

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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## CASE FILE

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## BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

Submitted by the Beis Hora'ah

### FLAME OWNER

Mr. Brand was working in his backyard one afternoon, using an electric compressor to inflate tires. The machine hummed beside him as he worked.

Suddenly, the compressor sputtered. A spark shot out, followed by a burst of flame from the motor housing.

"Fire!" his wife called from the porch. "Get the extinguisher!"

Mr. Brand stepped back and watched the small flames flicker around the machine. "Don't worry," he replied calmly. "It'll burn out in a moment."

However, a sudden breeze swept across the yard, fanning the flames. Dry leaves nearby caught fire, and within moments, the blaze spread into a patch of brush along the fence line.

"The extinguisher!" his wife urged again.

Now concerned, Mr. Brand hurried to get the fire extinguisher from the house. By the time he returned, though, the fire had already crept into the neighboring yard. His neighbor shouted in alarm as the flames reached a large tarp, which quickly ignited.

Mr. Brand sprayed the extinguisher and managed to put out the fire before it spread further. Still, the tarp had burned badly. When the neighbor pulled the burned tarp back, he stared in dismay. Underneath were several expensive power tools that he had stored there temporarily. The fire had badly damaged them.

"You'll have to compensate me for this," the neighbor said firmly.

Mr. Brand shook his head. "I didn't even light the fire," he replied. "The compressor sparked on its own. And how was I supposed to know there were valuable tools hidden under a tarp?"

The discussion grew tense. The two came before Rabbi Dayan and asked: "Is Mr. Brand liable for the tools under the tarp?"

"Eish (fire) is a category of damage," replied Rabbi Dayan, "defined as a person's flame spread by the wind" (C.M. 418:1).

"The Amora'im dispute (B.K. 22a) whether fire is like one's property — animal or pit — that damaged (isho mishum mamono) or is considered like the person's own actions (isho mishum chitzav), as if he himself damaged. The halachah is that both elements exist (C.M. 418:17; Sma 418:25).

"Thus, for example, if there was a wall capable of containing the fire when it began, but the wall subsequently fell (unrelated to the fire) and the fire spread, the damage is not attributed to the person's own actions (kalu lo chitzav), but he is still liable when he neglected to contain the fire, like for other property of his that damaged (C.M. 418:6).

"One practical ramification relates to the exemption of tamun, unexpected covered or concealed items that were consumed, which apply only when the fire is not attributed to the person's own actions (C.M. 418:13; Minchas Chinuch 56:2).

"If the person did not light the fire but rather his property caught fire on its own and spread, Even Ha'azel (Hil. Nizkei Mamon 13:19) proves from the language of the Rambam and Shulchan Aruch (C.M.

### LATE F(R)EE?

**Q** Shortly before Pesach, when my family was overwhelmed with Pesach preparations, I decided to order supper one night from a local eatery. When I placed

the order, the person on the phone asked if I could come pick it up. I told him that it was very difficult for me to get out and asked him to deliver it. He said it would be delivered within half an hour. When half an hour passed with no sign of the delivery, I tried to call the store, but the phone was busy. I tried numerous times over the next 15 min-utes and couldn't get through. At that point, with my children ravenous and impatient, and having no way to ascertain whether the food would ever arrive, I ordered from a different store. The food from the second eatery arrived shortly thereafter. Then just as I had paid and we were about to sit down to eat, the deliveryman from the first store came with my order.

**Am I required to pay for that food, considering that I already have food from another place?**

**A** The first question to address is what level of financial responsibility a customer has when he orders food from a proprietor who prepares it for him. As we will explain, in certain scenarios, this would be akin to sechirus poalim (hiring a worker). If that is the case, even if in the end, the customer doesn't need the food he ordered, he is required to pay in full (Shulchan Aruch, Choshen Mishpat 335:3).

In other circumstances, however, this would be categorized as an agreement to buy the food once it is ready. In such a case, too, the customer is obligated to pay and may not cancel retroactively once the food is prepared. But the reason is only that he is causing a financial loss to the seller through garmi (direct causation; ibid. 333:8).

There is a practical halachic difference between these two categories. When the obligation stems from sechirus po'el, the customer is required to pay the full amount

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## CASE FILE

418:6) that the person is still liable for it like other property of his that he did not restrain which damaged.

“Moreover, Minchas Chinuch (56:1) derives from

Tosafos (B.K. 22a sv “isho”) that although the person did not light that fire, it is still attributed directly to him (chitzav), since he was negligent in containing a fire in his ownership. According to this opinion, the leniency of tamun (even when there was a protective wall that fell) would be limited to a case in which the person lit a fire with hefker property, etc., since otherwise, the fire would be considered his action on account of his ownership (Giddulei Shmuel, B.K. 22a).

“However, Giddulei Shmuel (ibid.) concludes that when the person did not light the fire, he is liable only on account of the fire being his property (mamono) so that the associated leniency of tamun applies.

“Returning to our case,” concluded Rabbi Dayan, “according to Minchas Chinuch, Mr. Brand is liable for the tools; the fire is considered his own action since he owned the compressor that ignited and was negligent in containing the fire. According to Giddu-lei Shmuel, though, he is not liable, since he did not light the fire, so the leniency of tamun applies.”

Verdict: Eish is considered as both the person’s own action (chitzav) and damage by his property (mamono). If a person’s property caught fire and the owner neglected to contain it, the Acha-ronim dispute whether it is considered his own action. One ramification is whether the leniency of tamun (concealed items) applies.



## MONEY MATTERS

### MONEY MATTERS Shabbos and Yom Tov

#41

Found Money

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים זוג' ח' בת ר' שמואל חיים ע"ה

While taking a Shabbos walk, I encountered a \$100 bill. Am I allowed to possess it?

There is an issue of muktzeh and — if no eruv — an issue of carrying. Although Chazal provided certain leniencies regarding the prospective loss of one’s wallet, the leniencies are not applicable to money that is found, since it is not yours yet (O.C. 266:13).

Thus, you may not pick up the \$100 bill, even if there is an eruv, because of muktzeh (Mishnah Berurah 266:38). However, according to many Acharonim, you can kick it aside with your foot to a secure place if there is an eruv (Shemiras Shabbos K’Hilchasah 22:36).

There is a dispute between the Acharonim as to whether you may tell a non-Jew to pick up the bill for you, despite its being muktzeh. However, while you may not tell him to carry it if there is no eruv, if he chooses to bring it to your house of his own accord, you do not have to stop him (Mishnah Ber-urah, ibid.).

Nonetheless, if you found a valuable item that is not muktzeh and there is an eruv, you may possess it and take it home. It is not considered a transac-tion, because there is no seller or giver. However, you should not raise it in a manner that blatantly indicates acquisition (Shemiras Shabbos K’Hilcha-sah 29:32[89]).

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## BHI HOTLINE

they agreed upon. But when the obligation is only due to garmi, he is liable only for the actual loss he caused the seller, not for the full value of the work (Nesivos 333:3, 200:13). This includes compensation for the seller’s effort as well, but only at the rate of the lowest-paid workers (Erech Shai 14:5, 200:7).

How do we determine how to categorize a specific case?

Some Poskim write that if the work was done on something that belonged to the customer (e.g., a suit brought to a tailor for alterations), that would be considered sechirus poalim. But if the service provider does the work on something that belongs to him (e.g., a customer orders a custom-made suit, and the tailor provides the fabric), then it is classified as an agreement to buy the suit when it is ready (Mahara Sasson 119 cited in Ketzos Hachoshen 339:3).

Other Poskim say that the determining factor is the language used when placing the order. If the customer said, “Prepare the following for me,” that is considered sechirus poalim. But if he says, “I will buy such and such,” then he is agreeing to purchase the item when it is ready (see Nesivos 333:16; cf Mishpetei Hachoshen p 192 for differing opinions).

Returning to your case, the general understanding when placing a food order is that the customer agrees to purchase the food that is delivered to him. If the food is delivered on time and the customer wants to cancel the order after the food was prepared, he must pay for the loss he caused to the store (at the rate outlined above), since presumably the food can’t be sold to a different customer. If the food can be sold, the first customer does not have to pay, because he caused no loss, but he is still considered mechusar amanah (untrustworthy; see Shulchan Aruch 204:7).

But even if the food can’t be resold — regardless of whether the order is considered sechirus poalim or a purchase agreement — if the store committed to have the food delivered by a certain time and that time passed, the customer may cancel the order and place one elsewhere. The agreed-upon timeframe for delivery is an integral part of the agreement between the two parties, and if the seller or the employee (po’el) did not deliver on time, that is considered a violation of the agreement. Certainly, in your case, where you had no way of ascertaining if and when the order would arrive, you had every right to cancel the order (Pischei Choshen, Sechirus 10, footnote 4; see Pischei Teshuvah 207:2 and BHI #699). Obviously, in any such case, the customer should do what you did and try to contact the store to cancel before ordering from another store so as not to cause unnecessary loss to the first store.



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