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STORY LINE

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Portrait Problem

Outside the beis medrash of Yeshiva Gedolei Yisrael, Mr. Gross sold framed portraits of many Gedolim (great rabbis).

Dani loved to stand and admire the pictures when he walked in and out of the beis medrash. Looking at him were sages of the previous generation: HaRav Moshe Feinstein, HaRav Shlomo Zalman Auerbach, HaRv Yosef Shalom Elyashiv, zecher tzaddikim livrachah, and others.

"We have a lot of Gedolim pictures in our house," Dani proudly told Mr. Gross. "Who's that over there?"

"That's a Sephardic Gadol, Harav Yosef Chaim of Baghdad, known as the Ben Ish Chai," said Mr. Gross. "It's a beautiful picture; you can almost feel the radiance of Torah shining from him."

"I don't think that we have a picture of him in our house," said Dani. "Can I take it home for the weekend to check?"

"Sure; it costs $35," said Mr. Gross. "You can pay me next week if you decide to keep it."

Mr. Gross wrapped up the picture and gave it to Dani. Dani took the picture back to his dorm room and placed it carefully on the bookcase.

During the night, a fire broke out in the dormitory! Dani fled from his room, grabbing only his tefillin. Firefighters arrived quickly and were able to extinguish the fire.

When Dani returned to his room, though, he saw that the portrait of the Ben Ish Chai was soaked with the water they had sprayed.

The following morning, Dani went to Mr. Gross with the soaked picture.

"The picture got ruined in the fire last night," he said. "I'll have to pay for it."

"No, it's not your fault," Mr. Gross shook his head. "You don't have to reimburse me."

"But I had it," said Dani, "so I'm responsible for it."

"You hadn't decided for sure that you were going to buy it," insisted Mr. Gross. "Why don't we take it up with Rabbi Dayan when he comes?"

When Rabbi Dayan arrived, Dani and Mr. Gross approached him.

"I took a picture from Mr. Gross to check whether we had it at home, but it got doused in my dorm room by the firefighters," Dani said. "Must I pay for it?"

"The Gemara (Bava Basra 88a) teaches that if someone takes merchandise to examine and it is damaged in his hands, for any reason, he is liable," answered Rabbi Dayan, "provided that a price was set beforehand."

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Discontinued

FROM THE BHI HOTLINE

Submitted by M. I.

I borrowed my friend's stroller and someone stole one of the wheels. I told my friend that, as a borrower, I was responsible and would replace the wheel.

However, a few months passed before I got around to calling the manufacturer; by the time I contacted them, they informed me that the model and its replacement parts had been discontinued.

Q: Now that I cannot obtain a wheel and the stroller is no longer usable, what is my responsibility?

A: If it had not been possible to obtain a replacement wheel immediately after the wheel was stolen, you would have been liable for the entire value of the stroller since the theft caused it to be unusable. However, if a replacement wheel was available, the damage is assessed in terms of the cost of a replacement wheel and that was, in fact, your liability at time of the theft.

The question is the extent of your liability now, since at the time of the theft you could have obtained a replacement wheel, but because of your procrastination, it is no longer possible. Are you now liable for the entire value of the stroller?

When a borrowed object is damaged, the owner takes the broken pieces, the value of those pieces is deducted from the total

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STORYLINE CONTINUED

"Why is that?" asked Mr. Gross.
"There seem to be two reasons," explained Rabbi Dayan. "Many explain that when you take merchandise from a seller with the intention of keeping the item if it proves acceptable, this is considered 'buying it with the option to return,' provided that the price was set beforehand. For this reason too, the seller would not be able to retract on the sale (C.M. 186:1, 200:11)."
"This seems similar to the current common practice to sell with the right to return the item within seven or 14 days," noted Dani. "Obviously, if the merchandise were destroyed during the week, the customer could not ask for a refund."
"That is correct," said Rabbi Dayan. "The halacha is obvious in that case, though. The primary application of this halacha is in cases where the exact time of transaction was not clearly defined, e.g. selling second-hand items, arbaah minim, and informal sales - such as your case. Even if the customer has not paid yet, he must pay if the merchandise gets damaged."
"What is the other reason?" asked Mr. Gross.
"Some explain that when you take merchandise to examine it, it is like borrowing the item," said Rabbi Dayan. "A person who borrows is also fully liable for the item, even if it is ruined through oness, circumstances beyond his control. However, this would apply only to an item which is in demand, so that the customer has a clear benefit in being able to buy it. The customer would not be considered a borrower, though, for an undesirable item that the seller is interested in unloading (see Nesivos 186:1)."
"Either way, I have to pay," said Dani, taking out $35.

FROM THE BHI HOTLINE CONTINUED

value of the object, and the damager pays the difference between them. In the event that the broken pieces lost value between the time damage occurred and the time the damager paid for the damage, that loss is suffered by the owner (C.M. 344:2). The rationale behind this ruling is the fact that the damager never acquired the broken pieces and they remained in the possession of the owner. Therefore, any change in their value is the domain of the owner.
Applying this principle to your case means that whatever value the stroller retained while it was possible to be repaired with a new wheel remained the owner's. Your level of responsibility did not change because of your negligence to contact the manufacturer before the model was discontinued.
Furthermore, although you promised that you would take care of obtaining a new wheel, that commitment was a favor you offered your friend but not part of your responsibility as a borrower. Additionally, since your commitment was never enforceable, the owner should not have relied upon you to obtain the new wheel. Even had you made a binding commitment, the damage that resulted from your negligence was indirect — grama. This is especially true since there was no reason for you to anticipate that the model would be discontinued; therefore, you are considered a shogeg, one who inadvertently causes someone a loss. As such, you are not obligated to pay any more than the value of the wheel at the time it was stolen.

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

Damages #13

MONEY MATTERS

Q: Am I obligated to pay for destroying a check that was made out to someone else?

A: The Gemara (Bava Metzia 98a-b) teaches that one who burns a loan document is liable for the value of the loan as garmi, even though the document itself is not of inherent value (C.M. 386:2). The Rosh explains that this is because he actively damaged his friend's property and the loss is definite; additionally, the damage is done immediately. The same would seem to be true if you destroyed a check (Pischei Choshen, Nezikin 3:[50]).
You can only be made to pay, though, if you admit (or there is evidence) to the amount of the check or loan document; the owner is not believed as to its amount (see Shach 386:13). If witnesses can testify about the loan document and the lender can collect on the basis of their testimony, you would only be liable for the value of the paper itself.
If you destroyed other legal documents — e.g. a title to a car or house, or legal evidence that caused one to lose a court case — this is usually not considered garmi, but rather grama, for which there is only a moral obligation (P.C., Nezikin 3:[51]).