

# 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

## FALSE WITNESSES

One of the Ten Commandments is "*lo sa'aneh...*" the prohibition against testifying falsely. What happens if a witness later admits that he testified falsely?

\* \* \*

Reuven and Shimon were litigating in Rabbi Dayan's *beis din*. "Shimon owes me \$5,000," claimed Reuven.

"Why does he owe you?" asked Rabbi Dayan.

"I lent him \$5,000 and he never repaid," answered Reuven.

"What do you say?" Rabbi Dayan asked Shimon.

"I never borrowed!" replied Shimon. "He's lying!"

"Do you have any evidence?" Rabbi Dayan asked Reuven.

"Yes, a loan document signed by witnesses," replied Reuven. "I brought the witnesses to confirm their signatures."

Rabbi Dayan examined the document; it seemed genuine. He called in the witnesses, Levi and Yehuda, one by one.

"This is my signature," confirmed each witness.

"They're liars!" insisted Shimon. "I never borrowed!"

"Reuven holds a loan document, confirmed by the witnesses," ruled Rabbi Dayan. "You must pay."

A week later, Levi and Yehuda came to the *beis din*. They asked to speak with Rabbi Dayan privately.

"How can I help you?" asked Rabbi Dayan.

"We testified here a week ago on behalf of Reuven against Shimon," Yehuda said. "We admit now that our testimony was false. We were trying to help Reuven and signed the document, even though we never saw the loan."

"This is extremely serious!" Rabbi Dayan rebuked them. "False testimony is a violation of the *Aseres Hadibros* (Ten Commandments)!"

"We are aware of that, and therefore came to rectify the situation and tell the truth," Levi said. "If need be, we are willing to stand again on the witness stand and state that the document is false."

"What should we do now?"

"The Gemara (*Makkos* 3a) teaches that once a witness testified, he is not believed to retract and say that he testified falsely as an *eid zomem* (conspiring witness)," replied Rabbi Dayan. "His testimony remains valid" (*C.M.* 38:1).

"Rabbeinu Chananel (*ibid.*) and Rambam (*Hil. Eidus* 18:8) add that the witness is not liable to pay the person he conspired against based on his admission, because the liability of an *eid zomem* is a Divine penalty (*kenas*) not invoked by self-admission.

Rosh (*Responsum* 58:6), however, writes



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

## DAMAGED SCOOTER

**Q:** I rented an electric scooter for an extended period, and I allowed one of my friends to borrow it. While he was riding it, it was hit by a car and destroyed. The owner

demanded that I replace it, so I bought a new one, but I used it for a few months before giving it to him. He now claims that I owe him rent for the months that I used the new scooter.

Is he correct?

**A:** First let's discuss whether the person who borrowed the scooter from you was liable for it.

A *sho'el* (borrower) is generally liable for damages, even if they were caused by an *ones* (circumstance beyond his control). It is possible, however, that this case can be classified as *meisah machmas melachah* (a borrowed object or animal that died during normal use), in which case the borrower is absolved of payment.

Some write that a borrower is not required to pay in a case of *meisah machmas melachah* because when the object breaks during normal use, it proves that the owner gave him a faulty item that was not usable (*Ramban, Bava Metzia* 96b; *Rema, C. M.* 340:3, with *Shach* 5). Others say that it is because, when the owner allowed the borrower to use his object, he knew that it might break as a result, and it is as though he decided to forgo any claim to damages caused during normal use (*Ramah, cited by Tur* 340:6, and *Shulchan Aruch* 340:3).

The practical difference between these approaches is in a case in which the object is not damaged *due* to normal use, but *in the course* of normal use — such as in your case, where the scooter was hit by a car. According to the first approach, the borrower is obligated to pay, since there was nothing wrong with the scooter, but according to the second approach, he is not liable, because the owner knows that this type of damage could occur during the course of normal use. Since there is uncertainty which approach is correct, the borrower, who is the *muchzak* (holder of the money), is absolved (see *Shu"t Minchas Yitzchak* 2:88).

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### Weekly Wednesday Shiur

On subjects and principles of  
Choshen Mishpat

By: Harav **Chaim Kohn** Shlita  
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that although witnesses who claim that they signed a document falsely through drunkenness are not believed to invalidate their testimony, once their signatures are validated, they are believed in their admission regarding themselves to pay — whatever loss they caused through their false testimony as *garmi* (directly caused damage). *Schulchan Aruch* rules accordingly (C.M. 29:2; 38:1; 46:37; Gra 46:90).

Ramban (*Makkos* 3a), *Darhei Moshe* (38:1) and several *Achronim* (*Lechem Mishneh*, *Hil. Eidus* 18:8) understand this as a dispute between Rabbeinu Chananel and the Rosh, whether false witnesses are liable to pay based on their self-admission.

*Shach* (38:1), however, maintains that false testimony that caused loss is certainly *garmi*, so that the witness who admits is liable even according to Rabbeinu Chananel. He explains that Rabbeinu Chananel merely meant that he cannot be called an *eid zomem* and penalized based on self-admission if he didn't cause loss, such as if the defendant didn't pay yet.

"Other *Achronim* suggest various distinctions. Bach distinguishes between a false signature, which is considered *garmi*, and false verbal testimony, which is only *grama* and not liable. *Pischei Teshuvah* (38:1) distinguishes whether the false witness admitted before the defendant paid or afterwards. *Tumim* (29:1) suggests a distinction between testimony that exempts, which is immediate *garmi*, and that obligates, which is *grama*. He further qualifies that the witness is liable only if he knows that other witness also lied" (see *Pischei Choshen*, *Nezikin* 4:26-27).

"Thus," concluded Rabbi Dayan, "following the *Schulchan Aruch's* ruling, you must pay Shimon his loss."

**Verdict:** *Schulchan Aruch* rules, based on the *Rosh*, that witnesses who admit that they testified falsely and thereby caused a loss to the litigant are liable as a form of *garmi* (directly caused damage). Several *Achronim* suggest various limiting distinctions based on Rabbeinu Chananel, who seemingly exempts the witness.



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #5  
Contractual Obligations

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

### Q: In what areas are self-adopted communal practices, which are not based on regulations, binding?

A: Self-adopted communal practices are certainly binding in contractual obligations, such as employee rights, buying and selling, etc. (*Rema C.M.* 331:1).

In contractual obligations the *minhag* is binding even to remove from the one in possession. Similarly, if the parties disagree regarding what was stipulated, we presume that they stipulated according to the *minhag*, even to require the one in possession to pay (*Rebbi Akiva Eiger* 331:1; C.M. 340:5).

Therefore, some write that if the party in possession claims sincerely that he did not know of the *minhag* (and therefore did not stipulate explicitly that he does not want to follow the practice), the *minhag* does not override the default Torah law (*Shach* 42:36).

However, if the practice is so widespread that he certainly knew of it, he cannot claim against the *minhag*. However, some write that even in this case we do not easily remove from the one in possession (*Teshuras Shai* 1:381).



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That would apply, however, in a case in which the *sho'el* borrowed the scooter directly from the owner. In your case, however, you, as a renter, had no right to allow someone else to borrow it (*Choshen Mishpat* 342:1). Does that make it similar to a case of a *sho'el shelo midaas* (someone who borrows an object without permission), who is considered a thief and is liable even in cases of *meisah machmas melachah*?

The *Poskim* rule that even though a person has no right to borrow an object from a borrower or renter, if he did so and the object broke during normal use, *b'dieved* (after the fact) he is absolved from payment due to *meisah machmas melachah* (*Shu"t HaRashba*, cited in *Beis Yosef* 342; *Schulchan Aruch HaRav*, *sh'eilah* 4; *Shach* 72:140, and *Machaneh Ephraim* 19. Cf. *Pri Megadim*, cited in *Biur Halachah* 637:3 s.v. *ve'im* and *Avnei Miluim* 28:50).

But this is true only if there are witnesses who testify that it was *meisah machmas melachah* or if the renter saw and can take the oath that it was, or if the owner believes the borrower's claim that it was (*Chochmas Shlomo* 291:26). If, however, the owner does not trust the *sho'el* even if the latter is willing to take an oath, the owner is not required to believe that it was *meisah machmas melachah* (unless we know that he has rented this object to this *sho'el* in the past, which proves that he does trust him, or if he rents it out to anyone who is willing to pay; see *Pischei Choshen*, *Pikadon* 9 fn. 28 and BHI issue #557).

If it cannot be established that it was *meisah machmas melachah*, then the borrower is obligated to pay.

Now, in your case, as soon as the scooter was damaged, that was considered a termination of the rental. You were obligated immediately to either pay the owner the value of the scooter (cf. *Rashash*, *Bava Metzia* 35b) or replace it with one of equal value (see *Nesivos* 291:1).

Nevertheless, the fact that you delayed giving the new scooter to him — although wrong — does not obligate you to pay a rental fee, because the scooter did not belong to him until you actually gave it to him. He also has no right to demand that you pay him for the devaluation from when you bought it until you gave it to him, because you didn't borrow a new scooter, so you weren't required to repay with a new, one, only one of equal value (see further BHI issue #584).

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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