



# BUSINESS WEEKLY

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

**DENTED DOOR** Rabbi Dayan received the following email from a relative of his:

I have a Halachah question for you. Last week I was babysitting for the family of a friend for a few days while the parents were away. Dropping one of the kids off at day camp, I pulled out of the driveway and backed into someone's car that was parked in the street. There was a small dent that I noticed towards the back of the car that I hit, so I showed it to the owner. She said it was probably fine and that I shouldn't worry about it, but I gave her my number.

She just called me saying that her son noticed that there's a dent in the front door and the door doesn't close properly. She asked if I remembered anything about it. I told her that with the angle at which I backed out it only made sense that I hit the back end of the car. However, I couldn't be 100 percent certain that I didn't damage the front of the car as well. She was fine with this and not upset.

But I want to make sure I'm not withholding any money I owe them. Am I responsible to pay for the damage?

"This case entails two basic factors," replied Rabbi Dayan. "First, questionable damage; second, a partial admission."

"Regarding questionable damage, the basic principle of monetary law is hamotzi mei'chaveiro alav hara'ayah – the burden of proof is on the plaintiff. Therefore, if the damage is questionable, you cannot be held liable. Only if we knew that you damaged the door would you be liable" (C.M. 400:1).

"What if the car owner were sure that the damage to the door was done by me?" asked the relative.

"If the damaged party made a definite claim and the driver was uncertain, the halachah might be different," Rabbi Dayan answered.

"A person who admits partial responsibility (modeh b'miktzas) is required by the Torah to take an oath about the part that he denies. Regarding a Torah-mandated oath, the general rule is that if the person cannot take the oath he is liable (mitoch

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## BHI HOTLINE

### A CHAZZAN AND A BABYSITTER

I am a chazzan for the Yamim Nora'im for many years now, but it recently occurred to me that

I'm getting paid for work performed on Yom Tov.

**Q: Is it permitted to accept payment directly for serving as a chazzan on Yom Tov? If not, is there any other way that it is permitted?**

**A:** Chazal prohibited Shabbos earnings — sechar Shabbos. Some authorities maintain that serving as a chazzan or baal toke'a is included in the injunction (Tur O.C. 585), whereas others contend that these activities are not included since they are necessary to fulfill a mitzvah (Mordechai, Kesubos 189). These two positions are cited by the Shulchan Aruch (O.C. 306:5), and later authorities seem to accept the lenient position (Magen Avraham 585:12, S.A. Harav 306:1 and Mishnah Berurah 306:24). The Shulchan Aruch (O.C. 585:5), however, notes that even according to the lenient opinion the chazzan will not see brachah from the money he earns on Shabbos or Yom Tov.

Authorities present a number of ways to satisfy even the stringent opinion and to be able to realize brachah from the money earned.

One solution is for the parties to refrain from negotiating a salary for the job before Yom Tov, so that any payment is considered a gift rather than earnings (Shaarei Teshuvah 306:5 and Mishnah Berurah 306:24). Obviously, the chazzan will not be able to demand payment if the shul subsequently decides not to pay. Others hesitate to utilize this method, concerned that it involves subterfuge. It is an acceptable method only when the shul officials do not negotiate a salary and there are people who perform this service for free, so that if they decide to give the chazzan a gift, it is truly a gift



## STORY LINE

she'eino yachol l'hishava — meshalem)" (C.M. 87:1).

"Thus," continued Rabbi Dayan, "if the owner of the damaged car claimed definitively that the car was also damaged in front, whereas the driver admitted damaging the back but was uncertain about the front and unable to swear, the Mechaber and the Shach hold him liable for the front. However, the Rama maintains that mitoch does not apply, since — unlike the classic case of a borrower who is uncertain how much he repaid — the driver is not expected to know the extent of the damage. [Furthermore, in this case, where the damaged party already said not to bother about the dent in the back, everyone would agree that mitoch would not apply, since there is no longer a partial admission of debt]" (C.M. 388:1; 90:10; Shach 90:18).

"I assume there is no difference if the damage was unintentional, as in this case, or intentional?" asked the relative.

"In a case where a person did intentional damage, the Sages instituted a special penalty," explained Rabbi Dayan. "If he takes an oath, the victim is believed as to the amount of the damage, within reason. The penalty assessed to one who did intentional damage is the same as that of a thief; it is known as takanas nigzal, an institution regarding a victim of theft" (Shach 388:2; Pischei Choshen, Nezikin 10:38).

"In any case," concluded Rabbi Dayan, "you should be even more careful in your driving."



## BHI HOTLINE

(Orchos Shabbos 22:[151]).

However, this solution is often not practical. More common is to hire the chazzan using the method of havla'ah — lit., absorption. This involves hiring for services provided both on Shabbos and during the week, and paying one lump sum. In your case it would involve serving as chazzan during the week in addition to Yom Tov, e.g., for Selichos. Davening on Yom Tov and during the week must constitute one job, and the shul may not renege on the agreement once the chazzan began the job. This is acceptable to all opinions (O.C. 306:4-5 and Magen Avraham 9). Since the chazzan is not hired and paid exclusively for Shabbos, payment for davening on Shabbos is not included in Chazal's injunction against sechar Shabbos. [Some authorities contend that leading Minchah during the week does not satisfy this requirement, since shuls do not pay someone to daven Minchah. For havla'ah to be operative, it must involve weekday work for which an employer would pay (Shemiras Shabbos K'Hilchasah 28:[153]). According to some authorities, even if the chazzan does not lead the davening during the week, if preparation to perform the task on Shabbos/Yom Tov is done during the week, that is combined with the work performed on Shabbos/Yom Tov, and categorize the employment and payment as havla'ah (Aruch HaShulchan 306:12, Igros Moshe O.C. 5:18). It seems that all agree that if all parties stipulate that the employee must prepare during the week, this also solves the problem. It is important to note that when working as a babysitter on Shabbos one must take the necessary steps so that payment should not violate the injunction against sechar Shabbos. If one took sechar Shabbos without utilizing one of the above solutions, the money received is prohibited (O.C. 245:6).

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



## MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

### BEIS DIN AND CIVIL COURT #25

#### Vested Interest

#### Q: Can a person with a vested interest in the case testify in beis din?

**A:** A witness who has a monetary interest in a case, even indirectly (nogei'a badavar), is disqualified from testifying. The determination of indirect interest depends on the Dayan's evaluation. Most authorities explain the disqualification as concern that the witness might lie, or distort the truth, on account of his personal interest (C.M. 37:1,21; SM"A 37:1).

Therefore, such a witness is permitted to testify to his detriment. Additionally, if he dissociates himself from any monetary connection, he may now testify, even if he witnessed the incident while he had an interest. However, if the witness signed a document when he had an interest, the document remains invalid even after he dissociates himself (C.M. 33:15; Pischei Teshuvah 33:9).

If the witness has no interest at the moment, but might have in the future, whether he is qualified depends mostly on the likelihood. (See C.M. 37:10; Ketzos 37:5; Pischei Choshen, Eidus 2:36 [74].)

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