

BUSINESS WEEKLY

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



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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

DEFECTIVE MACHZOR

Shani received a set of *machzorim* as a bas mitzvah gift shortly after Shavuot. She happily wrote her name in them right away and eagerly waited for the opportunity to use each one when the proper time arrived.

"It's almost Rosh Hashanah," Shani's mother said to her. "This is the first year that you are considered an adult and responsible for yourself!"

"Yes, and I'm looking forward to using the *machzorim* I got for my bas mitzvah," Shani replied. "This will be my first opportunity!"

On Rosh Hashanah morning, Shani went to shul with her mother. She used her *machzor* and found special elevation in the *davening*.

Towards the middle of *chazaras hashatz* of *Musaf*, Shani suddenly lost the place. She flipped the pages back and forth, but could not find what the *chazzan* was saying!

Shani turned towards her mother to help her. Her mother realized that 16 pages were missing from the *machzor* — a folio was omitted from the binding! She quietly pointed to Shani that the page numbers skipped, and got her another *machzor* from the bookcase in shul.

As the family walked home after *davening*, Shani's father asked: "How was it *davening* as an adult from your own *machzor*?"

"It was so elevating!" Shani replied. "That is, until the middle of *chazaras hashatz*..."

"What happened?" asked her father.

"We realized that 16 pages were missing," Shani replied.

"Oh, I'm sorry to hear," said her father. "What did you do?"

"I used a *machzor* from the shul for the rest of the *davening*," answered Shani.

"We'll have to return the *machzor* to the store after Rosh Hashanah," said her father.

"The question is whether I can still return it three months later after writing my name in it and after using it for most of *davening*!"

"Good question!" replied Shani's father. "*B'ezras Hashem*, I'll check with Rabbi Dayan."

At *Minchah*, Shani's father asked Rabbi Dayan:

"Can we still return the defective *machzor*?"

"Even though several months passed since you bought the *machzor*," replied Rabbi Dayan, "you can still claim defective merchandise when you discover the defect" (C.M. and Sma 232:3).

"Furthermore, although Shani already wrote her name, further damaging the *machzor*, you can still return it as defective merchandise, since it is expected that people write their name in *seforim*



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

OF THE REFRIGERATOR AND THE SALMON

Q: I work as the kitchen manager in a summer camp. One Thursday, at 6:30 in the evening,

one of the kitchen workers called me while I was in the city and told me that he had just removed the kugels for Shabbos from the oven, and he wanted to know what to do with them. He was leaving for the day, so he couldn't wait for them to cool down before putting them in the refrigerator, but he was concerned that putting them away while they were piping hot would ruin the refrigerator.

I told him to put them in the refrigerator for now, and when I got back to camp in three hours, I would check to see that the refrigerator was working properly. In the end, it took me more time to get back, and by the time I did, I forgot all about it.

The next morning when I entered the refrigerator, the temperature was 70° F. I called a technician immediately to fix it.

After a thorough inspection, he told me that although placing hot food into a refrigerator can damage the compressor because it has to work harder to fight the heat from the food, in this case the compressor was still working properly. The problem, he said, was that the refrigerator had developed a leak, but that leak would have become a problem within a matter of days even had the hot kugels not been placed in the refrigerator — the extra heat merely accelerated the process.

Assuming the technician is correct, am I required to pay for the repair because I caused it to be necessary now instead of in a few days? And am I liable for salmon slices in the refrigerator that spoiled as a result of my negligence? If I am liable, then I have another question: The new salmon slices I ordered to replace them were apparently thicker than the previous ones, and the total amount weighed significantly more, because the price (which is set by weight) was much higher. Must I

DID YOU KNOW?

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

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for guidance and solutions.



CASE FILE

and *siddurim* (C.M. 232:13; *Pischei Choshen, Geneivah* 13:15[28]).

"Some *Poskim* maintain that if the customer could have readily checked the merchandise when he bought it, he loses his right to claim defective merchandise. Most *Poskim*, however, reject this position. Furthermore, it is possible that the absence of a few pages is not something that is readily noticeable or expected, so that everyone might agree here (*Sma* 232:10; *Pischei Teshuva* 232:1; *Aruch Hashulchan* 232:5; *Pischei Choshen, Geneivah* 13:9[14]).

"However, if you continue to use the merchandise after noticing the defect, *Shulchan Aruch* rules that you forfeit your right to return the item — since if you intend to void the sale and return the defective merchandise, you have no right to use it (C.M. 232:3).

"Although some suggest that if a person is not learned and unaware of this, he does not forfeit his right, most *Poskim* do not distinguish (*Pischei Teshuva* 232:1).

"Nonetheless, if the customer cannot notify the owner that he wants to return the item and is in a situation that he needs to continue using it, e.g., he is en route, he does not forfeit his right, but must pay fair rental for the subsequent usage (*ibid.*).

"Regarding a *sefer*, though," concluded Rabbi Dayan, "where presumably the store owner would allow you continued use of his item for the *mitzvah* — perhaps continued use does not automatically indicate forgoing of rights."

Verdict: Defective merchandise can be returned even long after the sale, even if the customer could have checked the item when buying it. However, if he continues using the item after discovering the defect, he usually forfeits his right, but this might not apply to a *machzor*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Property #12

How Much if the Property is Not Fit

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

Q: When someone enhanced another's property that is not fit for such an enhancement, how much does the owner have to pay?

A: When the property is not fit for such an enhancement — e.g., if someone planted trees in a field intended for sowing seeds — and the owner did not indicate positive interest in wanting the enhancement but did not protest and request removing the trees, or simply say, "Once you planted the trees, leave them and I will pay," the enhancer has "the lower hand" (C.M. 375:1).

This is interpreted by most authorities to mean the lesser of the capital gain of the property due to the enhancement or the expenditure of the enhancer, including his minimal hourly labor cost. However, the owner does not have to pay the going rate for such a contractor. Some interpret the "lower hand" as meaning the lower end of the rate of a contractor for such an enhancement (*Sma* 375:2; *Pischei Choshen, Geneivah* 8:18[39]).



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pay for the more expensive slices, or can I pay the value of the first salmon order?

A: It seems that you are liable for spoiled salmon (see *Pischei Teshuvah Choshen Mishpat* 346:2), because you, like any other worker, were considered a *shomer sachar* (paid guardian) vis-à-vis the food in the refrigerator (*Shulchan Aruch* *ibid.* 306:1), and you were negligent in having the hot food placed in the refrigerator knowing that it could ruin the refrigerator and cause the salmon to spoil.

Furthermore, even had you not been a *shomer*, you might have been liable for the salmon, like any person who causes damage through *grama* (causation), who must pay for the damage *latzeis yedei Shamayim* (to avoid Heavenly judgment).

The fact that you didn't actually place the hot kugel into the oven yourself, but had a worker do it, has no bearing on the case, because either way you were the one who caused the salmon to spoil.

(The only question is whether forgetting something is considered negligence; see *Inyan*, June 15, 2022/BHI No. 613.)

But you are liable only for the old slices that spoiled as a result of your actions, and you are required to pay the value of those slices, not the cost of the replacements.

Regarding the repair of the refrigerator, it seems that you are not liable even *latzeis yedei Shamayim*.

A *mazik* (person who damages something) is responsible to pay for the devaluation of the object he damaged, and, according to many opinions, for the amount it costs to repair it as well (*Shulchan Aruch* 387:1, with *Shach* 1, and 95:18; see *Inyan*, July 13, 2022/BHI No. 617).

But according to the technician, you did not actually damage the refrigerator; it was already broken, and it would have been necessary to fix it in a matter of days even had the hot kugels not been placed in it. This means that you did not cause any devaluation, and you also didn't cause an unnecessary repair, so you are not required to pay for this repair.

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

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