

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #115 / PARSHAS PINCHAS  
FRIDAY, JULY 13, 2012  
23 TAMMUZ 5772

THE CATSKILLS EDITION  
HAS BEEN DEDICATED  
L'ZECHER NISHMAS  
ר' ישראל בן אברהם ז"ל

## STORY LINE

by Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

## Sealed Envelope

Mr. Meyers scurried around the wedding hall, making sure that everything was properly in place; his son was getting married. "Could you please watch this envelope?" he asked his close friend, Mr. Koenig. "Sure," Mr. Koenig answered, taking the envelope.

Toward the end of the wedding, Mr. Meyers asked his friend for the envelope. Mr. Koenig reached into his shirt pocket for it, but found nothing.

"I put the envelope in my shirt pocket," he said. "It must have fallen out during the dancing. What was in it?"

"There was over \$3,000 in cash to pay tips and other expenses," Mr. Meyers said.

"You're kidding me!" exclaimed Mr. Koenig. "You didn't tell me there was money in the envelope."

"I didn't think it was necessary to tell you

what it contained," said Mr. Meyers. "Anyway, I assumed you would realize it was money."

"I really had no idea what the envelope contained," said Mr. Koenig.

"What, you don't trust me?!" said Mr. Meyers. "I'm telling you there was over \$3,000 in cash in there."

"I'm not denying what you say," apologized Mr. Koenig. "However, if you want me to pay, you need some evidence. Furthermore, I'm not sure that I have to pay the \$3,000, since you never told me there was cash in the envelope!"

"I don't see why not," replied Mr. Meyers. "If you agreed to watch the envelope, you are responsible for whatever it contained."

"On the other hand, I'm a shomer chinam (unpaid guardian)," argued Mr. Koenig. "I'm not responsible for loss in any case."

"There are different kinds of loss," countered Mr. Meyers. "Listen, Rabbi Dayan is here; we can ask him."

When Rabbi Dayan saw them approaching, he greeted Mr. Meyers, "Mazel tov! What a beautiful simcha. May you merit to see true Yiddishe nachas from the couple!"

"Amen, thank you," replied Mr. Meyers. "I have an issue here with my friend, though. Maybe you can help us."

"Certainly," offered Rabbi Dayan. "Sit down." The two sat down. Mr. Meyers related what had happened and claimed that Mr. Koenig owed him the \$3,000 that was in the envelope.

"What a fascinating case," replied Rabbi Dayan. "Let's go through the issues one by one."

"Even an unpaid guardian is responsible if he lost the entrusted item through neg-

*continued on reverse side*

## The Broken Buggy

*Submitted by P. E.*

I borrowed my neighbor's Mountain Buggy stroller without explicit permission. As I was using it, part of it broke. It still functions, but as a result of the damage, the value of the carriage went down by \$200. I am happy to pay the \$200.

Instead, my neighbor wants me to keep the damaged carriage and pay her the full amount that it was worth before it broke, so

that she can buy a new stroller to replace it.

**Q: How much do I owe her?**

**A:** Generally, when a borrower is liable for damage to the borrowed object, he is not obligated to replace the broken object. The object is still owned by its original owner and the borrower's only liability is to reimburse the owner the decreased value of the object (C.M. 344:2). The same applies to a

mazik (damager), who must only pay the decreased value of the object to the owner (C.M. 387:1, 403, 419:1). This is in contrast to the ganav (thief), who is considered to have acquired the object and must return an intact object to the owner. If the stolen object is broken, it is the thief who takes the broken pieces and must pay the full value of the object at the time of theft (C.M. 354:5. However, see Bach *ibid.*).

It seems that in response to your question,

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ligence," he said. "Placing the envelope in a deep, secure jacket pocket would seem acceptable under the circumstances. However, placing it in a shirt pocket, where it can easily fall out, is considered negligence (Pischei Teshuvah, C.M. 291:5, 8)."

"What about the fact that I had no idea what was entrusted to me?" asked Mr. Koenig.

"If the owner misrepresented the contents, the guardian only has to pay the value of what he agreed to watch," answered Rabbi Dayan (291:4). "For example, had Mr. Meyers told you it was just some receipts or a check, you would not have to pay the \$3,000, even if he had evidence that it contained cash. However, if the contents were not specified, you accepted responsibility for whatever was inside."

"But how do I know what was actually inside?" Mr. Koenig asked. "There's no evidence at all! Do I have to pay without evidence?"

"If you trust the word of Mr. Meyers completely, you must pay even without evidence," said Rabbi Dayan. "If you doubt his word, the Shulchan Aruch rules that when the guardian was negligent, the Sages instituted that the owner should swear what was entrusted and collect that amount, if reasonable (90:10; see Shach 90:16)."

"Does this apply also if Mr. Koenig knew that there was money in the envelope, but didn't know how much?" asked Mr. Meyers.

"In that case, since the guardian admits partially and cannot swear about the remainder, some maintain that he must pay even without an oath by the owner, based on the rule of 'mitoch she'eino yachol lishava meshalem'," replied Rabbi Dayan. "Others maintain that this principle does not apply, though, since the guardian is not expected to know how much was inside, so an oath by Mr. Meyers is still required (90:10; 298:1)."

we must determine whether you are considered a borrower who is liable only for the loss of value, or, since you took the carriage without permission - shoel shelo midaas (C.M. 292:1) - you are categorized as a thief.

In fact, Shulchan Aruch (C.M. 363:5) discusses just such a case. Interestingly, if one uses someone else's boat without permission and damages it, his liability is limited to repaying the loss of value and he does not pay any replacement costs for the boat.

It is clear that the borrower without permission is not considered a classic thief. Unlike the thief who intended to steal the item, the shoel shelo

midaas did not intend to keep the object for himself. Therefore, a borrower without permission is only categorized as a thief to define his use of the item as illegal, but he is not similar to the thief who must return an intact item or compensate for its full value. Regarding this specific halacha of compensation to the owner, the borrower/thief must only repay the loss of value (Nesivos 308:4; 363:6; and see also Terumas HaKri 363:5; Chazon Ish, B.K. 20:2, 3).

In your case, therefore, you only owe the owner of the stroller the decrease in value caused by your damage. You are not obligated to replace it.

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## Shomrim: Guardians #15

## MONEY MATTERS

**Q: Someone entrusted me with a crate of books for a week. If he did not pick it up at the end of the week, do I remain responsible for it?**

**A:** A guardian remains responsible for the entrusted item until it is returned safely to the owner (see C.M. 293:4; Pischei Choshen, Pikadon 7:2). However, if he explicitly told the owner that he does not want to watch any-

more, he is no longer liable, even for negligence (Rema 74:3; Sm"a 120:11).

Machaneh Ephraim argues, though, that if he accepted responsibility for a set time, he is not liable after that time (see, however, Aruch Hashulchan 291:20). A shomer sachar, after the designated time, reverts to a shomer chinam (304:6; 343:2).

A bookbinder is considered a shomer sachar on the books he is binding, but when

he finishes his work, he reverts to a shomer chinam - unless he insists on payment before returning the books. If he explicitly tells the owner to pick up the books and that he does not want to be the shomer after the set time, he is not responsible according to most authorities (306:1; P.C., Pikadon 7:9). A shoel (borrower) who borrowed books reverts to a shomer sachar after the set time (343:1).

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