

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Shared Shovel

It was snowing! Snowflakes drifted down in swirls, covering the ground with a beautiful blanket of white. When the snow stopped, Sruli bundled up and went to get his shovel from the garage. He discovered, though, that the shovel was broken.

Sruli knocked on the door of his neighbor, Mr. Schein. "Could I borrow your snow shovel for the afternoon?" he asked.

"With pleasure," said Mr. Schein. "We'll be leaving soon. When you're finished, just leave the shovel outside our garage."

Sruli had almost finished shoveling the walk in front of his house, when Asher, who lived across the street, came out.

"Can I borrow your shovel to clear my sidewalk?" Asher asked.

"It's Mr. Schein's," said Sruli. "I'll ask him."

Sruli knocked on the Scheins' door, but there was no answer.

"I guess you can use it," he said to Asher. "Anyway, I still have to clean the snow off our car parked in front. We'll keep each other company."

While they worked, Aharon, who lived around the block, came by.

"Can I borrow your shovel?" he asked Asher.

"It's not mine," replied Asher. "Sruli gave it to me."

Aharon turned to Sruli. "I'm sorry, but the shovel is Mr. Schein's," Sruli apologized. "I can't lend it without asking him."

Aharon looked at him strangely. "But you let Asher use the shovel!" he argued. "Why can't you lend it to me?"

Meanwhile, Sruli's father heard the discussion. "I'm not sure you were right to let Asher use the shovel," he said to Sruli. "Mr. Schein lent it you, not him."

"Forget it; I'll get a shovel from someone else," Aharon said. "We can ask Rabbi Day-an about this tomorrow in yeshivah."

The following day, Sruli, Asher, and Aharon stopped off at Rabbi Dayan's beis medrash and related what had happened with the shovel.

"Was I allowed to lend the shovel to Asher?" asked Sruli. "Could I have lent it to Aharon?"

"You were correct in your instinct," answered Rabbi Dayan. "You were permitted to lend it to Asher while you were still cleaning the car, but not to lend it to Aharon to take home."

"What is the difference?" asked Sruli.

"The Gemara (B.M. 29b) states clearly that a person who borrowed an item may not lend it to others, even for purposes of a mitzvah, such as a sefer Torah," explained Rabbi Dayan. "The lender can say, 'I don't want

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## Pilfered Paper

After World War II, a woman arrived in Eretz Yisrael and began to seek employment. She received a letter of recommendation from a well-known Gadol who knew her family in Europe. Armed with this letter, she entered an office to apply for a job. The business owner took the letter and asked her to return the following day.

The next day, the owner not only informed her that there was no position available, but to make matters worse, refused to return

the paper to her.

The business owner sold the letter to an antiques collector. Many years later, he regretted his action and contacted the woman to repay her for the stolen letter, but when they discussed the matter, they couldn't decide how much he was obligated to pay her.

**Q: Does he pay the letter's value at the time when he stole it, or its current value, which is obviously much greater?**

**A:** When a stolen object remains in the possession of the thief, he is obligated to return it irrespective of whether the owner abandoned hope (yei'ush) of recovering his object (C.M. 353:2; 354:2). The reason is that yei'ush does not in and of itself allow others to take the object for themselves. Therefore, if the business owner was still in possession of the letter, he would be obligated to return it. However, once he sold it, he is obligated to pay the woman the value

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my item in the hands of another person.' This applies even if the second person is generally viewed as more righteous and reliable than the first borrower (C.M. 342:1)."

"Then what right did Sruli have to lend the shovel to Asher?" asked Aharon.

"The Rashba, in his responsa (l:1053; 1145) explains that the primary concern is that the other person may steal the borrowed item," explained Rabbi Dayan. "Based on this, the Rashba rules that a person may sublet a house or ship that he rented or borrowed. Since these items cannot be hidden away, the borrower is permitted to transfer his usage right to another (Rema 342:1)."

"What does that have to do with us?" asked Asher.

"In the same way," replied Rabbi Dayan, "if the initial borrower remains present the entire time, many authorities allow him to

lend the borrowed item to others.

Thus, so long as Sruli is present to watch the shovel, the presumption is that Mr. Schein would not mind if Asher also uses it (Nesivos 72:17; Pischei Choshen, Pikadon 9:9; see, however, Aruch Hashulchan, C.M. 342:2). Alternatively, it is also permissible if the owner regularly lends the other person items of similar value, indicating that he considers him trustworthy (Shach 342:1).

"The second borrower, though, may only use the item in a manner comparable to what the first person borrowed it for," concluded Rabbi Dayan. "For example, if Sruli borrowed the shovel to remove soft snow, he may not lend it to Asher after the snow hardened and began to ice over. Perhaps the owner was only willing to lend the shovel for soft snow (Shulchan Aruch Harav, She'eilah #4)."

of the letter.

The question is how much he must pay: the minimal value of the letter when he stole it, or the more recent inflated price?

The answer is neither, not what it was worth when he stole it, but not its current value either; he pays what its value had been at the time it was sold. Although generally one must pay the owner what the object was worth at the moment it was stolen (meshalmin k'shaas hagezeilah), when it is subsequently sold, he must pay what it was worth at the time of the sale.

When someone steals a barrel of wine worth \$10 and after its value increased to \$20, it broke, he is only responsible to compensate the owner \$10, its value at the time of theft. However, if he broke it, the thief is obligated to pay the owner \$20 (C.M.

362:10, 354:3). The reason is that as long as the stolen object remains intact in the thief's possession, the owner retains ownership. Consequently, if the thief breaks it after its value increased, the thief is damaging (or stealing) the owner's object and must repay the owner the value of that object at the time that he broke it (see Ketzos 34:3 and Nesivos 34:5).

The same applies when the thief sold the letter. Although the stolen object exists even after it was sold, nevertheless, since the owner cannot take possession of it from the buyer, the sale permanently takes it out of the owner's possession (see Otzar Meforshei HaTalmud, B.K. III p. 237).

Therefore, the business owner must determine the value of the letter at the time that he sold it and pay the woman that amount.

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## Lost and Found #20

**Q: I found a lost item and publicized it, but nobody came to claim it. What should I do with the item now?**

**A:** This depends on the item. Something that is irreplaceable, either because of its uniqueness or its sentimental value to the owner, you are required to hold. You are considered a shomer (guardian) on the item until the owner is identified.

Current Poskim, though, allow you to use most items which are replaceable for yourself, or to sell the item for a fair value after a reasonable amount of time passes. You should keep a "hashavas aveidah" pad in which you record the lost item, any relevant simanim, and its value. (Used items should be valued in their current condition.) You may then use the item or the proceeds of the sale. If the owner should ever turn up, give him the

equivalent of the item's value (C.M. 267:21; Hashavas Aveidah K'halachah 6:1-2).

The same applies to food items that are liable to spoil (Sma 267:30). It can also be done for items that have no siman, but were picked up before the owner was aware (yei'ush shelo midaas), where the halacha is "yehei munach ad sheyavo Eliyahu" (let it sit until Eliyahu arrives) (Igros Moshe, C.M. 2:45d).

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