

BUSINESS WEEKLY



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

Issue #649 | Ki Sisa | Friday, Mar 10, 2023 | 17 Adar 5783

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



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

CRUSHED HAT

Nesanel was turning bar mitzvah. His father had taught him the *leining*, and now took him to buy a hat. They chose one that fit well and was in style at his yeshivah. Nesanel stood before the mirror. "You look mature and responsible!" complimented

his father.

On the Shabbos of the bar mitzvah, Rabbi Dayan spoke before the *leining* and addressed the significance of the hat.

"In *Parashas Ki Sisa*," Rabbi Dayan said, "the Torah relates that after the sin of the Golden Calf Bnei Yisrael removed the decorative crowns they had received at Har Sinai.

The hat that you wear symbolizes the crown of Torah that adorns you as you become bar mitzvah and accept upon yourself the yoke of Torah and *mitzvos*, which is the true crown to your head!"

Nesanel listened attentively to the *drashah* and happily adjusted his hat. After the *drashah*, he put on a *tallis* for *leining*, and placed his hat on an empty chair next to him, which he pushed under the table.

Just then his friend Shimon, who had *davened Shacharis* elsewhere, rushed in. Shimon saw the empty seat next to Nesanel. "*Mazel tov!*" he wished Nesanel joyously. He pulled out the available chair and hastily sat down.

"Watch out for my hat!" warned Nesanel.

It was too late, though. Shimon had already sat on the hat.

The brand-new hat was crushed. So was Nesanel.

Nesanel tried to straighten the hat as best he could since it was Shabbos, but the damage was done. The hat had a clear crease in it, and would either need to be reshaped or replaced.

"I'm sorry..." apologized Shimon. "I'll have to get you a new hat."

"It's my fault, not yours," replied Nesanel slowly, trying to control his tears. "I shouldn't have left my hat on the chair."

After *davening*, Nesanel and Shimon approached Rabbi Dayan. "I accidentally sat on Nesanel's new hat," said Shimon.

"Am I liable for the damage to the hat?"

"The *Mishnah* (B.K. 26a) teaches that a person is liable for damage he inflicts, whether intentional or not," replied Rabbi Dayan, "even if through *ones* – circumstances beyond his control, as we have mentioned numerous times.

"*Tosafos* (B.K. 27b), however, points to several cases in which a person who damages through *ones* is exempt. He therefore concludes that a



BHI HOTLINE

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

PERFECT MATCH?

Q: On Purim I was fundraising door-to-door with a group of friends. We approached Reuven and asked him if he could donate generously to this cause. He replied that if we went to Shimon's house and convinced him to donate \$100, he (Reuven) would match that donation. We knocked on Shimon's door, told him about Reuven's offer, and asked him to donate \$100. We explained that he would earn a double *zechus*, because his contribution would bring in a matching donation. He agreed in theory, but he said that we first had to check whether Reuven would truly be obligated to fulfill his verbal pledge.

Is Reuven obligated to keep his commitment?

A: We must first determine whether Reuven made his offer because he was certain that Shimon *wouldn't* donate \$100. If that was his thinking, then he is not required to fulfill his pledge, because it is in the category of *nidrei shegagos* (vows made in error). A *passuk* in the Torah (*Vayikra* 5:4) implies that a person is obligated to fulfill a vow only if it was made with full intent, not if it was based on erroneous assumptions (*Shulchan Aruch, Yoreh De'ah* 232:6).

If Reuven did consider it at least a possibility that Shimon might grant your request, the next question to address is whether a verbal commitment is enough to obligate a person to fulfill a pledge if he did not make a *kinyan* to formalize it.

In this regard, a verbal commitment alone is binding without a *kinyan*, because a pledge made to *tzedakah* is considered a *neder* (vow) (*ibid.* 258:12 and *C.M.* 243:2).

But we must still consider the possibility that Reuven would not be obligated to fulfill his pledge because of the *halachah* of *asmachta lo kanya*.

An *asmachta* is an agreement a person makes under the assumption that he won't actually have to fulfill it. (For instance, wagers are *asmachtas*, because every person who places a bet thinks he will win.) In this case, if Reuven agreed to match Shimon's donation only because he assumed that Shimon might not be willing to give, presumably his pledge is not binding (*ibid.* *C.M.* 207:13).

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

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CASE FILE

person is liable only for slight *oness*, when he should have been more careful, but not when he took reasonable care.

“Ramban (*B.M.* 82b) however, writes that a person is liable even for absolute *oness*, unless there was negligence by the damaged party. Thus, if someone placed his item next to a sleeping person, who damaged it in his sleep, he is exempt. According to *Tosafos*, since this is beyond the sleeping person's control; according to the Ramban, because of the owner's negligence” (*C.M.* 421:3-4).

Similarly, if someone left his items where people walk, and a person accidentally broke them, he is exempt. According to *Tosafos*, since people are not expected to look down when they walk; according to Ramban, because of the owner's negligence” (*C.M.* 412:1).

“Our case seems similar. A person who pulls out an empty chair in shul is not expected to examine whether there is something on it. Nesanel, who left his hat on the chair under the table bears an element of negligence. Therefore, Shimon is exempt.

“This depends, though, to what extent is it normal for people to put things on chairs next to them. If the shul has rows of chairs without tables this is common, whereas when there are tables – it is not” (see *C.M.* 412:2; *Pischei Choshen*, *Nezikin* 8:10[25]).

“Remember, though, Nesanel,” concluded Rabbi Dayan. “It's not the hat itself that matters, but rather the crown of Torah and *mitzvos* that you proudly bear on your head continuously!”

Verdict: There is a dispute whether a person who damaged through full oness is liable. However, when he exercised reasonable care, and there was an element of the owner's negligence, he is certainly exempt.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Dayanim (Judges) #37

Favors

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

Q: Is a Dayan who received favors from a litigant allowed to judge him? Is it considered bribery?

A: Not only is monetary bribery prohibited, but also doing a favor that the litigant was not accustomed to having received beforehand (*C.M.* 9:1).

Therefore, if the litigant did the Dayan a favor or did a service that the Dayan was not accustomed to having received beforehand, or even accorded him a verbal courtesy that he was not accustomed to, the Dayan is disqualified from judging him. The *Rishonim* dispute whether he is disqualified by law or only as a *middas chassidus* (*Bach*, *Sma* and *Pischei Teshuvah* 9:4).

Similarly, if the Dayan borrowed from the litigant on a regular basis and is not able to reciprocate the favor and lend in return, he is disqualified from judging him. Some maintain that this is true even if the litigant was accustomed to lending the *Dayan* before the case arose. However, if the *Dayan* only borrowed occasionally and without any connection to the litigation, he is not disqualified (*Rema* 9:1; *Pischei Teshuvah* 9:5).



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We see from two vows in the Torah, however, that this assumption might not be correct.

After waking from his dream with the ladder, Yaakov Avinu vowed: *If Hashem will be with me... everything You give me, I will repeatedly tithe to You* (*Bereishis* 28:20-22). And when Amalek attacked and took a hostage, Bnei Yisrael vowed that if they defeated their enemy, they would consecrate all the spoils of war to Hashem (*Bamidbar* 21:2).

Both of these vows could be categorized as *asmachtas*, because in both the vow was contingent upon a specific outcome — yet they were seemingly considered binding.

Some *Rishonim* infer from this that whenever a person makes a vow or takes an oath, it is never considered an *asmachta* (*Maharam MiRottenberg*, *Prague Edition* 494). This approach is codified in *Halachah* (*C.M.* 207:19; and *Yoreh De'ah* 258:10 with *Nekudos Hakesef*).

Other *Rishonim* argue that the aforementioned episodes in the Torah are inherently different. Those vows were likely to have been made with full intent because they were made in order to merit salvation or Divine assistance. Therefore, when the salvation or assistance was received, the person who made the vow affirms it in his mind. Consequently, if a person asks Hashem to help him through a situation, and he promises to fast or give *tzedakah* when he receives that assistance, those pledges are not considered *asmachtas* (*Orach Chaim* 562:13, with *Magen Avraham* 17).

If, however, a person vows to give *tzedakah* or fast if he does a certain *dvar hareshus* (an action that is not a *mitzvah*), and he is not sure that he will do that action, it is an *asmachta*.

But if a person is trying to bolster his commitment to do a *mitzvah*, and he pledges to fast or give *tzedakah* if he fails to do that *mitzvah*, it is not an *asmachta* (*Rabbeinu Yerucham*, *Toldos Adam v'Chavah*, *Nesiv* 19, cited in *Orach Chaim*, loc. cit).

According to this opinion, in your case, where Reuven's intention was not meant to commit himself to do another *mitzvah*, it would be considered *asmachta* and he would not have to match Shimon's donation.

In practice, since the *poskim* (*Magen Avraham* 562:16 and *Mishnah Berurah* 54) rule according to the first approach, if Shimon donates the \$100, Reuven must match it even though his pledge was an *asmachta* (see however BHI #637).

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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