



# Business weekly

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

## STORYLINE

### closed for repairs

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Dr. Brand took a sabbatical to do research in another city. He rented his house for the year to the Reichs.

The relationship between Dr. Brand and Mr. Reich began to sour when damage occurred in the house and they disputed who was responsible. Dr. Brand indicated that would be happy if the Reichs found another dwelling for the remainder of the year. Mr. Reich, however, didn't want to move.

Mrs. Reich was in the kitchen one day when she smelled smoke coming from the direction of the electrical service panel. A minute later, the smoke detector began to beep.

"Everybody out of the house immediately!" Mrs. Reich shouted. The family evacuated quickly and called the fire department.

Fire trucks arrived within minutes as smoke spread through the house and flames erupt-

ed from the wall near the service panel.

The firemen raced into action with chemical extinguishers. Fortunately, they were able to extinguish the fire before it spread. However, there was significant damage to the service panel and the wall.

Mr. Reich notified Dr. Brand of the fire. "It wasn't our fault," said Mr. Reich. "Something went wrong in the electrical box."

"We'll hear what the fire inspector says," Dr. Brand fumed.

The fire inspector confirmed that the fire was caused by a failure in the service panel. Dr. Brand notified the insurance company, who sent an appraiser. An electrician determined that the entire electrical service panel would have to be replaced and completely rewired. The wall also needed to be repaired.

"How long will the repairs take?" Dr. Brand

asked the electrician.

"It could a few weeks to complete the repairs, during which time there will be no electric power here," the electrician said. Meanwhile, the Reichs went to live with relatives. "This is good opportunity to encourage the Reichs to find another house," Mr. Brand thought.

"I'd like to wait on the repairs until I come to visit next month," he told Mr. Reich. "You might want to look for another house."

Mr. Reich, however, demanded that repairs be made immediately. Dr. Brand insisted, in return, that Reichs continue paying rent during the weeks of the renovation.

"If I can't live there, I'm not going to pay!" Mr. Reich flatly refused.

When Dr. Brand returned, the two went to a din Torah before Rabbi Tzedek.

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## FROM THE BHI HOTLINE

Submitted by  
E. K.

### a check with change

My friend paid me with a check that bounced. He wrote a new check that included extra money to cover the fee I incurred from depositing the check.

He mentioned that due to new banking regulations, funds that he had deposited to cover the check were not available yet.

**Q: If what he is saying is true, should I return the extra money he gave me to cover the penalty since it was not his fault?**

**A:** The point that requires clarification is what principle, if any, can be applied to hold the issuer of the check liable for the fees the recipient incurred. Seemingly, the fees incurred were the indirect result of writing a bad check, and one of the most fundamental principles of Choshen Mishpat is that someone who indirectly causes a friend a loss is exempt – grama b'nizakin patur. However, there is a category of indirect damage which encroaches on the area of direct damage.

This is known as garmi, and one is liable if he is negligent and causes garmi damage. For example, if Reuven agrees to meet Shimon out of town for a din torah but then skips the meeting, he is liable to reimburse Shimon for his expenses (C.M. 14:5).

Similarly, when someone issues a check, he is essentially informing the recipient that the check is good and can be deposited into his account. If the issuer was negligent and issued a check when the account did not have

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Rabbi Tzedek ruled: "Mr. Reich does not have to pay rent for the month of the renovations. Even if he prepaid the rent, Dr. Brand would likely have to refund the month's rental. When a person rents a house and it collapses or burns down, most authorities maintain that the owner is not required to rebuild the dwelling, and the tenant does not have to pay rent for the remaining months and should be refunded any extra payments. However, some authorities maintain that the tenant remains obligated to pay rent for the duration of rental period (C.M. 312:17; SM"A 312:34)."

"Why does the tenant have to pay rent if he cannot live in the house?" exclaimed Mr. Reich.

"This opinion views a rental agreement as 'purchasing' the rights to use the house for that time," explained Rabbi Tzedek. "Therefore, if the usage is compromised, the renter loses, just as if he had purchased something and it broke afterwards (see Chazon Ish B.K. 23:10). According to this opinion, the owner is also not responsible for maintenance. However, the common

rental practice is to require the owner to make necessary repairs (Rama 314:1; GR"A 314:6; Emek Hamishpat, Sechirus #51)."

"How does this relate to rental payment during the month of renovation?" asked Dr. Brand.

"Rental payment for the month of renovation is similar to rental payment after a house collapsed," answered Rabbi Tzedek, "Therefore, in accordance with most authorities, Mr. Reich is not obligated to pay rent for the month, since he couldn't use the house during this time."

"What happens if the rent was prepaid?" asked Mr. Reich.

"We mentioned that some authorities require the tenant to pay the remaining rent," replied Rabbi Tzedek. "Furthermore, some suggest that if the contract calls for prepayment of the rental, both opinions agree that the usage rights are 'sold' and the tenant is not entitled to a refund (Nesivos 312:13; Pischei Choshen, Sechirus 6:7,15). However, the prevailing common rental practice in many places is that the landlord is fully responsible for maintenance, even to refund the month's rent."

sufficient funds - or even if at the time the check was issued there were sufficient funds, but he later wrote additional checks, leaving the account without coverage for this check - he is liable to pay the fees the recipient incurs as a result of the bad check. Although one is liable for garmi damages that resulted from one's negligence, one is not liable even latzeis yedei shamayim (beyond the letter of the law) for garmi damages that are a result of circumstances of oness (beyond his control) or shogeg (accidental) (Shach 386:6; see also Minchas Pitim 386:3).

In a case of oness or shogeg, if the issuer of the check decides on his own to pay the recipient because he feels that it is the proper thing to do, the recipient need not be concerned about the issuer's misconception that he is obligated to pay. The reasoning is that since he paid without being asked, he indicates that he wants to do

the "right thing" even if he is technically exempt from having to make a payment. Similarly, in a case of oness or shogeg, it is prohibited for the recipient to ask to be reimbursed if that gives the impression that he is obligated to pay. If the issuer of the check voluntarily paid the recipient and mentioned that he feels halachically obligated to do so, it raises a question of whether the recipient must return the extra funds since it may involve mechilla b'taus (mistakenly forgiving a debt) or, in this case, paying due to an erroneous impression that he is obligated.

In your case, since the issuer already paid you in order to maintain his reputation as an honest person, you are not obligated to return the funds - even though your friend may have not been obligated to cover the bank fees (see Rivash cited in Ketzos 17:3, 75:4, 207:3).

**Please contact our confidential hotline with your questions & comments**

877.845.8455 ■ ask@businesshalacha.com

## MONEY MATTERS

### borrowing and lending week #12

**Q: I took out a loan in my own name for a small joint business venture. If the venture fails and the loan has to be repaid from personal assets, does my partner have to repay half the loan?**

**A:** If one partner borrows for the purpose of a joint business, the other partner is also obligated, even though he did not participate in procuring the loan. This is because

the first partner is viewed as an agent of the second partner, provided that the second partner admits that the loan was taken on behalf of the business or that there is proof for this (C.M. 77:2).

The Rama, however, follows an opinion that if it was not evident at the time of the loan that the loan was taken on behalf of the partnership, the second partner carries no personal liability, even if he later admits that

the loan was taken on behalf of the partnership.

The consensus of later authorities is: If the loan was explicitly taken on behalf of the partnership, if the first partner borrowed the money upon the instruction (or with the consent) of the second partner, or if the money was invested directly in the partnership, the second partner is obligated (Shach 77:9; Nesivos 77:4).

## WITNESSES

**Can Mechutanim be Eidim together?**

**Sunday mornings at Bais Moshe Shmiel**

(Rabbi Rottenberg's shul: 1782 East 28th, btwn Quentin and R)

**Seder Limud** 9:00 - 9:45 am

**Shiur:** R' Moishe Bergman, Rosh Chabura 9:45 - 10:30 am

Refreshments served

Stipends are available to participants of the seder limud

For more information, contact Rabbi Rottenberg: 347-533-2299 or rottenberg@btinternet.com

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