

BUSINESS WEEKLY



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

PLEASE PICK US UP!

Naftali Stein was flying to Florida for two weeks with his whole family.

One evening, Naftali was discussing the upcoming trip with his brother Baruch, who lived nearby. "Would you be able to drive us to the airport next week?" Naftali asked.

"That's fine with me," Baruch said. "I'm happy to help."

"I actually was going to ask you whether I could borrow your car while you are away," Baruch added. "One of our kids has been asking to use our car a lot recently, so having another car available would be helpful for us."

"It's probably OK," Naftali said, "but let me speak with my wife first."

"You're welcome to borrow our car," Naftali told Baruch the following day. "I just ask that you drive us to the airport and pick us up when we return. That will save us hiring a car service."

"No problem," Baruch said. "The extra car will be a great help for us."

Baruch drove the family to the airport, and then drove home and parked the car near his house.

While the Steins were away, there was a thunderstorm. A big branch broke off from a tree near the car. Fortunately, it landed next to the car, not on it, but broke off the side-view mirror.

When the Steins returned, Baruch picked them up in the airport. He showed Naftali the damage and described what happened.

"Obviously, I'll pay for the mirror," said Baruch. "It's not worth invoking the insurance,"

"Why should you have to pay?" said Naftali. "It's not your fault that the branch fell. It was an act of G-d!"

"Nonetheless, I borrowed the car," replied Baruch.

"Therefore, I am liable, regardless."

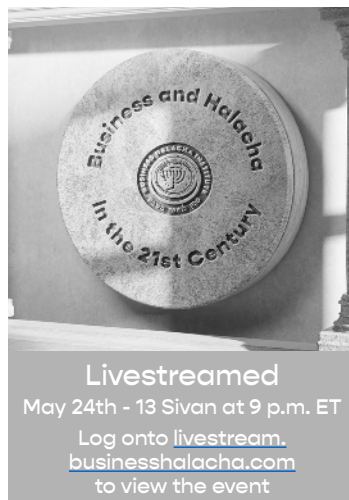
"If you're halachically liable, I won't object," said Naftali, "but I don't want to take payment if you're not liable."

"We can ask Rabbi Dayan what the *halachah* is," suggested Baruch.

The two met with Rabbi Dayan and asked:

"Is Baruch liable for the uncontrollable damage to the car that he borrowed?"

"As you know, there is a difference between a borrower (*sho'el*) and a renter (*socher*) regarding oness (uncontrollable mishaps)," replied Rabbi Dayan. "A borrower is liable in almost all situations, even uncontrollable mishaps, since the benefit of using the item is completely his" (C.M. 340:1).



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לע"נ ר' שלמה ב"ר ברוך ז"ל מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

GOWN IS GONE

Q: I bought expensive fabric, which I gave to a seamstress to sew into a *chasunah* gown. I went for several fittings, and the gown was almost done. Then, for a few weeks, she didn't contact me at all, and now she called to inform me that the gown got ruined and cannot be salvaged.

Is she liable for the damage to the fabric and the gown, and am I required to pay her for the hours she put into sewing it?

A: You did not elaborate about what caused the damage - was the seamstress negligent in handling it, or did it happen due to an *oness* (circumstance beyond her control), such as a burst pipe that flooded her workshop and destroyed your gown?

If the seamstress was negligent, then you certainly aren't required to pay for the work (*Shulchan Aruch*, C.M. 301:1).

Regarding the fabric, since you supplied it, the seamstress became a *shomer sachar* (paid guardian) for it (see *Bava Metzia* 80b). As a *shomer sachar*, she is liable not only for negligence, but also for loss or theft of the fabric (*ibid.* 306:1).

The *poskim* deliberate, however, how much she must pay.

It is obvious that she must compensate you for the fabric (and any other materials) you provided. But it is possible that she is also liable for whatever the gown was worth right before it was destroyed.

There is a dispute in the *Gemara* (B.K. 98b) regarding a craftsman who is paid for creating or fixing an item (as opposed to a person who is paid an hourly rate for work; *Shach* 306:3). One opinion is that he acquires the *shevach* (increase in value) of the object he is working on; it belongs to him until he is paid by the customer, and it is then considered as though he sold the *shevach* to the customer.

The second opinion is that the craftsman does not acquire the *shevach*. As he works on the raw material



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"A renter, however, who pays for usage of the item, is liable for theft and preventable loss, but is not liable for oness (uncontrollable mishpas), like a *shomer sachar* (paid guardian)" (C.M. 307:1).

"Regarding a *shomer sachar*, *Halachah* does not differentiate whether the amount paid is commensurate with the value of the item or effort to guard (there is a dispute just if the payment is less than a *prutah*). The payment can also be incidental to the guarding, such as a middleman who earns a brokerage fee" (C.M. 185:7, 303:1; *Shach* 303:1).

"Furthermore, the payment does not have to be monetary, but can also be in the form of a service. Thus, two people or partners who simultaneously watch each other's items are considered *shomrim sachar*" (C.M. 176:8; *Aruch Hashulchan* 303:3).

"Similarly, a person who does a service to the owner in return for using the item is considered a renter, not a borrower. It does not make a difference whether the service is of commensurate value to the usage allowed" (*Rama* 303:1; *Pischei Choshen* 10:4[7]).

"Thus, the arrangement that Boruch drive the family to the airport and pick them up is considered as payment for using the car. Thus, Boruch is treated as a *socher*, not a borrower, and he is not liable for uncontrollable mishaps .

"As such," concluded Rabbi Dayan, "Baruch is not liable for the damage to the mirror, since he is considered a renter of the car, and thus not liable for the uncontrollable damage inflicted by the branch."

Verdict: A person who borrows an item on condition to do a service to the owner is considered a *socher* (renter) and not liable for oness (uncontrollable mishaps).



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #19 (Bordering Property) Delayed Exercising Rights

לע"נ ר' יחיאל מיכל ב"ר חיים זוג' ח"י בת ר' שמואל חיים ע"ה

Q: I bought a property; a month later the *bar-metzra* claimed it. Is this allowed?

A: Chazal required that the *bar-metzra* exercise his rights promptly. They granted him only the time needed to go and bring his money and claim the property from the buyer in *beis din*. If he delayed claiming his rights, he foregoes and loses them (C.M. 175:32; *Sma* 175:57; *Mishmeres Shalom* 175:15).

The amount of time varies according to generations and circumstances. Nowadays, the time might be what is needed to withdraw money or make a bank transfer, but we do not allow time to arrange a mortgage, as will be explained, *be"H* (C.M. 175:25).

However, if the *bar-metzra* was delayed because of uncontrollable circumstances or other pressing issues, he does not lose his rights. (*Rama* 175:32; *Aruch Hashulchan* 175:21)

Furthermore, if the sale was done quietly and not known to the townspeople, the *bar-metzra* does not lose his rights until the sale becomes public knowledge and he delayed afterwards.



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and it increases in value, that increase belongs to the customer, and the craftsman only has a right to payment for his work.

According to the latter opinion, which is how the *Shulchan Aruch* rules (C.M. 306:1 and 339:6, and *Yoreh De'ah* 120:10), the *shevach* of the gown belonged to you, as the owner of the fabric, and since the seamstress ruined the gown, she is liable for its value right before it was destroyed.

According to the former opinion (cited in *Shulchan Aruch, Even Ha'ezer* 28:15 and in *Rema, Yoreh De'ah* *ibid.*) that the tradesperson owns the *shevach*, as long as you hadn't paid the seamstress for her work that *shevach* still belonged to her. She is therefore not liable at all for the *shevach*, only for the value of the fabric when she began to work on it.

Some *poskim* write that due to the uncertainty about how we rule, the tradesperson is entitled to absolve herself from payment with the claim of *kim li* (see *Shach, C.M.* 306:3).

If the damage to the fabric was caused by an *oness*, such as a flood caused by a burst pipe, then the seamstress, as a *shomer sachar*, is not liable.

The question remains, therefore, whether you must pay her for the time she spent working on the gown.

According to the opinion that a craftsman does not acquire the *shevach*, and it belongs to the customer, the loss is entirely yours, and you must pay her for her work.

But according to the opinion that a craftsman does acquire the *shevach*, some authorities would consider your situation to involve a full *kinyan* on the part of the seamstress. When the *oness* happened, therefore, it was her loss, and she has no right to payment for her work since the improvement that was damaged belonged to her (*Shach, C.M.* 72:9; *Divrei Mishpat* 306:6; *Shu"t Beis Ephraim, Even Ha'ezer* 117).

But other *poskim* maintain that even according to the approach that the craftsman acquires the *shevach*, it is not a full *kinyan*, but rather a partial *kinyan*, similar to the one a lender makes on a *mashkon* (object given as collateral). Since the *shevach* belongs primarily to the customer, the craftsman does not forfeit the right to payment for the work (*Ketzos* 306:4; *Nesivos* *ibid.* 4; *Chazon Ish, B.K.* 22:8).

Nevertheless, the *poskim* write that since the customer can claim *kim li* that the craftsman *has* acquired the *shevach*, we cannot obligate the customer to pay for the work (*Pischei Choshen, Sechirus* ch. 13, fn. 5).

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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