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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

BEAM BANG

Mr. Bloom stopped by Lazer's Lumberyard to buy a dozen wooden beams. "Do you want the beams delivered?" Lazer asked.

"No need," replied Mr. Bloom. "I'll just load them on my car's roof rack."

Mr. Bloom then turned to Shimon, one of the young men working there. "Could you please help me load the beams?" he asked.

"With pleasure," Shimon replied.

Mr. Bloom and Shimon loaded the beams onto the roof. "The beams are not stable," Shimon said. "Let me adjust them before we tie them down."

Shimon started adjusting the beams on the roof. In doing so, a beam fell off the other side of the car and hit the side-view mirror, cracking it.

Mr. Bloom made a face. "How did that happen?" he asked Shimon.

"I was adjusting the beams," Shimon apologized. "I told you that they were not stable."

"You should have been more careful," said Mr. Bloom. "Although the beams were not stable, you knocked that beam off and cracked the mirror."

"I was just doing you a favor," replied Shimon. "Anyway, it's also your fault; you loaded the beams on the roof in an unstable manner. Don't blame me!"

Lazer came over. "What's going on?" he asked.

"Shimon tried to adjust the beams that we loaded on the roof," explained Mr. Bloom. "One slipped off and cracked the mirror. I think he's liable!"

While they were arguing, Rabbi Dayan pulled up. "Look who's here — Rabbi Dayan!" exclaimed Lazer. "We can ask him!"

"A monetary question just arose," Mr. Bloom said. He explained the situation and asked: "Is Shimon liable for the cracked mirror?"

"The Shulchan Aruch (C.M. 384:3) addresses the case of a construction worker who was dismantling a wall and a stone collapsed at the far end, causing damage. If the stone fell of its own accord, the worker is exempt, since this is considered oness (beyond his control); if the stone fell due to the worker's banging, he is liable" (B.K. 98b and Meiri; Pischei Choshen, Sechirus 7:[56-57]).

"How does this compare to our case?" asked Mr. Bloom.

"If the beam on the other side fell simply because it was not loaded in a stable manner, Shimon is exempt," explained Rabbi Dayan. "However, if by rearranging the beams Shimon pushed it off, the cracked mirror is considered the result of his actions and he is liable if he could

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BHI HOTLINE

EXPENSES OF DIN TORAH

A friend of mine hit my car. It is not damage that people would regularly

fix, but it definitely depreciated the value of the car. My mechanic maintains that the car lost \$1,000 of its value, whereas my friend's mechanic contends that it only lost \$200 in value. We decided to consult a used-car dealer and follow his appraisal.

Q: Who is obligated to pay for the appraisal? A similar question arises for other service providers when there is a disagreement concerning the cost of the service. In these circumstances, who is responsible to pay for the appraisal?

A: When there is a disagreement between parties that requires a din Torah, there are associated costs, and the same question can be asked: Who is responsible to cover those costs? Regarding all such questions there are many factors that must be considered.

Generally, a litigant is not responsible to reimburse the other party's expenses related to bringing the din Torah (C.M. 14:5), because all parties behaved properly and sincerely in bringing their irreconcilable disagreement to beis din for resolution.

There is not even a moral obligation for the one who loses the din Torah to reimburse the other party — unless he knew that the other party was correct and nevertheless contrived a scheme to force the other party to bring him to a din Torah, hoping that the other party would not want the expense and effort involved in bringing the matter to a din Torah. (See Yeshuos Yisroel 14 in regard to whether beis din could compel him to pay since this is a form of garmi —



STORY LINE

have prevented it.”

“Would the same apply if someone helped his neighbor load something on his car roof?” asked Mr. Bloom.

“When a person acts on the owner’s instruction or request, there is a difference between a paid worker and one who works voluntarily,” replied Rabbi Dayan. “Tosafos (B.K. 27b, s.v. U’Shmuel) explains that a person is only liable for damage if he carries an element of blame, even if not negligent (oness k’ein aveidah), whereas a paid worker carries additional liability so long as he could have prevented the loss (oness k’ein geneivah). Even a paid worker, though, is not liable for damage beyond his control” (C.M. 306:4; 378:11).

“Am I considered a paid worker?” asked Shimon. “Mr. Bloom didn’t pay me to load the beams!”

“That’s an interesting point,” replied Rabbi Dayan. “Mr. Bloom didn’t pay you for loading and stabilizing the beams; you did it as a favor to him. On the other hand, you were being paid then for your work at the lumberyard. It would be best to compromise on this issue. A neighbor who helped without charging, though, would not be liable if the owner also initially loaded the beams in an unstable manner” (see Pischei Choshen, Sechirus 13:15, 17 [29]).

“The local custom (minhag hamedinah) must also be considered,” concluded Rabbi Dayan. “In some places, the seller is responsible for loading the beams on the car, in which case he or his worker would certainly be liable. In other places the custom is that if a person wants to take the beams home on his own car he bears responsibility for any damage to the car. This has to be verified.”



BHI HOTLINE

inevitable indirect damage.)

The defendant is not obligated to reimburse the plaintiff for the expense of calling him to the din Torah (Shach 106:2).

However, if the defendant did not respond to the first hazmanah (summons) in order to impose additional expenses on the plaintiff, the defendant has at least a moral obligation to reimburse the plaintiff.

Other related expenses, e.g., the money paid to the dayanim, are shared by the two parties. Included in those expenses are whatever costs the dayanim incur to enable them to render their verdict (Rivash 475 cited by Beis Yosef 14:5). Expenses related to determining how much the plaintiff is claiming from the defendant are not subject to the above parameters. Such expenses are subject to the principle hamotzi meichaveiro alav haraayah — the burden of proof rests on the plaintiff. (Nesivos 176:27 writes that the damaged party must pay the expenses involved in determining the value of his claim.) However, it seems likely that when it is not possible to determine the extent of the damage, e.g., one who destroyed an item that can no longer be appraised, we apply the principle hamotzi meichaveiro alav haraayah. On the other hand, when someone damages property that can be appraised, the cost of that appraisal is part of the damage, since a damager is obligated to determine what he owes.

Additionally, there may be many circumstances in which beis din will decide, based on a desire to promote peace, that the two parties should share the cost of the appraisal. Consequently, in your case it seems likely that beis din would require the damager to pay for the appraisal (cf. Seder Hadin 10:10, Teshuvos V’hanhagos 5:386).

For questions on monetary matters,
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MONEY MATTERS

COPYRIGHTS AND PATENTS # 17

Q: If a person produced a book or music disc that does not bear the copyright symbol ©, does he still retain copyright rights? What if the author didn’t even write, “All rights reserved?”

A: If the author writes, “All right reserved,” or similar language, he retains full rights, even if he neglected to include the international copyright symbol ©. (For music discs, sometimes the symbol ® phonorecord — is used instead.) This is also the dina d’malchusa nowadays in most countries, including the U.S. and Israel; the author retains full copyright rights even without the symbol. (Before 1989, though, the symbol was required in the U.S.) The primary significance of the symbol nowadays is to negate any claim of “innocent infringement.”

Furthermore, even if the law required the symbol, the author’s rights according to Torah law would still apply.

If the author did not even write “All rights reserved,” it is questionable whether this indicates intentional relinquishing of his rights or was an oversight. In this case, one should contact the author, since most often he has no intention of relinquishing his rights (Emek Hamishpat, Zechuyos Yotzrim, intro. 3:49-50; ch. 38:83).

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