

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

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## Good Intentions

Yisroel, Shlomi, and some teenage friends swam at the local pool during men's hours. They all brought locks to secure their clothes lockers, except Shlomi.

"Shlomi, you shouldn't leave your stuff there unlocked," Yisroel reproached him. "There have been thefts here."

"I'm not worried," replied Shlomi. "It's not likely that anything will happen."

Yisroel decided to teach Shlomi a lesson. He called over two friends. "When swim is over, keep Shlomi occupied for a few minutes," Yisroel said to them. "I'm going to take his wallet. I'll return it to him tomorrow in school."

When the swim was over, Yisroel headed promptly for the locker room and took Shlomi's wallet. By the time Shlomi returned to the locker room, Yisroel was heading home. Shlomi checked his pocket and saw that his

wallet was missing. "I don't believe it!" he said. "Someone stole my wallet."

"We warned you that this could happen," said his other friends. "Next time, bring a lock!"

Yisroel put the wallet in his desk at home. During the night, he was awakened by the blaring of the fire alarm. He woke abruptly and, smelling smoke, cried out, "Fire!!" to awaken the rest of his family.

The fire department arrived within seven minutes, but Shlomi's wallet got burned. The following morning, Yisroel met Shlomi in school.

"Guess what happened yesterday at the pool," Shlomi said. "My wallet was stolen!"

"We had a fire in our house last night!" replied Yisroel. "Actually, I was the one that took your wallet yesterday... and it got burned."

"So you stole it," said Shlomi.

"I didn't 'steal' it," protested Yisroel. "I did it for your good, to teach you to be more careful."

"Well, you had no right to touch my wallet," argued Shlomi. "You're responsible for it!"

"I put away the wallet safely in my desk," said Yisroel. "The fire was an oness (uncontrollable circumstance)."

"What's the difference?" replied Shlomi. "A thief is responsible even for oness!"

"I don't think I qualify as a 'thief,' though," insisted Yisroel. "I never took it for myself!"

"To me it's all the same," responded Shlomi. "You had no right to touch my wallet."

The two went to Rabbi Dayan. "Was I allowed to take Shlomi's wallet in order to teach him to be more careful?" asked Yisroel. "Am I liable for it?"

"You were wrong to take the wallet; it is a form of stealing," answered Rabbi Dayan.

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## Defect Demands

Before Sukkos, I carry a lot of Sukkos-related items in my store. A customer called the other day and told me that he purchased a fold-up bed from me that is defective. I told him to bring it to the store and I will refund his money. He responded that he doesn't drive, and when he purchased it, he paid a car service to bring it to his house. He then demanded that I repay him for the expense of the car service and that I hire a driver to pick up the bed from his house.

**Q: Am I obligated to repay him for the money he spent to have the bed delivered to his house? Who is responsible to bring the bed back to my store, me or him?**

**A:** Assuming that you, the merchant, were not aware that the item was defective, you are not responsible to reimburse the customer for the expenses involved in transporting it to his house. However, you are responsible for the expense involved in re-

trieving the defective item.

The Shulchan Aruch (232:21) addresses the case of someone who purchased defective merchandise and the seller demands that the customer return the merchandise before he issues a refund. He differentiates between a customer who informed the merchant of his intent to transport the merchandise elsewhere, in which case the merchant is responsible to retrieve the defective item, and a customer who did not inform

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"However, since the wallet was destroyed through uncontrollable circumstances, you are not liable for it."

"Really?" exclaimed Shlomi.

"The Gemara (B.M. 61b) extends the prohibition 'Do not steal' to one who steals l'meikat," explained Rabbi Dayan. "Rashi explains this to mean wanting to cause his fellow temporary anguish but intending to return the item. But a number of Rishonim explain this to mean 'in order to teach the owner a lesson,' such as what will happen if he is not careful with his property (Rabbeinu Yonah, Shaarei Teshuvah 3:85; She'iltos, Noach #4)."

"Is this really the same as actual stealing?" asked Yisroel.

"Most authorities understand that stealing l'meikat is also prohibited in the Torah," replied Rabbi Dayan. "Some, though, interpret the Rambam's position that the prohibition is Rabbinic, 'so that one should not accuse himself to stealing' (Hil.

Geneivah 1:2; Minchas Chinuch 224:1)."

"So why is Yisroel not liable for the wallet?" asked Shlomi.

"Ketzos (348:1) questions whether there is full liability of a thief in a case of l'meikat," answered Rabbi Dayan. "He brings proof that one is not liable for oness, since he did not take it with the intention of keeping the wallet or benefitting from it. Aruch Hashulchan (348:4) also rules this way. (See, however, Chazon Ish, B.K. 20:5, 'nireh.') You would be liable, though, if the wallet were lost or stolen from you."

"But every thief could excuse himself in this manner," objected Yisroel. "He'll say he did it with good intentions!"

"You are only exempt in such a case if you clarified your intention to two witnesses before taking the item," concluded Rabbi Dayan. "Otherwise, you are presumed to have stolen for your benefit and are not believed (Yad Hamelech, Geneivah 1:2)."

the merchant of his intent to transport the merchandise, in which case the customer is responsible to return it to the merchant.

Nesivos (232:10) explains that the distinction is not actually a function of whether the customer informed the merchant of his intent to transport the merchandise to another location or not. The essential issue is whether the merchant was aware that the customer would incur expenses before realizing that the item is defective.

Upon discovery that an item is defective, the original purchase is voided and the item reverts to the original owner, i.e. the merchant. Therefore, if the merchant is interested in retrieving his item, he must exert the required effort and bear the expenses and may not impose those expenses on the customer. However, if the customer damaged the

purchased item in a manner unrelated to the regular use of the item, he is responsible for that damage (C.M. 232:13).

In this context, transporting it to a distant location without the knowledge of the merchant, thereby generating additional costs, is considered "damage," and the customer is responsible to pay those costs. In a circumstance in which it was expected that the customer would transport the merchandise to another location, the customer is not liable for the additional expense.

Consequently, in your case, since it was expected that the customer would take the bed to his home, it is your responsibility to retrieve the defective bed and you cannot demand that he bear the expense of returning it.

But, as mentioned, you need not compensate him for the expense he incurred to take it home in the first place.

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## Lost and Found #14

**Q: I found a pearl necklace in a predominantly Jewish neighborhood. Can I hand it in to the police instead of publicizing it on my own?**

**A:** In many countries, the law requires notifying and/or handing in lost items to the police. This is also an effective method of publicizing, since the owner is likely to turn to them. In certain cases, we even apply the

rule of dina d'malchusa dina (the law of the land) (C.M. 259:7).

Despite this, a number of authorities have objected to transferring lost items to the police, since they often do not handle the lost item as required. For example, they will display it to the claimant and return it with insufficient simanim, and they award ownership to the finder or State if not claimed within a few months.

However, it is permissible to hand in items for which the police will likely require proper identification (Pischei Choshen, Aveidah 2:[53]).

Nonetheless, you can hand in an item found on a bus to the company's lost and found, even if they do not demand proper simanim, since anyone who rides the bus does so with this understanding (Hashavas Aveidah K'halacha 3:4-5).

## DID YOU KNOW?

Paying a babysitter the next day, instead of when she completes her job, is a very serious halachic shaila.

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