

# HALOCHOSCOPE

Congregation Shaaray Tefilah, Pittsburgh, PA

Correction to last issue: Section A line 3 should read "...when Hashem's enemies are destroyed..."

This week's question:

A Jew has agreed to take in the mail from his gentile neighbor's mailbox while he is away on vacation. May he pick up the mail delivered on Shabbos right away or must he wait until Shabbos is over? If he does not take care of it, is he neglecting his duty, and liable for loss or damage that occurs as a result?

The issues:

- (A) Is mail Muktza if it is delivered on Shabbos?
- (B) Is there any difference if there is a concern that it might be stolen?
- (C) What is his general responsibility with regard to taking care of the gentile's mail?

### (A) Is mail delivered on Shabbos Muktza?

The laws of *Muktza*, the Rabbinic prohibition against moving certain things on Shabbos, are complex and we will only be able to focus on a few of them. Generally, if one did not have in mind at the onset of Shabbos to make use of an article during Shabbos, it is Muktza. This does not necessarily involve a conscious decision; anything that is normally used on Shabbos for a permissible purpose is not Muktza, because one does not put it out of mind. There are, however, different categories of Muktza with varying restrictions. In addition, there are exceptions to the prohibition.

If mail arrives on Shabbos from outside an *Eruv*, the enclosed area in which one may carry on Shabbos, it could be considered Muktza; the receiver of the mail could not have had it in mind at the beginning of Shabbos, because he was unable to use it at that time. The mailer had no intention at the beginning of Shabbos to use this letter either, therefore it is Muktza. However, if one knew before Shabbos that this letter would be delivered on Shabbos, then it is not Muktza. However, something that came from outside the *Techum Shabbos*, the outer limits of the city beyond which Jews may not walk, it is considered Muktza even if the recipient knew of it. This is because the sender may not send anything of his out of his own *Techum*, and the recipient is also bound by the sender's restriction.

However, the rule that the intentions for its use on Shabbos define the Muktza status of an article does not apply to the article of a gentile. Therefore, if a gentile sends mail to a Jew from beyond the Eruv or the Techum, it is not considered Muktza. In our case where the receiver is also a gentile, although he himself is unaware of its arrival, it is not Muktza either. [See Beitzah 24a-b, 37-38. Poskim. Tur and Shulchan Aruch Orach Chaim 515:1,5,9, Magen Avraham 1,27 etc. 498:3. 307:14, Magen Avraham 20 etc.]

Nonetheless, there are other considerations here. Anything that cannot be used on Shabbos without violating a Shabbos-law is also Muktza. This is known as either *Kli Shemelachto LeIssur*, a utensil with a forbidden normal use, or *Muktza Machmas Gufo*, material which is not a *Kli*, utensil, and has no use on Shabbos. Some Poskim consider mail in this category. However, if the letter was opened by a gentile, many authorities permit reading it. Furthermore, if an article has permissible uses besides its forbidden use, it may be moved to be used for these permissible uses or for its space; this is called *Letzorech Gufo Umekomo*. For example, a letter can be used as a book-mark. Some Poskim, therefore, maintain that a letter is not Muktza. [See Halochoskop Vol. 1 No 8.]

However, there is a category of Muktza called *Chisaron Kis*, which means that anything which will not be used for any purpose other than its intended use, is totally Muktza and may not be moved at all. Examples include special-purpose knives and needles that will be damaged if they are misused. Another example of this is new merchandise that is intended for sale, since the seller does not want it to appear used in any way. Some types of letters fit into this category, for example one does not use a letter containing a check to wrap around the top of a bottle in place of a lid, or even as a book-mark. This brings into question the mail in our case, since even though it belongs to a gentile, the Jew taking care of it is concerned for its remaining in good condition, and is not allowed to read it or to use the letters. In addition, some letters may contain checks. On the other hand, there are opinions that interpret *Chisaron Kis* differently: when one is concerned that even moving the object might lead to its being damaged. In our case, since the owner specifically requested to move the mail, it is not in this category. However, this is untrue in our case since after the mail is picked up it will indeed be put into a designated place where it will not be touched. [See Shabbos 123a-b. Tur and Sh. Ar. O.C. 308:1. 308:14 Magen Avraham 20. Responsa in Sefer Tiltulei Shabbos /Hilchos Muktza.]

#### (B) Concern about possible theft

Even if we do not consider the mail a case of *Chisaron Kis*, but only a *Kli Shemelachto LeIssur*, which may be moved *Letzorech Gufo Umekomo*, it may not be moved from "the sunlight to the shade". This means that if neither it nor its space is needed, one may not move it for its own protection from the elements. Another example of this restriction is that one may not move it to save it from being broken or stolen. In our case, if the gentile requested that it

be moved because of fear of theft, it is not permitted, even assuming that it is *Kli Shemelachto LeIssur*. However, the neighbors might not be as concerned about the actual mail being stolen as the mail piling up revealing their absence and encouraging thieves to break into their home. If this is true, then there is an indirect *Tzorech Mekomo* here since the purpose of moving the mail is to vacate the space in the mailbox. Once one is moving the article *Letzorech Mekomo*, one may continue moving it until he wishes to put it down. However, it might be requisite that the space is being vacated for active use to permit moving something *Letzorech Mekomo* which is not the case. Furthermore, one must be certain that the reason for removing the mail from the mailbox is to give the appearance of the residents' presence and not to protect it from being stolen. [See Shabbos 124a. Tur and Sh. Ar. O.C. 308:3]

There is an opinion that *Bimkom Pseida*, where imminent loss could occur, the laws of Muktza are suspended. Thus, if one sees robbers or looters approach his house, he may hide his valuables even if he will need to move Muktza. Others, however, disagree and do not permit the suspension of a Rabbinic ordinance *Bimkom Pseida* unless there is a risk that if it is not suspended the owner will violate a more serious Scriptural prohibition. Even according to the lenient view, one may only move the Muktza in the face of a real danger of theft and not the mere suspicion of one. Therefore it is unlikely that this is relevant to our case. [See Tur and Sh. Ar. O.C. 134:2. commentaries]

Another issue complicating matters in our case is that the Jew is preparing for after Shabbos by picking up the mail which is not needed for Shabbos. This raises the issue of *Hachana*. If, however, the purpose of removing the mail is not to save the letters but to empty the mailbox, this is necessary on Shabbos, too. [See Halochoskop Vol I No 7]

#### (C) The Jewish neighbor's responsibility

There are really two issues to be dealt with here. First, the responsibility of a *Shomer Chinam*, one who has undertaken to watch someone else's property for no fee. The responsibilities of a Shomer usually only begin once the article to be watched is in his possession. He is then responsible for its loss or other damage due to his own negligence. In our case, since he has not yet picked up the mail, he is not responsible for it. Once he actually picks it up, he may not neglect his responsibility and must take care of it in a way suited to the article. However, the Torah laws of Shomer only apply to a Jewish Shomer taking care of a Jew's article. In this case where a gentile is the owner of the articles in question, Jewish law absolves the Shomer of his liability, and a lawyer must be consulted to determine the *Dina Demalchusa*, the secular law, here. [See Mechilta Mishpatim 153. Sh. Ar. Choshen Mishpat 301:9]

The second issue is *Darkei Shalom*, going beyond the minimum requirements of the law to keep a peaceful relationship with the gentiles. To this end, a Jew is obligated to save the possessions of a gentile from being stolen. This

means that if a gentile left something out in a place where thieves will find it, the Jew should bring it to a safe place. Obviously this only applies to a case where the gentile did not think at the time he left it there that there was a risk of theft, but the thieves came on the scene later. In the same way, in our case, the gentile did not intentionally leave his mail out, but there is nothing he can do to bring it in himself. Therefore, one could assume that if he requested that his neighbor take it in for fear of it being stolen, it is at least as obligatory as the above case. However, on Shabbos, one cannot suspend the laws of Muktza and Hachana because of Darkei Shalom, although certain lesser ordinances are permitted. It might be permissible, because of Darkei Shalom, to ask another gentile to take the neighbor's mail and bring it into the Jew's house. However, the Jew must first find out if he may delegate his own responsibility in this way according to the Dina Demalchusa. In conclusion: it appears that in our case the Jew should not pick up his gentile neighbor's mail until Shabbos is over. [See Sh. Ar. C.M. 266:1, commentaries O.C. 325:2]

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#### ANNOUNCEMENTS

##### SCHEDULE:

SHABBOS SHACHARIS	9:00 AM
SHABBOS MINCHA	4:40 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	4:50 PM
CANDLE-LIGHTING VAYETZEI	4:42 PM
MINCHA EREV SHABBOS VAYETZEI	4:50 PM

##### SHIURIM:

GEMORO MAKOS	SUNDAY	7:15 AM
HALACHA B'YUN	MONDAY	8:30 PM
HILCHOS SHABBOS	SHABBOS	8:15 AM

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