

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #111 / PARSHAS SHLACH
FRIDAY, JUNE 15, 2012
25 SIVAN 5772

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STORY LINE

by Rabbi Meir Orlan

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Banana Split - Repeeled!

Rabbi Goodman entered his classroom with a pile of *Business Weekly* newsletters. He often brought to shiur the exploits of Rabbi Tzedek and Rabbi Dayan to enliven the Gemara they were learning.

"This week's article deals with issues we've learned during the year," Rabbi Goodman announced with a broad smile. "Bava Kama is a good masechta for this as it deals with the laws of damages."

"*Banana Split!*" exclaimed Dov. "I remember!" (See *Business Weekly* Issue #108)

"Actually, it's not a happy story," said Rabbi Goodman, "but it teaches the importance of being a conscientious citizen."

Baruch read aloud the story about Mr. Frei, who threw his banana peel in the street. An elderly man slipped on the peel and was badly bruised. In addition, an expensive gift he was carrying was shattered.

"That's actually bor (a pit)," Yaakov said. "We learned that you're liable for injuries to animals and people, but not to inanimate objects."

"That's what Rabbi Tzedek ruled," replied Rabbi Goodman. "Mr. Frei was liable for the elderly man's doctor's bills but not for the damage to the gift, although there is a moral obligation according to some authorities."

Baruch finished reading the article. "There's something I don't understand, though," he said.

"Yes?" asked Rabbi Goodman.

"We learned in Tosafos (B.K. 28b, s.v. "v'nishof") that when a person trips on an obstacle and is not injured by the object but rather by the ground below, the owner of the obstacle is not liable," Baruch said.

"Even if the elderly man slipped on the ba-

nana peel, why should Mr. Frei be liable for the injury inflicted by the ground below?"

"That's an excellent point!" replied Rabbi Goodman. "I was also wondering about that."

Yisrael entered the discussion. "There's something else I don't understand," he said.

"We learned that someone who wounds another person has to pay five payments: permanent damage (nezek); pain; medical bills; lost wages; and embarrassment (B.K. 83b). Where do we find, though, that this applies to an injury inflicted by a bor? Why does Mr. Frei have to pay medical bills?"

Rabbi Goodman said, "I'll ask Rabbi Tzedek to explain why he wrote that Mr. Frei is liable for medical bills and for damage inflicted by the ground below."

A week later Rabbi Goodman came into class waving an e-mail printout.

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Alternate Compensation

Submitted by T. P.

My mechanic replaced my alternator before a long trip. Two hours into the trip, the car stalled. A local mechanic replaced the alternator and related that my "new" alternator was actually refurbished. I did not think that a broken alternator would have any value and left it behind.

When I returned home, I asked my mechanic to refund the money I had paid for

the refurbished part. He refused unless I would first return the faulty alternator so that he could send it to his supplier for a refund.

Q: Is my mechanic obligated to refund the money I paid for the faulty alternator?

A: The first issue is the extent of a dealer's liability. A dealer purchases merchandise from various manufacturers and sells it to

customers. May he refuse to refund money if the damaged object is not returned, causing him to be unable to recover his loss?

Shulchan Aruch (C.M. 232:18) discusses the case of a dealer who bought and sold an animal, unaware that it had no teeth. The buyer did not check it either, and it died of starvation. The customer wanted the cost of the defective cow refunded. The dealer responded that it was the customer's duty to examine the cow immediately for any

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"I received a reply today from Rabbi Tzedek about our banana peel question," he announced, and began to read the letter aloud.

"Dear Rabbi Goodman, I am happy to hear that you use *Business Weekly* in your shiur to enhance the Gemara you are learning and to illustrate the application of Choshen Mishpat to our daily lives.

Both of your points are well taken.

In fact, only a person who injures another is obligated in regard to the five payments, including medical bills (C.M. 420:3). However, a person who made a bor is liable only for permanent injury (nezek) that the victim suffered, such as if he remained crippled, tore ligaments or suffered paralysis - but not for medical bills (Pischei Choshen, Nezikin, 7:[8]).

The primary purpose of that article was to differentiate between damage to people or animals and damage to inanimate

items. The example of medical bills, however, was not an accurate one. Mr. Frei would only be liable if the person who slipped on his peel became, for example, crippled.

Regarding an injury inflicted by the ground below or beyond the obstacle, there is a dispute (Gra 411:5). The article simplified the issue by stating that the elderly man landed on the peel itself. It referenced the Sma (412:9), who explains that if a person slipped on water and was injured by the ground beneath it, we consider it as if he were injured by the floor of a pit; the person who spilled the water is liable. Had the man not landed on the peel, though, Mr. Frei would be exempt also from liability for the man's injury (410:31; 411:1).

I wish you success in your teaching, and hope that you continue to enjoy *Business Weekly*.

Thank you for writing, Rabbi Tzedek"

defect. The dealer would then have been able to return it to his supplier and recover his loss. Halacha rules that since the customer knew that the dealer does not examine the animals himself, it was the customer's obligation to do so. The customer therefore must suffer the loss.

However, the reason the customer loses is questionable. The customer has the responsibilities of a custodian until the return of the purchase (C.M. 232:22), but as such, he is exempt from liability if the object has no intrinsic value (ein gufo mammon). In the case of the animal, it had no value for the dealer other than recovering his losses - which was not the essential value of the animal. The Nesivos (232:7) therefore explains that the liability of the customer is not as a custo-

dian but for causing a loss. It was mutually understood that the customer must examine the animal for defects. If he failed to do so, he is liable for consequent damages (garmi) caused to the dealer (306:6; however, see Even HaOzel Mechira 16:10).

In your case, there was no understanding that you should test the alternator to see if it was working properly. You are not responsible for garmi, but rather as a custodian for the mechanic. Since the value of the alternator for the mechanic is only that he may return it to the supplier for reimbursement - which is not its essential value - you are not liable and the seller must reimburse you. Obviously, this applies only if there is no accepted practice in the industry to withhold the refund until the return of the damaged item.

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Shomrim: Guardians #11

Q: Is a car mechanic who gets paid for his labor considered a shomer chinam or shomer sachar on the car that he fixes?

A: A person who receives monetary benefit from an item entrusted to him is considered a shomer sachar, even if he is not paid directly for watching.

Thus, a car mechanic is a shomer sachar on the car he fixes and a dry cleaner is a shomer sachar on the clothing he cleans.

However, once the shomer finishes working and allows the owner to take his item, even before paying or if the owner had already paid, the workman is considered only a shomer chinam (306:1; Pischei Teshuvah 306:1).

Similarly, business partners are generally considered shomrei sachar (176:8); a salesperson is a shomer sachar on the merchandise he sells (185:7); a delivery service is a shomer sachar on the packages he de-

livers (187:1). There is a dispute whether a person who finds an object is considered a shomer sachar (267:16).

Nonetheless, according to some authorities, while these people are obligated in theft and loss as shomrei sachar, they are not obligated to watch to the same careful degree as a guardian who gets paid for watching but only in the routine manner. (See Pischei Teshuvah 303:1; Pischei Choshen, Pikadon 2:2[5].)

MONEY MATTERS

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