



Restoring the Primacy of Choshen Mishpat

# BUSINESS HALACHA *in the* CLASSROOM

❧ *Bava Metzia* ❧  
PEREK ZAYIN

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# Buy!

## *Bava Metzia 83a - Minhag HaMedina*

Mr. Scher tracked a number of stocks. One was TorahTech, a start-up that specialized in harnessing new technology to disseminate Torah.

The company showed promise, but its marketing efforts hadn't succeeded yet. Mr. Scher considered the stock overpriced at \$6 a share, but worth grabbing if its price dropped significantly. He instructed his portfolio manager, Mr. Gelber, to buy 10,000 shares if the price dropped to \$4.

Rumors of a significant second-quarter loss — but a fresh product line aimed at the new Daf Yomi cycle — set the stock on a volatile course. For two weeks it oscillated between \$4.50 and \$7 a share. When the quarterly report was finally issued, the stock descended to \$4 for a few days.

A month later, though, TorahTech's new Daf Yomi products began selling big. The stock began a steady climb, eventually hitting \$8 a share six months later!

Mr. Scher gave instructions to sell the 10,000 shares of TorahTech, anticipating earning 100-percent profit on the sale.

Mr. Gelber checked the account. "You don't have any shares of TorahTech," he said. "What do you mean?" Mr. Scher asked. "I instructed you to buy 10,000 shares when the price dropped to \$4!"

"Let me check," said Mr. Gelber. He reviewed the account and acknowledged, "Somehow, I missed that order."

"That's \$40,000 lost!" exclaimed Mr. Scher. "I've been following that company for months."

"I'm sorry," said Mr. Gelber. "I usually enter orders immediately so that the purchase is made automatically."

"You should compensate me for the loss," said Mr. Scher. "The failure to execute was sheer negligence on your part."

"That seems extreme," replied Mr. Gelber. "It's not even a loss, just a missed opportunity for profit. I'm willing to take it up with Rabbi Dayan, though. Let's talk with him."

They related the details to Rabbi Dayan.

"Mr. Scher does not have to pay for the lost \$40,000 in this case," ruled Rabbi Dayan. "The Tosefta teaches that an investor who gave money to an agent to buy

## *Buy, cont.*

merchandise and sell it for a shared profit, but the agent didn't buy — has only a complaint against him (C.M. 183:1).

“Similarly, the Yerushalmi writes that mevatel kiso shel chavero — a person who restrained his friend's money and prevented him from earning profit — has only a complaint. This is, at most, a form of potential grama (see Shach 61:10; 292:15; Pischei Choshen 12:[36]).”

“Are there cases in which a person has to cover lost profits?” asked Mr. Scher.

“The Mishnah (B.M. 104a) teaches that a farmer who undertook to work another's field and share the crop, but left the field fallow, must pay whatever the field was expected to produce,” answered Rabbi Dayan. “This was a generally stipulated condition that became standard (328:2).


“Furthermore, the Gemara (B.M. 73b) discusses the case of a person who gave money to an agent to buy wine for him during the market season. Some authorities derive from this that if the loss is clear, the agent has to pay (Nesivos 183:1; Chasam Sofer, C.M. #178 ).”

“How is it different from the original case in the Tosefta?” asked Mr. Gelber.

“Nesivos (306:6) explains that the Gemara deals with a contracted worker (kablan) or partner, who pays even for a lost profit opportunity (306:3),” answered Rabbi Dayan. “The Tosefta refers to an agent who was not paid, or a salaried worker (po'el) who was entitled to back out from the job.”

“Why shouldn't Mr. Gelber have to pay, then?” asked Mr. Scher. “He's a contracted broker.”

“A number of authorities disagree with the Nesivos and Taz,” replied Rabbi Dayan. “They maintain that the agent is required to cover lost profit only if he stipulated so beforehand (see Pischei Choshen, Pikadon, 12:[38]; Nachalas Zvi 292:7).

“However, as with many issues of workers, we must consider minhag hamedinah, the current practice of brokers (331:2). FINRA\* rules and most broker contracts require that cases of stockbroker misconduct, such as failure to execute, be settled through arbitration. The broker would likely be required to pay part of the loss.” 

\*FINRA is the largest securities regulating firm in the USA.

# Close to Home

*Bava Metzia 83a - Minhag HaMedina*

Adam worked in Wolf's Wholesale Sefarim store. He worked until 5:00 PM, but he would often leave earlier to deliver sefarim (Jewish books) as part of his job.

Today was no different. In the early afternoon, Mr. Wolf helped Adam load ten boxes of sefarim into his car for delivery.

"These go to a store on my block," Adam commented to Mr. Wolf. "That will be convenient to deliver on the way home."

At 4:30, Adam drove off to deliver the sefarim.

The following day, Mr. Wolf reviewed Adam's timecard.

"I see that you left a half-hour early," he said to Adam. "I thought you were going to drop the sefarim off on your way home."

"I did," said Adam. "It was very convenient; it saved me the extra half-hour drive home."

"Exactly; you could have stayed till 5:00," replied Mr. Wolf. "I assumed you would work a regular day and deliver the sefarim when you got home. You were going there anyway."

"If I have a package to deliver, that's part of work," said Adam. "Sometimes the deliveries take me farther from home, and sometimes they take me closer."

"That's understandable," said Mr. Wolf. "But this required no extra effort on your part; it was right on your block. It's a case of zeh neheneh v'zeh lo chaser (this one benefits and this one does not lose out)."

"You asked me to deliver the sefarim, so I included it in my work hours," Adam responded. "Whether it's on my way home or not should be of no consequence to you."

"I'm not going to make a fuss about it; it's only half an hour," said Mr. Wolf. "But I attend a fascinating business halacha shiur on Sunday mornings with Rabbi Tzedek. I'm interested in finding out what the halacha would be in this situation."

"I'll join you," said Adam.

On Sunday after the shiur, Mr. Wolf and Adam approached Rabbi Tzedek.

"An interesting case occurred last week," began Mr. Wolf. "We were wondering what the halacha is."

He related the story to Rabbi Tzedek and asked; "Can Adam count the sefarim


delivery to his block as part of his work hours?”

“Unless agreed otherwise beforehand, Adam is entitled to deliver the sefarim to his block during work hours,” said Rabbi Tzedek, “even though it saved him the usual drive home.”

Rabbi Tzedek explained. “The overriding principle regarding working conditions is ‘minhag hamedinah,’ the common practice (C.M. 331:1, 2),” replied Rabbi Tzedek. “It seems clear that the common practice nowadays is to pay for hours ‘on the job’ without consideration of travel time. Some workers live an hour from their work and others live five minutes away; both get paid the same salary for equivalent work. Most places in America do not reimburse for travel expenses, while in Israel most do. Therefore, as long as Adam was servicing Wolf’s Wholesale Sefarim, he is entitled to consider it as part of his work, even if it spares him the travel time home.”

“But what about the concept of zeh neheneh v’zeh lo chaser?” asked Mr. Wolf. “Since Adam had to go home anyway, and lost nothing in delivering the sefarim, shouldn’t I be exempt from paying for the benefit I gained?”

“The concept of zeh neheneh does not apply here for a few reasons,” answered Rabbi Tzedek. “First, the concept relates primarily to de facto situations, where someone already benefited from another’s property or efforts. However, if you request that someone do you a service, you usually must pay, even if it did not cause the other person additional effort or expenditure (see 363:6).

“Second, zeh neheneh applies only when there was no additional effort or cost involved,” added Rabbi Tzedek. “However, when there is even a small additional cost, then the beneficiary must pay for the entire service, not only the additional small amount. Thus, since the delivery was a few houses away and required an additional stop, as well as time and effort to unload the sefarim, it is not considered ‘lo chaser,’ and you must pay your worker the full amount for the delivery (363:7).” 

# First Things First

*Bava Metzia 83a - Minhag HaMedina*

Adam worked as a salesman from 8 to 6, leaving him little time to learn.

"I was asked to help run the night Kollel in our shul from 8 to 11 PM," Adam said to his wife. "They'll also pay. What do you say?"

"It's not going to be easy for the family, but it's a great opportunity to learn," his wife responded. "We could also use the additional income."

Adam accepted the offer. After a full day's work, he had supper and headed out again. By the time he returned home, took care of some necessary paperwork, showered, and went to sleep, it was almost 1:00 AM.

"Five hours of sleep," he mused, as he set the alarm for 6:00 AM.

As the weeks wore on, it became harder to get up. The alarm rang and Adam hit the snooze button, half asleep. "Adam, you've got to get up," his wife roused him.

Adam rubbed his eyes and dragged himself out of bed. After davening, he had a double-strength cup of coffee, and headed out to work. When Adam arrived, his boss called him in. "Adam, there have been errors in your sales reports recently," he said. "You also seem less energetic and enthusiastic. Is everything okay?"

"I'm okay," said Adam, "but I've mentioned to you that I started running a night learning program to supplement our income. I'm going on very little sleep."

"I understand that you need to supplement your income and want to learn," said the boss, "but it's beginning to affect your work. I value your contribution to our business, but you must make your job a priority and give it your all."

"But you've known about this program for a while," said Adam, "and you never objected."

"Still, if the learning program leaves you too tired to function properly," said the boss, "you have to consider dropping it. It's unfair to us."

Adam went to consult with Rabbi Tzedek.

"I started running a night Kollel to supplement my income, but the late hours are beginning to detract from my work," said Adam. "Can I continue with the Kollel?"

Rabbi Tzedek answered, "You are not allowed to take on additional responsibilities if it detracts from your ability to function properly at your primary work."

Rabbi Tzedek pulled a volume of Rambam from the bookshelf. "Here, read this



## *First Things First, cont.*

passage in the end of Hilchos Sechirus (13:6-7),” he said to Adam. “It’s cited by the Shulchan Aruch (C.M. 337:19-20) and sets forth the required work ethic.”

*A worker is not allowed to do his own work at night and hire himself out during the day... He should not starve and afflict himself... because this is stealing from the work of the employer, since his strength will be weakened and his mind will be dulled and he will not work energetically.*


*Just as the employer is warned not to steal the wages of a poor laborer and should not withhold them, so too, the poor [employee] is warned not to steal the work of the employer and waste time a little here and a little there, spending the whole day unproductively, but must be meticulous with his time.*

“Wow!” commented Adam. “That’s quite a work ethic!”

“Yes,” responded Rabbi Tzedek. “The employer pays the employee for the time and effort that he invests in his work. Therefore, when the employee wastes time or behaves in a way that makes him work inefficiently, he is taking wages unfairly and cheating the employer.

“The details of the work obligation depend on what is customary in that time and place (331:1). If it is customary to allow workers a short call home during the course of the day, to daven mincha (pray), or to string together a number of part-time jobs, that is acceptable. However, the employee should be careful not to overextend this allowance and make numerous calls, spend time to handle personal needs during work hours, or spread himself thinly so that he cannot properly fulfill his responsibilities.”

“But what about the opportunity to learn extra Torah?” asked Adam.

“Learning Torah is of utmost importance and you should continue learning whenever possible,” replied Rabbi Tzedek. “However, working with integrity is also part of upholding Torah, as the Rambam concludes: *He must work with all his energy, as the righteous Yaakov said: ‘I worked for your father with all my energy.’ Therefore, he received reward [for] this also in this world, as it says: ‘The man was very, very prosperous.’*” 

# Free Lunch

## *Bava Metzia 83a - Minhag HaMedina*

The financial administrator of Derech HaTorah Elementary School sent out a memo: "The school must trim expenses across the board by 15%; please submit proposals."

The kitchen submitted a list of recommendations to trim its budget, among them:

"At present, many of the teachers and staff eat lunch in the Yeshiva lunchroom. This amounts to 30-40 additional servings daily. Restricting lunch to students alone would reduce food costs by approximately 5%. This step can be implemented immediately."

At the committee meeting, the faculty representative objected to this exclusion. "For years, the teachers have eaten in the lunchroom," he argued. "Changing this policy would place upon them an unnecessary burden and expense to bring their own lunch."

"The free lunch was a benefit we were happy to provide so long as we were able to," replied the financial administrator. "There is no stipulation in the contract that entitles you to a free lunch, so we are under no obligation to continue this practice. Furthermore, almost no other job provides this benefit."

"Although eating a free lunch is not stipulated in the contract, this has been the practice in Derech HaTorah for years," countered the faculty representative. "This is also the practice of most other schools that have a lunchroom; teachers are allowed to eat there."

"What other schools do is their business, but has no relevance for us," the administrator said. "We have no obligation to provide benefits not stipulated in the contract."

"Teachers here should be granted the same conditions as teachers in comparable educational settings," responded the faculty representative. "We view this benefit as a proper courtesy and a fair supplement to our meager salary. Certainly during the school year itself, you cannot change the terms of the employment."

"It does not seem to me that eating a free lunch is considered a term of employment," the administrator insisted. "We desperately need to curb expenses, and there is no reason not to implement this step now."

"The question of whether to continue the practice in future years should be finalized later," interjected the principal. "However, the question of whether there is an obligation under the current contract to allow the faculty to eat in the lunchroom is



## *Free Lunch, cont.*

a halachic one. The question should be addressed to Rabbi Tzedek before we make a decision.”

The principal called Rabbi Tzedek and explained the issue to him. “I’m putting you on speakerphone,” he said. “Can you guide us?”


Rabbi Tzedek ruled: “If it is common for comparable educational institutions to allow faculty to eat in the lunchroom, the school is required to provide free lunch, unless they specifically stipulated otherwise in the contract.”

Rabbi Tzedek then explained, “One of the most fundamental principles of employee-employer obligations is the rule, ‘hakol k’minhag hamedina’ – ‘everything is according to the common practice.’ It is impossible to stipulate every last point in a contract, so whatever is not explicitly addressed follows the common practice. The issue of providing a meal is mentioned in the Mishna (B.M. 83a) as an example of this rule: ‘In a place where the practice is to provide a meal – [the employer] is obligated to provide a meal; to provide refreshments [e.g., coffee and tea] – he is obligated to provide refreshments... everything according to the common practice.’

“The notion of common practice also varies from profession to profession. Although almost all employers do not provide free lunch, in educational institutions with a lunchroom that serves meals to its students, the general practice is to allow teachers to eat there as well. Therefore, even though this benefit is not mentioned in the contract, the employer is obligated to provide it, in accordance with the common practice (C.M. 331:2). Furthermore, since this was the established practice in Derech HaTorah, the employment was taken under this condition, even if not explicitly mentioned.

“The principle of hakol k’minhag hamedina applies to all employers,” concluded Rabbi Tzedek. “As we mentioned, if the common practice is to provide coffee and tea to workers, the employer is obligated to provide a machine for this. If it is standard to allow employees a half-hour lunch break, the employee is entitled to this break even if not stipulated in the contract.”

“Can the school amend the contract next year to exclude this benefit?” asked the principal.

“Yes,” replied Rabbi Tzedek, “since whatever explicit agreements the parties reach is binding in monetary matters (C.M. 337:17).” 

# Not Publishable

## *Bava Metzia 83a - Minhag HaMedina*

Yanky Schwartz was a regular writer for a noted Jewish magazine. One day, the feature editor, Sam, contacted him.

“We’re running a series on Jewish communal issues,” Sam said. “I’d like you to write an article about violence in Jewish day schools.”

“You’re kidding,” said Yanky. “Is this really an issue?”

“Unfortunately, the phenomenon is more common than you think,” said Sam. “Sometimes the best way to raise communal awareness is through an article on the subject.”

Yanky worked for a month on the article: researching the topic, interviewing principles and students, collating the material, drafting the article, editing and proofing it. He emailed the finished article to Sam, who made some minor revisions and forwarded the article to the senior editor for approval.

The senior editor, however, returned the article with the following comment: “The article is well-written well and 100% correct. However, due to the broad-ranging readership of our magazine and the reputation of the relevant schools, the issue is too sensitive to be addressed in our magazine. Therefore, the article is not publishable.”

Sam forwarded the response to Yanky, apologizing for the inconvenience he caused.

When Yanky received the response, he became irate. “What do you mean?” he wrote back to the senior editor. “I spent a month working on this article, which Sam asked me to write, and now you decide that the topic can’t be published?!”

“Sam can only suggest topics for articles,” the senior editor replied. “However, he is not authorized to make final decisions about what is included for publication.”

“All the same, he is my direct contact,” said Yanky. “I invested lots of time in that article. Whether you choose to publish it or not is your business, but you owe me for the article.”

“I’m sorry for the mistake,” replied the editor, “but you know that our policy is to pay only for articles that are published.”

“But your feature editor was the one who told me to write about this topic,” argued Yanky. “Could we speak with Rabbi Dayan?”

“Sure, great idea,” answered the editor.

The two met with Rabbi Dayan, who said, “There are two general models for work. One is the employee model (po’el or kablan), in which the worker is paid for doing the work, whether by the hour or by the job. The other is the customer model, such as one who orders from a baker or carpenter, whereby the customer buys the final product from the worker.”

“What would a journalist who gets paid for his articles be considered?” asked the editor.

“A regular columnist would presumably be similar to an employee, even if he is not paid a regular salary with a W-4, but by the article or word with a 1099-Misc,” answered Rabbi Dayan. “A freelance journalist who submits an occasional article might follow the second model.”

“What is the halacha in these cases?” asked Yanky.

“Halacha addresses both examples,” continued Rabbi Dayan. “If an employer instructs a worker to do something, and the worker does the work, the employer owes him pay even if he gained no benefit from it. For example, if he told the worker to plow a certain field, which turned out to be someone else’s or unowned (hefker) property, the employer is still responsible to ensure the wages (C.M. 335:3; 336:1-3).

“Similarly, if a customer instructs a professional to make something and then refuses to buy it, if the professional is unable to sell it to others, the customer must pay for having caused him damage. Some indicate that this is the full value of work (333:8; SM”A 333:29).

“Therefore, if the feature editor is authorized to request articles from the writers,” concluded Rabbi Dayan, “the magazine would seem responsible to pay for the article, even if the magazine could not benefit from it.”

“But what about the policy of paying for articles only when they are published?” asked the senior editor.

“That would be relevant if the journalist wrote the article of his own accord or did not do a satisfactory job,” responded Rabbi Dayan. “However, if he was instructed to write a certain article and did a satisfactory job, the magazine cannot avoid payment by choosing not to print the article. In the particular instance of journalism, though, there is a fairly accepted minhag hamedina (common commercial practice) to pay a ‘kill fee’ of approximately 50% for solicited articles that remain unpublished.”



# Bumped

## *Bava Metzia 83a - Minhag HaMedina*

Rabbi Feld sat in the boarding lounge of the airport, learning his daf. He was traveling to the wedding of one of his congregants, Mr. Krauss, who had purchased him a complimentary ticket. Although the wedding was scheduled for late afternoon, he had booked an early flight to allow ample time.

Rabbi Feld noticed Rabbi Dayan sitting across from him, waiting for the same flight. "I'm heading to a wedding in Chicago," Rabbi Feld said. "By any chance, are you also attending?"

"No," replied Rabbi Dayan. "I was invited to give a shiur."

As they talked, an announcement came over the loudspeaker: "Continental Flight 473 to Chicago is overbooked. There is an additional flight at 12:00 p.m. Passengers willing to be rescheduled to the 12 o'clock flight will be granted a free round-trip ticket to anywhere that Continental flies. Please approach one of the Continental representatives near the boarding gate."

Rabbi Feld couldn't believe his ears. "A free ticket to anywhere that Continental flies!" He could get a free round-trip ticket to Israel in exchange for a few hours' delay! He looked at his watch. Even with the later flight, he should arrive at 3:00 p.m., just in time to make the wedding.

"Should I risk it?" he thought to himself.

Rabbi Feld asked himself another question: Since the Krauss family had sponsored the ticket, perhaps it was they who should be entitled to the bonus ticket. It was their money, after all.

Rabbi Feld needed to make a quick decision. He turned to Rabbi Dayan and explained the situation.

"Can I take the later flight?" he asked. "If I do, who gets the ticket?"

"Whether you can take the later flight depends on what you expect Mr. Krauss would want," said Rabbi Dayan. "The bonus ticket would certainly belong to you, though."

Rabbi Feld decided that it would be irresponsible to risk arriving late for the wedding, despite the potential gain.

"Thank you. I'll stay with this flight," he said to Rabbi Dayan. "Now that we have some time, though, could you please explain the reason for what you said?"

## *Bumped, cont.*

“When a person gives a gift, we evaluate his intention in giving it,” said Rabbi Dayan. “Mr. Krauss clearly bought you a ticket so that you could participate in his simcha. You should therefore act in accordance with his intention. Presumably, he would not want you to arrive late for the wedding. If you were meant to lead the wedding (mesader kiddushin) or take an important role in the chuppah, he would probably not be willing to have you take any risk (see Choshen Mishpat 241:5; 246:1).”

“What about the bonus ticket?” asked Rabbi Feld. “I know that in some cases, an agent who bought something and received a bonus must share it with the sender who paid the money. Here, Mr. Krauss paid for the ticket (C.M. 183:6).”

“Correct, but this does not apply here for a number of reasons,” said Rabbi Dayan. “First, the bonus ticket would be issued under your name. Rashi explains that the bonus is shared because we are unsure to whom the seller intended to give it: the sender who paid the money or the agent who executed the purchase. Accordingly, when the bonus is explicitly designated to the agent, he is entitled to it (Rema 183:6).”

“But don’t some later authorities question this ruling?” asked Rabbi Feld (see Be’er Heiteiv 183:21; S.A. Harav, Mechirah #11).

“Yes, but the Rashba writes that if the agent received the bonus because he benefited the seller, everyone would agree that it belongs completely to the agent,” said Rabbi Dayan. “Here, the bonus ticket is not because of the initial purchase, but because you were willing to be bumped from the early flight (Ketzos 183:7).”

“Furthermore, the commercial airline practice is to benefit the bumped individual, regardless of who paid for the ticket,” Rabbi Dayan concluded. “Thus, the principle of hakol k’minhag hamedinah (everything in accordance with the common commercial practice) applies here (331:2).”

“Thank you,” said Rabbi Feld. “This will make for an interesting shiur when I return home!”





# Pesach Cleaning

*Bava Metzia 83a - Isi ben Yehuda*

"Pesach is just around the corner!" was Mrs. Adler's motto. Pesach cleaning started well in advance, and its star was her trusted Hoover canister vacuum cleaner. It was expensive, but its powerful suction and versatility made it worthwhile for Pesach.

One morning, while Mrs. Adler was vacuuming, the doorbell rang. "C'mon in, Sally," she called to her closest neighbor, Sally Baum, who lived down the hall.

"How's Pesach coming along?" asked Mrs. Baum.

"So far, I've managed to keep on schedule," replied Mrs. Adler. "I hate the last minute rush!"

"I just wish I had a better vac," lamented Mrs. Baum.

"Mine is great," glowed Mrs. Adler. "You can borrow it tonight."

In the evening, Mrs. Baum sent her son to pick up the vacuum. Armed with the vacuum, she went around the edges of the rooms, poked with the crevice tool behind the cabinets, and started to clean the couch.

"Hi, Sally," she heard her husband's voice.

Mrs. Baum looked up. "Welcome home," she replied. "You know that Mrs. Adler always says, 'Pesach is just around the corner!' Well, now it really is, and she was kind enough to lend us hers for the evening. Come have supper."

After supper, Mrs. Baum continued vacuuming. Without warning the vacuum suddenly sparked and the electricity blew! "What happened?" called out Mr. Baum. "I'm not sure," answered his wife. "It seems that the vac blew the fuse."

Mr. Baum unplugged the vacuum and replaced the fuse. "That was strange," he said. "We never have problems with the electricity."

"Back to work," hummed Mrs. Baum as she plugged the vacuum in. She pressed the button ... but nothing happened. She pressed again, with no response. She tried a different outlet; still nothing.

"The motor died," groaned Mrs. Baum. "How am I going to face Mrs. Adler? She relies on this machine like anything!"

"We'll have to buy her a new one," said her husband. "We can't afford this now, but we have no choice." Mrs. Baum walked down the hall to the Adlers with the broken vacuum and \$500.



## *Pesach Cleaning, cont.*

Mrs. Adler greeted her, "Finished already, Sally? You're fast!"

"I'm really sorry, but the vacuum broke," said Mrs. Baum.

"Please tell me you're kidding!" said Mrs. Adler. "I'll never manage without my vac."

"Really, it's broken," said Mrs. Baum. "I was using it and it just went. But I brought you money to buy a new one."

Mr. Adler walked over. "Is there a chance that you overtaxed the machine? Sucked up something that clogged the airflow?"

"No," said Mrs. Baum. "I was using it normally. But what's the difference? When you borrow something, you're responsible, no matter what."


"That's usually true," said Mr. Adler. "However, I remember learning that if the item breaks or dies through normal usage the borrower is exempt. I'll ask Rabbi Dayan at the Daf tonight."

After the Daf, Mr. Baum walked home with Rabbi Dayan and asked about the vacuum. "You are correct," replied Rabbi Dayan. "When you borrow something you are responsible even for freak accidents, but if it dies or breaks on account of the work for which it was borrowed – you are exempt. This is called *meisa machamas melacha*." (C.M. 340:1)

"Why should this be?" asked Mr. Baum.

"The Gemara (B.M. 96b) explains that the owner lent the item with the understanding that it be used; therefore, he accepted the consequences of this usage," answered Rabbi Dayan. "However, there are two caveats. First, the borrower is exempt only if he used the item for the purpose for which it was lent, but if he used it in even a slightly different manner he is responsible. He does not need to buy a brand new machine, though, but only to pay for the actual loss. (344:2)"

"The second caveat," continued Rabbi Dayan, "is that the borrower must prove with witnesses or take a severe oath in Beis Din that the item broke during the course of work to be exempt, unless the lender completely trusts him." (344:1)

"Thus, if you trust Mrs. Baum that the vacuum died during routine use, she is exempt," concluded Rabbi Dayan. "If she wants to pay something as a neighborly gesture, that's fine, but it's important to know the halacha!" 

# The Shadchan

*Bava Metzia 83a - Minhag HaMedina*

Shmuel Nissel was twenty-seven and still single. Shiduchim were slow in coming, despite the best attempts of his upstairs neighbor, Mrs. Fendel, who was a professional shadchan.

One night, Mrs. Fendel called with a potential shiduch. "I know a young lady, Sari, who is just perfect for Shmuel," she said to Mrs. Nissel.

"That would be nice," said Mrs. Nissel, "but all the other ones who were supposedly 'just perfect' haven't been."

"Really," said Mrs. Fendel. "I am convinced that Sari is just right." She explained for twenty minutes why the two were the perfect match.

"It certainly sounds like it's worth a try," said Mrs. Nissel.

The first meeting went well, as did the second and third.

"How's the shiduch working out?" Mrs. Fendel asked Shmuel's mother.

"They definitely have much in common," Mrs. Nissel replied, "but some issues still remain."

After going out seriously for weeks, though, Sari decided to stop. A year went by.

Friends of the family, Mr. and Mrs. Rafi Green, came over for Shabbos. As the two families sat around the table, the discussion turned to shiduchim.

"Do you remember Sari, who Shmuel went out with last year?" asked Rafi.

"Of course we remember," said the Nissels. "Shmuel was very interested. They almost got engaged."

"My wife works with Sari," said Rafi. "Her impression is that Sari might be willing to resume going out."

"We'd be happy to give it another try if Sari's interested," said Shmuel's parents.

The next day, Rafi called Mr. Nissel. "My wife spoke with Sari's family, and they're interested in trying again."

"Thank you so much!" exclaimed Mr. Nissel.

A month later, Rafi called to find out how the shiduch was progressing. "It looks like it's going to work out this time!" Mr. Nissel told him.

Sure enough, two weeks later, the Nissels called their close friends and neighbors. "Shmuel just got engaged to Sari and there's a l'chaim at our house tonight!"

Mrs. Fendel was one of the first to arrive. "Mazal Tov! Mazal Tov!" she called out.

## *The Shadchan, cont.*

“So, it was the right shiduch after all.” She approached Mrs. Nissel excitedly and said, “See, I told you I would be the shadchan!”

“I’m really glad it worked out in the end,” responded Mrs. Nissel happily. “It was good that the Greens pushed us to resume the shiduch.”

No sooner had they finished talking, when Rafi Green walked in. “Mazal Tov! Mazal Tov!” he called out. “So, the shiduch was the right one.” He gave Mr. Nissel a big smile and thumped him on the back, adding with a wink, “I guess I’ve finally made it as a shadchan.”

“Yes, yes...” responded Mr. Nissel happily, but confused. “I’m really glad it worked out. It was good that Mrs. Fendel suggested the shiduch a year ago.”

Mr. Nissel was perturbed. “Who is the real shadchan?” he thought. “Who is entitled to the shadchanus money?”

The following day, Mr. Nissel met with Rabbi Dayan.


“Who is considered the real shadchan?” Mr. Nissel asked. “Is it Mrs. Fendel, who suggested the shiduch in the first place and helped Shmuel and Sari in the early days of meeting each other, or Mr. Green, who encouraged them to resume going out and ultimately get engaged?”

“Generally speaking, the one who brings the transaction to fruition deserves the agent’s fee,” Rabbi Dayan answered. “However, the accepted practice is to split the shadchan gelt between the one who began the shiduch and the one who completed it, especially when the first meetings ultimately contributed to the engagement.”

“So they share it 50/50?” asked Mr. Nissel.

“Some divide it that way,” replied Rabbi Dayan (Aruch Hashulchan E.H. 50:42). “However, since the one who completes the transaction is usually primary, the more prevalent custom to give one-third to the one who began the shiduch and two-thirds to the one who completed it (Pischei Teshuva C.M. 185:3).”

“That makes a lot of sense,” said Mr. Nissel. “In truth, we do owe both of them a debt of gratitude.”

He pulled out his checkbook and wrote one check to Mrs. Fendel and another for twice the amount to Rafi Green. He thanked them both and explained that Rabbi Dayan recommended dividing the shadchan money in this manner. 

# Porter Damage

*Bava Metzia 83a - Lifnim Meshuras HaDin*

“This house needs a major reorganizing,” Mrs. Blum said to her husband. “Some boxes need to be taken down to the basement; others need to be brought up.”

“Sorry, but I can’t do that with my weak back,” replied Mr. Blum. “Get a strong teenage boy to help.”

Mrs. Blum posted a message on the community list: “Strong teenage boy needed to move boxes. \$15 an hour.”

Shortly after posting the request, Shimshon replied, “I am strong and available to work in the late afternoons.” They arranged a day.

When Shimshon came over, the Blums directed him moving boxes up and down.

“Now, take this box up to the kitchen,” said Mrs. Blum.

Shimshon lifted the box. “You’re sure you have it?” asked Mr. Blum. “It contains glass.”

“Yes,” replied Shimshon. “It’s not heavy.”

Halfway up the stairs, Shimshon tripped. The box slipped out of his hand and fell with a smash! Mr. Blum came running.

“Sorry about that,” said Shimshon. “I hope nothing broke.”

“It certainly sounded like things broke,” sighed Mrs. Blum. “I had glass decanters and vases in there.”

Shimshon picked up the box and brought it to the kitchen. Mrs. Blum opened it and was greeted with shimmering slivers of glass at the bottom of the box.

Mr. Blum assessed the damage. “There’s about two hundred dollars’ worth of damage here,” he said slowly.

Shimshon drew his breath. “That’s almost three times what I earned working the whole afternoon,” he thought.

“It was an accident,” he finally said. “You saw that I tripped on the stairs and the box fell out of my hand.”

“So what?” said Mr. Blum. “You are responsible for the damage.”

“It’s true that I carried the box,” said Shimshon, “but I never accepted responsibility for the contents.”

“I think that’s included in the job,” said Mr. Blum. “We can consult Rabbi Dayan about this, though.”

## *Porter Damage, cont.*

Mr. Blum and Shimshon met with Rabbi Dayan. “We hired Shimshon to move boxes,” said Mr. Blum. “He tripped on the stairs and broke a number of expensive glass items.”

“There was damage,” acknowledged Shimshon. “But it seems unfair that I should work all afternoon and walk away owing money!”

“Strictly speaking, Shimshon is responsible for the damage, unless it was due to circumstances beyond his control (oness). Since he was paid for the job, he is considered a shomer sachar, who is responsible for controllable loss,” replied Rabbi Dayan. “However, Chazal instituted that a porter who stumbles and damages his load is exempt, unless he was negligent, such as if he tried to carry a load that requires two people (C. M. 304:1,4). The reason for this ruling is that otherwise, people would not be willing to accept such a job. Being a porter is a difficult job generally done by poor people, with high risk and low salary. If they would be held responsible for accidental damage, they would not be willing to take the risk (Shvus Yaakov 3:177).”

“Even if Shimshon doesn’t have to pay for the damage,” said Mr. Blum, “I assume that I don’t have to pay him for his work?!”

“There is a dispute whether Chazal required paying his wages,” said Rabbi Dayan. “Therefore, if the employer is in possession of the money he cannot be made to pay. However, if the worker is poor, righteous people go beyond the letter of the law and provide his wages (see Aruch Hashulchan 304:1,11).”

“Why should there be an obligation to pay wages?” asked Mr. Blum.

“The Gemara (B.M. 83a) relates that Rabbah b. b. Chanan hired porters, who broke a barrel of wine,” explained Rabbi Dayan. “Rabbah grabbed their garments as payment for the damage. Rav instructed him to return their garments, based on the verse, ‘So that you should walk in the way of the good.’ The porters then said, ‘We are poor and worked all day; we are hungry and have no money.’ Rav instructed Rabbah to pay them wages, based on the verse, ‘and keep the paths of the righteous.’ This means that we should act in a manner beyond the letter of the law with needy workers, unless they were grossly negligent (SM”A 304:1).”

“Does this exemption apply also to professional movers?” asked Mr. Blum.

“Nowadays, the custom is that moving companies pay for damage and usually have insurance to cover it,” said Rabbi Dayan. “Therefore, the common custom would prevail, and they would have to pay for the damage.”





# Fence Value

## *Bava Metzia 87a - Going Rate*

Mr. Sam Braun stood at the back door of his house with another man, surveying the back yard. The man, who had a tape measure in his hands, took measurements along the length and width of the yard. Sam's neighbor, Hillel Farber, sat in the adjacent yard.

"What's going on, Sam?" Hillel called out. "Who is that?"

"We're doing some renovations," answered Sam. "This is the contractor, Tom Green."

"What are you building?" asked Hillel.

"I'm adding a deck in the back of the house and a wooden structure for the kids to play in," Sam answered. "I'm also considering building a wooden fence to separate our two properties. What do you think of that?"

"That's a good idea," said Hillel. "It would also give us more privacy."

"Are you willing to split the cost of the fence?" Sam asked.

"Could be," replied Hillel. "How much will it cost?"

Sam turned to Tom. "What do you expect the fence to cost?"

"In the range of \$2,000 to \$3,000," said Tom. "It depends on the exact measurements and the type of wood we'll use."

"Fair enough," said Hillel. "I'm willing to chip in and pay half."

Sam decided, in the end, to run the wooden fence around most of his property.

When Tom finished the work a month later, Sam said to him: "You remember that my neighbor said he'd split the cost of the fence between the properties? How much was that part of the job?"

"It's worth \$3,000," Tom answered. "Let him pay \$1,500."

Sam told Hillel that the fence cost him \$3,000.

"Can I see the invoice?" asked Hillel.

"The invoice is for the entire job," said Sam. "The part of the fence that we share is not listed separately, but \$3,000 is what Tom told me it's worth."

"If you don't mind," said Hillel, "I'd like to double-check with another contractor about that valuation."

"I don't mind your checking," replied Sam, "but I think we should follow Tom's appraisal anyway, since he did the work."



## *Fence Value, cont.*

Hillel spoke with another contractor who said, “That kind of fence generally runs about \$40 per foot.”

Hillel calculated that the shared part of the fence, which ran 60 feet, came to a total of \$2,400. “Based on what the other contractor told me,” he said, “the fence is worth only \$2,400.”

“Who’s to say that his appraisal is more accurate than Tom’s?” Sam replied. “Anyway, as I said before, Tom did the work.”

“But he didn’t give a clear price beforehand for the shared part of the fence,” argued Hillel. “At this point, his appraisal is no different from anyone else’s. Why should I pay more than it may be worth?”

Sam scratched his head. “Maybe that’s what the other contractor charges, but Tom charges more,” he responded. “I suggest we take this up with Rabbi Dayan.”

“Great idea!” exclaimed Hillel. “I’ve been waiting for a chance to ask him a business halacha question!”

Sam and Hillel met with Rabbi Dayan, who said, “In general, when a person agrees to have a job done and no price is stipulated, if there is a fixed going rate, he must pay that amount (C.M. 331:2).”

“What if there is a price range?” asked Hillel.

“Then he only has to pay the lower end of the range,” answered Rabbi Dayan, “in accordance with the principle ‘hamotzi mei’chavero alav hare’aya’ - the burden of proof is on the plaintiff. This is true even if most people charge a higher price (Ketzos 331:3).”

“But I stipulated a price with the contractor,” objected Sam. “Hillel agreed to reimburse half the price that Tom charged for the fence.”

“That is correct,” said Rabbi Dayan. “Had Tom stated a specific price for the shared fence, Hillel would have to pay whatever it was, even if there might be a cheaper contractor. However, no explicit price for the shared fence was given.”

“Then how do we evaluate it?” asked Sam.

“Since Mr. Farber agreed to the work of this contractor,” said Rabbi Dayan, “Mr. Green should give a clear calculation of his appraisal — according to his billing standard, or as a proportion of the entire fence — and Mr. Farber must pay that (Pischei Choshen, Sechirus 8:[11]).”



# Revalued Rental

## *Bava Metzia 87a - Going Rate*

With spring around the corner, the Coopers decided to do extensive gardening and landscaping work on their property. They contracted Hymie Ganz, a professional landscaper, to do the work, which was scheduled to take a full week.

At the end of the second day, satisfied with the work that had been done already, Mr. Cooper paid Hymie a partial payment of \$1,500.

On the third day, Hymie called.

"I won't be able to come today," he said to Mr. Cooper. "I hope I can make it tomorrow."

The following day, however, Hymie called to say that he would not be able to make it again.

"When will you be able to come?" Mr. Cooper asked, somewhat irritated.

"Unfortunately, I can't say for sure," Hymie said. "It may not be for another week or two. I have a problem with my assistants, and it's very difficult to work without them."

"You're kidding me," said Mr. Cooper. "I can't leave my property like this for another two weeks! My neighbor does gardening; maybe he can finish the job."

Mr. Cooper called back a few hours later to say, "I arranged with my neighbor to finish the job. Send me a revised bill for the work that you did. My neighbor also asked if he can use the gardening tools that you left here; I'll pay you their fair rental value."

"If that's what you decided, okay," said Mr. Ganz. "I'll add the rental value to the bill."

Hymie made a summary of the work and mailed the bill to Mr. Cooper: \$2,500 for two days' work, plus \$150 per day for the tools.

When Mr. Cooper received the bill he threw a fit.

"Hymie messed me up, and is asking for so much!?" he exclaimed. "\$1,500 is more than enough for the work he did!"

He responded to Hymie that he felt he had already compensated him fairly, and refused to pay any more.

Hymie summoned Mr. Cooper to a din Torah before Rabbi Tzedek for the remainder of the money. Mr. Cooper, in return, accused Hymie of damaging his sun deck, for which he demanded reimbursement.

### *Revalued Rental, cont.*

At the beis din, Hymie raised the value of the tool rental from \$150 a day to \$200. He submitted a price quote from a rental store, showing that the rental value of the tools was \$250.

Mr. Cooper objected to this increase.

"Hymie already set the price at \$150 per day," he said. "He can't raise the price now!"

"Why not?" argued Hymie. "I can even ask for \$250 if I want!"

Rabbi Tzedek ruled, "If the discrepancy is significant, Mr. Ganz still has basis to raise the price to its fair value."

Rabbi Tzedek then explained. "It is advisable to set a clear price before renting or buying something. If a price was not fixed, but rather set at the 'fair rental value,' the renter pays the average going rate. This amount is at least \$200 per day, as Hymie now demands (C.M. 331:3)."


"This would be fine had Hymie billed me for \$200 at the outset," responded Mr. Cooper. "After he billed me for \$150, though, he established that as the price!"

"If Hymie was not aware of the average going rate," replied Rabbi Tzedek, "just as there is ona'ah (price fraud) for sales, there is also ona'ah for rentals of tools. If the rent varied significantly from the fair value, the aggrieved party can demand the differential (227:35; SM"A 227:65)."

"But Hymie's a professional; he probably knew the true rental value," said Mr. Cooper. "He was willing to forego the amount beyond \$150."

"First of all, we allow even a professional an ona'ah claim," said Rabbi Tzedek, "especially one who does not deal with tool rentals on a regular basis (227:14)."

"Furthermore, even if Mr. Ganz did know the true price and knowingly billed you a lower price, there is an additional factor here," Rabbi Tzedek continued. "Although he charged only \$150 for the tools, he was expecting that you would pay the full bill that he submitted for his labor. However, once you refused to pay the bill, and even submitted a counterclaim, Mr. Ganz can claim that he never intended to forego the full value of the rental under such conditions (see Shach 17:15; Minchas Pitim 17:12)."

"Therefore," concluded Rabbi Tzedek, "since the rental amount that Mr. Ganz initially billed is significantly less than the average going rate and you refused to pay the remainder of his bill, he can still ask for the full value of the rental." 

# Unmarked

## *Bava Metzia 87b - Gezel Akum*

Mr. Spitz was going through the mail. He picked up a large envelope, a wedding invitation.

“Can I soak the stamps off that envelope for my stamp collection?” asked his son, Pinchas.

“Of course,” said Mr. Spitz.

The invitation was heavy and had required three stamps. Pinchas noticed that only two stamps were postmarked; the third was not marked at all.

“Look at this,” Pinchas said to his father. “This stamp is still good; you can reuse it.”

“I don’t think the post office allows you to reuse the stamp,” replied Mr. Spitz. “Using it would be considered cheating the government.”

“How is it cheating them?” argued Pinchas. “If they didn’t bother canceling the stamp, that’s their problem! Anyway, the post office has no way of knowing whether it was already used or not.”

“Reusing the stamp means that you’re not paying for the letter that you will send,” explained Mr. Spitz.

“Why not?” asked Pinchas. “As long as you put on a stamp, it’s like paying. What if the post office had lost money and you found it and bought a stamp? Would that be considered not paying?”

“I don’t know if that’s the same,” responded Mr. Spitz. “Money that was found has inherent value; the stamp is simply an indication that you paid the postal service for delivering the letter.”

“Rabbi Dayan once gave a shiur in our yeshivah,” said Pinchas. “He invited us to discuss business halacha issues with him. Would you mind if we asked him?”

“I’d love to,” replied Mr. Spitz. “I enjoy reading his Business Weekly!”

Mr. Spitz and Pinchas met with Rabbi Dayan. “If a stamp was not postmarked,” asked Pinchas, “is it permitted to reuse it?”

“Reusing a stamp that was not postmarked is illegal and even punishable with a prison term,” said Rabbi Dayan. “It is also problematic halachically for one of three reasons, which may differ between the U.S. and Israel.

“Since reusing the stamp is illegal, many authorities consider this issue one of dina d’malchusa, the law of the land,” explained Rabbi Dayan. “The government is entitled

to pass laws relating to taxes and the financial functioning of the government. These laws achieve halachic authority as well and are binding on the Jewish citizens of the country also (see Mishneh Halachos 6:288)."

"How might the U.S. and Israel be different?" asked Mr. Spitz.

"There is a major dispute between contemporary authorities whether *dina d'malchusa* applies in Israel," answered Rabbi Dayan. "Some say it applies. Others disagree, because they base *dina d'malchusa* on the government's consent for you to live in the land, whereas all Jews are rightful partners in Eretz Yisrael and are entitled to live there with or without the government's consent (see Pischei Choshen, Geneivah 1:[4]; Yechaveh Daas 5:63).

"On the other hand, when dealing with a Jewish postal service, there may be an additional element of *hashavas aveidah* (returning lost items)," continued Rabbi Dayan. "The unmarked stamp is like a lost item of the postal service which should be 'returned' by not using it. Some consider the lost stamp abandoned property (*yei'ush*), though, which you are not required to return." (See also Shevet Halevi 5:173.)

"What is the third issue?" asked Mr. Spitz.

"Beyond the issues of *dina d'malchusa* and *hashavas aveidah*, some authorities suggest that there may be an element of theft here," replied Rabbi Dayan. "The stamp is not a government tax or a lost item of inherent value, but rather an indication that you paid for the service of delivering the letter. By reusing an unmarked stamp you are deceiving the postal service to deliver the letter and perform a service without paying them. This may be a form of theft, which is prohibited whether to Jew or gentile, private delivery service or governmental."

(See C.M. 348:3; Shach 348:3; P.C., Geneivah 1:[1]; Oz Nidberu 6:74.)





# Responsibility to Return

*Bava Metzia 88a - Shomer Aveida*

Moish was walking along the Yeshiva campus when he saw an MP3 player lying on the ground.

“Looks like one of the guys lost this,” he thought. “Must have fallen out of his pocket.”

He picked up the MP3 and examined it to see if contained any identification. The MP3 was full of recorded shiurim and Jewish music, but nothing that provided a name or telephone number. There was a small decal on it, however, that served as an identifying feature.

Moish took the MP3 back to his room and placed it on his desk. He then wrote a sign and posted it on the bulletin boards around the Yeshiva. “Found MP3 player. Please contact Moish at...,” providing his cell phone number.

Two days passed, but no one called to claim the item.

“You know, we need to do a major straightening of the room,” Moish’s roommate said to him. “Can you help me move the stuff out to the hall?”

“I think you’re right,” Moish said, surveying the mess around the room. The two boys moved the desk and the other belongings out to the hall.

When they finished cleaning the room and went to get the desk, Moish noticed that the MP3 was missing from the desk. “Oh no,” he exclaimed. “It seems that someone took it!”

Later that day, Moish received a call. “Hi, it’s Shalom. I saw a sign that you found an MP3.”

“Yes,” said Moish.

“I lost mine a few days ago,” Shalom said. “It had a decal on the side with a miniature picture of the Chafetz Chaim,” Shalom said.

“I did find an MP3 like that...,” said Moish.

“Oh, great!” said Shalom. “I was really worried about it. I use it to review shiur and listen to the Daf.”

“The problem,” Moish said slowly, “is that we left it outside my room and it’s gone.”

“You’re kidding me,” said Shalom. “Why did you leave it outside the room?”

“I was trying to straighten the room and moved the desk outside to the hall,” said Moish. “I didn’t expect it to be taken.”



## *Responsibility to Return, cont.*

“I really appreciate your trying to help,” said Shalom, “but you ruined things now.”

“It’s no worse than when it was lying around the campus,” said Moish.

“Still, once you took it, I would expect you to be responsible for the MP3,” said Shalom.

“I never accepted responsibility for it!” said Moish.

“When you picked it up, you did,” said Shalom.

“I don’t see how that makes me responsible,” said Moish, “but it would be best to discuss the issue with Rabbi Tzedek.”

Moish and Shalom met with Rabbi Tzedek. “Am I responsible for an MP3 that I found and was lost or stolen from me?”

Rabbi Tzedek ruled: “If Moish left the MP3 outside his room carelessly, then he is responsible. Had he put the MP3 away safely in the room and it would have been stolen, there is a dispute whether he is responsible.”

Rabbi Tzedek then explained, “A person who finds a lost item is responsible to take it and safeguard it until the owner claims it. During this time, he is considered a shomer, a guardian over the object, and is responsible for it as any other item entrusted to him.

“There is a dispute in the Gemara (B.K. 56b) regarding how to consider a person who holds a lost item. Raba considers him a shomer chinam, unpaid guardian, since he has no monetary benefit from holding the lost item. Rav Yosef, on the other hand, considers him a shomer sachar, a paid guardian, since his involvement in the mitzvah of hashavas aveidah when picking up the item exempts him from the mitzvah of giving tzedakah at that time. Furthermore, since the Torah imposes the responsibility to guard the item on the finder, he is considered a shomer sachar.”

“How do we rule?” asked Moish.

“The Shulchan Aruch (C.M. 267:16) rules that the finder is treated as a shomer sachar, a paid guardian, and therefore is also responsible for theft and avoidable loss. The Rama, however, cites an opposing opinion that he is treated as a shomer chinam, unpaid guardian, and therefore responsible only for negligence. Later authorities rule that the issue remains as an unresolved dispute (SM”A 267:17; Shach 267:14).

“Therefore, if the MP3 was lost through negligence, such as by leaving it outside, the finder is responsible for it. However, if he put it away and it was stolen, he cannot be made to pay.”



# Stolen Sweets

*Bava Metzia 93a - Shomer Sachar*

Purim was less than a month away. An advertisement for Mishloach Manos baskets on the shul bulletin board depicted an assortment of mouth-watering baskets.

“Manny’s Magnificent Mehadrin Mishloach Manos offers a range of baskets to suit every taste and budget. Your shul representative is Mr. Jerry Lewis. Please place orders by Rosh Chodesh Adar to ensure timely delivery.”

A week before Purim, Manny brought 250 baskets of Mishloach Manos to Jerry’s house.

“We’ll put them over there in the corner of the living room,” Jerry said. The two men unloaded the baskets into the house.

“Manny’s Mishloach Manos baskets have arrived,” Jerry announced in shul. “Orders can be picked up from 7 to 10 PM.”

During the following days, most of the baskets were collected. Jerry looked forward to receiving 20% of the sales profits from Manny as payment for his efforts.

Three days before Purim, Jerry came home from work in the afternoon and saw that one of the windows was pried open. The remaining Mishloach Manos baskets were gone!

Jerry called Manny to inform him of the theft. “Our house was broken into,” he said. “Fifty baskets of Mishloach Manos were stolen!”

“I can’t believe it!” exclaimed Manny. “That’s a thousand dollars worth of baskets. Who’s going to pay for this?”

“I suggest we let Rabbi Dayan work this one out for us,” replied Jerry.

The two came before Rabbi Dayan.

“We have an unfortunate case to discuss,” Manny said. “Mr. Lewis agreed to sell Mishloach Manos baskets for 20% profit, but some baskets were stolen from his house. Is he responsible for them?”

“Was the house properly locked?” asked Rabbi Dayan.

“Of course,” said Jerry. “The thief pried open one of the windows.”

Rabbi Dayan turned to Manny. “Were you aware that the baskets were being kept in the living room?”

“Yes,” answered Manny. “I unloaded the baskets there.”

“It might seem, at first glance, that Mr. Lewis is responsible,” said Rabbi Dayan,

## *Stolen Sweets, cont.*

“but there are two reasons to exempt him.”

“Can you please explain?” asked Manny.

“A sales agent is considered a shomer sachar (paid guardian) on the merchandise he holds,” said Rabbi Dayan. “Therefore, in principle, he is responsible for theft and loss of the merchandise. This is true even if he hasn’t earned any profit yet, since he has the potential of profit from the sales (C.M. 185:7; 186:2; Pischei Choshen, Pikakon 1:5).”

“But I kept the baskets in my house like the rest of my possessions,” said Jerry. “We’ve never had a break-in before.”


“A shomer sachar is obligated in theft even if he guards the entrusted item the same as his own property,” replied Rabbi Dayan. “He is being paid to watch extra carefully (303:10-11).”

“Why, then, should Jerry be exempt?” asked Manny. “This seems a classic case of theft.”

“Although a shomer sachar is generally obligated in theft and is expected to watch extra carefully, he can stipulate with the owner for a lower level of responsibility (296:5),” said Rabbi Dayan. “A number of authorities maintain that when the owner was aware of the conditions in which the merchandise would be kept, it is considered as a stipulation that such guardianship suffices. Here, you knew that the baskets would be kept in the house and that Mr. Lewis would go to work daily. Similarly, some exempt a sales agent if he guarded the merchandise in the customary manner of such merchandise, since this is the common business practice and expectation of the supplier (P.C., Pikadon 3:[53]; Divrei Geonim 95:69).

“Although a sales agent is considered a shomer sachar on account of the expected share of profits, he is not being paid explicitly to guard the merchandise, but for his efforts in selling it,” added Rabbi Dayan. “Therefore, some authorities write that he does not carry liability when he kept the merchandise the way people regularly do, unlike a true shomer sachar who is expected to be extra careful (Pischei Teshuva 303:1; P.C., Pikadon 3:[54]).”

“If I am exempt from the theft,” said Jerry, “I suppose Manny also has to pay my share of profits?”

“Because both reasons to exempt are subject to debate,” concluded Rabbi Dayan, “if Manny has not paid you and you do not hold any of the sales money, he can withhold payment of your profit or wages against the value of the theft.” 

# Laptop Liability

*Bava Metzia 93a - Shoel*

“Hi, Levi,” said his friend, Moshe. “I’ve got a project to work on for the next two months. Do you have a laptop that you’re willing to lend me for the duration?”

“Funny that you’re asking,” replied Levi. “I just bought a new laptop. If you want to borrow my old one for two months, I’d be happy to lend it.”

A week later, while Moshe was working on the laptop, his neighbor Baruch came by to visit.

“I see you got yourself a computer,” Baruch said. “When did you buy it?”

“Actually, it belongs to my friend Levi,” said Moshe. “I borrowed it for two months to work on the project.”

While they were talking, Baruch accidentally knocked the laptop off the table. It fell to the floor and cracked!

Moshe quickly picked up the laptop and examined it.

“It’s ruined,” he said to Baruch. “It’s completely smashed, and there is no way it can be repaired. You’ll have to pay me for the laptop.”

“It wasn’t your laptop,” said Baruch. “I don’t owe you anything. If Levi wants the money, let him ask me directly, or you can pay him and then I’ll reimburse you.”

Moshe called Levi. “I’m so sorry. My neighbor broke the old laptop that you lent me,” he said.

“I still wanted it as a spare,” said Levi. “You’ll have to pay for it.”

“My neighbor was the one who ruined the laptop, though,” Moshe said to him. “Ask him for the money. He won’t pay me unless you ask him directly.”

“I don’t even know him,” replied Levi emphatically. “You borrowed the computer; you are liable for it. Either pay or get the money from your neighbor and give it to me yourself.”

“But why should I pay if he damaged the laptop?” argued Moshe. “I don’t have the money to lay out until he reimburses me.”

“It’s not fair to push me from one to the other,” said Levi. “Let’s take it up with Rabbi Dayan.”

Levi and Moshe went to Rabbi Dayan.

“Who is liable for the laptop?” asked Levi. “Moshe, who borrowed it, or the guy who damaged it?”

## *Laptop Liability, cont.*

“The Gemara (B.K. 111b) addresses a similar case,” replied Rabbi Dayan. “If someone steals an item and then another person consumes it, both are accountable to the owner. The thief is liable because he stole the item. Nonetheless, the item still belongs to its owner, so that the one who consumed it damaged the owner’s property. Therefore, the owner can collect in full from either party, or even a partial payment from one and partial payment from the other. The same is true in your case (C.M. 361:5).”


“But I didn’t steal anything,” objected Moshe. “I didn’t do anything wrong.”

“True, but a borrower is accountable to the owner for his item, even if it is lost through uncontrollable circumstances (oness),” replied Rabbi Dayan (C.M. 340:1). “Thus, you owe Levi. But since the laptop was Levi’s property, Baruch is also liable to him, so Levi can collect from either of you.”

“Can I demand payment of the laptop from Baruch now, or can only Levi do that?” asked Moshe. “Does Baruch owe me anything?”

“Because you are responsible to pay for the laptop, and Baruch caused you a direct loss (garmi) by breaking it, he has accountability to you also,” answered Rabbi Dayan (see Pischei Choshen, Geneivah 4:[34]).

“What about the fact that I don’t have the use of the laptop to finish the project I am working on?” asked Moshe.

“The Nesivos (341:11) suggests a novel idea regarding this,” said Rabbi Dayan. “Since you borrowed the laptop for two months, you have a legal right to use the item for that time; Levi cannot demand it back for the full two months. Therefore, the Nesivos suggests that the value of that usage, the laptop’s depreciation, is owed to you, the borrower — not Levi, the owner. This only applies, though, if the item’s nature and the duration of the loan are such that the usage entails an accruable depreciation of the item (see Chukey Chaim — Hichos She’eilah 2:12; P.C., Pikadon 9:[14]).” 



# Mugged!

*Bava Metzia 93b - Listim*

Mr. Eric Roth lived in Israel.

"I'm flying to America next week," he told his neighbor, Shraga. "My niece is getting married!"

"Mazal Tov!" said Shraga.

"Do you want anything while I'm there?" Eric offered.

"I need a new zoom lens for my Nikon camera," said Shraga. "It's hard to get that part here."

"I'll try," said Eric. "How much does it cost?"

"Between \$150 and \$200," said Shraga. "I'll give you money."

That evening, he brought \$200 cash to Mr. Roth.

"Do you want me to keep the money separate?" asked Eric. "I may prefer to use my credit card for the purchase and save the cash for other expenditures."

"Either way is fine," said Shraga. "You can use the money if you want."

Mr. Roth put the money in his wallet. He wrote down the specifications of the lens that Shraga wanted.

When Mr. Roth landed, he took a taxi to his sister's house.

"The ride will cost \$40," said the taxi driver.

"That's fine," Mr. Roth said. He opened his wallet and pulled out two of the \$20 bills that he had received from Shraga.

The following day, Mr. Roth went shopping for the lens.

As he turned off the main avenue and walked onto a side street, two men accosted him. One of them pulled a knife. "Gimme your money!" he ordered.

Eric took out his wallet, shaking. The men grabbed the cash and ran off.

Eric flagged down the next police car and reported the mugging.

"There's not much we can do other than taking a description of the men and fingerprints from the wallet," said the policeman. "If we should later catch the muggers, we can possibly charge them for this also."

Mr. Roth was dazed by the experience and decided to cut his day short. As he headed back to his sister's house, he wondered, "What do I about the \$200 that Shraga gave me? Do I have to buy the lens with my own money?"

That evening, Eric saw Rabbi Tzedek in shul. He related the whole story and asked,



## *Mugged, cont.*

“Am I responsible for the money that was stolen from me in the mugging?”

Rabbi Tzedek replied, “Since you requested permission to use the money for your own purposes and even used some of it for the taxi, you are responsible for the entire \$200.”

Rabbi Tzedek then explained. “An armed mugging is considered an oness, uncontrollable circumstance, for which only a borrower is responsible, not a shomer chinam (unpaid watchman) or shomer sachar (paid watchman) (303:3). However, if a person is entrusted with money that he is allowed to use and uses it, he is considered a borrower and is fully responsible, even if lost through oness (292:7).”

“I used only \$40 of the money,” argued Roth. “Why should I be responsible for the full amount?”

“A number of authorities write that by using even a small part of the money, you are considered a borrower of the entire entrusted amount,” replied Rabbi Tzedek. “The reason is that by spending some of it, you indicate readiness to use the money as your own (Nesivos 292:10; Pischei Choshen, Pikadon 5:17[63]).”

“What if I hadn’t used the money for the taxi?” asked Roth.

“That’s a complex issue,” answered Rabbi Tzedek. “When a person is entrusted with money in an open manner that implicitly indicates permission to use it, he is considered a shomer sachar because of the privilege of using the money, even if he did not use it. He is then responsible for regular theft, but not for armed mugging. If the person already had the status of a shomer sachar, it is questionable whether he now becomes a borrower on account of the privilege to use the money (292:7; 267:25; P.C., Pikadon 1:[14]).

“However, if someone entrusted money and then gave explicit permission to use it,” continued Rabbi Tzedek, “the Shach (72:31) writes that the guardian, whether a shomer chinam or shomer sachar, becomes fully responsible for the money as a borrower, even for circumstances beyond control. Other authorities disagree, but the Tumim (72:19) concludes that the dispute is only when the owner granted permission on his own. If the guardian initiated the request for permission, though, he is certainly liable. Here, you asked for permission to use the money; this is an additional reason to hold you liable (P.C., Pikadon 5:18).”

Mr. Roth thanked Rabbi Tzedek. The following day, he bought the lens with his credit card. 

# Shattered Glass

*Bava Metzia 93b - Techilaso BePeshia*

Chaim, Yosi and Dov were walking through Meah Shearim, choosing gifts to bring back with them from Yeshiva. Chaim and Yosi had already chosen theirs, but Dov kept browsing. It was his parents' 25th anniversary and he was looking for something really special.

Dov finally spotted an exquisite glass tray for Shabbos candlesticks with a delicate gold-tone design of Yerushalayim. "This is exactly what my parents like," he exclaimed. "With the silver candlesticks on it, every Shabbos will be special!"

Pleased with their purchases, the boys headed back to Yeshiva. "Let's stop off for falafel," Chaim suggested. "There's a mehadrin store two blocks away that has room outside to sit."

"Sorry, but I've got to run to a doctor's appointment," said Dov. "Would you mind taking the tray back to Yeshiva for me? I don't want to schlep it around."

"No problem," Yosi assured him. "I'll take good care of it."

Yosi and Chaim headed to the store and chose a table outside. They put the gifts down on the chairs and had falafel. After some time, the boys picked up their gifts and headed back to their Yeshiva.

Halfway there, Yosi stopped in his tracks and groaned, "Oh no! We forgot Dov's tray at the falafel store."

Chaim turned to him, "Do you think it's still there? Someone could have taken it by now!"

"I hope no one took it," said Yosi. "I'll go right back."

He ran back with his heart pounding. He was almost there when he saw a large stray dog bound by and bang into the chair which the tray was on. Yosi watched dumbfounded as the tray fell to the ground and shattered.

He picked up the box with the shattered tray, and returned to Yeshiva.

"Did you find the tray?" Chaim asked him.

"I did," said Yosi, "but a stray dog ran by and knocked it over. It's shattered!"

"Oh no!" exclaimed Chaim. "Just wait till Dov hears this!"

In the evening, Dov came by to get the tray. "I'm really sorry," explained Yosi. "I forgot the tray on a chair, and when I came back, a stray dog knocked the chair over and broke the tray." He gave Dov the box with the shattered tray.

## *Shattered Glass, cont.*

Dov opened the box. "I spent a lot on this tray," he moaned. "I can't afford to buy another one. You assured me you'd take care of the tray!"

"But it's not my fault that it's broken," responded Yosi. "Who expects a wild dog to come bounding down the street?"

Dov walked out shaking his head. "I really don't know what I'll do."

Yosi went over to Chaim and said, "Dov is very upset at me."

"You did take responsibility for the tray," Chaim reminded him gently. "It was negligent of you to leave it at the store."

"I know," said Yosi, "but it's not my fault that it broke; it was that dog!"

"Whether it's your fault or not, you accepted responsibility," said Chaim. "You owe him for it."

"My parents mentioned that Rabbi Dayan is visiting Israel," said Yosi. "I'll give him a call."


Rabbi Dayan heard the story and said: "Had you been watching the tray when the stray dog ran by, you would not have been responsible. However, since you forgot the tray and left it unattended, you are responsible to pay fully for the tray, based on the principle of *t'chilaso b'peshia v'sofo b'oness*."

"What does that mean?" asked Yosi.

"Generally, a person who accepts responsibility for an item is responsible for negligence, *p'shia*, but not for an unexpected or uncontrollable circumstance, *oness*," explained Rabbi Dayan. "However, if the person was negligent and, in the end, an *oness* resulted from this, the person remains accountable (C.M. 291:1,6)."

"How does that apply here?" asked Yosi.

"When you forgot the tray at the falafel store, you were negligent," answered Rabbi Dayan. "Another customer could have easily walked off with the tray or accidentally knocked it off the chair. Although this did not happen, but rather something unexpected happened – since the *oness* resulted from leaving the tray outside unattended, you remain fully responsible."

"That's going to cost me a lot," said Yosi, "but Dov will be relieved that he'll be able to buy another tray." 

# Stolen Sweets

*Bava Metzia 93b - Shomer Sachar*

Purim was less than a month away. An advertisement for Mishloach Manos baskets on the shul bulletin board depicted an assortment of mouth-watering baskets.

“Manny’s Magnificent Mehadrin Mishloach Manos offers a range of baskets to suit every taste and budget. Your shul representative is Mr. Jerry Lewis. Please place orders by Rosh Chodesh Adar to ensure timely delivery.”

A week before Purim, Manny brought 250 baskets of Mishloach Manos to Jerry’s house.

“We’ll put them over there in the corner of the living room,” Jerry said. The two men unloaded the baskets into the house.

“Manny’s Mishloach Manos baskets have arrived,” Jerry announced in shul. “Orders can be picked up from 7 to 10 PM.”

During the following days, most of the baskets were collected. Jerry looked forward to receiving 20% of the sales profits from Manny as payment for his efforts.

Three days before Purim, Jerry came home from work in the afternoon and saw that one of the windows was pried open. The remaining Mishloach Manos baskets were gone!

Jerry called Manny to inform him of the theft. “Our house was broken into,” he said. “Fifty baskets of Mishloach Manos were stolen!”

“I can’t believe it!” exclaimed Manny. “That’s a thousand dollars worth of baskets. Who’s going to pay for this?”

“I suggest we let Rabbi Dayan work this one out for us,” replied Jerry.

The two came before Rabbi Dayan.

“We have an unfortunate case to discuss,” Manny said. “Mr. Lewis agreed to sell Mishloach Manos baskets for 20% profit, but some baskets were stolen from his house. Is he responsible for them?”

“Was the house properly locked?” asked Rabbi Dayan.

“Of course,” said Jerry. “The thief pried open one of the windows.”

Rabbi Dayan turned to Manny. “Were you aware that the baskets were being kept in the living room?”

“Yes,” answered Manny. “I unloaded the baskets there.”

“It might seem, at first glance, that Mr. Lewis is responsible,” said Rabbi Dayan,

## *Stolen Sweets, cont.*

“but there are two reasons to exempt him.”

“Can you please explain?” asked Manny.

“A sales agent is considered a shomer sachar (paid guardian) on the merchandise he holds,” said Rabbi Dayan. “Therefore, in principle, he is responsible for theft and loss of the merchandise. This is true even if he hasn’t earned any profit yet, since he has the potential of profit from the sales (C.M. 185:7; 186:2; Pischei Choshen, Pikakon 1:5).”

“But I kept the baskets in my house like the rest of my possessions,” said Jerry. “We’ve never had a break-in before.”

“A shomer sachar is obligated in theft even if he guards the entrusted item the same as his own property,” replied Rabbi Dayan. “He is being paid to watch extra carefully (303:10-11).”

“Why, then, should Jerry be exempt?” asked Manny. “This seems a classic case of theft.”

“Although a shomer sachar is generally obligated in theft and is expected to watch extra carefully, he can stipulate with the owner for a lower level of responsibility (296:5),” said Rabbi Dayan. “A number of authorities maintain that when the owner was aware of the conditions in which the merchandise would be kept, it is considered as a stipulation that such guardianship suffices. Here, you knew that the baskets would be kept in the house and that Mr. Lewis would go to work daily. Similarly, some exempt a sales agent if he guarded the merchandise in the customary manner of such merchandise, since this is the common business practice and expectation of the supplier (P.C., Pikadon 3:[53]; Divrei Geonim 95:69).

“Although a sales agent is considered a shomer sachar on account of the expected share of profits, he is not being paid explicitly to guard the merchandise, but for his efforts in selling it,” added Rabbi Dayan. “Therefore, some authorities write that he does not carry liability when he kept the merchandise the way people regularly do, unlike a true shomer sachar who is expected to be extra careful (Pischei Teshuva 303:1; P.C., Pikadon 3:[54]).”

“If I am exempt from the theft,” said Jerry, “I suppose Manny also has to pay my share of profits?”

“Because both reasons to exempt are subject to debate,” concluded Rabbi Dayan, “if Manny has not paid you and you do not hold any of the sales money, he can withhold payment of your profit or wages against the value of the theft.” 