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RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

MECHUTANIM

Mr. Kanner and Mr. Levitt were adjudicating in Rabbi Dayan's *beis din*. Rabbi Kagan, whose son had married Mr. Kanner's daughter, often served as one of the two addition *Dayanim* on the panel.

"I respect Rabbi Kagan very much as an outstanding *talmid chacham*," Rabbi Dayan informed Mr. Kanner, "but he is your *mechutan* (in-law) and cannot serve as a *Dayan*. He's too close to you. I will have to select someone else, instead."

The case involved two furniture purchases that Mr. Levitt had made from Mr. Kanner. One purchase was for his own home, and one purchase was for his daughter's.

During the case, Mr. Levitt called upon a number of witnesses, among them his *mechutan* Rabbi Leiner.

Mr. Kanner objected to Rabbi Leiner's testimony. "You told me that my *mechutan* Rabbi Kagan was too close to serve as a *Dayan*," he reasoned. "If a *mechutan* is like a relative, then Mr. Levitt's *mechutan* Rabbi Leiner should not be able to testify, like any other relative."

Despite the objection, Rabbi Dayan allowed Rabbi Leiner to testify. He first testified about the furniture purchase for Mr. Levitt's home.

Rabbi Leiner then began testifying about the furniture that had been purchased for their children, toward which he had committed part of the money. Rabbi Dayan stopped him, though. "You cannot testify about that," he said to Rabbi Leiner.

When the case was over, Mr. Kanner said to Rabbi Dayan: "I accept and respect the way you handled the case, but I must confess that I am puzzled."

"In what way?" asked Rabbi Dayan.

"You first told me that my *mechutan* Rabbi Kagan could not serve as a *Dayan*," replied Mr. Kanner. "Nonetheless you overruled my objection to the testimony of Mr. Levitt's *mechutan* Rabbi Leiner regarding one purchase, but you didn't allow him to testify regarding the second purchase."

Rabbi Dayan smiled.

"Could you please explain," said Mr. Levitt:

"Is a *mechutan* like a relative or not?"

"The *Gemara* (*Sanhedrin* 28b) teaches that *mechutanim* are allowed to testify for each other," replied Rabbi Dayan. "They are not considered

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SLOT SURPRISE

Q: I bought something in a vending machine, and when I reached into the slot on the bottom to remove my purchase, I found an item there that I hadn't paid for.

Am I allowed to take it?

A. Last week, we dealt with *she'eilos* related to money found in the coin return of a vending machine. We determined that if it is due to a malfunction and the machine is owned by a Jew, the mitzvah of *hashavas aveidah* obligates the finder to inform the owner and return the money to him, since the owner is the only one with a valid claim to that money. But if the machine is in working order, and the change was most likely left behind unwittingly by a customer, since the owner generally does not expect to receive change left behind, the person who finds it may take it. An exception would be if the machine is situated in a private space, such as an office or a yeshivah, where people would generally return money found in the machine to the owner.

This week, we turn to related questions regarding items left inside a vending machine. The first step to answering these *she'eilos* is to determine who owns a vended item left in a machine.

According to the Torah, money acquires *metaltelin* (movable objects). Accordingly, as soon as money is inserted into the machine and becomes the owner's property, the item that is vended should belong to the customer.

Chazal were concerned about a situation in which a customer paid for merchandise but did not take delivery of it. If a fire were to break out where the merchandise is stored, the merchant has no incentive to salvage it. To motivate the merchant to salvage the merchandise, *Chazal* instituted that money does not effect a *kinyan*. Rather, either lifting (*hagbahah*) or pulling (*meshichah*) the merchandise, as appropriate for the specific item (*Shulchan Aruch,*

relatives, but rather as entities that complement each other (like a barrel and its cover). Similarly, they can testify together on behalf of others" (*C.M*. 33:6).

"However, a person cannot testify if he has a vested interest in the case. Thus, regarding the furniture that Mr. Levitt purchased for himself, Rabbi Leiner could testify, since it has no relevance to him. However, regarding the purchase for the children he cannot testify, since it has monetary ramifications also for him" (*C.M.* 37:1).

"Nonetheless *mechutanim* are disqualified from judging each other, since they are considered like extremely close friends (*ohev*). Even if one is an officially appointed *Dayan*, the other litigant can refuse to adjudicate before him" (*Rama*, *C.M.* 33:6).

"This is because witnesses are expected merely to relate dry facts, so that even extreme friends are allowed; we don't suspect them to commit perjury and testify falsely. However, judges are required to reason and make judgment calls, and may be swayed subconsciously. Nonetheless if a *mechutan* judged, the ruling is valid, since he is not an actual extreme friend" (*C.M.* and *Sma* 33:1).

"Because they are not relatives, two *mechutanim* can sit on a panel together. Although two judges who have great animosity (*sonei*) cannot sit together, since they might judge to spite each other, but two extreme friends will hear each other and admit to the truth" (*Sma* 33:16).

"Nonetheless," concluded Rabbi Dayan, "Rama (*E.H* 130:1) writes that *mechutanim* preferably should not sign together on a *get*, similar to distant relatives, which we avoid. One should be similarly stringent regarding a *kesubah*. Some write that even *mechutanim* grandparents should not sign together on a get" (*Pischei Choshen*, *Edus* 2:10[18]; *Kesubah K'hilchasa* 8:5).

Verdict: *Mechutanim* are considered like close friends who cannot judge each other but can testify, unless they have a vested interest. However, preferably they should not sign together on a *get* or *kesubah*.

C.M. 198:1), is required to effect a *kinyan*. Accordingly, in the aforementioned circumstance, since the merchant retains ownership of the merchandise, he is motivated to salvage it if a fire breaks out.

It would seem, then, that the item left in the vending machine belongs to the owner of the machine. It would therefore be subject to the dispute between Rabbi Akiva Eiger and the Nesivos cited in last week's issue whether we say that the owner relinquished his ownership, and without a clear resolution, one would have to act stringently and return it (see ibid. 260:7).

One might be able to follow the lenient opinion, however, in combination with several other factors that – depending on the circumstances – might render this item the property of the customer, who was most likely *meya'eish* (despaired) from retrieving it:

1. Some point out that *Chazal* instituted the change regarding money's ability to acquire objects out of concern that a fire would break out on the seller's premises and he would feel no urgent need to put it out. Therefore, if the item is in a neutral territory that belongs to neither the seller nor the buyer, then the money does acquire the object, since there is no obligation for the seller to prevent harm from befalling the merchandise that is not under his control (*Aruch Hashulchan* 198:4).

   According to this reasoning, when buying from a vending machine, the customer acquires the item immediately when it vends, since the seller has no way to protect it from harm.

   Most *poskim* disagree with this approach, however, and say that once *Chazal* instituted this change to the way objects are acquired, we don't differentiate between cases, and the vended item still belongs to the seller (see *Shu"t Rabbi Akiva Eiger* 134; *Nesivos* 198:4; *Hagahos Imrei Baruch* to *Sma* ibid. 9).

2. Some say that nowadays, money does acquire objects under the rule of *situmta*, which means that an act that merchants traditionally use to complete a transaction is recognized as binding in *Halachah* (see *Mishpat Shalom* 201:2; *Shu"t Maharash Engel* 7:111), but others disagree (*Shu"t Imrei Yosher* 2:178).

3. Some say that *Chazal's* change only afforded the customer the right to renege on the deal until he makes an active *kinyan*, but if he does not renege, the merchandise purchased through money belongs to him (see Ramban, *Bava Metzia* 49a; *Shu"t Maharsham* 1:115; *Divrei Geonim*, 63:9 and 14). In our case, however, rather than reneging on the deal, the customer despaired of receiving his merchandise and it therefore remained his. Since he is assumed to have been *meya'eish*, the finder can keep it.

According to the opinions that the vended item belongs to the customer, if a person typically buys only one item at a time in that machine, which means that he simply forgot to take it, he was likely *meya'eish*.

Therefore, when someone finds an item in a vending machine, he may take it, out of a *sefek sefeikah* (double doubt): on the chance that it belongs to the owner of the machine, the owner forgoes his rights to it (according to Rabbi Akiva Eiger), but even if the *halachah* follows the Nesivos in that *safeik*, it might belong to the customer, who was likely *meya'eish* when he realized that he left it in the machine.

If one purchase releases several items – such as candies that fall at once – and it is possible that the customer didn't notice one of them when he reached inside to retrieve his purchases, if it does belong to the buyer, the *yi'ush* would be *shelo midaas* (without conscious knowledge). If the item is worth more than a *prutah*, the finder should treat it like any item found before *yi'ush*, as detailed in issue #256.

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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