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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

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Just One Tile

The Alperes hired Mr. Fixler, a general handyman, to do some work around their house. While working on one of the fixtures, Mr. Fixler accidentally knocked his drill off the ladder. It landed with a thud on the floor of the entranceway, cracking a tile.

Mr. Fixler apologized profusely for the incident. "Obviously, I will replace the tile," he said. "Do you have any spare tiles?"

The Alperes checked their basement for remaining tiles, but could not find any. They took the broken tile to the store where they had purchased the tiles seven years earlier. "Do you have any of these tiles left?" Mr. Alpert asked.

"We don't carry that style anymore," said the salesman.

"Perhaps you have an odd box left in the warehouse?" suggested Mr. Alpert.

"I'll check with inventory," said the sales-

man.

He returned ten minutes later. "There are no more of those tiles in inventory," the salesman said. "That style was discontinued five years ago. I checked with some other vendors that we work with; they also don't have any left."

"We'll have to replace an entire strip of tiles with complementing tiles," Mrs. Alpert said. They chose a box of decorative tiles and gave them to Mr. Fixler to install, along with a bill for \$179.

When Mr. Fixler saw the bill for the tiles, he felt that the amount was exaggerated.

"You have very expensive taste," he commented. "I don't need to cover that."

"How much do you think is fair?" asked Mr. Alpert.

"I cracked just one tile," said Mr. Fixler. "I don't owe you more than that. I'm willing to

go beyond the letter of the law and replace additional tiles, but not to pay for them."

"We would have been very happy had you not damaged any tiles," replied Mr. Alpert. "Consider that the broken tile was also expensive."

"It certainly wasn't that expensive," argued Mr. Fixler. "Anyway, the tiles were seven years old."

"The tiles were in fine condition, though," said Mr. Alpert. "The new tiles are only needed because of your damage. It's not fair that we should have to pay!"

"How about letting Rabbi Dayan settle this?" suggested Mr. Fixler.

"Great idea!" responded Mr. Alpert. "Let's do that!"

The two met with Rabbi Dayan.

"Is there any reason I should be required to pay beyond the one cracked tile?" asked

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Warranted Refund

Submitted by T. M.

I bought an electronic device and paid extra for the warranty. After a few days, the device was not working, so I returned it for a refund. The storeowner examined the device and informed me that since it is impossible to know whether I had damaged the device or whether it was defective, he would not refund my money without proof that the device was defective. I am certain that I did not

use it in an unusual manner.

Q: Do I have the right to demand a full refund?

A: The debate concerning the storeowner's liability could manifest itself in two ways. The customer may either claim with certainty that he was sold a defective object, or he may claim that the device broke in the normal course of usage and a warranty obligates

the storeowner to repair it. If the customer claims that the object was defective, his aim is the cancellation of the sale and to have his money refunded (mekach ta'us).

In this case, the burden of proof is on the one seeking to collect (ha'motzi me'chaveiro alav haraayah) and since the customer is seeking a refund, he must prove the veracity of his claim by demonstrating that he bought a defective device (see C.M. 232:16). However, if the object was purchased by check

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Mr. Fixler. "You might, since the primary obligation of damage is to restore the item to its former use," answered Rabbi Dayan. "Therefore, if replacing the damaged tile requires uprooting and replacing a few additional, adjacent tiles, they are also included in the liability. Also, tiles are sold as a whole box, not singly (see Shach 387:1; Chazon Ish, B.K. 6:3)."

"What about the fact that the tiles were old, though?" asked Mr. Fixler. "Also, the decorative strip looks nicer than the original simple flooring. The original box of tiles would cost no more than \$50, had it been available!" "If the repair adds value, the owner needs to absorb part of the cost," replied Rabbi Dayan. "For example, if a worker broke an old sink and it was replaced with a new one, he is liable for the cost of installation and the proportional worth of the old

sink; the owner is responsible for the difference in worth between the new sink and the old one (see Mishpetei HaTorah 1:24)."

"But we cannot restore the actual damage here," said Mr. Alpert. "The original tiles are not available. The only way to make it aesthetically pleasing was by adding decorative tiles."

"If the original cannot be restored, the liability is for the value of the damage," responded Rabbi Dayan. "The additional expenditure to make it look aesthetically pleasing beyond the original would, at most, be considered grama (Rama 386:3)."

"Therefore," concluded Rabbi Dayan, "Mr. Fixler must pay only what the original tile was worth, had it been available, factoring in also that it was not new. The remaining cost should be absorbed by the Alperes."

"Thank you," said Mr. Alpert. "We appreciate your guidance."

or credit card and the buyer can still cancel the payments, he may do so.

The same principle applies when the customer claims that the object broke in the normal course of usage and the storeowner is uncertain whether to believe him. Halacha rules that since the seller is not expected to know how the customer handled the merchandise, he has no obligation to repair the item even beyond the letter of the law (Tumim 88, Urim 38, and Minchas Pitim 75:9).

The same argument applies in the first scenario — which seems to be your case. Since the seller is not expected to know whether the device that

he sold you was defective, he is not obligated to refund your money.

However, in fact, it seems that since you purchased a warranty, the halacha would be different. If the warranty does not specify otherwise, it can be assumed that the merchant agrees not to contest the claim of the buyer that the item was defective or broke in the normal course of usage. If this is not so, the merchant could always demand that the customer prove that he was sold a defective object and this would render the warranty to be worthless. Therefore, it is clear that, by definition, a warranty gives credibility to the buyer's claim.

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Shomrim: Guardians #17

Q: I borrowed a drill to bore holes into wooden beams. The bit broke on a hidden piece of metal embedded in the wood. Am I liable for the bit?

A: A person who borrows an item is liable for it even if it was damaged through uncontrollable circumstances. Nonetheless, if it was damaged through routine use, the borrower is exempt. This

is called "meisah machmas melachah" — died on account of use. The rationale is that the item was not borrowed to sit idle; it was borrowed to be used (B.M. 96b; C.M. 340:1).

Some extend this exemption to include any uncontrollable damage that occurred during the course of routine use (C.M. 340:3; Sm"a 340:8). Others, however, limit it to cases where the item malfunctioned, in

which case the lender is considered partly at fault for lending an item unfit for the task (Shach 340:5-6).

Thus, you are legally exempt for the bit, based on the first opinion. [If you gave a deposit, though, you would not be entitled to a refund, based on the second opinion.] Of course, this exemption applies only if you used the drill as planned, but not if you misused it to drill into metal or concrete.

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