

BUSINESS WEEKLY

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



Issue #744 | Tetzaveh - Zachor | Mar 7, 2025 | 8 Adar 5785

לע"נ גלינה בת אליעזר וואלף ע"ה



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute



BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

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

DOOR DENT

The wind howled outside with strong gusts.

"I know it's cold and windy," Mrs. Winter said to her husband, "but we need several groceries."

"I'll drive to the store," replied Mr. Winter.

"Please drive carefully!" Mrs. Winter implored. "It's very windy, with rain on and off."

"Of course," said Mr. Winter. "I always try to drive safely."

When Mr. Winter reached the store, he found a spot between two cars. The car to his left was close to the demarcation line.

Mr. Winter zipped his coat and prepared to get out. He opened the door slowly, not to bang the adjacent car.

The door was partly open, when a strong gust flung the door outward, smashing it into the adjacent car. Mr. Winter saw that his door made a dent in the other car.

Mr. Winter looked in the other car to see if there was any identification to whom it belonged. He saw a copy of the *Business Weekly*, but no identification.

Mr. Winter found a plastic bag in his car. He wrote a note with his name and number, wrapped it in the plastic bag so that it wouldn't get wet, and placed it securely under the windshield wiper of the other car.

When Mr. Winter returned home, he said: "I drove carefully, but when getting out of the car — although I tried to be careful — the wind flung the door open and dented the adjacent car."

"What did you do?" asked Mrs. Winter.

"I left a note under the windshield wiper," answered Mr. Winter. "If the owner calls, we'll have to pay or invoke the insurance."

"From what you said, it wasn't your fault," said Mrs. Winter. "You were careful, but the wind flung the door; you didn't do the damage. Are you sure that we are liable?"

"I'm not sure," replied Mr. Winter, "but I think it was right to leave the note."

"Maybe check before the owner calls?" said Mrs.

RENEGED ON REMOVAL

Q: I hired a contractor to remove debris from an old house I had demolished. This contractor offered a lower price than all the

others I priced because he really wanted the work. After removing 10 truckloads of debris, he called me and said that he is not earning enough on the deal, so he does not want to finish the job, but he wants me to pay him for the work he did. I paid him what I owed for that work and hired a different contractor to finish the job, which ended up costing me a lot more than I would have paid the first contractor I had hired.

When I paid the first contractor, I told him that I was doing so *lifnim mishuras hadin* (going beyond the letter of the law). He disagreed, claiming that because I had paid him only for the work he had done, and I would not have found a cheaper price anyway, I actually gained from his removal of the first 10 truckloads at that low price.

Who is correct?

A: There are two types of workers, with differing *halachos* pertaining to each. One is a *sechir yom*, a day laborer, hired for a certain amount of time and is paid for that time no matter how much work he gets done. The other is a *kablan*, contractor, who is hired to do a certain task and is paid for completing that task, with the employer having no say regarding when he actually does the work (as long as he meets the agreed-upon deadline).

Chazal noted that in *halachah*, a day laborer is akin to an *eved ivri* (Jewish servant), because he is obligated to work during a specific time as per the employer's instructions. He is therefore subject to the rule of "*Ki li Bnei Yisrael avadim* — Bnei Yisrael are servants to Me" (*Vayikra* 25:55), from which *Chazal* deduced (*Bava Metziah* 10a) that we are servants to Hashem *only*, and not to other humans, who are themselves servants of Hashem. This rule establishes that a Jew may never be completely subjugated to another human being. A day laborer is, therefore, entitled to renege on his agreement to work at any point during the employment term, and the employer must pay him the amount due for the time he has worked (*Shulchan Aruch, Choshen Mishpat* 333:3; see BHI

Ensure harmony in your family.
Write your will today!

Zahav and the Business Halacha Institute present the

Monthly Halachic Will Initiative

Meet with Rabbanim and Professionals in the Estate Planning field, and have your HALACHIC WILL AND MEDICAL DIRECTIVE created, signed and witnessed on site

IMPORTANT
A Halachic Will can be created as a standalone Will or an addendum to an existing Secular Will

Upcoming Dates

BROOKLYN
March 24
April 28

LAKEWOOD
March 26
April 30

RSVP to schedule an appointment, Address and Time will be provided.
Call Zahav: 732-540-1898

ZAHAV
SENIOR RESOURCE & REFERRAL CENTER
A Division of Agudath Israel of America



THE WERDIGER EDITION - לע"נ הרב"ח ר' נחמיה בן הרב"ח ר' שלמה אלימלך ז"ל - DEDICATED BY HIS SON R' SHLOME WERDIGER



BEIS HORA'AH

Ask the Rav. Email correspondence / Arbitration and Mediation
/ Small Claims / Wills and Estate Planning / Halacha Hotline



BUSINESS SERVICE DIVISION

Rabbinical Consultation / Banking and Iska / Contract Drafting
/ Shabbos Initiative / Industry-specific Seminars



AWARENESS & EDUCATION

Business Weekly / Hebrew Masa Umatan / Shiurim and Chaburis / Kollel IDayanis Choshen Mishpat
Curriculum / Seferim & Publications / Self-learning Program / Halacha on the Daf



CASE FILE

Winter.

Mr. Winter called Rabbi Dayan and asked:

"Am I liable for the dent?"

"A person is liable both for damage that he himself did and for damage done by his animal, property or fire that he did not guard properly," replied Rabbi Dayan. "Damage by the person has broad liability, whereas other categories of damage have certain limitations specific to each category."

"The *Mishnah* (B.K. 62a) teaches that if a spark flies from the blow of a blacksmith's hammer and damages, the blacksmith is liable (C.M. 382:2).

"*Tosafos* (B.K. 60a; B.B. 26a) differentiates that if the spark flies from the force of the blow alone, it is considered damage by the person himself. However, if the spark is carried by the wind, it is treated as 'fire,' which the *Gemara* (B.K. 3b, 6a) characterizes as damage enabled by an additional force, i.e., the wind.

"Following this definition, objects left on the roof that were blown by a normal wind and damaged while falling are considered a subset of 'fire,' because it is damage enabled by the wind (*Sma* 411:1; C.M. 418:1).

"If the items were blown by an abnormally strong wind, the person is exempt, following the rules of 'fire.' Nonetheless, if the strong wind was already blowing, the person is liable, because the person should have known to expect it (C.M. 411:2; *Rema* 418:9; *Pischei Choshen*, *Nezikin* 9:9).

"Thus, if you bang the adjacent car when opening your door — this is damage by the person; you are liable even if you damaged unintentionally (C.M. 378:1).

"However, if the door was flung by a very strong wind, this is like a spark or item carried by the wind. If the gust was sudden and unexpected, you are exempt. However, because it was stormy and the wind already strong, you are liable, as a subset of 'fire.'

"There is a dispute whether nowadays *beis din* is halachically authorized to enforce payment of 'fire' damage; many maintain that yes. Regardless, you are certainly responsible, and *beis din* can sanction until you compensate the damaged party (*Shach* 1:1; *Pischei Teshuvah* 1:2; C.M. 1:5, *Pischei Choshen*, *Nezikin* 10:2,4).

"Therefore," concluded Rabbi Dayan, "you were correct to leave a note on the windshield."

Verdict: A car door flung open by an abnormally strong wind is characterized as "fire." When unexpected, the person is exempt; when the wind is already present, the person is liable.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Ye'ush – Abandonment

#26

Conclusion and Summary

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

During the past six months, we addressed various aspects of *ye'ush* — abandonment, when the owner states or indicates that he abandons hope of reclaiming his items. This concept is most relevant in the realm of *hilchos aveidah* but also has other applications, e.g., in the laws of theft.

Several *Acharonim* distinguish between *hefker*, which immediately removes the item from the owner's possession and *ye'ush*, which allows others to take it but does not revoke the ownership until possessed by others and is therefore retractable.

If a person finds an item before the owner has *ye'ush*, he is responsible to return it even if the owner later has *ye'ush*. The finder may keep the item only if he took it after *ye'ush*. Even so, it is proper *lifnim mishuras hadin* (beyond the letter of the law) to return the item to the owner when identified.

Certain cases of uncontrollable loss are considered automatic *ye'ush* or perhaps even *hefker*, despite the owner's futile statement that he hopes to recover the item.

When a person is willfully careless with his items (*aveidah midaas*), others are not required to toil to return them. The *Rishonim* dispute whether others may take these items for themselves. This depends mostly on whether the carelessness indicates the owner's intent to allow the items to others.

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



BHI HOTLINE

#544-545 for exclusions).

A *kablan*, on the other hand, who is not required to work at specific hours, is not akin to a servant. Rather, because his wages are due only when his work is done, he is similar to a seller, as he is essentially selling the product he created to the person who hired him. He is therefore not entitled to renege on the work agreement, and if he does, the employer has the upper hand in negotiating a settlement.

If the employer must now hire workers to finish the job, and he has to pay them more than the original *kablan* charged, he may deduct that extra amount from the payment of the *kablan* who reneged. *Chazal* determined that there is an implicit agreement between an employer and a contractor that should the contractor renege, the employer may deduct from his wages if he has to pay more to a new contractor (*ibid*. 333:4). In fact, even if the employer already paid the *kablan* the amount due for the work he did, he may now demand back the extra amount he has to pay the new contractor (*ibid*. 5).

The *Rashba* (*Bava Metzia* 76b) writes that this is true even if the initial *kablan* offered to do the work at a lower price than others, and if not for his offer, the employer would have paid more to any other contractor. Even in this case, the employer is entitled to deduct the extra amount he will have to pay the new contractor from the wages due to the contractor who reneged so that he does not have to pay, in total, more than he agreed to pay the first contractor (*Chikrei Lev*, *Choshen Mishpat* 2:80; *Chazon Ish*, *Choshen Mishpat* 23:31, explaining *Shulchan Aruch* 333:4).

Because *Chazal* said that during the initial agreement, the *kablan* agrees to have the wages he earned from the work he did garnished by the employer to pay for a new contractor if he reneges, that principle applies in this case as well (see *Chazon Ish*, *Likutim* to *Bava Metzia* 20:10.)

You are, therefore, correct in your assertion that your payment was *lifnim mishuras hadin*, because you were entitled to withhold the extra amount you paid the second contractor from the wages you paid the first one.



PLACE YOUR LOGO HERE IT WILL BE SEEN BY 30,000 PEOPLE
NL@BUSINESSHALACHA.COM
(718) 233-3845 #201

Neuhaus
CERTIFIED PUBLIC ACCOUNTANTS • ADVISORS
732-886-5430

Haas & Zaltz, LLP

WILLS & TRUSTS | ELDER LAW
SPECIAL NEEDS | PROBATE

845.425.3900

Sensible

Car Rental

718-633-2500
reservations@sensiblecarrentalbklyn.com