



BUSINESS WEEKLY

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WERDIGER EDITION

Issue #299 | Vayakheil | Friday, March 4, 2016 | 24 Adar I 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

ELECTRIC SHORT The Brauns rented a house equipped with a central air-conditioning/heating unit. When they moved in, they purchased a large self-cleaning oven, instead of the old one that was in the house. One winter day, the electricity suddenly blew. The Brauns looked outside and saw that the neighbors had electricity. Mr. Braun went to the electric panel and tried raising the circuit breaker. It fell again immediately.

"Something's wrong with our electricity," he said. "We'll have to call an electrician." An hour later the electrician came. He checked the circuits, and ascertained that the problem was with the A/C. "There's a problem with the A/C/heater," he said. "You'll have to call an A/C technician."

Meanwhile, Mrs. Braun began to make supper. She wanted to turn on the oven, but noticed that the display panel was blank. "There's something wrong with the oven!" she exclaimed.

"The surge must have blown the circuit board in the oven," said Mr. Braun. "We'll have to have it replaced or fixed."

The next day, the A/C technician came by. "This unit's been around for a number of years," he said. "Some of the wires are already brittle, and the insulation is worn in a few places." He replaced the wiring and the damaged electrical components in the A/C.

Mr. Braun notified the landlord of what had happened. "We'll cover the air-conditioning repair," the landlord said. "That's included in house repairs."

"What about the damage to the oven that the A/C caused?" asked Mr. Braun.

"The oven is yours," said the landlord. "It's your responsibility."

"But your A/C caused the damage," said Mr. Braun. "It should be your liability!"

"It's not as if I did any damage," countered the landlord, "but I'm willing to pose the question to Rabbi Dayan. Whatever he decides is fine with me."

Mr. Braun called Rabbi Dayan and related what happened. "Who is responsible for the circuit board in the oven?" he asked.

"The landlord is not accountable for the damage," answered Rabbi Dayan, "for a number of reasons."

"Why is that?" asked Mr. Braun.

"First, the damage that the A/C caused to the oven falls into the category of indirect damage (grama)," replied Rabbi Dayan, "for which a person is not liable in beis din" (B.K. 60a; Rema, C.M. 386:3).

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BHI HOTLINE

HAT EXCHANGE. PART I It was time to daven and I went to grab my hat

and noticed that someone took my hat instead of his.

Q: Am I permitted to use his hat until I can track down the owner and exchange hats?

A: Your inquiry was seemingly addressed by Shulchan Aruch. He rules (C.M. 136:2) that if one's items become accidentally exchanged at a wedding, one may not use the other item and it must be returned, even though he will not have an article to use. Even when it is clear that the other person mistakenly took your item, it is prohibited to use his article since borrowing someone else's item without permission (shoel shelo midaas) is an act of theft, and one may not steal an object from one who stole from him without beis din's consent (Shulchan Aruch Harav, Geneivah 30). However, later authorities have suggested a number of leniencies that may apply.

1) Authorities rule that one may use rubbers that were exchanged in a public place, since people are not makpid (particular) about rubbers. Using another's rubbers until the owner is found is not considered theft, since this is the custom (Aruch Hashulchan; see also Kesef Hakedoshim 136:2). Some authorities extend this rationale to hats (Shevet HaLevi 6:238; Igros Moshe, O.C. 5:9:7). Others argue that this leniency is limited to circumstances in which there is a definite custom, but in most instances that is not the case (Imrei Yaakov on Shulchan Aruch Harav, ad loc.). 2) One might suggest that since the other person took your hat, it may be assumed that he would permit you to use his hat. However, one may not use someone else's object assuming that when the owner realizes he will not mind (yei'ush shelo midaas lo heivi yei'ush — C.M.



STORY LINE

"The Rashba (2:53) rules that one who rented out a storage place with a hole, which caused a loss to the stored item, is exempt because of grama," he explained. "We can extend this to one who rented out a malfunctioning tool, which caused damage to other items. Nonetheless, if the owner knew beforehand that the item malfunctions, some maintain that he is liable, and certainly there is no need to pay the rental fee for the defective item" (Pischei Choshen, Sechirus 6:1; Pikadon 9:22).

"Isn't there a non-enforceable obligation (chiyuv b'dinei Shamayim), though, to pay for grama damage?" asked Mr. Braun.

"Grama generally carries a responsibility b'dinei Shamayim, if the person intended to damage," replied Rabbi Dayan. "However, there is no obligation when unintended, as in this case (Pischei Choshen, Nezikin 3:39-40; Minchas Pitim 385:3).

"Second, a technician told me that damage to a circuit board is usually a cumulative issue, after being weakened by former incidents, not due to a single event," continued Rabbi Dayan. "Moreover, it is not the power outage that causes the damage, but rather the surge when you turn the power back on. Appliance vendors usually recommend a surge protector for such appliances, so that you bear an element of negligence for not doing so."

"Third, damage inflicted by the A/C is included in the category of bor (pit)," concluded Rabbi Dayan. "The Torah exempts damage done by a bor to other inanimate objects (keilim b'vor). There is a dispute whether there is even a chiyuv b'dinei Shamayim for this" (C.M. 410:21; Pischei Choshen, Nezikin 7:[9]).



MONEY MATTERS

PARTNERSHIP # 21

Responsibility for the Property

Q: I purchased something for the partnership, but it was stolen from my car. Am I solely liable for the theft?

A: Partners are generally considered shomrei sachar (paid guardians) on the joint property, and are therefore liable for theft. However, if the partnership agreement did not include guarding the joint property, some maintain that they are considered only shomrei chinam (unpaid guardians), and they are not liable for theft (see Rema 176:8; Shach 176:16; Machaneh Ephraim, Hil. Shomrim #36).

Furthermore, if the partners operate the business and work on behalf of each other, the exemption of be'alav imo (the owner was in his service) would usually apply. On the other hand, if they are investment partners and others operate the business, be'alav imo would not apply (C.M. 176:8; Pischei Choshen, Shutfim 1:29-31).

If partners worked on a client's item, and one took it to return to the owner and lost it, he alone is responsible. The exemption of be'alav imo does not apply, since the item is not theirs (Mishpat Shalom 176:8[15], citing Pe'er Hador).



BHI HOTLINE

262:3, cf. Shach 260:26). Accordingly, Tosafos (B.M. 22a, d.h. Mar Zutra) rules that one may not eat a friend's food without permission presuming that the owner will not mind. The reason is that although when informed he may not mind, at the time the food is eaten the owner had not given permission.

Shach (C.M. 358:1) disagrees with Tosafos and rules that it is permitted to eat someone else's food without obtaining permission if one believes that the owner would not mind. The principle of yei'ush shelo midaas applies to lost objects, since the owner relinquishes his ownership against his will. It does not apply in a circumstance where the owner would willingly share his food (see Agudas Eizov: Ye'i'ush, Oneg Yom Tov; O.C. 31 and Y.D. 110).

Many poskim subscribe to Shach's view (Nesivos 66:28; 195:1; 197:4; 244:1), while others advocate adopting Tosafos's stringent position (Ketzos 209:5, 262; however, he entertains the possibility that one may be lenient if the item is needed for a mitzvah (see also Kesef Hakedoshim 136). Shulchan Aruch Harav (Metzia 4) references Tosafos and emphasizes the importance of publicizing his position since it is frequently violated. However, poskim explain that he adopts this position only when the borrowed item will be used up, e.g., eating a friend's food. If the borrowed item will be returned intact, it is permitted to borrow that item (Minchas Pitim 358:4; see also Ketzos 262). In your case since the hat will be returned, it is almost certain that the owner would permit you to borrow his hat due to the distress he caused you (Imrei Yaakov to Shulchan Aruch Harav). Others are more hesitant because many people do not lend their hat to others for hygienic reasons. However, it seems that if it will be borrowed for a short period of time, one may assume that the owner would not mind and it is permitted.

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