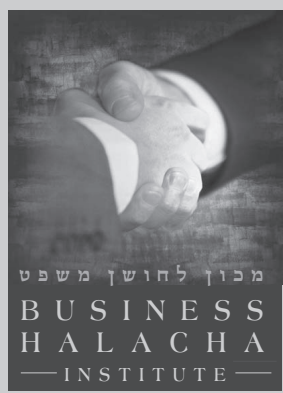


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Business

PARSHAS PINCHAS
FRIDAY, JULY 2 2010
VOLUME 1 ISSUE 15
under the auspices of
Harav Chaim Kohn, shlita

weekly



STORYLINE

bag overboard!

By Rabbi Meir Orlian, Yerushalayim
Halacha Writer for the Business Halacha Institute

"Hi, Benjy!" called Yehuda, Benjy's best friend. "Do you want to go boating with me at Island Park tomorrow?"

"Sure," answered Benjy.

"Pack lunch and a change of clothes; I'll bring the nosh," said Yehuda.

"I have a great waterproof camera," said Benjy. "We'll be able to take pictures on the water."

Benjy met Yehuda the next morning, and they drove to the park. After their picnic lunch, they headed to the water and rented kayaks. They put on life vests, tucked their bags into the boats, and set out.

"I'll race you to that buoy over there and back," shouted Benjy.

"Okay," laughed Yehuda. "One, two, three, go!" The kayaks surged forward, rolling in the waves.

They reached the buoy together. "Let's go,

sharp turn!" shouted Yehuda. As they leaned over to make the turn, a large wave rose...

SPLASH! The kayaks capsized, tossing both of them into the water.

Yehuda struggled for a few minutes and managed to right his kayak and mount it. He came to help Benjy, but Benjy said, "You'd better get our bags before they sink. I can wait a few more minutes."

The bags had floated off in opposite directions and were already filling with water. Yehuda paddled swiftly away to pick up his bag.

"My camera!" Benjy suddenly cried out. "You've got to rescue my bag first!"

"My bag looks like it's about to sink," Yehuda called back. "If I get yours, mine might sink by the time I get to it!"

"I can't afford to lose that camera," yelled Benjy. "It cost almost \$400! Please go get it." Yehuda thought quickly. In his bag were a

change of clothing and an MP3 player, worth about \$100 altogether.

"If you'll pay \$100 to cover my bag, I'll go rescue yours."

"Deal!" said Benjy.

Yehuda set off after Benjy's bag, with strong, swift strokes. He was within ten feet of it when the final air seeped out and the bag sank. Yehuda dove in after it, but to no avail. The bag was gone.

Yehuda returned defeated. His own bag was also gone. He helped Benjy right his kayak, and they headed back to shore.

Two weeks later, Benjy showed Yehuda a new camera he had bought. "It's much simpler, but I couldn't afford to buy another expensive one," he said.

"I'm sure it takes pictures just fine," Yehuda said sympathetically. "By the way, what about the \$100 you promised me?"

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FROM OUR HOTLINE

Submitted by
Z. Kaufman

a drop in value

As I was backing out of the shul parking lot yesterday, I carelessly bumped into a parked car, denting it. I didn't recognize the car so I left a note with my contact information. When the fellow contacted me, he told me that since the car is old and worn out, he doesn't plan on repairing the scratch. Nevertheless, he went to a couple of repair shops for repair estimates which

ranged from \$500 to \$750. He told me that he will go easy on me and will only ask me to pay the lowest estimate.

Q: I admit that I owe him money, but it seems unfair that I should have to pay him for repairs he does not intend to make. What is my liability?

A: The general way by which damages are assessed is by calculating the loss of value to the damaged object (Choshen Mishpat 387:1). If the car was worth \$1,000, and after it was damaged the owner could sell it for \$200, the one who caused the damage is liable to pay \$800, or the depreciation that he caused. Seemingly, in your case we should make a similar calculation and we

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STORYLINE CONTINUED

Benjy was startled. "Why should I pay? You didn't save my bag." "So what?" responded Yehuda. "You knew that I might not be able to rescue it, and I gave up mine trying to save yours."

"I agreed to compensate you if you would save mine, but you didn't help me," argued Benjy. "I lost \$400, and now you want me to pay another \$100?!"

"Let's ask Rabbi Tzedek!" they both agreed.

Rabbi Tzedek ruled: "Benjy has to pay a reasonable fee for trying to rescue the bag, let's say \$20. However, Yehuda cannot demand the \$100, since he did not stipulate that Benjy should pay even if he fails to rescue the bag."

Rabbi Tzedek explained, "A worker is entitled to payment if he fulfilled his duties responsibly, even if the employer did not ultimately benefit from his service. For example, a person who is hired to represent a client or run an election campaign is entitled to pay even if the client loses (Chavas Yair #154). On the other hand, a person who was contracted to accomplish a certain goal is not entitled to payment unless he accomplishes it (ibid). If

a serviceman is contracted to fix something and is unable to, he is not entitled to payment unless he stated that he charges for labor, or that is the common practice. Because of this, most servicemen now stipulate that the initial charge is for the visit itself.

"In our case, we assume that Benjy agreed to pay the excessive amount only if Yehuda would succeed in rescuing the bag, whereas for the attempt he is willing to pay only a reasonable fee (C.M. 264:4 and Nesivos 264:3). If Yehuda wanted to secure the \$100 payment regardless of the outcome, he had to stipulate this explicitly (SM"A 264:11)."

FROM OUR HOTLINE CONTINUED

would assess the value of the depreciation that occurred. Shach (Choshen Mishpat 95:18, 387:1) rules that paying for an object's depreciation applies only when the damaged item cannot be repaired. If it is repairable, one is obligated to pay the repair costs. For example, if someone punches a hole in dry-wall, he is obligated to pay repair costs rather than the depreciation of the house – which would be significantly less. Based on this, it would seem that you should pay the damaged party the value of the repair. Chazon Ish (Bava Kama 6:3), however, clarifies that the obligation to pay

repair costs does not grant the damaged party the right to demand reimbursement for the cost of the repair. It is a right to have the object repaired. If the damager cannot repair it himself, he may pay someone else to repair it. If it will not be repaired, the damaged party may only collect the depreciation and no more. Consequently, if the owner of the damaged car will not repair the scratch, he may demand the depreciation but not the repair costs.

Please contact our confidential hotline with your questions & comments
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MONEY MATTERS

truth in advertising week #1

Q: If a product I am selling has a defect, is there a requirement for me to point it out to the customer? Is there a difference in the halachic ruling if the defect is clearly visible to my customer?

A: According to the Shulchan Aruch, it is prohibited to cheat people in business or mis-

lead them in any way during a business transaction. For example, if there is a defect in an item being purchased, the vendor must inform the customer before the sale is made (Shulchan Aruch, Choshen Mishpat 228:6).

The SM"A (#7) adds another point to this rule: even if the seller will offer a discounted price on a defective item so that he is not actually cheating the purchaser, he still must inform

him that the item is imperfect. The reason for this is that otherwise the seller would be misleading the buyer into thinking that he is getting a bargain.

However, if the defect in question is something that the purchaser can clearly see on his own, some say that there is no need to point it out to him.

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