

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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BUSINESS WEEKLY FOR THE MONTH  
OF KISLEV HAS BEEN DEDICATED

לעלוי נשמת  
מיכל שרה אידל בת ר' יוסף  
BY SHAMMAI BIENENSTOCK

## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Traffic Jam

At 5:00 PM, Zvi locked his office and headed home. On the street, he raised his hand and hailed the next available cab.

He gave the cabbie his address and was surprised to find that the cab driver was a religious Jew.

"I usually take the train," Zvi commented to the driver, "but we have a cousin's wedding tonight. I have to get home quickly."

After heading cross-town, they got on the highway. Traffic was moving very slowly.

"What's going on?" Zvi asked.

The driver turned on his radio. "There has been a serious accident on the highway," they heard. "Traffic is moving very slowly due to police activity. Avoid the area and take alternate routes."

Zvi looked at his watch. "Is there any way to get off the highway?" he asked the driver.

"The next exit is a quarter-mile from here,"

said the driver. "But at this rate it will take a while to get there."

Meanwhile, the taximeter continued to tick, adding \$.50 every minute. After twenty minutes, they finally neared the exit, while the fare had increased \$10.00.

Zvi turned to the driver.

"We could be stuck on this highway another hour, and alternate routes will also be clogged," he said. "I'm better off taking the train. Exit the highway and I'll get off. What does the meter read?"

"You're leaving me in the middle, after I've already wasted twenty minutes here?" replied the taxi driver. "That's not fair to me!"

"It's not my fault that there was an accident," replied Zvi. "I didn't cause you the loss."

"But you hired me to take you home," argued the taxi driver. "You're leaving me in the middle of the job."

"The fare is determined by the meter," reasoned Zvi. "If I get off here — that's it."

"I attend a business halacha shiur," said the cab driver. "We learned that if an employer retracts in the middle of a job, he owes the worker compensation for the remainder of the job."

"I happen to have Rabbi Dayan's phone number," said Zvi. "I'll ask him if you want!" Zvi called Rabbi Dayan and presented the issue. "Do I owe the driver anything for the remainder of the trip?" he asked.

"There is a difference between a car service and a taxi," answered Rabbi Dayan. "In a car service, which is paid a flat amount for the ride, you have to compensate the driver if you stop in the middle of the ride; in a taxi, whose fare is determined by the meter, you do not."

"Why does that make a difference?" asked

*continued on reverse side*

## Sly Switch

I allowed Reuven, my tenant, to store things in my shed. He hasn't paid his rent in months.

**Q: Am I permitted to change the locks on the shed, preventing him from accessing his possessions, as a means of forcing him to pay me the money he owes?**

**A:** We will not discuss whether what you would like to do is advisable. That should be reviewed with your Rav. We will focus on

whether changing the locks is technically permitted from a halachic perspective.

A lender may demand security only before issuing a loan. Once a loan is issued, the Torah prohibits a lender from forcibly taking something from the borrower as security (C.M. 97:6 & Sma). In your case, though, it is permitted for you to take control of the renter's items. There are two reasons for this.

The prohibition against forcibly taking security once a loan was issued is limited to the

borrower in the context of an actual loan. However, a lender may forcibly take property as security from a guarantor of the loan, if the guarantor's obligation for payment came due. Similarly, a landlord may forcibly take security from a tenant and an employee may forcibly take security from his employer without first obtaining authorization from beis din (C.M. 97:14). In these circumstances, the prohibition does not apply unless the debt was transformed into a loan.

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Zvi. "Once the worker begins a job, he has a commitment to complete it, and the employer has a commitment to provide him with the salary," explained Rabbi Dayan. "Thus, if the owner retracts in the middle of the job, he still owes the worker compensation for the remainder of the salary. He can deduct a certain amount, though, since the worker now has free time and, in the case of a car service, saves on gasoline for the remaining distance. This is called k'poel batel (like an idle worker) (C.M. 333:2)."

"Why is a taxi different?" asked Zvi.

"For two reasons," answered Rabbi Dayan. "First, a taxi can usually find another customer in a few minutes who will pay the same fare. If the worker can find equivalent work to replace

the missing wages, the first employer who stopped in the middle does not have a legal liability."

"This makes sense in routine circumstances," said Zvi. "What if the taxi driver would have trouble picking up someone else?"

"Even so, the taxi fare is based on distance traveled and time elapsed," replied Rabbi Dayan.

"The exact job and its fare are not predetermined; they depend on the route the cab takes and traffic conditions. The only agreement is that the price should reflect the meter reading; each unit is considered separately.

"Thus, although you initially asked your driver for a trip home, it stands to reason that you are entitled to stop anywhere you wish (Dvar Chok U'mishpat, p. 245)."

Another rationale for leniency is that the prohibition only restricts a lender from forcibly taking something from the borrower. In the event that the lender had possession of the borrower's item and now wants to retain it until the loan is paid, he does not violate the prohibition (C.M. 4:1). If the lender does not take possession of the borrower's property but merely prevents the borrower from accessing his property, it is certainly permitted.

Although one generally may not act as a vigilante, a person may (subject to specific conditions) unilaterally enforce his rights based on the principle of avid inish dina l'nafshei. Ketzos HaChoshen (4:1) relates that he observed lenders who thought it wise to take hold of another person's possession in order to strengthen their claim in beis din, but in fact they are behaving incorrectly and may have violated a Torah prohibition by doing so. How-

ever, if they retain something that was originally given to them for safekeeping, they do not violate a prohibition.

Nevertheless, the Zohar (3:119) writes that even retaining something that one was given for safekeeping is prohibited, as it involves dishonesty. Moreover, one should learn from Hashem: each night we deposit our souls with Hashem, and despite our guilt, He returns our souls. So too, one who receives an article to watch as a custodian should always return it to the owner. In other words, even in circumstances in which one does not violate the prohibition of forcibly taking security from a borrower, one should not retain an object deposited in his possession.

Nevertheless, since you were not given these items to serve as a custodian, but merely authorized the other party to store his things in your shed, it is permitted for you to change the locks on your shed.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM

## Lost and Found #16

**Q: I found a lost MP3 player and publicized it. While holding it, am I liable if it gets stolen? Can I entrust the player to someone else? May I use it meanwhile?**

**A:** While you hold a lost item, you are responsible to guard it. There is a dispute in the Gemara (B.M. 29a) whether you are considered a shomer sachar (paid guard-

ian) or a shomer chinam (unpaid guardian). The Shulchan Aruch rules that you are considered a shomer sachar and liable for theft. However, the Rema and later authorities cite the opposing opinion that you are a shomer chinam and exempt you (based on hamotzi mechaveiro), unless you were negligent (C.M. 267:16; Shach 267:14). Although a regular guardian may transfer

the item only to his household or someone the owner deems trustworthy, you may entrust a lost item to any reliable person. However, it may not be used. Some authorities allow you to use the item in a manner that does not damage it at all, if it is the type of item that the owner would certainly allow you to use (Pischei Choshen, Aveidah 6:3-4; Hashavas Aveidah K'halachah 3:9-12).

## DID YOU KNOW?

Paying a wedding band, plumber or handyman immediately at the completion of the service is a fulfillment of numerous mitzvos d'oraysa, akin to making kiddush on Shabbos, putting on tefillin, saying krias shema, and birchas hamazon.

For more information, please speak to your Rav, or you may contact our Business Services Division at: phone: 718-233-3845 x41 · email: ask@businesshalacha.com

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