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STORYLINE

crock **shock**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

Mrs. Fleishman was hosting her extended family for Shabbos. "This cholent will not be enough," she thought to herself.

Mrs. Fleishman borrowed a small crock pot from her neighbor, put up another cholent, and got to work on the rest of her menu.

Meanwhile, in the other corner of the kitchen, a dairy casserole for seuda shlishis was baking. "It smells almost ready," said Mrs. Fleishman, as she grabbed a dairy spoon and mixed the melted cheese one final time. She started rinsing the spoon, but was interrupted by the door bell.

Mrs. Fleishman ran to answer the door, spoon still in hand. "Oh hello, Shimon," she welcomed her brother.

Meanwhile, a slight burning smell emanated from the stove. "Excuse me," she exclaimed to her brother, "the rice is starting to burn!" She ran and shut the fire just in time.

Mrs. Fleishman opened the lid of the crock pot to check the second cholent, and gave it a stir. As she rinsed off the spoon, she gasped in shock! She had accidentally used the spoon from the hot dairy casserole!

Mrs. Fleishman turned to her husband. "What do I do about the cholent?!"

"We can manage without it," he consoled her, "but I'll call Rabbi Tzedek right now."

"My wife accidentally stuck a dairy spoon in the cholent," Mr. Fleishman explained.

"Was the spoon clean?" asked Rabbi Tzedek. "Was it used in the last twenty-four hour with hot dairy?"

"Unfortunately, my wife had just used it to stir a dairy casserole straight from the oven."

"Was the cholent sixty times the volume of the spoon?" asked Rabbi Tzedek.

"I don't think so," said Mr. Fleishman. "It was a large spoon and the cholent was small."

"In that case," said Rabbi Tzedek, "unfortunately, the cholent is prohibited and the spoon and pot have to be kashered. What kind of pot was it?"

"It was a ceramic crock pot," said Mr. Fleishman.

"I'm sorry," said Rabbi Tzedek, "but ceramic can't be kashered."

"It wasn't even ours," said Mr. Fleishman. "We borrowed it from our neighbor. Does that mean we have to buy them a new one?"

"Actually, you are not legally liable because the damage is not evident," Rabbi Tzedek replied, "but you have a moral responsibility."

"What do you mean?" Mr. Fleishman asked in amazement.

"Your question touches upon a fascinating topic known as hezek she'aino nikar, damage that is not evident," Rabbi Tzedek

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FROM OUR HOTLINE

wet with a **warranty**

Submitted by
L. W.

I recently purchased a laptop with an extra warranty. A friend accidentally spilled coffee on it. He quickly offered to pay for the computer, but I told him that I'd first check if the warranty covered such damage. Fortunately, the company did send me another laptop. I was even able to salvage my files, so I didn't lose anything as a result of the incident.

Q: Since I paid extra for the warranty, am I permitted to ask my friend to compensate me for the extra payment - or even the full value of the computer - although ultimately, I did not suffer a loss?

A: The issue in question is the rights to claim payments from the damager although the losses are recovered from another resource. According to some authorities, a case of the Gemara Bava Kamma (116a) is the key to this question. There, wild waters swept away two donkeys: Reuven's $100 donkey and Shimon's $200 donkey. Shimon offered to compensate Reuven for the loss of his donkey if he'd rescue Shimon's donkey. Reuven actually saved Shimon's donkey - but miraculously, Reuven's donkey also emerged from the flood alive. Ostensibly, Shimon should not have to pay Reuven $100, since he didn't lose his donkey. However, Rav

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STORYLINE CONTINUED

explained. "The Mishna (Gittin 52b) addresses damage that is not physically evident, but rather entails halachic loss. Examples include defiling ritually pure food or raising wine in offering to idols. The person is legally liable only if he damaged intentionally, but not if he damaged accidentally (Choshen Mishpat 385:1)."

"Why is this?" asked Mr. Fleishman. "A person is generally responsible also for accidental damage (C.M. 378:1)."

"R. Yochanan (53a) explains that damage which is not physically evident is not considered damage," Rabbi Tzedek explained. "In principle, a person should be exempt for such damage even when done intentionally, but the Sages fined him and declared him liable when done intentionally, so that people should not defile others' food.

"Here, too, there is no physically evident damage to the crock pot; the fact that it was rendered treif (non-kosher) is hezek she'aino nikar. Therefore, when you return the pot, you are not legally liable for having rendered it treif, since your wife inserted the dairy spoon by mistake (Pischei Teshuva C.M. 385:1; Shaar Hamelech, Chovel U'mazik 7:3). Nonetheless, the Gemara indicates that there is a moral responsibility to pay."

"This concept raises a world of questions," Mr. Fleishman remarked. "If I accidentally short someone's electric appliance or erase his hard disk, is that not considered damage since it is not physically evident?"

"Such damage is evident through the object's malfunction, even if no damage is externally apparent," Rabbi Tzedek replied. "Similarly, if you spill milk into someone's cholent and the taste is noticeable, it would be considered as hezek nikar, evident damage, and you would be liable (Ksav Sofer C.M. #26). However, there is no physically evident damage or evident taste to the pot. Therefore, it is considered hezek she'aino nikar, for which you carry only moral responsibility (see, however, Mishneh L'melech, Gezeila 3:4 and Chacham Zvi, new responsa #19)."

FROM OUR HOTLINE CONTINUED

rules that although the Heavens showed mercy toward Reuven and returned his donkey, it does not mitigate Shimon from his obligation to pay Reuven. This seems to establish that an obligation to compensate remains even if the loss never happened. Accordingly, Ohr Someach (Sechirus 7:1) rules that one may claim his damage from the insurance and, at the same time, collect the loss from the damager.

Others (see Harei Besamim 2:245) reject the application of the Gemara to this case. In their opinion, as the donkey was drowning, Reuven actually had suffered a loss. Only the act of Heaven that came to his rescue recovered it. In contrast, damage that occurs while the owner is insured is not considered a loss altogether, and frees the damager from any restitution.

There is, however, another argument to obligate the damager to pay. Consider the following analogy. If a friend heard that someone damaged your computer and bought you a new computer as a gift, no one would argue that this gift would release the damager from a legally demanded compensation. Similarly, the insurance company pays the damage as part of a deal but not as compensation for the loss (see Teshuvas Maharsham 4:7). As such, the extra warranty to replace the computer is part of the purchase, not a legal compensation for the damage. You may therefore ask your friend to pay for the full value of the computer at time of damage.

Also, please verify that the warranty applies even if you receive compensation from another source. Only in this case may you demand payment from your friend (Minchas Yitzchok 3:126).

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

payment of wages week #5

Q: I served as a waiter at an affair. Before going home, I asked the caterer for my wages. He insisted that he had paid all the waiters, including me, an hour ago. Who is believed?

A: The general rule is that when the defendant denies the claim, the burden of the proof is on the plaintiff (hamotzi meichavero alav ha'reayah). However, Chazal instituted that on payment day, a worker is believed if he takes a severe oath that he was not paid. The reason is that the employer may be preoccupied with other employees or business interests and is liable to get confused, whereas the employee is focused on his own payment (C.M. 89:2).

However, if the dispute should arise later on, past the payday, we revert to the general rule, and the employer is believed with a simple oath (shevuas heses) (89:3). We mentioned in a previous issue that Beis Din usually refrains nowadays from administering oaths, and advocates a compromise.

This entire situation could be avoided if the caterer would pay by check or have each waiter sign a document when paid.

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