



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

**PROMPT WAGES** "There is a problem with the showerhead," Mrs. Lerner said to her husband. "It's leaking terribly."

Mr. Lerner checked and saw that the showerhead had cracked. "The showerhead has to be replaced," he said to his wife. "It's not a big deal."

Mr. Lerner got a wrench and tried to loosen the showerhead. However, it was stuck on very tightly. He applied some force, and the showerhead broke off with a small piece of pipe, which had corroded.

"The pipe cracked," Mr. Lerner said to his wife. "I'm going to have to call Yossi, the plumber."

"The pipe holding the showerhead broke and has to be fixed," Mr. Lerner said to Yossi. "Would you be able to come by?"

"I can come by tomorrow morning," Yossi replied. "Will somebody be home?"

"I'll be at work, but the kids should be home," said Mr. Lerner. "I'll tell them to expect you."

When Mr. Lerner left the following morning, he instructed his son, David: "Ask Yossi how much it is, and please pay him."

When Yossi finished, David asked him, "How much is the job?"

"Thank you for asking," said Yossi. "I'll settle with your father later."

Yossi sent an email to Mr. Lerner: "The shower is fixed. It comes to \$100, when you have a chance."

Mr. Lerner replied: "Thank you. Be"H, I will bring the money over later."

Mr. Lerner returned home in the late afternoon. He looked at his watch. "What time is sunset?" he asked his children.

David checked the shul bulletin. "It's in half an hour," said David. "Why do you ask?"

"There is a mitzvah to pay the worker on that day," answered Mr. Lerner.

"Yossi didn't sound like he needed the money immediately," David noted.

"That's true," replied Mr. Lerner. "He even wrote to me, 'when you have a chance,' but I wonder if there is a mitzvah regardless."

"Maybe ask Rabbi Dayan?" suggested David.

Mr. Lerner called Rabbi Dayan. "A plumber fixed my shower today," he said. "Is there a mitzvah to pay him before sunset if he said, 'when you have a chance?'"

"There is both a positive command to



## BHI HOTLINE

**DIESEL FUEL** I rented my friend's car and without thinking I filled the tank with diesel. Shortly afterward the car stopped working. The owner is demanding that I deal with the mechanic and continue to pay the rental fee until it is returned.

**Q: Am I obligated to do all of that? Is there an exemption since I didn't intend to damage the car?**

**A:** In a circumstance in which a renter has no way of knowing that the car requires special fuel and consequently added the wrong fuel, he would be exempt. The owner must inform the renter of special circumstances and if he does not, the renter is exempt (according to some opinions this is the rationale for the exemption of meisah machmas melachah — see Shach 340:5).

In your circumstance the exemption does not apply since drivers know that ordinary cars do not take diesel fuel, and using it for an ordinary car is a negligent act for which one is liable. If the owner has an insurance policy that covers this type of loss, the renter may not be liable for anything except what is not covered by the insurance. Although many authorities maintain that a mazik is liable for damaging insured items (Ohr Same'ach, Sechirus 7:1 and Maharsham 4:7), nevertheless, a rental agreement is different since it is understood that the renter will not be liable for damage that is covered by insurance (see Minchas Yitzchak 3:126), since it is assumed that insurance coverage is part of the agreement. Liability is limited to those costs that are not covered by insurance.

Regarding the owner's claim that you should have to deal with the mechanic and continue to pay rent until the car is returned, it is not a valid claim. A mazik's liability is limited to paying for

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## STORY LINE

pay a worker on time and a prohibition to delay his wages," replied Rabbi Dayan. "The Torah states: 'On that day you shall pay his wages; the sun should not set upon him' (Devarim 24:15). However, the Mishnah (B.M. 111a) lists certain situations in which one does not violate the prohibition."

"What, for example?" asked Mr. Lerner.

"The employer does not violate the prohibition unless the worker requested his wages," explained Rabbi Dayan. "Most authorities maintain that if he did not request the wages, the employer also is not neglectful of the positive command" (C.M. 339:10; Pischei Choshen, Sechirus, 9:[35]).

"When the worker explicitly allowed you to pay later, presumably everyone would agree that there is no requirement to pay that day," continued Rabbi Dayan.

"Furthermore, the employer is not required to bring the money to the worker, but to make it available. Nonetheless, if you do make the effort to pay that day, you merit fulfilling a mitzvah. The Zohar (3:85a), in particular, encourages this." (Ahavas Chesed 9:[31]; Shulchan Aruch Harav, Sechirus §18).

"I don't have any cash on hand," said Mr. Lerner. "What about paying by check? Would that fulfill the mitzvah?"

"A check that can be deposited that day is like cash, and the employer fulfills the mitzvah," replied Rabbi Dayan. "If the worker agrees to accept a postdated check, the employer does not violate the prohibition, but it is questionable whether he fulfills the mitzvah" (P.C., Sechirus 9:[36]).



## MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

### BEIS DIN AND CIVIL COURT #24

#### Relatives' Testimony

#### Q: Which relatives are disqualified from serving as witnesses in beis din?

**A:** The Torah disqualifies witnesses who are relatives of one of the litigants, one of the Dayanim, or of each other — whether to exempt or obligate (C.M. 33:10, 17).

As a rule of thumb, first-degree relatives (e.g., parent-child or siblings) and second-degree relatives (e.g., grandparent-grandchild, uncle-nephew, or first cousins) are disqualified; third-degree relatives are allowed (e.g., second cousins or even first cousins once removed). There is a dispute regarding great-grandparents-grandchildren and great-uncles-nephews, and they should not testify (C.M. 33:2).

Husband and wife are generally considered the same. Thus, a witness disqualified as a relative also cannot testify for the relative's spouse. However, the unrelated spouses of two first cousins can testify (C.M. 33:3-4).

Mechutanim (a pair of in-laws) are allowed to testify for/with each other, if they don't have a vested interest in the case (C.M. 33:6).



## BHI HOTLINE

repairs; it does not obligate the mazik to spend the time dealing with getting the damaged item repaired. The owner is the one who must invest that time (Shach 95:18 and Chazon Ish, B.K. 6:3). Therefore, once the damage occurred, the owner may no longer charge rent while the car is being repaired since once the car is broken, the rental agreement is terminated. Although your negligence prevents the owner from earning rental fees on his car, he cannot compel you to reimburse him for that loss. Poskim debate whether one who leases a cow and damages it is liable for the time it cannot work. Some authorities maintain that since the animal will heal, the only loss the owner suffers is the loss of income while the animal is healing and cannot work. Since there is no unemployment payment (sheves) for an animal the renter/mazik is not liable. Others disagree and contend that since animals are sold on a regular basis, wounding an animal so that it cannot work causes its value to diminish and the renter/mazik must pay for that loss (C.M. 307:6).

It is clear, however, that even the latter opinion (obligating the renter/mazik) agrees that he only pay for the animal's diminished value due to its incapacity to work for a period of time, but does not have to continue paying the rental fee (see Nesivos 340:3 and Chazon Ish, B.K. 13:2-3).

However, it is appropriate to reach some sort of settlement to address your moral obligation since there are authorities who obligate, latzeis yedei Shamayim, one who, as a result of negligence, prevented another from earning a profit (Radvaz 1:84; Avnei Nezer, Y.D. 133; Imrei Yosher 1:149 and 2:33; cf. Beis Ephraim, C.M. 28; and Imrei Binah 1:8).

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