



# BUSINESS WEEKLY

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### TOTAL LOSS!

May I borrow your car for the evening?" Yehudah asked his neighbor Daniel. "I want to visit a friend in another town."

"You're welcome to use it," said Daniel. "It's an old car, though, not worth much, so I have liability insurance but no collision coverage."

"That's OK," said Yehudah. "I don't expect to get into an accident."

Yehudah stopped along the way to eat. He parked on an incline, so he applied the handbrakes. When Yehudah resumed driving he forgot to release the handbrakes. After driving on the highway for about 20 minutes he smelled a burnt odor. He stopped and checked the motor, but it seemed fine. He continued driving.

Only when he reached his destination did Yehudah notice that the handbrakes had been on. "You might have damaged the brakes!" his friend said. "You can't drive home until they cool down and you check them."

After spending two hours with his friend, Yehuda got into the car and tried the brakes; they seemed to respond. "I'll take a spin around the block," he said.

"The brakes seem all right," Yehudah told his friend. "I'm going to head home."

On the way, Yehudah tested the brakes and they responded properly. At one point, a truck in front of him slowed down. Yehudah hit the brakes, but they didn't respond! He veered onto the shoulder and crashed into the barrier. Fortunately, he was not injured, but the car was totaled.

"You were negligent to drive with the handbrakes on," Daniel told him. "You clearly burned the brakes."

"It's unlikely that the brake failure was due to the handbrakes, since the brakes only grasp the back wheels," replied Yehuda. "Also, I tested the brakes afterward and they responded. They probably failed for some other reason, unrelated to me."

Yehudah and Daniel came to Rabbi Dayan. "Is Yehudah liable for the car?"

"Yehudah is liable," ruled Rabbi Dayan, "since some possibility remains that his negligence contributed to the brake failure."

"Could you please explain?" asked Yehudah.

"A borrower is liable — even if the borrowed item was lost through circumstances beyond one's control (*oness*) — unless the item failed through normal use (*maisah machmas melachah*)," explained Rabbi Dayan. "Thus, the Rambam (*Hil. She'eilah* 1:1) writes that if

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## BHI HOTLINE

### DELAYING SALARY PAYMENT

by the Bais Hora'ah

I recently made a *shidduch* for one of my children. At the *l'chaim* the *shadchan* wished me *mazel tov* and left. It later occurred to me that he probably came for his *shadchanus* fee and I was so busy with the *simchah* that I forgot. The *shadchan* lives in a different and somewhat distant neighborhood, so it would be difficult for me to go to drop off the money.

**Q: Am I required to make the effort to drop off the money to avoid violating bal talin (delaying paying an employee's salary) and to fulfill b'yomo titen s'charo (the mitzvah to pay an employee on completion of his term of employment)?**

**A:** An employer does not violate the prohibition of bal talin unless the employee requests his salary. If an employee leaves without requesting payment, the prohibition is not violated (C.M. 339:10). The Torah states, "An employee's salary should not be withheld by you." In other words, the prohibition is violated when the employer decides to withhold his employee's salary, but if the employee never requests payment he is thereby agreeing to accept payment at a later date, so the prohibition is not violated (Sma 339:16).

However, it is not necessary for an employee to verbally ask to be paid. If an employee appears before his employer but does not verbally ask to be paid because he is too shy, it is considered as though he requested payment. This is because it is evident from his behavior that he wants to be paid at that time (*Ahavas Chesed* 9:11).

Therefore, in your case, since it appears that the *shadchan* came expecting to be paid, it is as if he requested payment and the prohibition applies. According to some authorities, even when an employee does



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a person borrowed an animal to ride on and it died *while* traveling, the borrower is exempt. "However, the Rosh (B.M. 8:4), cited by the Tur and Rema (C.M. 340:3), qualifies this," continued Rabbi Dayan. "He maintains that the borrower is exempt only if the animal died *because* of the work, e.g., it tripped or was overexerted and overheated. However, if there was no indication of stress, the borrower cannot swear that the animal died because of the work; maybe it died naturally. Thus, he remains liable."

"What is the root of this dispute?" asked Yehudah.

"Beis Yosef defends the Rambam's position that we cannot obligate the borrower out of doubt when it may have died from work," replied Rabbi Dayan. "Furthermore, since the animal died en route, it likely died from the work; the borrower simply swears that it died while traveling. The Shach (340:7), however, sides with the Rosh and Rema. He explains that the borrower must swear with certainty what happened to the animal. Furthermore, since no exertion was noticed we cannot presume that the animal died due to the work."

"The Ketzos (291:11; 340:4), based on the Ra'ah, argues that when it is not known what happened to the item the borrower is exempt (*eini yode'a im nis'chayavti*)," added Rabbi Dayan. "However, he agrees that if the borrower was initially negligent he remains liable (*eini yode'a im peraticha*); certainly if the loss can be remotely linked to the negligence (*techilas b'peshia v'sofo b'oness*), as in our case."

"Thus," concluded Rabbi Dayan, "Yehudah remains liable unless it is ascertained that the brake failure was completely unrelated to the negligence with the handbrakes."



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not request his salary and the Biblical prohibition will not be violated, it is prohibited to withhold his salary (*Pischei Teshuvah* 339:7).

On the other hand, it is not necessary for an employer to pursue his employee to pay his salary; the employee must come to collect. [See B.K. 46b: "The one who is in pain goes to the doctor."] Therefore, if an employee requested payment and at the time the employer did not pay him, but later the employer contacted the employee and informed him that the money is available and the employee does not return, the employer does not violate *bal talin*.

There is no source that indicates that the employer has an obligation to go to his employee to pay him. The Torah only commands that an employer not withhold an employee's salary; thus if the employee does not come, the employer is not withholding his salary (*Ahavas Chesed* 9:11 with *Nesiv Chesed* 31, *Kesef Kodashim* 339; cf. *Mishpetei Tzedek*, *Garmizan* 149).

It also essential to note that the prohibition of *bal talin* does not always apply for a *shadchan*. When one contacts a *shadchan* and asks him/her to find a *shidduch*, the *shadchan* is an employee and *bal talin* applies. If the *shadchan* initiated the *shidduch* on his own, he is not an employee; his payment stems from the fact that he has provided a beneficial service (*hana'ah*) (C.M. 264:4 and *Gra* 264:13; 185:13). Since the obligation to pay in such a case is a general debt that one owes rather than an employment agreement, it is not subject to the prohibition of *bal talin* (see *Ketzos* 75:13).

Accordingly, when it is difficult to pay immediately, it is acceptable to delay paying the other party without violating *bal talin*. (See *Pischei Teshuvah* 89:2 for another reason why *bal talin* does not apply in such a case.)

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## MONEY MATTERS

### RENTALS #10

#### Repairs

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

#### Q: Who is responsible for repairs to a rental unit?

**A:** This issue, as well, depends on the stipulated terms and the local practice of most people for such a dwelling (*Rema* 314:2; *Aruch Hashulchan* 314:1).

If the common practice is unclear, the guiding halachic principle is: Repairs that require professional service or that relate to the structure of the house for proper dwelling are the landlord's responsibility; repairs that are not of a professional nature and relate to daily use are the tenant's responsibility.

For example, structural, electrical and plumbing issues necessary for proper maintenance of the house are the landlord's responsibility; light fixtures, furniture and appliances are the tenant's responsibility. If the tenant paid for repairs incumbent upon the landlord, he can deduct it from the rent (C.M. 314:1; *Kesef Kodashim* 314:1).

Affixing a *mezuzah* or roof railing, which are obligations upon the dweller, is also the tenant's responsibility (C.M. 314:2; Y.D. 291:2. See *Pischei Choshen*, *Sechirus* 6:[6] regarding the railing of a porch intended for use).

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