



# Business weekly

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## STORYLINE

### repair refusal

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

When Yisrael opened his garage on Friday morning, Eli was waiting there.

"I'm driving to Baltimore for Shabbos," Eli said, "but funny things have been happening with the car recently. Can you check the battery and brakes?"

"Sure," Yisrael told him. "Come back in two hours."

Yisrael examined the car. The battery and brakes were fine, but there was a problem with the alternator. He tried calling Eli to ask whether to replace the alternator, but Eli was unavailable.

"It's dangerous to drive to Baltimore like this," Yisrael reasoned, "but if I wait until Eli returns, it will already be too late to order the part and install it."

Yisrael ordered the alternator and began working. As he was finishing, Eli returned.

"I'm just about finished," Yisrael said. "The battery and brakes were fine, but I had to replace the alternator. I tried reaching you, but you were not available."

Eli looked uncomfortable. "Thank you," he said, "but I didn't want the alternator replaced!"

"But you needed it replaced," said Yisrael. "It wasn't safe to drive to Baltimore like this."

"I only asked you to check the battery and brakes," Eli insisted. "I didn't ask for any other work and do not want to pay. If you want, you can put the old alternator back in."

Yisrael rolled his eyes. "It's already been opened and installed," he said. "It's not worth my time taking it out. But it's not fair of you not to pay; the part was faulty and had to be replaced."

"How you can do work without authoriza-

tion and expect to be paid?" said Eli.

"I always ask, and did try reaching you," Yisrael replied. "You were in such a rush this morning, though, that I was sure you would want me to fix whatever was necessary to get to Baltimore."

"I can't talk now," said Eli, "but I'm willing to discuss this with Rabbi Dayan after Shabbos."

"Agreed!" said Yisrael. "We can see him Sunday evening."

The following week, Yisrael and Eli met with Rabbi Dayan. "I replaced a faulty alternator in Eli's car before I had a chance to contact him," Yisrael said. "He refuses to pay for the repair."

"This case relates to an intricate topic called 'yored l'sedei chaveiro shelo bir'shus,' one who plants trees in another person's field

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## FROM THE BHI HOTLINE

Submitted by  
B. W.

### breaking a promise

I promised to lend money to my unemployed friend so that he could start a business. I instructed him to have a lawyer draw up the necessary documents. The documents were drawn up, but I am now regretting my pledge, as I realize that I may need the money this year.

**Q: Can I renege on my commitment? If so, must I reimburse him for the money he paid to have the documents drawn up?**

**A:** The point at which a potential lender may no longer retract his commitment to issue a loan is a fundamental debate. The general principle that a valid kinyan creates a legal obligation applies to this case as well. One approach maintains that the loan document generates a lien on the borrower's property, and once drawn up with the agreement of the lender, it is the equivalent of a kinyan. Therefore, the lender must follow through with the loan (Tur C.M. 39:19 in the name

of Ramban). Others reject the assertion that drawing up a loan document creates an obligation on the potential lender to carry out his commitment, saying that the lender retains the right to renege on his agreement to issue the loan (Tur ibid.).

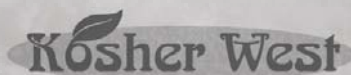
In our case, however, all opinions agree that there was no kinyan to obligate the lender to loan the money. Merely having a loan document drawn up without the parties signing the document does not constitute a

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without authorization,” said Rabbi Dayan. “The Gemara (B.M. 101a) teaches that the owner has to pay if the work was beneficial. If the field was intended for trees, the owner has to pay to going rate for such work; if the field was not intended for trees, the owner pays a lesser amount (C.M. 375:1; SM”A 375:2).”

“What if the owner of the field says that he did not want the trees planted?” asked Eli.

“The Geonim rule that the owner can say that he does not want the trees,” replied Rabbi Dayan. “He can tell the planter to remove them and does not have to pay. There is a dispute, however, whether this applies also to a field intended for trees. The Shulchan Aruch indicates that he can say so even if the field was intended for trees, whereas the opinion of the Rama is unclear (C.M. 375:2,7; SM”A 375:4,14; and GR”A 375:2,17).

“The Chazon Ish (B.B. 2:3) explains that, in principle, everyone agrees that the owner does not have to pay if he truly does not want the trees,” continued Rabbi Dayan. “The dispute ex-

ists when the owner does not seem to have a valid reason: Is he simply looking for an excuse to evade fair payment for the benefit he received? The Aruch Hashulchan (375:11) suggests a similar rationale to explain the opinion of the Rama; it depends on whether he has a valid reason for not wanting the work.”

“But if it was dangerous to drive with the faulty alternator and it needed to be replaced,” asked Yisrael, “shouldn’t Eli have to pay for it?”

“The Rama rules that if someone repaired an abandoned house, the owner must pay him for essential repairs,” was the reply. “However, he can refuse to pay for repairs that were not essential and that he doesn’t want (375:7).

“Therefore, if the repair was essential for the car, Eli has to pay the going rate even if he did not ask for it to be done,” concluded Rabbi Dayan. “If the repair was not essential, but appropriate, it would be comparable to a field intended for trees that he can refuse to pay if he offers a valid reason.”

kinyan between the borrower and lender that obligates the lender to loan money.

On the other hand, since the borrower was instructed by the lender to invest money to obtain the loan, the lender is obligated to reimburse the borrower for those expenses (Sm”a 39:46). This is categorized as garmi – a sort of indirect damage for which one is liable. It is comparable to one who places a special order for the manufacture of an object and then decides against purchasing that item. Since the manufacturer invested money to produce that object, the customer is obligated to reimburse him for his loss (Rav Akiva Eiger ibid. referencing C.M. 333:8). If, however, the lender retracts his commitment due to circumstances beyond his control, he is not obligated to reimburse the other party for his loss (Shach C.M. 386:6).

An additional factor that the lender must consider is that of

tzedakah (charity). If the borrower is poor, one may not retract his pledge to lend him money. An oral agreement to fulfill the mitzvah to lend a poor person money is considered a vow, and one is obligated to follow through on that commitment (Ahavas Chesed 1:11 footnote 18). Accordingly, the right to retract one’s commitment to loan someone money is limited to a wealthy borrower for whom there is no mitzvah to lend money (see Minchas Shlomo 1:91:20, about whether hataras nedarim prevented the vow from taking place). Even if the borrower is wealthy, if the lender knows that the borrower was relying upon him, retracting the agreement may involve a violation of mechusar amanah (lacking trustworthiness), which restricts a person from renegeing on an oral commitment to another person (the details of mechusar amanah are beyond the scope of this article).

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# MONEY MATTERS

## borrowing and lending week #6

**Q: I lent a neighbor a bag full of quarters, but he lost it before counting the exact amount it contained. How much does he have to pay?**

**A:** If both parties admit to the loan, but neither knows or remembers the sum, the borrower must pay the amount that he is certain about. Some say that there remains a moral obligation to compromise with the

lender about the remaining sum, whereas most maintain that there is not even a moral obligation to do so (C.M. 75:18; Shach 75:58).

On the other hand, if the lender claims a definite amount and the borrower does not remember exactly how much, he is obligated to pay the full amount that the lender claims, within reason. This is because the borrower admits partially and is therefore obligated

in a severe Torah oath, which he is unable to take. This principle is known as: mitoch she’aino yachol lishava meshalem – since he is unable to swear, he must pay (75:19).

The primary exception to this rule of mitoch is when the borrower is willing and able to pay immediately the amount he acknowledges (heilech). In this case, he needs to pay only that amount and is exempt from the remainder (87:1).

### IMPORTANT NOTICE

**“Early Bird Specials” often involve serious ribbis (interest) issues.**

This is especially true with day camps that offer perks or discounts for early payment.

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