



# BUSINESS WEEKLY

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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### LOST BAG

The class was returning from an overnight trip. The hold of the tour bus was loaded with knapsacks and equipment they had taken.

"I'm not returning to the school," Shimon told his friend Avi. "I'm getting off at a town along the way."

When Shimon got off, he removed some knapsacks to get to his, which was deep in the hold. He returned them and the bus continued on.

When the bus returned to the school, Avi couldn't find his bag. The following day, he asked Shimon about it: "Did you see my bag?"

"I remember removing it to get to my knapsack," Shimon replied. "When I put the bags back, I must have missed yours and left it out. Did you have your name on the bag?"

"Yes," said Avi. "It had a tag with my name and phone number on it."

"Maybe someone will find it and call you," said Shimon.

"Hopefully," replied Avi. A week went by, but nobody reported the missing bag.

"I feel really bad," said Shimon. "It was my fault for leaving the bag out. I'll have to pay you for it."

"I don't know about that," replied Avi. "You were trying to get your bag out. It was an honest mistake."

"Still, it was my negligence," said Shimon. "Doesn't that make me liable?"

"You didn't exactly lose the bag, though," said Avi. "You left it at the bus stop and it had a name on it."

"Why don't we ask Rabbi Dayan?" suggested Shimon. Avi agreed.

They approached Rabbi Dayan and related what happened. "Am I liable?" asked Shimon.

"What a fascinating *she'eilah*!" exclaimed Rabbi Dayan. "The *Gemara* (B.M. 35a) teaches that a guardian who does not remember where he placed an entrusted item is liable. It is considered negligence on his part" (C.M. 291:7).

"Nesivos Hamishpat (291:14) writes that it is worse than regular negligence," continued Rabbi Dayan. "He considers it direct damage and writes that even a guardian who is exempt from negligence (e.g., *b'alav imo*), or even a person who is not a guardian, is liable in such a case. Even a person who hid his friend's item to protect it and forgot where he put it is liable, since he acted on his friend's property and through his

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## BHI HOTLINE

### DAMAGES

Someone damaged my wedding ring. Although the

ring currently sells for about \$50, to me it is worth much more since it was the ring used for the *kiddushin* at my wedding.

**Q: How much is the *mazik* — damager — obligated to pay me? Similarly, if someone damages my old family photos, how much is he obligated to pay?**

**A:** A *mazik* is responsible for the damage he caused. If the article can be repaired, the *mazik* is obligated to repair the damage. If the damaged item cannot be repaired, he must pay the owner for the loss in value that the article suffered as a result of the damage. This is calculated by determining how much the article was worth before it was damaged and how much it is worth subsequent to the damage, and the *mazik* is obligated to pay the difference. When these values are calculated, the time and place of damage is taken into account, since the item may be worth different amounts in different markets (*Panim Me'iros* 2:129; *Chazon Ish*, B.K. 11:13). Nowadays there is a limited market for used personal items so it is difficult to determine the market value. Different *poskim* have different methods of calculating the value of such articles and practically, the owner and *mazik* should negotiate a settlement (*Mishpat Hamazik* 32:3). Even more difficult is calculating the value of an item that has value only for the owner, like prescription glasses. Putting aside how to calculate the damages, we must establish whether, in such a situation, the *mazik* is responsible. It can be inferred from some authorities that someone who damages glasses that are valuable only to the owner when there is no market for such an article would not be liable to pay since the glasses have no objective market



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actions the item was lost by being placed where it couldn't be found."

"It seems, then, that I'm liable," said Shimon.

"According to the Nesivos, probably," replied Rabbi Dayan. "However, *Imrei Shefer* (Klatzkin, #24-26) partially disputes the position of the Nesivos. Although a person who had no right to take his friend's item is considered as damaging if he misplaced it, for a guardian — who is supposed to put the item away — it is not considered direct damage. It is still considered negligence, though, since a guardian is responsible to know where the entrusted item is, even though forgetting is not necessarily considered negligence in other contexts" (*Pischei Choshen, Pikadon* 3:[4]).

"How would this apply here?" asked Avi.

"When Shimon removed the knapsacks to get his, he did not intend to steal your knapsack nor accept responsibility for it as a guardian," replied Rabbi Dayan. "I suggest that he also is not comparable to one who took his friend's item without permission, since it is common to rearrange the contents of the hold and to reload the knapsacks as needed. Therefore, it is neither theft, nor negligence of a guardian, nor direct damage.

"Furthermore, there is another lenient factor, possibly even according to the Nesivos," added Rabbi Dayan. "The bag had identification; someone could have returned it. Therefore, Shimon's actions should be considered *grama* (indirect damage), for which there is no enforceable liability. Nonetheless, since Shimon was negligent and caused damage through his actions, he has a moral obligation to pay (*chiyuv b'dinei Shamayim*)." (*Shach* 32:2; *Pischei Choshen, Nezikin* 3:39).



## MONEY MATTERS

### EMPLOYMENT #13 Insincere Commitment

(Based on writings of Harav Chaim Kohn, shlita)

**Q: I was snowed in and desperate to get out. Two boys offered to shovel, but when they detected my desperation demanded twice the usual rate. I expressed agreement, without meaning it. Must I pay the exaggerated rate?**

**A:** In certain situations when the worker demands exaggerated wages, the employer can claim that he was insincere in his salary commitment (*meshateh ani*) and is required to pay only the regular rate.

According to some authorities, the employer can claim *meshateh ani* only when the worker was required to provide the service due to a *mitzvah* incumbent upon him or danger to the employer. However, others maintain that the employer can claim *meshateh ani* for any service for which he had to commit to pay more than was reasonable (*E.H.* 169:50; *C.M.* 264:7; *Shach* 264:14).

Exaggerated wages are those that vary significantly, at least a sixth, from the customary rate (*Nesivos* 264:8; *Pischei Teshuvah* 264:7).

Nonetheless, if the employer committed sincerely, he must pay the full amount and cannot retract after the work was done. (*Machaneh Ephraim, Sechirus* #15; *Ketzos* 81:4).

(To be continued next week, be"H.)



## BHI HOTLINE

value (*Nesivos* 148:1).

Many authorities, however, reject this position and assert that when an article is valuable to the owner, even though there is no resale market for that article, a *mazik* is liable for damaging that article. Common practice follows this opinion (*Pischei Choshen, Nezikin* 10:[44]; *Minchas Shlomo* 2:135). However, as previously mentioned, in such a situation, it is difficult to assess how much value to assign to the damaged article.

Some authorities further qualify the position that assigns value to items that have no resale value. It applies only to those items that have an actual market value but people do not purchase them used because they are personalized (e.g., the owner's prescription) so that others have no use for them. However, there is a market for purchasing such personalized items.

On the other hand, if an item does not have any market value or value to others but has sentimental value to the owner — for example, family pictures, or a person's own Torah insights — a *mazik* does not have to pay according to the value the owner assigns to them. He would have to pay only according to the value they have in the open market. The reason is that the loss to the owner is not monetary since the item has no resale value; it merely causes him distress (*Teshuvos Haradam* 13, cited by *Divrei Geonim* 51:23. See also *Mishpat Hamazik* 31:9).

Therefore, in your case, the damage is calculated based on damage done to a \$50 ring rather than whatever value you assign to the ring due to its sentimental value to you.

For questions on monetary matters,  
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