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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

wheels to borrow

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

"Shaul, are you almost ready for the wedding?" Mrs. Halperin called upstairs to her husband. "It's not far, but we can't be late!" "I'm ready," answered Mr. Halperin. "I just hope that the car won't give us problems; it's been acting up recently."

"Maybe check it now," said Mrs. Halperin. Shaul went out to the car and turned the ignition, but heard only some clicking. He knocked on his neighbor's door. "Hi, Label. I'm sorry for troubling you, but our car needs a boost and we have a wedding tonight."

Label maneuvered his car into position and connected the cables, but to no avail.

"I guess the battery finally died," said Shaul. "I don't know how we'll get to the wedding!"

"You can borrow our car," said Label.

"Thanks," replied Shaul appreciatively.

Mr. Halperin took the keys. "We couldn't get

the car to start," he told his wife, "but Label offered to lend his car."

"That's very nice of him," she said. "I don't like borrowing cars, but we need to get to the wedding."

The Halperins were driving home from the wedding when they heard, "thump, thump." "What's that noise?" Mrs. Halperin asked with alarm.

"Sounds like something with the tires," said Shaul. "I'd better pull over and check."

He got out and examined the tires. The front left tire was low on air and producing a hissing sound. Mr. Halperin located a large nail protruding between the ridges. "Must have been a nail on the road," he said. "I'll have to put on the spare."

"Shaul, do you think they can patch the tire?" his wife asked.

"I don't know," he replied. "It's a big nail and

made quite a gash. The tire may have to be replaced."

"I wasn't planning on spending \$100 to get to the wedding," lamented Mrs. Halperin. "We could have taken a car service there and back for half the price!"

"I wonder if we're actually responsible to pay," said Mr. Halperin. "We weren't negligent at all; we had no control over this."

The next morning, Shaul met Rabbi Dayan in shul and related what had happened the night before.

"Are we responsible to replace the tire even though it was not our fault?" he asked.

"The Torah describes four types of shomerim (caretakers): unpaid, hired, a renter, and one who borrows," answered Rabbi Dayan. "A person who borrows an animal or item is responsible for it, even if it is ruined through uncontrollable circumstances. For

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FROM OUR HOTLINE

Submitted by
H. F.

the cost of a cantor

I am contacting you regarding an urgent matter.

My shul was planning a special Shabbaton at a hotel and I was assigned the task of arranging entertainment. My committee and I decided that hiring a chazzan (cantor) to lead the davening and perform a Motzai Shabbos concert for the community would be exciting. We contacted a number of

chazzanim and came to an agreement with a particular chazzan that he would spend the weekend with us for a salary of \$3,000. Shabbos was a great hit and everyone was looking forward to hearing the chazzan again on Motzaei Shabbos at the concert. After havdalah, the chazzan approached me and said that had he known the number of people who would be present at the

weekend, he would have charged a higher rate. He then stated emphatically that he would not perform the concert unless I agreed to pay him \$4,000.

Needless to say, I was flustered and I told him that I would have to think about it. I discussed it with a couple of shul members and it was suggested that I inform two witnesses that I am being forced to agree to

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STORYLINE CONTINUED

example, had lightning knocked a tree down on the car while you were at the wedding, you would have been responsible (Choshen Mishpat 340:1). However, our Sages taught that if the item is ruined or damaged through routine usage, the borrower is exempt. This is called in halacha, 'meisa machamas melacha' – died on account of usage (C.M. 340:1)."

"What is the basis for this exemption?" asked Shaul.

"It is based on logic," Rabbi Dayan explained. "The item was not borrowed to sit idle; it was meant to be used. Therefore, the borrower is exempt from damage that results from usage (B.M. 96b). Some explain that this exemption includes any uncontrollable damage that ensues from routine usage, and here the nail was a result of routine driving (C.M. 340:3 and SM"A 340:8). Others, however, explain that the exemption applies only if the item malfunctioned, such as if the tires had worn out and burst, in which case the lender is considered partly at fault for

having lent an item unfit for normal tasks (Shach 340:5-6)."

"What is the halacha, then?" asked Mr. Halperin.

"You are legally exempt, based on the first explanation," said Rabbi Dayan. "Nonetheless, you might want to pay, at least partially, for the tire, out of appreciation to your neighbor for having lent you the car. On the other hand, if you already replaced the tire out of pocket, you cannot ask the lender for reimbursement, since you are responsible according to the second explanation.

"Of course, the borrower is exempt only if he used the item properly, in the manner for which it was lent," Rabbi Dayan concluded. "Had you driven through a junkyard and blown the tires, you would have been responsible. Similarly, if the nail made a small hole that could have been patched and you continued driving until the tire got completely ruined, you would be responsible to replace the tire according to both opinions."

FROM OUR HOTLINE CONTINUED

pay him \$4,000 for his Motzaei Shabbos concert. After the concert, the two witnesses would confirm that I never intended to pay him the additional amount and we would pay him only \$3,000.

Q: Is this scheme permissible?

A: The halacha that you were advised to follow is called mesiras moda'a (lit. giving notice). When a person is forced to sell an object that he has no interest in selling, he may "give notice" to two witnesses that he is being forced to make the sale and then later reverse the sale. The details of mesiras moda'a are complex and one who needs to employ this tool must consult with an authority about these matters to assure that Bais Din will re-

verse the sale (see Choshen Mishpat 205). In your case, however, mesiras moda'a is unnecessary. Although a fundamental right of an employee is that he may quit at any time, if quitting would cause his employer a loss – davar ha'avud - the employee may not quit.

What recourse does an employer have if his employee states his intent to quit, resulting in a loss? One of the options granted by Shulchan Aruch (C. M. 333:5) is to promise the employee a higher wage. Then, upon completion of the job, the employer is only required to pay him the originally agreed-upon amount. If your chazzan were to quit, it would cause a loss; therefore, you have the right to promise him a higher amount in order to ensure that he finishes the job.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

unfair pricing week #5

Q: A car mechanic charged me rates way higher than other mechanics in his area. Can I claim ona'ah and demand a refund?

A: The Shulchan Aruch differentiates between a po'el, an employee who is time-bound and paid by the hour or day, and a kablan, an independent, contracted worker who charges a flat rate for the job.

We learned last week that there is no ona'ah

on the sale of slaves. Although there is no slave market nowadays, the exclusion of people from ona'ah remains relevant for time-based workers. Thus, even if the price-per-hour varies significantly from the going rate, neither the worker nor the employer can claim ona'ah (C. M. 227:33), at least for a deviation of half the going rate (C.M. 227:29).

However, if the worker is an independent

worker who charges a flat fee for a job, the Shulchan Aruch rules that ona'ah applies if his price veers significantly from the average range. This is because such a worker is not bound by time and not comparable to a slave, whose time is bound. If the worker charges extra because he is highly qualified and provides a superior service to other professionals, then there would be no ona'ah (227:36).

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