obey, the sender is liable, since the rationale does not apply," replied Rabbi Dayan.

"Tosafos applies this also to our case in which the agent was unaware that he was instructed to transgress, since he had no reason not to obey. Nimukei Yosef disagrees, though, and exempts the sender" (*Shach* 348:6).

"Similarly, some maintain that if the agent is known to transgress, the sender is liable, since the rationale does not apply. The sender was aware that the agent would fulfill his instructions and not heed the *mitzvah*," added Rabbi Dayan.

"Others do not differentiate, since the agent remains obligated to heed the commandment and can choose whether to obey. Some also maintain that if the sender threatened the agent to force him to obey, the sender is liable for the theft" (Rema, *C.M.* 388:15; *Shach* 388:67; *Pischei Choshen, Geneivah* 4:24).

"Thus there is a dispute whether Jeremy is liable," concluded Rabbi Dayan. "Nonetheless, he has a moral obligation to repay the theft that he caused, and if the money had reached his hands he would certainly have been liable for it, like any other lost item" (*Pischei Choshen, Geneivah* 4:23[66]).



MONEY MATTERS

(Based on writings of Harav Chaim Kohn, shlita)

WEIGHTS AND MEASURES #11

Undercutting the Market

Q: A new superstore opened in our neighborhood, selling well below the prices of all other stores in the area. Is undercutting the market viewed positively in *halachah*?

A: In general, one who sells below the market rate is viewed positively, since this will lead other sellers to lower prices, and reduce the market rate for consumers (*C.M.* 228:18).

However, some authorities limit this to foodstuffs, which are essential for consumers, whereas for other commodities they maintain that it ruins the market and causes losses to owners of smaller store (*Erech Shai* 156:5; *Aruch Hashulchan* 228:14). Others, though, certainly do not differentiate if the other sellers can compete with these lower prices (*Chochmas Shlomo* 228:18; *Pischei Choshen, Geneivah* 14:14).

Nonetheless, many authorities prohibit predatory pricing, when the goal is to eliminate competition by selling at a price that others cannot compete with and that cannot be economically justified, sometimes even at a loss. This causes great loss to other store owners, and also raises concern that after eliminating competition, prices will be raised again (*Hilchos Mishpat* 228:18).



BHI HOTLINE

Would the Rav have to reimburse the grocer for the resulting financial loss?

Two precedents indicate that there is no obligation to pay:

1. A Jew who steals *chametz* from another Jew and keeps it over Pesach may return it after Pesach and claim that he is returning it as is (*harei shelcha lefanecha*), even though the owner is forbidden to use it (*Shulchan Aruch, Choshen Mishpat* 363:1).

2. If a *shomer* (guardian) did not sell *chametz* he was asked to safeguard, the *Poskim* (*Shach* *ibid.* 7; *Magen Avraham* 443:5; *Pischei Choshen, Pikadon*, note 104) debate whether he is required to compensate the owner for his loss. But even those who would require the *shomer* to pay might exonerate the Rav in our case, because he was not a *shomer* (*Shaar Hatziyun* 443:16).

In both of these cases, a person responsible for someone else's *chametz* not being sold over Pesach is absolved from paying for it, which would seem to indicate that the Rav should similarly be absolved.

Nevertheless, the Rav might have an obligation to pay because this is a case of *garmi* (direct causation), since the grocer was relying on the Rav to sell his *chametz* (see *Shulchan Aruch, C.M.* 306:6, and *Mishpat Hamazik* 17:9).

However, since the *chametz* will generally not become forbidden (as we will explain shortly), the Rav will not be required to pay (*Shulchan Aruch, ibid.* 306:5).

There are several factors that combine to render the grocer's *chametz* permissible for use:

1. Some authorities suggest that *chametz* kept in a case of *ones* becomes prohibited only if the owner also failed to be *mevatel* (nullify) his *chametz*. A person who nullifies his *chametz* has already fulfilled his Torah-level obligation to remove *chametz* from his possession, so he is not subject to the penalty levied on those who own *chametz* on Pesach. Some *Poskim* rule that we can rely on this *heter* in all cases (see *Aruch Hashulchan* 443:3 and *Mekor Chaim* 14), while others apply it only in cases of significant financial loss (*Mishnah Berurah, ibid.* 25; *Bi'ur Halachah, s.v. Afilu*).

2. Some *Poskim* rule that since the circumstances causing the *ones* are so unusual that it would never occur to anyone to prevent such an eventuality, *Chazal* did not levy a fine on the owner for failing to rid himself of the *chametz* (*Beis Meir*, cited in *Mishnah Berurah* 448:9; see *Kovetz Mibeis Levi* 15, p. 85).

In this specific case, since the grocer tried to sell his *chametz*, we have no reason to levy a penalty that was instituted in order to prevent people from failing to eliminate their *chametz* (*Shu"t Shoel Umeishiv, Mahadurah Kama* 2:41, cited in *Shu"t Maharsham* 6:2, and see *Shu"t Chasam Sofer* 133).

As noted above, however, in all likelihood, the *chametz* was sold, and no case needs to be brought against the Rav.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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