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STORY LINE

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Save Me a Seat

Shlomo and Kalman planned a trip during winter vacation. "We'll meet at the bus station and board together," they decided. Shlomo arrived at the bus station half an hour early, but Kalman got delayed on the way. As departure time approached, Kalman called Shlomo.

"I'll be there in ten minutes," he said. "Get on the bus meanwhile, and save me a seat next to you toward the back."

Shlomo boarded the bus and settled in. He put his knapsack on the seat next to him, saving it for Kalman.

As time wore on, the bus became more and more crowded. Shortly before departure time, Kalman contacted Shlomo again.

"I just bought my ticket and am waiting on line," he said.

With relief, Shlomo saw that Kalman was about to board. Before Kalman boarded,

though, there were no longer any other seats available.

Another young passenger asked Shlomo to move his bag and allow him to sit.

"I'm saving the seat for my friend, who's about to board," said Shlomo.

"It was nice of you to look out for your friend," said the passenger. "However, I'm first, and there are no other seats available."

"But my friend already bought his ticket," protested Shlomo. "He's also entitled to a seat, and he asked me to save the seat on his behalf!"

"Who gave you the right to save him a seat?" argued the other passenger. "First come, first served!"

Meanwhile, Kalman boarded the bus. "There's my friend," said Shlomo, pointing up the bus. "He's coming down the aisle."

The other passenger, though, removed

Shlomo's knapsack from the seat and sat down.

"What are you doing?" said Shlomo. "You have no right to touch my knapsack."

"You fellows are rude," the other passenger said to Shlomo. "You should have been decent enough to remove the knapsack yourself."

Kalman came over. "I asked you to save me a seat next to you," he said to Shlomo.

"I did, but all the other seats were taken," said Shlomo. "This fellow insisted he had a right to the seat."

When Shlomo and Kalman returned to yeshivah, they asked Rabbi Dayan about the incident.

"Did Shlomo have a right to save the seat for me?" asked Kalman.

"The Gemara (B.M. 10a; Kesuvos 84b) teaches that even in cases where a credi-

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Damaged Device

I borrowed a tool from my neighbor, and he was nice enough to show me how to use it. Unfortunately, the tool broke while I was using it, and I am uncertain whether I was negligent and did not use it properly or if it just broke in the normal course of use (meisah machmas melacha).

Q: Am I obligated to pay for it?

A: The first issue that must be clarified is

when you are liable as a shomer (custodian) and when you are exempt. When someone borrows something (i.e. a shoel or any other custodian), and the object's owner was working for the borrower at the time he lent the object, by Biblical decree the borrower is exempt from the liability that is normally imposed on the shoel. This exemption is known as shemirah b'baalim: becoming a custodian (shemirah) while the owner (baal) is working for the custodian (C.M. 346:1).

Even if the borrower did not ask the object's owner to work for him at that moment, but the owner did so voluntarily, the borrower is exempt from liability. However, this is true only when the object's owner was interested in assisting the borrower. If the owner's help was provided out of self-interest, the borrower has full liability for the object.

For example, if the object's owner assisted the borrower out of concern that if he did not assist, his object would become dam-

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tor can seize property from his debtor, another person cannot grab on his behalf if there are limited assets and additional creditors may lose out,” replied Rabbi Dayan. “This is referred to in halacha as *‘tofes l’baal chov b’makom shechav l’acherim.’*”

“The Shulchan Aruch rules that the other person may not seize the property even if he was an agent of the creditor, who instructed him to seize the property on his behalf (C.M. 105:1).”

“How does this apply here?” asked Shlomo.

“Each person who buys a bus ticket is entitled, when he pays, to any available seat,” explained Rabbi Dayan (see C.M. 198:6).

“Many authorities compare saving a seat for your friend to grabbing property on his behalf at the expense of other passengers, who also have a right to that seat. Thus, you may not save him the seat if there are no comparable seats available.”

“What if I had bought both tick-

ets?” asked Shlomo. “Does that make a difference?”

“In that case, some contemporary authorities permit saving the seat,” said Rabbi Dayan. “You are then entitled to utilize two seats and, theoretically, could even use one seat for your knapsack if you needed to. Others consider this unfair when other people need the seat (see Sma 105:2).

“Of course, these rules apply in the absence of any explicit conditions of the bus company or common practice among people,” concluded Rabbi Dayan. “Therefore, if the company explicitly states that one may not save seats under any circumstances, those terms are binding on the passengers. Alternatively, if the common practice considers it acceptable to save seats for immediate family — spouse, parents/children — who are getting on at the same stop, it is permissible (see Mishpetei HaTorah 1:85).”

aged, the borrower is fully liable and it is not an instance of *shemirah b’baalim*.

Accordingly, in your case, the intent of the owner in showing you how to use the tool is the determining factor for your liability. If his intent when showing you how to use the tool was for your benefit, it is a circumstance of *shemirah b’baalim* and you would be exempt. However, if he had his own self-interest in mind, e.g. he didn’t want you to use it incorrectly and break it, the exemption of *shemirah b’baalim* would not apply (C.M. 346:4; Pischei Choshen, Pikadon 6:[14]).

In a circumstance in which the owner had his own self-interest in mind and the borrower is uncertain whether it was his negligence that caused the object to break or whether it broke in the normal course of use, the borrower is obligated to pay.

The reason for this is that when a borrowed object

breaks, the Torah gives the borrower two options: either take an oath that the object broke in the normal course of use, or pay for the broken object. If the borrower is uncertain whether or not it broke in the normal course of use, he obviously cannot take an oath, which leaves him no option other than to pay for the broken object (Tosafos, B.B. 34a and B.M. 5a).

Furthermore, even in a circumstance in which the owner had the borrower’s interest in mind and the exemption of *shemirah b’baalim* applies, there are authorities who write that the borrower has a moral obligation to pay for the broken object (Ohr Hachaim, Mishpatim 22:14), and it seems logical that the borrower should do so when he was negligent (Tal Torah, B.M. 97). However, when it is possible that the borrower was not negligent, it would seem that he is entirely exempt from liability.

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Lost and Found #27

Q: I moved into a rental apartment and found an item left there. What should I do? Does this apply to a hotel room too?

A: This depends on where the item was found and who the former tenant was. If the item was found in a visible area, we can assume that it belongs to the previous tenant, who forgot it. Therefore, it should be returned to him if he was a ben Yisrael.

However, some authorities maintain that if the item has *simanim*, recognizable features, the former tenant must provide *simanim*; otherwise the item should be publicized. (see C.M. 260:3; Shach 260:11; Nesivos 260:7).

On the other hand, if the item was found hidden away in a concealed place, it could have been from an earlier tenant, who already abandoned hope. Therefore, you

can keep it. [This halacha might vary with the duration of the previous tenant’s rental.] Again, some authorities maintain that if there is a *siman*, you should publicize the *aveidah* (Hashavas Aveidah K’halachah 8:1).

In a hotel where most guests are *bnei Yisrael*, the management should be notified. If the item was left in a haphazard way indicating that the owner no longer wants it, you may keep it (C.M. 261:4).

MONEY MATTERS

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