

# BUSINESS WEEKLY



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

Issue #609 | Behar | Friday, May 20, 2022 | 19 Iyar 5782

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

### BROOMSTICK

Lag Ba'Omer was approaching. The children in the neighborhood had collected wood during the past few days to make a large bonfire in an empty lot.

One of them saw a multicolored, painted broomstick lying outside his neighbor's garage. He assumed that it was garbage

and added it to the pile of wood waiting in the lot.

The afternoon before Lag Ba'Omer, Eliezer arranged the wood in a tall tepee-like structure, so that the fire would burn high and bright in honor of Rabi Shimon bar Yochai. He placed the painted broomstick in the center of the structure, to provide support, and piled other wooden pieces around it in a tepee fashion.

The neighbor happened to stop by, and admired the tepee structure Eliezer had built. Then he noticed the broomstick in the middle.

"I've been looking for my broomstick since yesterday!" the neighbor exclaimed. "I left it outside my garage, and was wondering where it went!"

"Someone must have thought that it was garbage," Eliezer apologized.

"I'd like it back," said the neighbor.

"You're not serious," said Eliezer. "I just spent four hours setting up the wood. Taking out the broomstick would make the whole structure collapse!"

"I want my broomstick back," repeated the neighbor.

"I'll pay you for it, or buy you a new broomstick," offered Eliezer.

"No, the broom head has an unusual hole," explained the neighbor. "It's very hard to find a stick that matches it properly."

"I'm willing to buy you a fine, new broom," offered Eliezer.

"No, I like the broom that I have," said the neighbor. "I even decorated the broomstick."

Just then, Rabbi Dayan happened to walk by. Eliezer approached him and asked:

**"Can the neighbor demand his broomstick back, or does it suffice if I pay its value?"**

"A person who steals is required to return the item itself when it is still intact," replied Rabbi Dayan. "He cannot suffice with returning its value, without the owner's consent." Nonetheless, the *Mishnah* (*Gittin* 55a) and *Gemara* (*B.K.* 95a) teach that *Chazal* instituted that if a person stole a beam and affixed it in a building, he can pay its value, to encourage people to do *teshuvah*. Due to the significant potential loss entailed in dismantling the building, *Chazal* considered

### DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos

Ask your Rav or email  
ask@businesshalacha.com  
for guidance and solutions.



## BHI HOTLINE

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

### ACCOUNTABILITY FOR ANGRY ACTIONS?

**Q.** During Chol Hamoed, I hired a taxi to take our family on a trip, wait for us at our destination, and drive us home.

As is unfortunately common, towards the end of the trip, we got into a heated argument with the driver regarding the price. The driver grew so irate that he said, "Enough! Get out of my car! I don't need your money!"

We had no choice but to get out.

Aside from a possible moral obligation to pay for his service, are we also halachically obligated to pay, or is his irate declaration that he doesn't need our money akin to forgoing payment?

**A.** The *Rema* (*C.M.* 333:8) writes that if a worker committed to complete a certain job, and in middle the employer grew angry and fired him, the employer may renege on that dismissal — thereby requiring the worker to honor his original commitment — because firing someone in anger is not considered to be done with full intent.

On the other hand, the *Gemara* (*B.B.* 160b) writes that *Chazal* decreed that a *Kohen* who divorces his wife must use a special divorce document called a *get mekushar* (tied get). A *get mekushar* is folded and sewn shut numerous times, with signatures of witnesses on each fold, which lengthens the process of giving the *get*. The logic behind this decree is that while a non-*Kohen* may remarry his wife after he divorces her, a *Kohen* may not marry a divorcee, even his own ex-wife. *Chazal* therefore lengthened the process of a *Kohen* giving a *get* in the hope that he will calm down during the process and decide not to divorce his wife (*Tosafos* [ibid. s.v. *Tiknu*] explains why we no longer use a *get mekushar*).

This *gemara* implies that a person who acts out of anger is considered to have acted with full intent (since the *get* would be valid even if given in anger), which seems to contradict the *Rema* (*Toras Chaim* ibid. and *Sanhedrin* 110b).



## CASE FILE

the beam as no longer existing intact, so that the thief can pay its value.

“However, this enactment was made only when the beam was affixed in a permanent manner to a building attached to the ground, or to a *sukkah* for the duration of Sukkos, which is considered as permanent for that week. Otherwise, this enactment does not apply, and the thief is required to return the beam itself” (C.M. 360:1; Sma 360:5).

“Thus, although the broomstick was placed in the middle of the bonfire, and removing it would cause the tepee structure to collapse, the obligation to return the stolen broomstick remains.

*Erech Shai* (360:1) suggests that whenever there is significant additional cost in returning the stolen item itself – such as if the thief sold it to a non-Jew, who demands a premium for returning it, or the item was sent afar – this is included in this enactment. However, his position is questionable” (*Pischei Choshen, Geneivah* 2:10[32]).

Perhaps dismantling the Lag Ba’Omer bonfire structure could be considered a “significant loss” and included in the enactment according to the *Erech Shai*. However, as mentioned, his position is questionable, and when in doubt about an enactment, we resort to the primary *halachah*” (*Ketzos* 362:3).

“Furthermore, the *Erech Shai* refers primarily to a financial loss, so that presumably even he would agree that in this case the thief is required to return the broomstick itself.

“Let me add,” concluded Rabbi Dayan, “that Rabi Shimon bar Yochai would not consider it an honor to have a bonfire made with stolen wood. You need to be careful what you take!”

**Verdict: Eliezer must return the broomstick itself, even at the cost of dismantling the tepee bonfire structure.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**MONEY MATTERS**  
**Mechilah (Forgoing) #24**  
**Maamad Sheloshtan**

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

**Q: I sold a loan to someone in the presence of the borrower (maamad sheloshtan). Can I still forgo the loan, as other loans that were sold?**

A: We mentioned previously that a creditor can forgo the loan even if he sold it, but is liable to the buyer for the loss (C.M. 66:63).

Nonetheless, many *Rishonim* maintain that if the loan was sold through *maamad sheloshtan* – i.e., in the joint presence of the lender, borrower and buyer – the lender cannot forgo the loan anymore. In this case, we consider it as if the borrower accepted upon himself a loan debt directly to the buyer. Shulchan Aruch rules in accordance with this opinion (C.M. 66:29, 126:1; Sma 66:71).

Shach, in one place, accepts this ruling regarding a loan without a loan document (milveh b'al peh). Elsewhere, he writes that the borrower, who is in possession, can claim kim li like those *Rishonim* that the lender can forgo even a loan sold through *maamad sheloshtan* (Shach 66:97, 126:10).



## BHI HOTLINE

Most *poskim* rule according to the Rema, and offer the following explanations as to why the *Gemara* does not contradict this *halachah* (see *Shu"t Chasam Sofer, C.M.* 130):

In truth, a *get* given in anger is not valid, but the *Kohen* will still be barred from remarrying his wife because of “*rei'ach haget*” (lit., the scent of a get). This means that in many cases, even if a *get* is not valid enough for the woman to remarry, she is still not allowed to marry (or remarry) a *Kohen* (*Makom Shmuel, B.B.* loc. cit.; *Chasam Sofer, Gittin* 26b; *Teshuvos Maharim MiBrisk* 38, and *Imrei Binah, Dayanim* 20:5).

The difference lies in the amount of time that passes between whatever provoked the anger and the resulting act. If the reaction is immediate, while the person's anger is still burning, his actions do not carry halachic validity. But if he had time to calm down and his anger is no longer visible — or if he never grew enraged, but was merely upset — then the resulting action is valid. *Chazal* enacted the *get mekushar* in case the *Kohen* had already entered the less-angry phase, in which his actions would be valid, but had he given the *get* during his rage, it would not have been valid (*Pnei Shlomo, B.B.* loc. cit. *Shut Dovev Meisharim, 2:38, 2 and 3:34, and see Shut Cheishev Ha'eifod* 1:94).

There is a difference between angry speech and an action — such as giving a *get* — that is done out of anger. When someone speaks out of anger, it is not considered as though he thought his position through, and his words carry no halachic validity (*Teshuvos Maharim, Imrei Binah, and Dovev Meisharim* loc. cit., and *Yismach Lev, C.M.* 4; see also *Kova Yeshua, B.K.* 93a).

(According to this approach, there is room to deliberate whether firing a worker via email is considered a valid termination of employment. On one hand, sending the email is an action, which would make it final, but emails, too, are sent without much forethought, so perhaps the dismissal would not be considered final.

Regarding the case of the angry employer firing his worker, some *poskim* write that if enough time has elapsed after the employer fired the worker for him to have calmed down, and he hasn't reneged, then the dismissal becomes final and he can no longer demand that the worker finish the job (*Chikrei Lev, Yoreh De'ah* 236, cited in *Tosafos Re'em* 19).

Considering all the above sources, had the taxi driver contacted you to demand payment within a short amount of time of when he told you to leave the car, then his forgoing payment out of anger is meaningless, and you must pay him. But if he called you much later, then it is obvious that he was serious about forgoing payment, and you don't have to pay.

**If the driver does not have your phone number, we can assume that he knew, at the moment that he threw you out of his car, that he will no longer be able to demand payment, and he truly intended to forgo payment (see Maharit vol. 2, Choshen Mishpat 118).**

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

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

**WOULD YOU LIKE THE ZCHUS OF SENDING THIS NEWSLETTER TO YIDDEN WORLDWIDE?**

**CALL 718-233-3845 X 201. OR EMAIL : OFFICE@BUSINESSHALACHA.COM**

**DISTRIBUTION IN LAKEWOOD IS**

**לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל**