



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

∞ *Bava Kama* ∞ PEREK ALEPH

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Bonfire!

Bava Kama 3b - Aish

"Bar Yochai, nimshachta ashrecha..." Voices rang out as people danced around the roaring bonfire. The youngsters of the neighborhood, along with many adults, had gathered to celebrate Lag Ba'Omer.

After two hours of singing, dancing, and a Dvar Torah by the Rabbi, the group began to head home. The attending firefighter doused the flames with water.

"What? Already?! It's not fair that we have to stop," complained sixteen-year-old Boruch to his friends. "Just because the adults want to go doesn't mean we want to!"

"Yeah," answered Eli, "Let's go make our own fire. We can stay up late, roast marshmallows, tell stories and share Divrei Torah!"

"But where can we make the fire?" asked one of the boys.

"There's an unused lot nearby," said Boruch. "There are just some weeds and a small broken-down shed there. What do you say?"

The boys looked at each other. Finally, someone declared, "Let's do it!" They gathered the branches left over from the community fire and dragged them to the unused lot.

When they finished piling the branches in the middle of the lot, Boruch lit the fire. "What about the weeds and that tree over there?" asked one of the boys. "Isn't there a danger that the fire might spread?"

"Oh, don't worry," said Boruch. "They're too far away. See, even when the wind blows, the fire doesn't go near them."

Eli brought marshmallows, which they roasted on thin braches. Boruch strummed his guitar and they sat around singing into the night.

The wind picked up. The boys huddled around the fire, enjoying its warmth. "Let's get some more wood to make the fire bigger," said Eli.

"Stay here and keep an eye on the fire," Boruch said to his twelve-year-old brother, Simcha. "If anything happens, there are buckets of water over here." He walked away with the other boys to find more wood.

Without warning, an unusually strong gust of wind blew, fanning the fire and whipping the flame far across the ground. Some of the weeds caught fire, which started to spread towards the wooden shed! Simcha rushed to pour water on the fire, but it had already spread too much.

Bonfire, cont.

The fire began to engulf the shed and reach toward the tree. "Fire! Fire!" Simcha shouted. A neighbor poked his head through his window and quickly called the fire department, who extinguished the fire before it caused more significant damage.

Meanwhile, the owner of the property showed up and screamed at the boys: "Who gave you permission to light a fire here? That was so irresponsible!"

Although the broken shed was not worth much, the owner decided to take the boys to a Din Torah to teach them a lesson. He brought them before Rabbi Tzedek.

"These boys lit a fire that spread and burned down my shed," the owner claimed.

"We know it was wrong," said Boruch. "However, we made sure to distance the fire from the shed, and we also asked Simcha to stand guard with buckets of water."

"So what?" argued the owner. "Don't you know that wind blows fire around?"

"Yes, but when we lit the fire, the wind wasn't strong," responded Boruch. "The sudden gust of wind was unexpected."

"What's the difference," said the owner. "You never know how the wind will blow..."

Rabbi Tzedek turned to Baruch and ruled: "Had you lit the fire on your own property, you would have been exempt if you distanced it sufficiently for normal wind conditions. However, since you lit on another's property you are liable."

He explained: "A person is responsible for a fire that he lit and was spread by the wind, unless he was careful to distance it sufficiently from something that could burn. If he did so, but it was spread by an unusually strong wind, he is exempt (C.M. 418:2).

However, this is only if the person lit the fire on his own property, in a permissible manner. If he lit the fire without permission on his neighbor's property or on public property, he is liable even if it was spread by an unusually strong wind. Leaving a minor to guard the fire is insufficient and does not transfer responsibility away from the one who lit it (418:7)." 

Crock Shock

Bava Kama 5a - Hezek SheAino Nikar

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

Crock Shock, cont.

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 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).”



Up in the Air

Bava Kama 6a - Avno Sakino U'Masao

“Storms tonight with very strong winds,” the meteorologist announced. “Gusts will reach 50 mph.”

Throughout the afternoon, clouds gathered in the sky. The wind began picking up and the trees started swaying back and forth.

“You’d better fasten the outdoor tables and chairs, so that they don’t go flying,” Mrs. Spitz warned her husband.

Sammy Spitz went outside and chained the chairs to the table, adding a few weights for good measure. “That should do it,” he said to his wife. “The combined weight will hold them down.”

As the evening wore on, the wind continued to gain force. The trees began to sway wildly. The table lifted slightly from time to time. “I’m really worried about the table,” said Mrs. Spitz. “The wind can send it flying!”

Sammy looked out the window and watched the table for a few minutes. “It’s lifting a bit in the wind, but it can’t go anywhere. It’s got the chairs and weights attached to it.”

The family continued to go about their business. All of a sudden, the howling of the wind was punctured by a loud “Crash!” and the piercing wail of a car alarm.

Mr. and Mrs. Spitz ran outside. An exceptionally strong gust had lifted the entire bundle of table, chairs and weights and hurled them into their neighbor’s car!

“I can’t believe the wind did that,” said Sammy, shaking his head. “I’ve never seen it pick up something that heavy!”

As they were speaking, Benny Morgenstern, the neighbor, rushed outside to assess the damage. Fortunately, the car’s windows were not smashed, but there were several dents in the car.

“I’ll contact my insurance,” Benny said to Sammy, “but I assume it’s your liability.”

“I guess it is,” said Sammy sheepishly, “but I’m still shocked that any wind could lift up that whole thing.”

Meanwhile, some other neighbors came to see what happened, and soon a discussion began about whether the Spitzes were liable or not. “They didn’t do the damage,” declared one neighbor confidently. “It was an accident caused by the wind.”

“So what?” argued another. “It was their table that caused the damage.”

Up in the Air, cont.

“But with that kind of wind, there was nothing they could do,” responded the first.

“They could have chained the table down to something,” retorted the second.

Mr. Spitz and Mr. Morgenstern heard the argument. “Perhaps we should talk this over with Rabbi Tzedek?” suggested Benny.

“Certainly,” Sammy replied.

The two met with Rabbi Tzedek the next morning. Mr. Spitz provided details of the case and asked: “Am I liable for damage caused by my table that was hurled by the wind?”

Rabbi Tzedek answered: “A person is liable for damage caused by an object of his that was hurled by a normal wind, but not one hurled by an unexpected one. However, when a storm is known to be approaching, he is responsible for any item that can be hurled by such wind.”

Rabbi Tzedek then elaborated: “The Gemara (B.K. 6a) teaches that if a person left his rock or bundle on a roof and they were hurled by a normal wind, he is liable for damage they cause.”

“In which category of damage is this included?” asked Benny.

“If they caused damage while being hurled, it is included in the category of aish (fire), which is defined as damage caused in conjunction with an external force, such as the wind,” Rabbi Tzedek explained. “If they caused damage after landing, such as if someone fell on them, it is included in the category of bor (pit), which is defined as damage caused by an obstacle (C.M. 411:1 and SM”A 411:1).”

“What if the damage is caused by an unexpected wind?” asked Sammy.

“If the objects could not have been blown off the roof by a normal wind, but were blown by an uncommon wind, the person is exempt,” answered Rabbi Tzedek. “This is because he had no reason to expect that they might be blown, and was not negligent in placing them there (C.M. 411:2; Lechem Mishneh, Hil. Nezikin 14:16).”

“But what if he knew there would be strong winds?” asked the neighbor.

“If the person placed the objects there when the unusual winds were already blowing, he is liable, since he was negligent in placing them there under such circumstances,” answered Rabbi Tzedek. “The same would be if he knew a storm was approaching (see Rama C.M. 418:9 and 307:3). Therefore, Mr. Spitz must pay for the damage.” 

Windfall, Part I

Bava Kama 6b - Ilan SheNafal

It had been raining for hours with extremely heavy gusts of wind. The Bernsteins snuggled in the warmth of their home. The children sat by the window, watching the rain pour and the trees sway wildly. Every so often, there was a bolt of lightning followed by the resounding boom of thunder.

"Isn't this awesome?" Devorah piped up.

"I don't remember anything like this," answered her brother, Shimon. "Look at those trees dancing."

They both watched the branches shake violently in the battering wind.

While Mr. Bernstein kept checking the basement for flooding, Mrs. Bernstein turned on the radio and listened to the weather report: "Our meteorologist reports gale force winds and very heavy rain throughout the day. People are encouraged to stay indoors in rural areas."

"Why do people have to stay inside?" asked Devorah.

"Heavy winds like these can do a lot of damage and be dangerous," explained her mother. "If the wind gets strong enough, it can blow a tree down."

"I've seen whole branches ripped off lots of times," added Shimon.

Flash! BOOM!! Lightning and thunder struck almost instantaneously. "That means there's a storm directly overhead," explained Mrs. Bernstein. The wind howled around the house and the rain pounded. The trees were being bent to their maximum.

Mr. Bernstein came up from the basement. "It's starting to leak," he announced. "Please come—"

CRACK!

They all stared out the window in horror as their neighbor's maple tree came crashing down, destroying their car, part of their fence, and the backyard shed.

"Thank G-d it didn't hit the house," said Mr. Bernstein. "But there's a lot of damage."

Mr. Bernstein tried calling the neighbor, but there was no answer. "He must be out at work."

"What's going to happen with the car?" asked Shimon with concern.

"We'll have to take that up with the insurance," said his father.

"And what about my bike in the shed?" asked Devorah. "It's the neighbor's fault, because his tree broke it."

Windfall I, cont.

"It's not really his fault," explained Mrs. Bernstein. "The wind knocked the tree down. This wind is unbelievably strong today."

"But branches have fallen many times from that tree," Shimon commented. "It wasn't a strong tree."

"I'll have to speak to the neighbor tonight," said Mr. Bernstein. "Meanwhile, help me drain the basement, and then I'll do some research."

After draining the basement, Mr. Bernstein called Rabbi Dayan. "Unfortunately, our neighbor's tree fell and caused us a lot of damage. After we speak with the insurance people, we'll want to meet with you, but can you give some sources meanwhile?"

"Sure," answered Rabbi Dayan. "The Shulchan Aruch directly addresses the case of a tree falling and causing damage. Take a look at the very end of Choshen Mishpat 416. The basic rules are quite clear there, although there are always details that are more intricate."

Mr. Bernstein thanked Rabbi Dayan and pulled out the last volume of Shulchan Aruch. "Let's learn together if the neighbor is responsible," he said to his family.

They gathered around the table as he began to read: "A wall or a tree that fell into public property and damaged, [the owner] is exempt... If they were unstable, beis din sets him a time to cut down the tree or demolish the building... If they fell during this time, [the owner] is exempt; after this time he is responsible, because he delayed (C.M. 416:1)."

"It seems, then," Mr. Bernstein explained, "that if the tree was healthy the neighbor is exempt; if it was unstable and he was told to cut it down, he is responsible."

"I heard our other neighbor suggest a while ago that he cut it down," said Shimon.

"I'll have to verify that," said Mr. Bernstein. "In any case, look here in the Rama. He needs warning from the beis din. A neighbor's warning is not sufficient. I assume, though, that warning from a government agency would also suffice and possibly also if it was obviously unstable (cf. 307:3)."

"If he is responsible, what about the car?" asked Mrs. Bernstein. "How does that balance with the insurance coverage?"

"That's a tough one," said Mr. Bernstein. "I'll check with Rabbi Dayan when I talk to him next." 

What Constitutes 'Destitute'?

Bava Kama 7a - Ani

It was Purim time, and the bimah (table) in shul was covered with charity boxes for matanos la'evyonim (gifts for the poor). The boxes represented a full array of charity organizations, Torah institutions, and medical foundations. Prominent among the collection boxes stood one that read "Local Community Charity Fund".

Towards Purim, the local charity committee had received many requests for assistance and they were trying to make some order of the requests.

The gabbai (administrator) picked up some letters and read them:

"We took out a large mortgage five years ago, but recently lost both our jobs due to company downsizing. We are constantly trying to borrow money for the mortgage."

"I used to be a great philanthropist. I invested heavily in the stock market and lost almost all my fortune in a risky buy and am now in tremendous debt."

"I retired several years ago, and social security does not suffice to cover our needs. We don't have large pensions, and are afraid to liquidate the savings that we have."

"I work at occasional odd jobs, but am not able to make ends meet."

"Our jobs provide enough salary for general expenses. However, we are about to marry off a child and also have a sickly child who requires expensive medical treatments."

"We were recently married, and used our credit card freely to set up house. We now are in a spiraling cycle of debt and interest."

"These are some the requests that we received," the gabbai concluded. "We need to draft guidelines for distributing the money."

"Let's ask Rabbi Tzedek," one of the committee members proposed.

"Excellent idea!" the gabbai concurred. "I'll arrange a meeting with him."

The committee met with Rabbi Tzedek. "We received many requests for charity and know of other people in need who are embarrassed to ask for assistance," they said to him. "Who is considered 'poor' and entitled to receive matanos la'anuyim and charity?"

Rabbi Tzedek answered, "Nowadays, whoever doesn't have a stable income or supplemental savings to provide for his family for the coming year is entitled to receive charity and matanos le'evyonim, although priority is given to those in greater need."

Rabbi Tzedek then explained: "The Torah awards a number of agricultural gifts to

What Constitutes 'Destitute'?, cont.

the poor as charity: leket, shikcha, pe'ah, and ma'aser ani. The Mishna (Pe'ah 8:8) teaches that whoever has 200 zuz (silver coins) is not entitled to collect these gifts. This sum of 200 zuz was the amount of money necessary then to sustain a person for a year.

“Based on the Mishna, contemporary authorities write that if a person doesn't have the means to sustain himself and his family for the coming year, he is entitled to receive charity, even if he is able to cover his immediate needs. However, if a person has a stable salary that suffices for his family or has sufficient savings to provide for the year, he is not entitled to receive charity.

“People who are in financial need because of medical needs or overburdening loans are also entitled to charity. However, people who plunged themselves into poverty through extravagant lifestyle or risky investing should not take charity, unless they have no resort through loans or private gifts. Even so, they are of low priority (HaGaon Rav Y. S. Elyashiv shlita). Furthermore, if the person will have exceptional expenditures that year, such as for marrying off children, he is entitled to receive charity even if his salary suffices for daily living (Igros Moshe Y.D. 1:148).”

“What about a person who owns a house or a car that he could sell?” asked the gabbai.

“A person is not required to sell his house, even if he could buy a smaller house or live in a cheaper neighborhood,” answered Rabbi Tzedek. “However, if he has other spare or luxury items that he could sell at fair value, which would provide enough money to sustain the family for the year, he should sell them before taking from a communal charity fund (Y.D. 253:1; Shevet Halevi 2:125).”

“Is there any difference between regular charity and matanos la'evyonim on Purim?” asked the gabbai.

“Although the Megillah states, ‘matanos la'evyonim’ – gifts to the ‘destitute’ – the guidelines remain the same as for other charity to the poor, although the destitute take priority to others who are less needy,” answered Rabbi Tzedek (see Aruch Hashulchan O.C. 694:3). “On Purim, though, we do not investigate the needs of those who ask, but rather give to anyone who extends his hand for assistance (O.C. 694:3).” 

Little Lamb

Bava Kama 11a - Meshicha

The Becker family owned a small homestead and kept a few animals as a petting zoo. The children's favorite animal was a young sheep they named Rachel. There was much excitement as time approached for Rachel to bear her first lamb.

"What should we call it?" asked little Miriam.

"If it's male, we'll call it Tzoni," suggested Chaim, "and if it's female, we'll call it Kisba."

Mr. Becker, meanwhile, seemed lost in thought. "We just finished learning Maseches Bechoros in the Daf Yomi shiur," he said. "If Rachel has a male lamb, then he's a bechor (firstborn). We would have to give him to a kohen."

"What?" said Miriam shocked. "Give Tzoni away? After waiting five months for him?"

"I've heard about a pidyon haben for a firstborn son," said Mrs. Becker, "but not about giving a firstborn lamb to the kohen."

"A firstborn lamb is sacred even nowadays," said Mr. Becker. "We can't offer it now as a sacrifice, but it still has sanctity. You have to let the animal graze until it gets a blemish and then you give it to the kohen to eat (Bechoros 26b)."

"You mean we'll have a holy sheep roaming around the farm?!" asked Mrs. Becker. "What do we do with it?"

"Absolutely nothing," said Mr. Becker. "Since it's sacred, you can't use it for anything or shear it."

"How about if I just make a blemish in it?" said Chaim. "Then we can give the lamb immediately to the kohen."

"That won't work, either," said Mr. Becker. "You're not allowed to intentionally cause a blemish in a sacred firstborn animal. You just have to let it roam until it develops a blemish on its own."

"That can become a problem if it doesn't get a blemish for a long time," said Mrs. Becker.

"I think I heard something about selling it to a gentile," said Chaim.

"I don't see how I can sell a sacred lamb," Mr. Becker said. "I'll have to speak with Rabbi Tzedek about this."

Mr. Becker called Rabbi Tzedek. "We have a sheep about to deliver its first lamb,"

Little Lamb, cont.

he said. “What do we do if the lamb turns out male?”

Rabbi Tzedek answered, “You should sell part of the mother sheep to a gentile beforehand, typically the ear, by receiving a cash payment and also having the gentile lead the animal into his property.”

Rabbi Tzedek then explained, “Nowadays, when it is not possible to sacrifice a bechor, there is concern that a person will violate the prohibitions against using the bechor before it becomes blemished. Therefore, it is recommended to make a gentile a joint partner in the mother, so that the firstborn will not become sacred (Y.D. 320:6).”

“Why isn’t it enough for me to receive cash?” asked Mr. Becker. “Why is it also necessary for the gentile to lead the animal?”

“This is because every transaction requires a kinyan, an act of transaction, to be of halachic validity,” said Rabbi Tzedek. “There is a dispute regarding the manner in which a gentile acquires movable items from a Jew. The Rambam rules that either cash payment or taking the item suffices (Hil. Zechiya 1:14). However, Rashi writes that a gentile acquires only through cash payment (A.Z. 71a). On the other hand, Rabbeinu Tam and many other authorities maintain that a gentile acquires only through taking the item (C.M. 194:3; SM”A 194:1; Shach 194:1,4).

“In order to make the sale valid according to both Rashi and Rabbeinu Tam, the practice is to do both forms of kinyan – a cash payment and having the gentile lead the animal into his property.”

“What if a person did only one of these forms of transaction?” asked Mr. Becker.

“Since there is a dispute which kinyan is valid, many authorities maintain that the firstborn lamb remains holy out of doubt,” replied Rabbi Tzedek. “Others maintain, though, that the primary transaction is taking the animal, like Rabbeinu Tam; if the gentile only gave cash, the lamb would remain holy, whereas if he led the lamb, it would not be. (Shach Y.D. 320:8; Pischei Teshuva 320:6).

“Alternatively, the gentile can make a token cash payment to rent the area where the animal is standing and thereby acquire a share in the mother (Y.D. 320:6),” concluded Rabbi Tzedek. “There is much discussion in the achronim as to the exact nature of this method, whether through chatzer, agav, or meshicha (see Ketzos Hachoshen 194:3; Nesivos Hamishpat 200:Intro.)” 

Pesach Cleaning

Bava Kama 11a - Shamin LeNizakin

"Pesach is just around the corner!" was Mrs. Adler's motto. Pesach cleaning started well in advance, and its star was her trusted Hoover canister vacuum cleaner. It was expensive, but its powerful suction and versatility made it worthwhile for Pesach.

One morning, while Mrs. Adler was vacuuming, the doorbell rang. "C'mon in, Sally," she called to her closest neighbor, Sally Baum, who lived down the hall.

"How's Pesach coming along?" asked Mrs. Baum.

"So far, I've managed to keep on schedule," replied Mrs. Adler. "I hate the last minute rush!"

"I just wish I had a better vac," lamented Mrs. Baum.

"Mine is great," glowed Mrs. Adler. "You can borrow it tonight."

In the evening, Mrs. Baum sent her son to pick up the vacuum. Armed with the vacuum, she went around the edges of the rooms, poked with the crevice tool behind the cabinets, and started to clean the couch.

"Hi, Sally," she heard her husband's voice.

Mrs. Baum looked up. "Welcome home," she replied. "You know that Mrs. Adler always says, 'Pesach is just around the corner!' Well, now it really is, and she was kind enough to lend us hers for the evening. Come have supper."

After supper, Mrs. Baum continued vacuuming. Without warning the vacuum suddenly sparked and the electricity blew! "What happened?" called out Mr. Baum. "I'm not sure," answered his wife. "It seems that the vac blew the fuse."

Mr. Baum unplugged the vacuum and replaced the fuse. "That was strange," he said. "We never have problems with the electricity."

"Back to work," hummed Mrs. Baum as she plugged the vacuum in. She pressed the button ... but nothing happened. She pressed again, with no response. She tried a different outlet; still nothing.

"The motor died," groaned Mrs. Baum. "How am I going to face Mrs. Adler? She relies on this machine like anything!"

"We'll have to buy her a new one," said her husband. "We can't afford this now, but we have no choice." Mrs. Baum walked down the hall to the Adlers with the broken vacuum and \$500.

Pesach Cleaning, cont.

Mrs. Adler greeted her, "Finished already, Sally? You're fast!"

"I'm really sorry, but the vacuum broke," said Mrs. Baum.

"Please tell me you're kidding!" said Mrs. Adler. "I'll never manage without my vac."

"Really, it's broken," said Mrs. Baum. "I was using it and it just went. But I brought you money to buy a new one."

Mr. Adler walked over. "Is there a chance that you overtaxed the machine? Sucked up something that clogged the airflow?"

"No," said Mrs. Baum. "I was using it normally. But what's the difference? When you borrow something, you're responsible, no matter what."

"That's usually true," said Mr. Adler. "However, I remember learning that if the item breaks or dies through normal usage the borrower is exempt. I'll ask Rabbi Dayan at the Daf tonight."

After the Daf, Mr. Baum walked home with Rabbi Dayan and asked about the vacuum. "You are correct," replied Rabbi Dayan. "When you borrow something you are responsible even for freak accidents, but if it dies or breaks on account of the work for which it was borrowed – you are exempt. This is called *meisa machamas melacha*." (C.M. 340:1)

"Why should this be?" asked Mr. Baum.

"The Gemara (B.M. 96b) explains that the owner lent the item with the understanding that it be used; therefore, he accepted the consequences of this usage," answered Rabbi Dayan. "However, there are two caveats. First, the borrower is exempt only if he used the item for the purpose for which it was lent, but if he used it in even a slightly different manner he is responsible. He does not need to buy a brand new machine, though, but only to pay for the actual loss. (344:2)"

"The second caveat," continued Rabbi Dayan, "is that the borrower must prove with witnesses or take a severe oath in Beis Din that the item broke during the course of work to be exempt, unless the lender completely trusts him." (344:1)

"Thus, if you trust Mrs. Baum that the vacuum died during routine use, she is exempt," concluded Rabbi Dayan. "If she wants to pay something as a neighborly gesture, that's fine, but it's important to know the halacha!" 

Borrowing it Back

Bava Kama 11a - Shamin LeShoel

As Mr. Nathan walked home, he saw his neighbor's son Effy fixing his bike. It was quite old and rusty, with dents in many places. One of the spokes was broken.

"Shalom. How are you?" Mr. Nathan asked Effy. "It seems that almost every time I walk by, you're fixing your bike."

"Baruch Hashem, I'm fine," replied Effy. "The bike, however, is in really poor condition."

"Maybe it's time to get a new bike," suggested Mr. Nathan.

"I'd love to," said Effy, "but we just can't afford it."

Mr. Nathan walked home thoughtfully. He had a good bike that was almost never used; it was many years since he had last rode it. His grandchildren rode the bike when they visited, but they had moved to Israel the previous year.

The following day, Mr. Nathan invited Effy over.

"I have a bicycle that I don't use anymore," Mr. Nathan said to him. "Our grandchildren sometimes used it, but now that they've moved to Eretz Yisrael, I'd be happy to give it to you. The only thing is, if they ever come to visit, I'd like to borrow it back while they're here."

"That's very nice of you," said Effy. "Of course I'd be happy to lend it back to you if your grandchildren come." He thanked Mr. Nathan and took the bike home.

The following summer, Mr. Nathan's grandchildren flew in for a visit.

"Zeidy, where's your bike?" they asked. "We'd like to take a ride in the park."

"I don't use it anymore," answered Mr. Nathan, "so I gave it to Effy, the boy next door."

"Oh! Then we can't ride anymore?" they asked.

"Don't worry," replied Mr. Nathan. "I arranged to borrow the bike back when we needed it. I'll give Effy a call."

Mr. Nathan called Effy.

"Hello, Effy," he said. "Our grandchildren are in for a visit. Could we have the bike for the week?"

"Sure, with pleasure," said Effy. "I'll bring it over in a few minutes."

Effy walked the bike over and the grandchildren rode it to the park to play ball.

Borrowing it Back, cont.

When it was time to return home, the bike was missing. It had been stolen! A week after the grandchildren left, Effy politely asked for the bike back.

“I’m sorry,” said Mr. Nathan, “but the bike was stolen.”

“What do I do now?” lamented Effy dejectedly. “I sold my other bike as scrap. Now your grandchildren lost my bike and I have none at all...”

Later that evening, Mr. Nathan met Rabbi Tzedek.

“Do I owe Effy anything for the bicycle, which I gave him as a gift in the first place?” he asked.

“You are liable for the bicycle at its current value,” said Rabbi Tzedek, “unless Effy is willing to forgo that amount as a token of gratitude.”

Rabbi Tzedek then explained: “Although you gave the bicycle to Effy, once you gave it, it became his property. Therefore, borrowing the bicycle is no different than borrowing any other item from Effy, and you are liable for its theft (C.M. 340:1).

“When someone gives a gift, we evaluate his intention in giving, even if it is not stated explicitly,” added Rabbi Tzedek. “There is not sufficient basis here to assume that you intended to be able to borrow the bike back without any liability (see 246:1).”

“How much would I owe?” asked Mr. Nathan.

“Since the bicycle is a number of years old, the liability is for its current worth,” replied Rabbi Tzedek, “which depends on the condition of the bicycle, and is likely only a fraction of the initial cost (101:9).”

“Would Effy be justified in asking for payment, though?” asked Mr. Nathan.

“That would seem fair,” answered Rabbi Tzedek. “However, beyond justice and fairness, Effy may choose to forgo his right to compensation for the bike as an expression of gratitude to you for having given him the bicycle.

“Alternatively, you could have lent the bike to Effy as a long-term loan, whenever you don’t need it for your grandchildren,” concluded Rabbi Tzedek. “Then you would have remained the owner and Effy would be responsible as a borrower.” 

Evaluating Value

Bava Kama 15a - Tashlumei Nezek

The beis medrash of Yeshiva Toras Mishpat was packed with people. The tables where they learned were piled high with books.

Between the tables, a number of shtenders (book stands) dotted the beis medrash. One large shtender belonged to Avrumi Klein, who would rock back and forth on it while involved in enthusiastic debate. The shtender, which had been beautiful when it was new, was already a number of years old and had seen better days. It was still fully functional, but some cracks were developing in the wood, and there were gouge marks on it from numerous falls. Its paint job was partially faded.

Mendy Blum sat at his table, engrossed in a difficult sugya (topic) about which he was preparing a shiur. He jotted down a few notes and then went over to the library room to pull a few more books off the shelf. He carried the load of sefarim back to his desk.

As Mendy hurried back to his desk, he bumped with force into Avrumi's shtender, hurling it into the sharp metal legs of the table behind. The shtender hit the legs at an angle and broke.

Mendy righted the shtender and looked at the broken pieces. The wood had splintered badly in a number of places and didn't look like it could be reasonably fixed.

"What happened?" asked Avrumi, running over.

"I was carrying too many books and wasn't watching where I was going," said Mendy. "Definitely my fault. I'll pay you for it."

"The question is, how much?" said Avrumi. "A new shtender like this costs \$150, but it was already five years old. It doesn't seem fair that you should pay the full amount."

"On the other hand, you were using it fine," said Mendy. "You could have used it for many more years and wouldn't have had to pay anything. Now you have to go buy a new one."

"It's still not right to accept the full price," said Avrumi. "It's not exactly in perfect condition. There should be some guidelines in halacha how to evaluate the damage."

"Rabbi Dayan is sitting at his table," said Mendy. "We can ask him; he should know."

Mendy and Avrumi took the broken shtender over to Rabbi Dayan.

Rabbi Dayan saw them coming with the broken pieces. "Looks like there's a case of damage here," said Rabbi Dayan. "What happened?"

Evaluating Value, cont.

“I knocked it over,” said Mendy. “It’s clearly my fault, but the question is: How much to pay?”

“A person who damages an item is responsible to repair it, if typically repaired,” said Rabbi Dayan, “or to pay the value of the damage, if not typically repaired (C.M. 387:1; Shach 387:1).”

“How do we evaluate the value of the damage?” asked Mendy.

“If the item was new and the damage was a total loss, it is easy to ascertain the value,” said Rabbi Dayan. “However, it is difficult to ascertain the value of a used item. Classically, the value was the item’s worth on the used-item market. The Nesivos (148:1) even seems to suggest that a person who damages something that cannot be sold is exempt, even if it is of monetary worth to the owner. Besides the fact that others dispute this (see Kehilos Ya’akov, B.K. #39), it is suggested that his exemption never included goods that were useful to other people as well (Minchas Shlomo 3:104).”

“But secondhand items are usually sold nowadays at far less than their actual value,” argued Avrumi. “People are used to buying from stores, so even brand new, unopened items sold on eBay run at only 80% of their cost, and slightly used items lose significant value.”

“That is true,” said Rabbi Dayan. “Therefore, most batei din rule nowadays that we should estimate the item’s true monetary worth to its owner.”

“How can this be evaluated?” asked Mendy.

“One way is to amortize the item’s cost over time,” said Rabbi Dayan. “Thus, if the expected lifetime of an item is ten years and five years have passed, it would be evaluated at roughly half its cost (Mishpetai HaTorah I:24). Of course, there are additional factors to consider, such as the condition of the item and the depreciation curve of this particular item.”

“What if the damaged item is not a total loss?” asked Mendy.

“Halachically, the damaged item remains property of its owner and the one who damaged is responsible only to pay the differential,” said Rabbi Dayan. “He is not required take the damaged item and replace it for the owner with a new one. This applies whether the item is still usable for its initial purpose or valuable only for its parts (403:1).”



Just One Tile

Bava Kama 15a - Tashlumei Nezek

The Alperets hired Mr. Fixler, a general handyman, to do some work around their house. While working on one of the fixtures, Mr. Fixler accidentally knocked his drill off the ladder. It landed with a thud on the floor of the entranceway, cracking a tile.

Mr. Fixler apologized profusely for the incident. “Obviously, I will replace the tile,” he said. “Do you have any spare tiles?”

The Alperets checked their basement for remaining tiles, but could not find any. They took the broken tile to the store where they had purchased the tiles seven years earlier.

“Do you have any of these tiles left?” Mr. Alpert asked.

“We don’t carry that style anymore,” said the salesman.

“Perhaps you have an odd box left in the warehouse?” suggested Mr. Alpert.

“I’ll check with inventory,” said the salesman.

He returned ten minutes later. “There are no more of those tiles in inventory,” the salesman said. “That style was discontinued five years ago. I checked with some other vendors that we work with; they also don’t have any left.”

“We’ll have to replace an entire strip of tiles with complementing tiles,” Mrs. Alpert said. They chose a box of decorative tiles and gave them to Mr. Fixler to install, along with a bill for \$179.

When Mr. Fixler saw the bill for the tiles, he felt that the amount was exaggerated.

“You have very expensive taste,” he commented. “I don’t need to cover that.”

“How much do you think is fair?” asked Mr. Alpert.

“I cracked just one tile,” said Mr. Fixler. “I don’t owe you more than that. I’m willing to go beyond the letter of the law and replace additional tiles, but not to pay for them.”

“We would have been very happy had you not damaged any tiles,” replied Mr. Alpert. “Consider that the broken tile was also expensive.”

“It certainly wasn’t that expensive,” argued Mr. Fixler. “Anyway, the tiles were seven years old.”

“The tiles were in fine condition, though,” said Mr. Alpert. “The new tiles are only needed because of your damage. It’s not fair that we should have to pay!”

Just One Tile, cont.

“How about letting Rabbi Dayan settle this?” suggested Mr. Fixler.

“Great idea!” responded Mr. Alpert. “Let’s do that!”

The two met with Rabbi Dayan.

“Is there any reason I should be required to pay beyond the one cracked tile?” asked Mr. Fixler.

“You might, since the primary obligation of damage is to restore the item to its former use,” answered Rabbi Dayan. “Therefore, if replacing the damaged tile requires uprooting and replacing a few additional, adjacent tiles, they are also included in the liability. Also, tiles are sold as a whole box, not singly (see Shach 387:1; Chazon Ish, B.K. 6:3).”

“What about the fact that the tiles were old, though?” asked Mr. Fixler. “Also, the decorative strip looks nicer than the original simple flooring. The original box of tiles would cost no more than \$50, had it been available!”

“If the repair adds value, the owner needs to absorb part of the cost,” replied Rabbi Dayan. “For example, if a worker broke an old sink and it was replaced with a new one, he is liable for the cost of installation and the proportional worth of the old sink; the owner is responsible for the difference in worth between the new sink and the old one (see Mishpetei HaTorah I:24).”

“But we cannot restore the actual damage here,” said Mr. Alpert. “The original tiles are not available. The only way to make it aesthetically pleasing was by adding decorative tiles.”

“If the original cannot be restored, the liability is for the value of the damage,” responded Rabbi Dayan. “The additional expenditure to make it look aesthetically pleasing beyond the original would, at most, be considered grama (Rama 386:3).

“Therefore,” concluded Rabbi Dayan, “Mr. Fixler must pay only what the original tile was worth, had it been available, factoring in also that it was not new. The remaining cost should be absorbed by the Alperets.”

“Thank you,” said Mr. Alpert. “We appreciate your guidance.” 

Seamingly Simple

Bava Kama 15a - Tashlumei Nezek

“You’ve been growing like crazy this year!” Mrs. Ehrlich said to her son, Rafi. “Your Shabbos suit is already too short. You need a new one.”

Mrs. Ehrlich took Rafi to a local store and they chose a navy blue suit. “The jacket fits you perfectly,” Mrs. Ehrlich said. “We just have to hem the pants. Our neighbor, Mrs. Cutter, is a seamstress; I’ll ask her.”

Mrs. Ehrlich called to ask if she could bring Rafi over to be measured.

“I’m sorry, but I’m not home tonight,” Mrs. Cutter replied. “You can bring it over tomorrow.”

“I’m sleeping over at a friend’s house tomorrow night, though,” Rafi said. “And the following night there’s a learning program at school.”

“That’s okay,” said Mrs. Ehrlich. “I can measure the pants on you and bring them over to Mrs. Cutter.”

Rafi put on the pants and Mrs. Ehrlich measured them. “Your inseam is 26 1/2 inches,” she said. “We’ll make it 27, so that the pants will last a little longer.”

The following day, Mrs. Ehrlich brought the pants over to Mrs. Cutter, who was busy at her sewing machine. “I bought Rafi a new suit,” she said. “Please hem the pants at 27 inches.”

Mrs. Cutter grabbed a paper and jotted down: “Hem inseam at 27 inches.”

“Will the pants be ready by the middle of the week?” Mrs. Ehrlich asked.

“I’ll try my best,” said Mrs. Cutter. “I have a lot of other work already waiting, but I will make an extra effort to do the pants.”

Late the following night, Mrs. Cutter finally got to the pants. Rubbing her eyes, she read the note: “Hem inseam at 24 inches.”

Mrs. Cutter measured 24 inches, hemmed the pants and cut off the excess material. As she put away the note, she realized that it actually said, “Hem pants at 27 inches.” She had scribbled the seven quickly and mistakenly read it as a four!

Wearily, Mrs. Cutter looked at the pants, hoping that enough material remained to restore it to 27. Unfortunately, there wasn’t. She could add a piece to the bottom with delicate stitching showing, but it certainly wouldn’t look as nice.

“I’ve ruined these suit pants,” she thought to herself as she shut down her machine

Seamingly Simple, cont.

for the night. “Now what?”

The following morning, Mrs. Cutter told her husband what had happened. “What do I do with these pants?” she asked. “And what about the rest of the suit?”

“I’m not sure what the halacha is,” her husband said. “I’ll ask Rabbi Tzedek.”

Rabbi Tzedek said, “Your wife is responsible for the damage to the entire suit. However, if Mrs. Ehrlich has the possibility of selling it to someone who can wear it, even at a discount, your wife is only responsible for the differential in price.”

Rabbi Tzedek then explained, “A paid professional who damaged in the course of his work is responsible, unless it was due to circumstances completely beyond his control (C.M. 306:4; 378:1). Furthermore, when damage is done to part of a set that is sold only as a whole, the damage is to the whole set. Therefore, your wife is responsible not only for the value of the pants, but for the entire suit, since the owner can no longer wear it (see Mishpetai Hatorah 1:22).

“But is there really damage here?” asked Mr. Cutter. “The pants are in perfect condition, for someone with an inseam of 24 inches. Whether the pants have an inseam of 27 or 24, their worth is the same!”

“If the pants were intended for sale, this would be true,” said Rabbi Tzedek. “However, these pants are intended for use by the owner, not for sale. Therefore, since they are not wearable, it is considered damage even though there is no loss in inherent value. If it is possible, though, to sell the suit to someone else whom it will fit, say at a discount of \$50, your wife is obligated to pay only this differential.”

“Who has the responsibility to try to sell the suit?” asked Mr. Cutter.

“This is Mrs. Ehrlich’s responsibility,” said Rabbi Tzedek. “When someone’s property is damaged it remains his, so the one who damaged is responsible only to pay the differential. He is not required to take the damaged item and replace it with a new one (403:1). This is true also for a worker who did not follow the instructions of his employer properly; his variation is not considered as stealing the material, which would have required him to replace it (306:3).” 

Baa, Baa, Barbecue

Bava Kama 15b - Palga Nizka Knasa

The Fleishman family was away for the summer in the country. Their summer home was adjacent to one of the few Jewish-owned farms in the area, giving the Fleishmans a chance to experience rural life.

One weekend, they invited their extended family over for a barbecue lunch, lively conversation, and divrei Torah.

“The food’s almost ready, so please help set the table,” said Mrs. Fleishman as the tantalizing smell of roasted meat wafted through the air. “Bring out the plastic plates, cups and cutlery from the kitchen.”

Finally the table was set. Larry Fleishman asked his wife, “Are we ready?”

“I think so,” she answered. “Ask everyone to start washing.”

The family piled into the kitchen to wash, eager to begin the meal. Larry went to the grill to turn over the burgers and wings.

Meanwhile, a sheep from the neighboring farm wandered his way through the fence. It leaned over the table to munch on the salad, sending the table crashing down and knocking over all the other food. Before Mr. Fleishman had a chance to shoo the sheep away, it devoured the salad, nibbled on some of the meat, and grabbed some ears of corn, which it took back to the farm and ate there.

The first round of washers was stunned when they saw what had happened.

“We’ll have to throw out all the food that was on the table,” sighed Mrs. Fleishman. “So much for our nice family get-together.”

“Don’t worry,” said her sister. “There’s plenty of other food still in the kitchen. Nobody will go hungry.”

“I’ll deal with the neighbor afterwards,” said Mr. Fleishman. “Let’s enjoy ourselves meanwhile.”

“This is really exciting,” said Shloimy Fleishman. “Our shiur just learned in Gemara Bava Kama about animals damaging, and now we have a real case!”

“Hey, I just thought of a contest we can have,” Mr. Fleishman said. “Be the Dayan! Is the neighbor fully responsible for the salad, the corn, the meat, the table and the other food?”

“Rabbi Tzedek is here this weekend!” added Shloimy excitedly. “When we finish, can

Baa, Baa, Barbecue, cont.

we invite him to declare the winner?”

“Great idea,” laughed his parents.

Rabbi Tzedek was pleased to join the get-together for a few minutes. “It’s nice to take part in contests that encourage people to learn halacha,” he said, “especially Choshen Mishpat!”

Rabbi Tzedek listened carefully to all the suggested “piskei din” (rulings) and declared the Fleishmans’ son-in-law the winner: “The owner of the sheep is responsible for the full value of salad that he ate in the Fleishmans’ property and for the damage that it caused to the table and the other food in getting to the salad, but only minimal payment for the corn that it took back to the farm, and half-payment for the meat.”

Rabbi Tzedek then explained, “The owner of an animal is responsible for various types of damage caused by the animal. Damage caused by the animal for its pleasure, such as eating, is called shen (“tooth”).

“The Torah limits the obligation of shen to damage done in the victim’s property. The owner is not responsible, though, for eating damage done in public property or on the owner’s property. Moreover, if the animal snatched food from the victim’s property and took it to public or its owner’s property and ate it there, the owner is exempt (C.M. 391:7).

“However, the Mishna (B.K. 19b) teaches that although the owner is exempt for eating damage in public property, he still has to pay for the benefit that he received from the food - that his animal is fed. This would be evaluated by the cost of an equivalent quantity of hay or discounted vegetables (391:8; Pischei Choshen, Nezikin 6:36).

“In addition, the owner is responsible for damage that the animal does in its attempt to reach the food. Therefore, he has to pay also for the damage to the table (391:5). It seems that he has to pay also for the other food or any item that was knocked off in this attempt (Aruch Hashulchan 391:6).

“However, food that the sheep does not typically eat, such as meat, is not included in shen. Rather, it is considered keren (“horn”), or atypical damage, for which the owner is obligated only in half-payment, regardless of where it ate this food (391:2). Nowadays, it is not possible to enforce payment of keren, since it is considered a fine, but the owner has a responsibility to pay (C.M. 1:1).” 