



# 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

### REFUND OR REPAIR?

Yehudah purchased a new laptop from Cahane's Computers. From the beginning, the computer flickered on and off. Yehudah brought it back to the store. The technician found that the power supply was defective, and replaced it.

A few weeks later, the screen began to malfunction. Upon examination, there proved to be a problem with the screen. That was also replaced.

Yehudah used the computer for a while, but problems continued to plague the computer. Yehudah brought it back to the store, once again. The technician examined the computer thoroughly and determined that there was a problem with the motherboard.

Mr. Cahane called Yehudah. "The motherboard is still under warranty, so we'll replace it," he said. "With that, the problems should be solved. All the other components were checked and are intact."

"Three strikes and you're out!" replied Yehudah. "I'm not interested in having the motherboard replaced. I want a brand new computer or my money refunded."

"That's not our policy," said Mr. Cahane. "Each component comes with its warranty period. If we replace the defective part, the computer should be good as new."

"I don't care," said Yehudah. "This computer was defective. I bought a new computer, and expect it to work like a new one, not like a refurbished one."

"We provided you with excellent service," said Mr. Cahane, "but no one has ever asked to return a computer half-a-year later."

"No one has had so many problems, either," replied Yehudah.

The two decided to bring the issue before Rabbi Dayan: Can Yehudah demand a refund rather than a repair?

"The halachic concept of mekach ta'us or mum b'mekach (defective merchandise) relates to a defect present at the time of the sale," replied Rabbi Dayan. "The sale is then void; the customer can return the item and demand a refund. The seller cannot insist on upholding the sale and repairing the item" (C.M. 232:3).

"On the other hand, the warranty nowadays has a dual purpose," continued Rabbi Dayan. "It guarantees the merchandise against original defects and also provides coverage for failures that arise during the warranty period. The terms of the warranty, though, often

### DID YOU KNOW?

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## BHI HOTLINE

### BORROWED METROCARD

I borrowed my friend's Metro Card to go to an

appointment and the agreement was that I would repay him for the rides upon my return. Some time after I returned from my appointment I lost the card, and we do not recall how much money remained on the card.

**Q: How much am I obligated to repay him for the lost card?**

**A:** Any time a claimant is uncertain whether he is owed money or how much money he is owed, the respondent is not obligated to pay any more than he is certain that he owes. There is not even a moral responsibility (latzeis yedei Shamayim) to pay more than that (C.M. 75:18 and Shach 7).

Interestingly, even if it is known how much money remained on the card, it is possible that you are not liable. Although a custodian is responsible when something happens to the article in his care (each type of custodian has a different threshold for liability), the Torah exempts one who is a custodian for financial documents (shtaros) (C.M. 66:39-40 and 301:1). This is because the Torah excluded from liability custodians of objects that have no intrinsic value (ein gufo mammon) and merely represent debts or rights.

However, there is a dispute whether negligence triggers liability (ibid.) and since there are authorities who contend that he is exempt, a custodian cannot be compelled to pay (kim li) (Pischei Teshuvah 301:4; Erech Shai 66). Some contend that one who was negligent has a moral obligation to repay the damaged party (Imrei Binah, Hilchos Pesach 5), but others assert that the Torah's exclusion of objects lacking intrinsic value from the laws of custodianship also exempts a



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allow the manufacturer the option of repairing the item."

"Is there any notion in Halachah of repairing a defective item?" asked Mr. Cahane. "Halachah distinguishes between a mum oveir (temporary defect) and a permanent one," answered Rabbi Dayan. "Someone sold a house in another city, but — before the sale was completed — vandals removed some windows and doors and dirtied the walls. The Rosh (Responsa 96:6) ruled that the sale remains intact, since the defect is proportionally minor and transitory. The house retains its status, so the seller can uphold the sale and refund the amount necessary to restore the house to its former state."

"However, if one of the walls was defective, the Rama writes that the customer can void the sale," continued Rabbi Dayan. "The seller cannot insist on rebuilding the wall, since this would be panim chadashos (a new entity), i.e., it is not the same house that was sold. Similarly, if an integral part of the computer was defective and has to be replaced, it would be considered a mekach ta'us" (see C.M. 232:5; Nesivos, Chiddushim 232:7; Pischei Choshen, Ona'ah 13:3-7[6,7]).

"But our warranty policy specifies replacing the defective part," argued Mr. Cahane.

"The overriding principle in commerce is: hakol k'minhag hamedinah, everything in accordance with the local practice," replied Rabbi Dayan. "While Halachah provides default rules, people generally conduct business with the understanding of the common commercial practice. Thus, when buying a computer from a store that operates with a standard warranty policy, that policy is binding" (Maharsham 3:28).



## MONEY MATTERS

### PARTNERSHIP # 14

#### Disbanding a Partnership

##### Q: At what point can I disband a partnership?

**A:** In the absence of explicit terms or a common commercial practice, the answer depends on whether a defined time was set for the partnership.

If the partnership was set for a defined time, neither party can pull out until the specified time, the partnership runs bankrupt or one partner dies. If dividing the assets at the set time would cause a loss, they should be sold first (C.M. 176:15, 19; Pischei Teshuvah 176:23).

If there was no set time, each partner can pull out at any time. The assets should be divided or sold, or one partner should buy out the other (C.M. 176:16; Shach 176:29).

If the nature of the business is such that there is a set time for selling, such as Pesach products, it is as if they stipulated that time. Each party can restrain the other from disbanding the partnership until the expected time arrives and the merchandise is sold (C.M. 176:17).



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custodian from any moral obligation (see Maharsham 2:138; Chazon Ish, B.K. 2:7; cf. Birkas Shmuel, B.K. 2; Chiddushei Harim, B.K. 56a).

Examples of documents in this category are vouchers, coupons, checks, plane tickets, etc. MetroCards also fall in this category since the card has no intrinsic value. It represents the number of rides the card owner is entitled to take. Therefore, a custodian of a MetroCard is not liable if the card was lost or destroyed. Even if he was negligent, he cannot be forced to pay for the card (Maharshag, C.M. 105).

Accordingly, since you used the card for two rides, you must pay your friend for those two rides. However, you are exempt from liability on the remaining value, since you were a custodian of a card that does not possess intrinsic value.

There is an interesting debate concerning someone who borrows a MetroCard and the owner authorizes the borrower to use the card for as many rides as he wishes. Some contend that since the borrower may use the card for as many rides as he wishes, he has borrowed the full value of the card and, similar to any other borrower, is responsible to repay the owner the value of the card, even before he uses it for any rides (see also Hacheck B'Halachah 21:39). Others argue that when he initially takes the card he is a custodian and becomes obligated to pay the owner for each ride only when he uses the card. As a custodian, he is not liable if he loses the card.

In your circumstance, however, where the agreement was that you would use the card to go back and forth from your appointment, you did not borrow any more than two rides and you must pay the owner only for those rides.

For questions on monetary matters,  
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