

# BUSINESS WEEKLY

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Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Just Leave!

Mr. Hauser had hired Mr. Cooper to redo the siding of his house before the winter. When the completion of the work got delayed time after time, Mr. Hauser became upset. To make matters worse, Mr. Cooper insisted on certain advance payments. Mr. Hauser was not happy about this, but agreed in order to get the job finished.

Toward the very end of the job, Mr. Cooper announced that he needed a three-day break.

Mr. Hauser threw a fit. "You're doing it again!" he yelled.

"I need time to take care of certain pressing family matters," Mr. Cooper explained, but to no avail.

"Forget the rest of the job!" screamed Mr. Hauser angrily. "Just leave, and I'll finish the job myself!"

Mr. Cooper gathered his equipment and left.

Three days later, Mr. Hauser called. "I apologize for blowing up," he said to Mr. Cooper. "Please come finish the job."

"You already told me to leave," replied Mr. Cooper. "I'm not interested in finishing."

"But you're still bound by contract to finish the job," said Mr. Hauser.

"No, I'm not," said Mr. Cooper. "When you told me to leave and said that you'd finish the job yourself, you released me from my obligation."

"I never formally dissolved the contract," said Mr. Hauser. "I was just venting my anger."

"Doesn't make a difference," Mr. Cooper said. "You told me to leave. I'm out!"

"I'll sue you for breach of contract," threatened Mr. Hauser. "Anyway, I gave you advance payment. If you're not finishing the job, return the money."

"I will not," replied Mr. Cooper. "I was willing to finish the job, and you kicked me out. If you decided to forgo the rest of the work, that's your problem!"

"You know that I never meant to forgo my legal rights!" said Mr. Hauser. "You're bound by signed contract, and now you expect not to finish the job and to keep the money!"

"All I know is that you told me to leave," said Mr. Cooper. "We can take it up with Rabbi Tzedek if you want."

The two went to Rabbi Tzedek.

"A worker whose employer told him, 'Leave!' may do so, even if he has a binding commitment," said Rabbi Tzedek. "According to the Shach, he does not even have to return advance payments, while others question this point (Pischei Teshuvah 333:16). However, if the employer said to leave as an expression of anger, some say that the worker

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## Rainy Reimbursement

*Submitted by S. P.*

I asked my friend if I could borrow his umbrella. He agreed and told me that it was next to the stairs. I took it, but unfortunately, an unusually strong wind broke the umbrella. Meanwhile, my friend realized that his umbrella was in his car. I had taken someone else's umbrella.

**Q: The owner of the umbrella claims that**

**I must reimburse him for the umbrella. Am I obligated to pay him?**

**A:** If this had occurred to your friend's umbrella, you would be exempt based on the principle of meisah machmas melachah - a borrowed item that breaks in the normal course of usage (C. M. 340:1). Presumably, this exemption does not apply in your case, as you used someone else's umbrella without permission (Ritva, B.M. 40b).

On the other hand, since you thought that the umbrella belonged to your friend, you never accepted responsibility if it would be meisah machmas melachah (see Pischei Choshen, geneivah 7:[2]), and you should not be liable for the occurred damage.

There is another dimension to your case. Since you took the umbrella without permission (shoel shelo midaas) you are liable like a thief (C.M. 292:1) who is responsible for the stolen object even on damages occurring

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is not released from his commitment, since a statement made in a rage is usually not meant sincerely (Rama, C.M. 333:8). "Some question this ruling from the institution of get mekushar, though," continued Rabbi Tzedek. "Our Sages instituted a specially-made get (divorce document) for priests, who are not allowed to remarry their divorcees. A kohen might want to divorce his wife in a fit of rage; the special get required extra time to write, affording him time to calm down (B.B. 160b). This indicates that even an action done in a state of anger would be legally valid."

"How would the Rema answer this?" asked Mr. Hauser.

"If the person took action in the presence of beis din or witnesses, we cannot disregard his action on account of his anger," answered Rabbi Tzedek.

"If he merely made a remark in his anger, though, his statement to forgo does not carry legal meaning (Pischei Teshuvah 333:17)."

"So Mr. Cooper has to finish, since I simply said 'Leave' in a fit of anger?" asked Mr. Hauser.

"Many authorities concur with the Rema, but this law is always cited as 'some say,' implying that it is not universally agreed upon," replied Rabbi Tzedek. "As such, following the rule of hamotzi meichavero alav hare'ayah, it is not possible to obligate Mr. Cooper. It is proper, though, to reach a compromise in this case."

"Some also limit the Rema's ruling to statements such as, 'Leave,'" added Rabbi Tzedek, "but not to an explicit statement of forgoing, even if expressed in anger (Rabbi Akiva Eiger, New Responsa, C.M. #5)."

beyond his control (oness). Although you did not intend to be a shoel shelo midaas, we nevertheless might apply the liabilities of a thief based on the principle of adam muad l'olam. This rule teaches that a person is always guilty for his actions, even when done unintentionally. Accordingly, it seems that you must reimburse the owner.

However, there are authorities who contend that this principle of adam muad l'olam applies only to a damager (mazik) but does not include cases of ganav b'shogeg (inadvertent theft). In other words, although a thief is certainly obligated to return an object he stole, if it was destroyed due to an oness, a ganav b'shogeg is not obligated to pay (Ketzos and Nesivos 25:1). Others maintain that even one who steals an object inadvertently, albeit real-

izing that he is taking possession of an object belonging to someone else, may carry the liabilities of a thief; if he cannot return the stolen object, he must reimburse the owner.

This happens when one purchases an object not realizing that the seller stole it, or if one borrows an object thinking that it belongs to the lender when, in fact, it does not. In both of these examples, he intended to take possession of somebody else's object and is therefore a shoel shelo midaas - a thief. He is exempt only when he thought the object was his own and did not realize he was taking possession of another person's object (Machaneh Efraim, gezeilah 7).

The question of your liability depends on the above dispute, and since the matter is not resolved, you are exempt.

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## Damages #1

**Q: What are the basic categories of damage for which a person is liable?**

**A:** There are seven basic categories of damage. A person is liable for damage that he himself did, whether damage to another person's property (adam hamazik) or injury to body (chovel). In addition, a person is liable for damage caused by his animals, whether through ag-

gressive behavior (keren), eating (shein), or regular walking (regel).

A person is also responsible for a fire that he lit, even if it is spread by wind (eish).

He is also responsible for stationary items of his that damaged others who stumbled on them (bor).

These categories of damage are mentioned in Parashas Mishpatim (Shemos ch. 21-22) and addressed mostly in maseches Bava

Kama. There are many halachos specific to each of these categories. Some apply only in certain places, whereas others apply everywhere; most pay full value, whereas others only partial value or contain multiple payments; some apply only when negligence was involved, whereas others even when by accident; some can be adjudicated by beis din nowadays, whereas others cannot be adjudicated directly.

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