

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

SUBLET

The Greens lived in a rented house upstate, where the weather was temperate during the summer. However, they planned to be away for the entire summer visiting their family elsewhere.

"It's a waste to pay rent for the summer," Mrs. Green said to her husband. "Maybe someone from the city would be interested in subletting for the summer. It's much more pleasant here than in the city."

"We could consider that," replied Mr. Green. "It's a bit of a hassle arranging everything, but it certainly would help financially."

"What about our landlord?" asked Mrs. Green. "Do we have to ask his permission? It is his house, after all."

"What's the difference to him?" replied Mr. Green. "We rented the house for the year. We could live here during the summer, so why can't we have someone else live here in place of us? The landlord will get his rent, regardless."

"I know other families who had issues with this," said Mrs. Green. "Some landlords allowed it, while others refused it outright! Maybe check the contract; see if it says anything."

Mr. Green checked the contract. "Our contract doesn't specify anything about subletting," he said. "It doesn't allow it, but doesn't rule it out. I don't see, though, how we can avoid telling the landlord about it."

"I agree that we need to let him know," said Mrs. Green. "However, the question is whether we have to ask his permission. Often, once you raise a question, you open yourself to refusal. If we can, I'd rather just arrange it, and then let him know that we sublet it."

"I'm not sure if we need to ask his permission," answered Mr. Green. He called Rabbi Dayan and asked:

"Can we sublet the house for the summer without the landlord's permission?"

"The *Gemara* (B.M. 29b) teaches that one who rents an item may not rent it out to a third party," replied Rabbi Dayan (C.M. and *Sma* 307:4).

"However, the Rambam (*Hil. Sechirus* 5:5) limits this to movable items, where the owner can claim that he does not want the item in another person's hands. However, it does not apply to a house, which cannot be hidden away, and the owner can check that it is returned intact. Therefore, a person who rents a house for a set time is allowed to sublet, provided that the second renter does not have more family members than the

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

SNAKE SWALLOWS LIZARD: WHO PAYS?

Q. Before Purim, a seminary hired someone to bring animals to the school, including a caged snake and a lizard. The animal owner left the seminary for a few minutes, and in his absence, a girl opened the snake's cage. Before anyone could react, it jumped out and swallowed the lizard alive.

When the owner returned and saw what had happened, he demanded that the student pay 800 shekel for the lizard.

After receiving payment, he turned to us and posed a *she'eilah*, asking whether he was truly entitled to payment.

A. There are two parties who we might think could be liable in this case: The seminary administration might be liable, because when they rented the animals, they might have assumed the status of a *shomer sachar* (paid guardian); and the student, who was certainly not a *shomer*, but she might be liable as a *mazik* (a person who causes damage).

According to *Halachah*, the seminary administration is not liable, because they never accepted personal responsibility to guard the animals, which were in the possession of their owner the entire time.

The student's potential liability is more complex.

If a person stole an animal, he is liable for any damage it inflicts from the moment of the theft, assuming that he intended to acquire the animal for himself (see *Choshen Mishpat* 389:7 with *Sma* 7 regarding damage caused by a snake). If he stole it intending to release it, however, he is not liable for the damages; since he had no interest in taking ownership of it, he is not obligated to guard it (*ibid.* 396:3 with *Sma* 6 and *Shach* 1).

In our case, it is obvious that the student had no intention of acquiring the snake. Moreover, she did not make any *kinyan* (acquisitional act) on the snake by opening the door and allowing it to escape; enabling an animal to go free is not an act of theft.

There is a dispute between the Beis Yosef and the Rema (*ibid.* 396:4) regarding a case in which a person



CASE FILE

original tenant and is a reasonable person (C.M. and Sma 316:1; Rema 342:1; Aruch Hashulchan 316:2). "Most authorities understand that this is allowed even if the owner does not live on the premises, since he can still oversee the property (Taz 316:1).

"Rashba (Responsum 3:36) writes that it is permissible to sublet even to a larger family, if the tenant can show *beis din* that no additional damage is expected through this. Perhaps the Rambam would agree with this (Emek Hamishpat, Sechirus Batim 56:13).

"Furthermore, Kessef Hakodashim (316:3) suggests that when the common practice requires the tenant to return the house in its original condition, it is permissible to sublet to a larger family, since regardless, the tenant must ensure that the house is returned intact. This is questionable, though. In addition, most contracts nowadays do not require returning to the original condition when there is reasonable wear and tear.

"Nonetheless, some rule that if the house is furnished, the tenant cannot sublet it without the owner's permission, since the tenant has no right to sublet the movable items in the property (Emek Hamishpat, Sechirus Batim 56:31).

"Of course," concluded Rabbi Dayan, "all this is subject to the terms of the rental contract and *minhag hamedinah*, which are binding in issues of rental." (Pischei Choshen, Sechirus 4:8[22]).

Verdict: In the absence of a stipulation in the contract or *minhag hamedinah* indicating otherwise, a tenant can sublet to a similar-sized family even without the owner's permission. However, if the house is furnished, some *poskim* do not allow it on account of the movable items.



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destroys a gate that prevented another person's animal from escaping, and the animal then causes damage. The Beis Yosef rules, based on the approach of the Rambam (Hilchos Nizkei Mammon 4:2) that the person who destroyed the gate is liable for the damages caused by the animal. But other Rishonim express surprise about the Rambam's ruling, since this was only a *grama* (causational damage, not direct damage). The Rema rules that since no action was done to the animal itself, destroying the gate was a *grama*, and the person is not liable for the damages caused by the animal. (See *ibid.* regarding liability for the animal that escaped, and see BHI issue #522.)

Some *poskim* write that even the Beis Yosef rules this way only if the person who destroyed the gate specifically intended to have that animal cause damage; otherwise, he would agree that it is a *grama* and the person is not liable (see Migdal Oz *ibid.*; *Bei'ur HaGra* 396:8; Chazon Ish, Bava Kamma 1:6, among others).

In *Halachah*, we follow the ruling of the Rema, who rules that the person who destroyed the gate is not obligated to pay for damages caused by the animal (*Shu"t Maharashdam, Choshen Mishpat* 365, cited by *Shach* 396:2; *Chavos Yair* 204).

In the case of the girl who released the snake, even the Beis Yosef would agree, according to some *poskim*, that she is not obligated to pay, because her intention when she opened the cage was not to have the snake cause damage.

Like any other *grama*, however, the girl is required to pay *latzeis yedei Shomayim* (to avoid Divine justice).

The *poskim* debate what the *halachah* is if someone paid for damages because he thought he was obligated to do so according to the letter of the law, but in reality, his obligation was only *latzeis yedei Shomayim*. Some *poskim* require the victim of the damage to return the money, because had the *mazik* known that his obligation was only *latzeis yedei Shomayim*, he might have decided not to pay (*Shu"t Beis Yaakov* 60, cited in *Pis'chei Teshuvah, Yareh De'iah* 161:3). Others argue that the victim is not required to return the money (*Ketzos HaChoshen* 75:4; see *Imrei Binah, To'ein Venitan* 7).

In our case, it is possible that all *poskim* agree that the animal owner is not obligated to return the money, because the girl paid out of *mentchlichkeit*, not because she thought she had a halachic obligation to do so, as evidenced by the fact that she never asked whether she was obligated by *Halachah* or by law to pay for the lizard. Only if the animal owner had told her that she was halachically obligated to pay, and she had paid based on his statement, would he be obligated to return the money.

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Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #19
Sefer Torah Corrections

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

Q. Our shul received a new sefer Torah. During the year, we found several mistakes and paid a local sofer to correct them. Is the original sofer responsible for paying for the corrections?

A: Rashba (*Responsum* 1:1056) writes that although a person who pays for a *sefer Torah* expects to receive a kosher *sefer Torah*, it is common to find occasional mistakes, and almost impossible that there be no errors.

Therefore, if there are only a few errors, as common, presumably the buyer is *mochel* and the *sofer* is not liable to pay for the corrections. However, if there are more errors than usual, due to the *sofer's* carelessness, he is responsible for all the corrections (*Rema C.M.* 306:8)

Nonetheless, this is subject to *minhag hamedinah*, so that if the common practice is that the original *sofer* corrects even occasional mistakes, he must correct them. Where the common practice does not require him to correct them, but he did so of his own accord, he can charge for the corrections like one who enhanced another's property (*Gra* 306:26).



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