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STORY LINE

by Rabbi Meir Orlan

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Cleaners Confusion

Yaakov had spent Shabbos at his yeshiva for a few weeks in a row. On Wednesday, he went to the closet and quickly took out his Shabbos suit, which he brought to the cleaners.

The worker entered Yaakov's name and telephone number in the computer.

"It will be ready by 4:00 p.m. tomorrow and will cost \$13," he said, handing Yaakov the receipt.

In the evening, Yaakov's roommate, Elisha, asked him, "Did you see my Shabbos suit? It's missing from the closet!"

"I took my suit to the cleaners," replied Yaakov, "but yours should be there."

"Maybe you took mine by mistake?" suggested Elisha.

Yaakov looked at the suit in the closet.

"You're right!" he exclaimed. "I was rushing, and our suits look similar." He took out the

cleaners' ticket and handed it to Elisha.

"You should pay the bill," Elisha said.

"But they cleaned your suit," replied Yaakov. "Why should I pay? You got the benefit from this work, not me."

"I didn't ask them to do the work, though," said Elisha.

"Your suit was dirty, though," said Yaakov. "You've worn it for the past month."

"Still, I wasn't planning on having it cleaned yet," said Elisha. "Anyway, I'm short on cash and don't even have the \$13. I must have the suit back for Shabbos."

"No problem, I can lend you the money," said Yaakov. "You'll pay me back when you can."

"I'm not interested in borrowing," said Elisha. "You brought the suit in; you have the responsibility to pay!"

"But it was a mistake, a mekach ta'us," ar-

gued Yaakov. "I didn't realize it was your suit."

"There's no point in arguing," said Elisha. "Rabbi Dayan is still downstairs in the beis medrash; we can ask him."

The two went downstairs.

"If I mistakenly brought Elisha's suit, which was somewhat dirty, to the cleaners instead of my own, who has to pay?" Yaakov asked Rabbi Dayan.

"The Gemara (B.M. 118a) addresses the case of a person who hired a laborer for himself, but instructed him to work in his friend's property instead," replied Rabbi Dayan. "The one who hired the laborer has to pay him the full salary, since he accepted responsibility for the employment. However, he can then claim reimbursement from his friend for the benefit that he provided him by hiring the laborer (C.M. 336:1)."

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The Dress Mess

Submitted by O. S.

I lent a dress to my friend to wear to a wedding, and there was a stain on it when she returned it. I'm not sure if she realized that it was stained, but before I speak to her, I would like to verify what the halacha is in this situation.

Q: Is my friend obligated to pay for the dress to be cleaned?

A: Generally, a borrower (sho'el) is responsible even for damage that results from circumstances beyond one's control (oness). If, however, the damage occurs in the course of use (maisach machmas melacha), the borrower is exempt from any liability (C.M. 340:1) for two suggested reasons:

Either it is assumed that an owner forgoes damage resulting from normal usage, and therefore the borrower is not responsible, even if the borrowed object was not defec-

tive (C.M. 340:3), or, alternatively, it was the owner's negligence in lending an object incapable of performing its normal function, even if the owner was ignorant of its defect (Ramban cited in Shach 340:5).

A practical difference between these two explanations can be seen when one who borrows a car runs over a nail, causing the tire to go flat. According to the first approach, the car owner knows that the borrower may drive over a nail and it was understood that

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“What does ‘the benefit’ mean?” asked Elisha.

“If the work needed to be done anyway, it means the cost of the job. However, if there is a range of costs among laborers, he would only have to pay the lower end of the range, unless the job was clearly of superior quality. Thus, Elisha, if there are other local cleaners who charge only \$10 for comparable work, you would only have to reimburse Yaakov \$10 (see C.M. 332:1).”

“What if I wasn’t planning on cleaning the suit now?” asked Elisha.

“A suit needs a cleaning every so often,” replied Rabbi Dayan. “We would have to estimate the relative benefit of having the suit cleaned already, before

you planned to have it done. Even if the suit had no stains, there is still a benefit in having a freshly cleaned and pressed suit, but that would be worth a much smaller sum (see C.M. 375:1-3).”

“Why isn’t this considered a mekach ta’us, though?” asked Yaakov. “The employment agreement was a mistake.”

“Mekach ta’us is when there was some mistake in the nature of the work — e.g. the customer asked for pressing and the store did cleaning — or in the price agreement,” replied Rabbi Dayan. “Here, though, the nature of the work and price were clear, so the customer is responsible to pay the cleaners even if he gained nothing from the work (see C.M. 335:3).”

the borrower would not be liable for the damage. According to the second approach, since the damage did not result from faultiness of the object, it was not the owner’s negligence that caused the damage and the borrower is responsible.

Seemingly, since it is common for a dress to become dirty at a wedding, the borrower cannot be forced to pay for the cleaning, since at least by one definition, it is maisa machmas melacha (Pischei Choshen, Pikadon 9:[16]).

However, some question this conclusion, because the Gemara (Niddah 58a) rules that a woman who borrows a garment and left it stained is obligated to pay for it to be laundered (Kabo D’Kushaysa

39).

A possible distinction is that it is understood that one who lends a garment intends for it to be returned in the same condition in which it was lent. Therefore, the assumption that the owner is willing to forgo damage that results from normal usage does not apply; the borrower is liable (see Nesivos 340:3 and Chazon Ish, B.K. 13:2 regarding why staining someone’s garment would not be considered indirect damage).

Furthermore, if the lender stipulated that the dress should be cleaned after it was worn, the borrower must honor that stipulation — and since the widespread custom is to have it cleaned, it is comparable to a stipulated condition.

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Damages #9

Q: What are grama and garmi?

A: A person is liable for damage that he directly inflicted. However, the Gemara (B.K. 60a) states that one is legally exempt from indirect damage that he caused (grama). On the other hand, many authorities rule that we judge cases of garmi, which also seems to be a form of indirect damage. How do we resolve this seeming contradiction? (See

Pischei Choshen, Nezikin 3:2.)

Rambam, cited by the Shulchan Aruch, indicates that these statements do, in fact, disagree, and we obligate for even indirect damage whenever the loss is clear (C.M. 386:1). Other Rishonim differentiate between degrees of indirectness. Those cases more direct, immediate, or certain are called garmi, and one is liable; those less direct, delayed, or uncertain are called grama, and one is

legally exempt (Rama 386:3). Nonetheless, there is a moral obligation to pay for indirect damage when it is committed intentionally (Shach 32:2; P.C., Nezikin 3:39).

Others maintain that, in principle, all indirect damage is exempt. However, our Sages imposed liability as a fine in certain common cases, which are then called “garmi.” Accordingly, we cannot extrapolate to other cases (see Shach 386:1).

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