



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

WERDIGER EDITION

Issue #225 | Parshas Ki Tavo | Friday, September 11, 2014 | 17 Elul 5774

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### RENTAL DISAGREEMENT

Kalman approached his neighbor, Dov, on Sunday afternoon. "My parents are coming to visit from overseas tomorrow and are leaving next Sunday morning," he said. "We don't have enough room in our car for the whole family. Could we rent your mini-van

for the week?"

After some back-and-forth, Dov agreed to rent Kalman his mini-van for \$300.

"Also, do you have a roof luggage rack we can borrow during that time?" asked Kalman.

"Yes," said Dov. "I'll leave it with the car."

Later that week, on Friday afternoon, Dov called. "Please return the car keys on Motozei Shabbos," he said. "We have a bris on Sunday morning and we're all going. We also need the roof luggage rack."

"But we rented the car for a week," said Kalman. "I was planning to drive my parents to the airport on Sunday in your mini-van."

"We never agreed to rent the car for Sunday," said Dov. "You just asked to rent it for this week."

"That's not true," said Kalman. "I told you that I wanted the car through Sunday."

"That's not how I remember it," said Dov. "We didn't include Sunday. Can't you take your parents to the airport in your car?"

"With them and the luggage, we'd only have room for one other person," Kalman replied. "We'd all like to go and say good-bye. It's not like we get to see them often. Can't your family fit in your other car for the bris?"

"It will be extremely tight, and the kids will go crazy," said Dov. "It's an almost two-hour drive. It's your word against mine, and it's my car. Anyway, the luggage rack you borrowed without pay, so even if we included Sunday, I can demand it back now."

"No point in arguing," said Kalman. "Let's ask Rabbi Dayan; whatever he rules."

Dov called Rabbi Dayan. "I rented Kalman my mini-van and lent him my roof luggage rack. There's a dispute between us whether we included Sunday in the agreement. Who is believed?"

"Kalman is entitled to hold the rented and borrowed items until the time he claims," ruled Rabbi Dayan.

"Why is that?" asked Dov.

"The Gemara (B.M. 102b) discusses the case of a rental whose time frame is questionable," replied Rabbi Dayan. "The



## BHI HOTLINE

### TEACHER NEGLIGENCE

A friend asked me if I would drop off her mezuzos at the office of the

sofer located next door to the school where I work. I had them in my bag, and when I stepped out of the classroom the children opened my bag and ruined the mezuzos.

**Q: Are the parents of the children who did this liable? Am I liable to repay my neighbor for the damage caused by my students?**

A: Generally, parents are not liable for damage that their children cause, and teachers are also not responsible for damage caused by students. However, in your situation you are liable for the mezuzos, since it was negligent of you to leave your friend's mezuzos where your students could reach them. A shomer - custodian - may give items he is watching to his children or to members of his household to watch instead of him, since it is understood that he might do so; but if he gives it to his small children he is liable for any damage, since it is negligent to give someone else's items to a minor, who is considered irresponsible (Rema C.M. 291:21). Even a child who has reached the age of bar mitzvah but is irresponsible may be considered a minor in this matter (Maharashdam 49).

If an unpaid custodian - shomer chinam - leaves the animals he is watching to go into the city at a time when all the other custodians go into the city, he is exempt if something happens to the animals during that time even if they are stolen. The reason is that he behaved the way shepherds normally do (C.M. 291:12). Seemingly, this halachah is a precedent to exempt you from liability, since a teacher may also walk out of the room momentarily. However, the two cases are not parallel.

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## STORY LINE

ruling should be hamotzi meichaveiro alav hara'ayah (the burden of the proof is on the plaintiff). Regarding real estate, the landlord is considered muchzak (in possession of his property) and has the upper hand. However, regarding movable property such as a car and luggage carrier, the renter — who is holding the item — is considered muchzak (in possession)."

"What's the difference?" asked Kalman.

"Tosafos (B.M. 103a s.v. pardisei) explain that although the rental item is supposed to return to its owner, the renter physically holds it and can hide it from its owner," replied Rabbi Dayan. "Therefore, it differs from real estate that cannot be grabbed and hidden away from the landlord. Since Kalman is currently in possession and Dov is trying to claim it back from him, the burden of proof is on Dov to prove that Sunday was not included." (See Shach 312:14; SM"A 341:21; Nesivos 341:14; however, see Pischei Choshen, Sechirus 1:[14] citing Erech Shai.)

"I can understand the car rental, since he paid for it," said Dov. "But why can't I get back the luggage carrier, which was just borrowed?"

"It is important to emphasize that a loan for a set time is a legally binding commitment," explained Rabbi Dayan. "Even though Kalman borrowed the luggage carrier without payment, he acquires the legal right to use it for the stipulated time. If there was no stipulated time frame, then you could demand it back any time" (C.M. 341:1).

"So Kalman is believed just on his word alone?" asked Dov.

"In truth, since you contradict him definitively," answered Rabbi Dayan, "he is required to swear a shevuas heses (rabbinic oath). However, nowadays we avoid imposing oaths. In some cases, the beis din might seek a small compromise in lieu of the heses oath" (C.M. 73:2).



## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 11

**Q: If a computer technician or a friend offers to add to my computer unlicensed versions of programs that he has, is it permitted?**

**A:** Selling unlicensed versions is prohibited for a variety of reasons, including geneivah (theft), benefiting unfairly from another's toil, hasagas ge'vul (encroachment), dina d'malchusa (law of the land), and minhag hamedinah (common commercial practice). Thus, you are forbidden to purchase the unlicensed copy from him, just as you are prohibited to purchase from a thief, because this encourages him to continue stealing and is also a violation of lifnei iver and/or mesaye'a liy'dei ovrei aveirah (C.M. 356:1; 369:1).

Even if the technician offers to install it for free it is still prohibited, since he gains by selling you the computer or by charging for his time and labor. Asking a friend to install an unlicensed copy is similarly not allowed, since you are encouraging him to violate his licensing agreement. Moreover, even if a friend offers you an unlicensed copy of his own accord, by accepting it you are giving him verbal encouragement to violate, which is prohibited (Magen Avraham 347:4).

(Emek Hamishpat, Zechuyos Yotzrim, Intro. 35:5-9; ch. 40:23-40)



## BHI HOTLINE

In the case of the shepherd the potential damager is not present when he leaves to go into town; but in your case you acted negligently, since the potential damagers, i.e., children who tend to do damage, were already present when you walked out and left them with access to the mezuzos (See Rosh Nedarim 37a d.h., "sachar shomer"). Also, the animal owner knew in advance that the shepherd would leave the animals unguarded for a period of time, but your neighbor didn't expect you to leave her mezuzos where your students could get hold of them.

A teacher is allowed to go out of the classroom for a few minutes without concern that the students will inflict damage, but it is negligent to leave behind something that he or she is responsible to protect. Even though the teacher may regularly leave his or her own possessions in the classroom with the students, one must realize that when acting as even an unpaid custodian of someone else's possessions, one must conform with the Torah's expectation of responsible behavior; if one does not comply with that standard, he is liable for damage that occurs.

However, each case must be considered separately as to whether there was reason to be concerned that the children might damage or steal something while the teacher is out of the room. Even if the teacher is liable, the child's parent may choose to pay the damages and thereby release the teacher from liability. And if when the child becomes an adult he decides that he is morally (lifnim mishuras hadin) obligated to pay for the damage he caused as a minor (C.M. 349 and O.C. 343), the owner must return the money he received from the teacher (Shevet HaLevi 4:224).

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