



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

I TRIED MY BEST! "Shavuot is here!" Rabbi Dayan announced to a group of tenth-grade students. "Someone has sponsored \$50 gift certificates at the *sefarim* store for those who learn the entire night!"

The students looked at each other approvingly. Many planned to learn through the night anyway, but the incentive confirmed their plans.

"I have to point out," added Rabbi Dayan, "that the stipulation is not just to stay awake, but to learn! It is written regarding Rosh Hashanah that one who sits idle is like one who is sleeping" (*M.B.* 583:9).

The students arranged to learn together as a group and keep each other awake through the night.

Dovid rested on Shabbos, and planned to learn much of the night with his *chavrusa*, Boaz. He managed to fight his tiredness till 3:30 a.m., but toward morning collapsed into sleep. Boaz tried unsuccessfully to rouse him.

"Too bad," Boaz sighed. "I'll continue on alone."

Just then, somebody spilled a cup of hot tea on Boaz, and his arm got burned. A Hatzolah member rushed him to the bathroom to place the arm under cold water and then sent him home to pack it with ice.

After Shavuot the students came to get their gift certificates from Rabbi Dayan. "It seems that almost all of you had the privilege of learning all night," he said proudly.

After everyone else left, Dovid and Boaz approached Rabbi Dayan. "We tried our best to learn all night, but uncontrollable circumstances (*ones*) prevented us," David said. "I napped in the afternoon and valiantly tried to keep awake, but sleep overpowered me."

"Someone spilled boiling tea on my arm and I had to go home," added Boaz. "You taught us that '*ones rachaman patrei* — one is not liable for uncontrollable circumstances' (*B.K.* 28b). Shouldn't we be entitled to gift certificates?"

"You are not rightfully entitled to gift certificates," answered Rabbi Dayan. "A claim of *ones* does not apply here." "Why not?" asked Dovid.

"First, the Shach (*C.M.* 55:1) qualifies that only a rare or unusual occurrence is grounds for claiming *ones*, but not a common one, which should have been addressed in the agreement," replied Rabbi Dayan. "For example, in

DID YOU KNOW?

If you sign an agreement, you are bound by its terms even if you do not fully understand what it says, such as portions written in a different language or in fine print.

For more information please speak to your Rav, or you may contact our Business Services Division at:
phone: 718-233-3845 x 201
email: ask@businesshalacha.com



BHI HOTLINE

WIND DAMAGE PART I I opened the windows, not noticing that my friend's speakers

were on the windowsill. The wind knocked over the speakers and they broke.

Q: Am I obligated to pay for the speakers?

A: This week we will address whether you are liable for damage caused directly by the wind. [Next week *iy"H* we will address a case where the wind blew on a curtain, which knocked down the speaker.]

The *Gemara* (*Sanhedrin* 77b) discusses one who removes a plug in a dam and consequently water rushed in and killed someone. The *Gemara* states that if the person died from the initial rush of water (*koach rishon*), the one who removed the plug is accountable. If it was the subsequent flow of water rather than the initial rush that killed the victim, the person who removed the plug is not subject to punishment in *beis din* since the murderous act is considered indirect (*grama*).

There is a disagreement whether the same principle applies when removing a plug damages property. According to some, the same principle applies, and if property is damaged from the initial rush of water, the one who removed the plug is liable. If the property was damaged from the subsequent flow of water, the damage is indirect and the one who removed the plug is not liable (*Tosafos, B.K.* 4b, *d.h. Veima*).

Others distinguish between murder and damages. Regarding murder, there is a technical exemption from the death penalty if the victim did not die from the initial rush of water. Even though it was likely that the victim would die, the subsequent flow of water was not the direct act of the murderer. Regarding damages,



STORY LINE

the *Gemara's* times, a flooded river is considered *oness*, but not a broken bridge or ferry. Thus, falling asleep is not grounds for claiming *oness*, since it is common."

"What about me?" asked Boaz. "Getting burned is certainly uncommon!"

"True, but there is a second, more fundamental reason," said Rabbi Dayan. "*Oness* exempts from punishment, and generally does not obligate a person in a fine or penalty, because he is not held accountable for having *violated* the prohibition or stipulation. However, *oness* of one party cannot obligate the other side; it is still not considered as if the person *fulfilled* the stipulation.

"The *Talmud Yerushalmi* (*Kiddushin* 3:2) records a dispute about someone who betrothed a woman on condition that he marry her by a certain date, but was prevented from doing so due to *oness*," explained Rabbi Dayan. "Rabi Yochanan maintains that *oness* is not considered as having fulfilled the stipulated action, so that the betrothal is void; Rabi Shimon ben Lakish (Reish Lakish) considers it as having been fulfilled. The *halachah* follows Rav Yochanan. Although the Torah exempts *oness*, it does obligate the other party.

"Thus, had you made an agreement that if you don't learn all night you will pay, *oness* could exempt you from paying," added Rabbi Dayan. "However, regarding the agreement that if you learn all night the sponsor will reward you, since you did not learn all night — for whatever reason, even due to *oness* — he is not obligated to give the gift to you" (*Shach*, C.M. 21:3; *Ketzos* 21:1).

"I'll ask if he's willing to gift you for your efforts, though," concluded Rabbi Dayan, "but that is at his discretion."



BHI HOTLINE

since the resulting damage was inevitable, the *mazik* (damager) is liable, even though it was somewhat indirect (*garmi* — indirect damage that is inevitable and thus one is liable) — (*Chiddushei HaRan*, *Sanhedrin* 77b; *Imrei Binah*, *Shabbos* 27).

This debate, however, is limited to cases like the dam where the water that will damage is already present and will certainly pour through upon removal of the plug. Liability for damage caused by wind depends on what occurred. If the wind was blowing as one opened the window and immediately knocked over an object, it is similar to the case of the plug on the dam, and he is liable. If the wind was not blowing when one opened the window, and the damage occurred later when the wind started to blow, the damage is indirect and the one who opened the window is not liable (*Mishpat Hamazik* 12:39).

In this circumstance, the damage is not even categorized as *garmi*, since one of the conditions for damage to be categorized as *garmi* is that the damage occurs immediately and it must result from the object the *mazik* touched (see *Gra* 155:131; *Ulam Hamishpat*; cf. *Shach* 155:22). In this case, since the wind did not blow immediately and it was not opening the window that caused the damage, the *mazik* is not liable.

Regarding your question, if the wind was blowing when you opened the window and the speakers were immediately knocked to the ground, you are liable for the damage, since it is considered as though you broke them. If the wind did not knock them over until some later time, the damage is indirect and you are not liable. If, however, you were negligent and should have realized that when the wind began to blow the speakers would fall, you have a moral obligation (*latzeis yedei Shamayim*) to pay the owner.

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



MONEY MATTERS

RENTALS #6

Rental Terms

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

Q: I rented a summer home for the weekend without drafting a written contract. What are the terms of such a rental?

A: A confirmed rental is binding according to the terms stipulated, whether written or verbal. Terms that were not addressed are in accordance with the local common practice (*minhag hamedinah*) — (C.M. 315:2, 331:1; *Sma* 315:3).

However, for the rental agreement to be binding, the price must be either stipulated, known, left to the discretion of a third party, or agreed as the average going rate (C.M. 200:7, 331:3; *Radbaz* 6:2282).

If the renter used the rental item without an agreed price, he pays the going rate. If there is a price range, he pays only the lower end of the range and is not obligated to pay the average rate. However, the owner can refuse to allow him further use at this price, since the rental agreement is not binding without a defined price (as above) — (*Maharashdam*, C.M. #245; *Ketzos* 331:3; *Pischei Choshen*, *Sechirus* 5:[4], 8:4).

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

The Business Weekly inspires and informs thousands across the world.
Sponsor a week to join us in this mitzvah.
Email sponsor@businesshalacha.com to reserve your week.

DISTRIBUTION IN LAKEWOOD IS
לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל



LEASELAND
Since 1991
Auto Leasing & Sales Inc.
(800)223-5327
info@leaseland.com



GROSS & CO.
INSURANCE
(212) 620-4040



Kings county
Auto Body Inc.
718.399.9500



Sell with me, move for free!
Schmidt REALTY
Residential • Commercial • Sales • Rentals
718-853-HOME (4663)
info@schmidtrealtyinc.com