

# 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

### DAMAGED CAR

Yehudah asked to borrow a car from his friend, Ari.

"I'm happy to lend it to you," said Ari. "However, I don't have comprehensive insurance because it's an old car and not worth much. Please drive carefully!"

"Don't worry, I always try to drive carefully," replied Yehudah.

"Driving carefully is included in the *mitzvah* of protecting lives!"

"Agreed!" laughed Ari. "Even so, if anything happens to the car — you'll have to cover the loss."

Yehudah took the car and parked it outside his house overnight.

During the night, there was a thunderstorm. Strong winds broke a large branch off a tree nearby. The branch fell on Ari's car, damaging it significantly and breaking a car seat in it.

In the morning, Yehudah called Ari apologetically. "You'll never believe what happened!" he exclaimed. "In the storm, a large branch fell and smashed the car."

"I'm glad that no one was hurt," replied Ari. "I don't think I'm going to bother fixing the car, though. It's not worthwhile to me to invest in it."

"Then I'll have to pay whatever the car was worth and buy you a new car seat," said Yehudah.

"Since I borrowed the car, I'm liable even for *ones* (circumstances beyond control) (C.M. 340:1).

"It's true that you're liable," replied Ari. "However, you don't have to pay everything. The booster seat was old; maybe I can sell the car to someone who wants to fix it."

"Why should *you* have to do that, though," said Yehudah. "If I'm liable for the car — that becomes my headache."

The two approached Rabbi Dayan. Yehudah asked:

#### "How much must I pay Ari?"

"In general, *halachah* imposes liability only for the value of the item in its used condition," replied Rabbi Dayan. "Therefore, there is no halachic requirement to buy a new item or to pay the replacement cost of a new item. We understand that if a person borrowed a 2010 car and it was totaled, he does not have to replace it with a brand-new car, but rather pays the value of a used 2010 car, so that the owner can replace his old car with one in similar condition.

"Admittedly, this *halachah* is easily applicable regarding cars, where there is an active used-car market. However, the principle is true also for the car seat; the primary liability is to reimburse the loss of used value. Comparable used items can sometimes be procured via eBay or Yad2.

"Moreover, the *Gemara* (*Kiddushin* 11a) teaches that if the broken item is still usable and/or of

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## BHI HOTLINE

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

### EXPIRED REGISTRATION: PART II

**Q:** I borrowed my friend's car, and the police pulled me over because the registration had expired. The car was impounded, and I had to pay \$175

to get it out. Am I responsible for that \$175, or is my friend required to reimburse me?

**A:** In the previous issue, we explained that you were not required to pay the impound fee. Since you did pay it, the question that remains is whether you may now demand that the car owner reimburse you.

Although it might seem logical that he is required to repay you, according to basic *halachah*, he has no such obligation.

The *halachah* is that if Reuven pays a debt that Shimon owes to someone else, Shimon is not required to reimburse him (*Shulchan Aruch*, C.M. 128:1, with *Shach* 5). Several explanations have been offered for this *halachah*.

The *Gemara* (*Nedarim* 33a) states that Reuven's having paid the debt is not considered as though he provided Shimon with direct benefit. Rather, it is considered akin to *mavriach ari*, someone who chases off a lion to prevent it from harming someone, and in such a case, the person who was saved is not required to pay the person who saved him. Similarly, Reuven is considered to have chased off the lender so that he doesn't demand payment from Shimon, not as though he provided some new benefit to Shimon.

*Talmud Yerushalmi* (*Nedarim* 4:2 and *Kesubos* 13:2) explains that Shimon is not required to repay Reuven because he can claim that he would have convinced the lender to forgive the loan (see *Tosafos*, *Bava Kamma* 58a, s.v. *Nami*).

Others explain that we presume that Reuven paid off the loan as a *mitzvah*, and he gave the money as a gift. Although he is now asking to be repaid, he is not entitled to change his mind (*Rashi Bava Kamma* 58a, s.v. *Eima* and *Shach* loc cit. 8).

(Notably, Rabbeinu Tam writes that the *halachah* that someone who paid off another person's loan is not entitled to reimbursement is limited to a case in which someone



## CASE FILE

some value, the borrower can return the broken item and just add the differential between the item's initial value when borrowed and its current value. In this respect, a borrower differs from a thief, who is required to pay the item's value at the time of theft if he cannot return it intact (C.M. 344:2; 354:5).

"Thus, if the car still has market value in its damaged state or can be sold for parts, that amount is deducted from the liability of the borrower.

A similar *halachah* applies to one who damages; he is required to pay the differential between the item's initial value and the current, damaged value. However, many *Poskim* write that if the item can reasonably be repaired, the one who damages is liable for the cost of repair. Regarding a borrower, though, some write that he has no such liability, just to return the lost differential in value (*Shach* 387:1; *Pischei Choshen, Pikadon* 8:15[49]).

"Nonetheless," concluded Rabbi Dayan, "for the sake of neighborly relations and in appreciation for the loan of the item, some people prefer to replace the broken item with a new one or pay its full value, especially for small items. This is not required but is a welcome gesture of appreciation."

**Verdict: A person who borrowed an item and it got damaged (not through routine usage), is liable for the differential value between the initial, used value of the item and its current value.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

Yored L'sedei Chaveiro

Enhancing Another's Property #22  
Hiring to Enhance

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

**Q: After a heavy snow, I hired a teenager to shovel my property. I told him to shovel also for the neighbor. Do I have to pay him for the neighbor?**

A: When you instruct a worker to work in another's property, if the worker did not know that this was another's property or if you indicated that you are responsible for his wages — you are liable to pay the worker. You can then collect from the neighbor in accordance with the laws of *yored lesedei chaveiro*, even though you did not do the enhancement yourself (C.M. 336:1; *Sma* 336:4).

However, if the worker knew that this was another's property, and you did not indicate that you take responsibility for the wages — the worker's claim is to the neighbor, in accordance with the rules of *yored lesedei chaveiro*.

If the neighbor was present when you told the teenager to shovel there and the neighbor remained silent, his silence is tacit agreement, and he is liable for the teenager's regular wages (*Rema* 336:1).



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financially supported a woman whose husband traveled overseas and did not leave enough money for her. The reason the husband is not required to reimburse that person is because he can claim that had that person not stepped in and supported his wife, she would have made do with the amount of money she had. But if someone pays off an actual debt, then the borrower is required to repay him [*Tosafos, Kesubos* 108a, s.v. *Ha* and *Bava Metzia* 31b s.v. *Im Yeish*]. But this opinion is not accepted; the *Poskim* rule that the borrower is not required to reimburse him [*Shach* 128:5 and *Ksav Sofer, C.M.* 18, cf. *Sema* 128:3].

This *halachah* holds true even if the lender is pressuring the borrower to repay the loan, and even if the lender has collateral from which he can recover the loan (C.M. 128:1). In the latter case, if the lender gave the collateral to the person who paid off the loan, that person is required to return it to the borrower.

Some say, however, that if the person who paid the loan has access to the borrower's money or to collateral belonging to him, we do not seize it from him, because we rely on the *Poskim* who maintain that in such cases the borrower is not absolved from repaying the person who paid off his loan (*Shach* loc. cit.).

Returning to our case, if you wanted to continue to drive the car after it was impounded, so you had a specific reason to pay the impound fee, it is not considered a case of paying off someone else's loan. Rather, since the car owner would have been required to give you a car to drive for the remaining period of time he said he would lend you his car, you had a right to pay the impound fee on behalf of the lender to get the car you originally borrowed, and he is required to reimburse you (see *Eimek Hamishpat* 2:38).

But if you do not want to continue using the car because it is not registered (actually, it is unclear whether you would be allowed to continue driving it, because it is possible that when it was impounded, that ended the borrowing period [see C.M. 341:6 and *Mishpatei Hachoshen* *ibid.*, note 14, p. 488]), then your payment of the impound fee is considered paying someone else's loan.

In all likelihood, he will be willing to reimburse you (and he might even be mandated to do so *latzeis yedei Shamayim* [to avoid Heavenly justice]; see *Chiddushim Ubi'urim, Kesubos* 107b). Nevertheless, someone who finds themselves in such a situation should contact the car owner before paying the impound fee and ask whether he will reimburse him if he pays the fee.

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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