



# BUSINESS WEEKLY

WERDIGER EDITION

Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### EXPENSIVE REPAIR

Mr. Weil was rushing to shul. He found an empty spot in the shul's parking lot and quickly pulled in. However, the spot was a bit tight and he bumped into the adjacent car, scratching the paint and denting the door slightly. He scribbled a note with his name and number and went inside.

After *davening*, Mr. Weil returned to the parking lot and saw the owner of the damaged car, Mr. Braun, standing there. "Sorry about the damage," Mr. Weil said. "I was rushing to *daven* and misgauged the parking."

"The damage doesn't seem severe," Mr. Braun said, "but it has to be repaired."

"I probably won't invoke my insurance," said Mr. Weil. "Most of the cost will be my deductible, anyway. Check what it costs to repair and I'll pay you directly."

Two days later, the two met again. "I checked with two dealer-authorized body shops," Mr. Braun said. "One wants \$500 for the job and the other \$600."

"That's strange," replied Mr. Weil. "I showed a photo of the damage to my body shop. He said that he would repair it for about \$400."

"I'd like the repair done at a dealer-authorized shop, though," said Mr. Braun. "I don't know the quality of work of your body shop."

"The body shop I use is reputable and does good work," said Mr. Weil. "Many people in the shul use him."

"Still, the car is still new and under warranty," said Mr. Braun. "I want to make sure that it's kept in best condition. Slight changes in the color might also affect the price if I decide to sell the car later. It's also a hassle to go to someone new; I prefer my regular shop."

"That's your prerogative, but I don't think I have to pay more for that," said Mr. Weil. "I'll pay you the \$400 that it costs at my body shop and you can repair it wherever you want."

"My desire to use a dealer-authorized shop is fair," said Mr. Braun. "You're liable for the damage at his cost, \$500!"

The two decided to approach Rabbi Dayan. "Mr. Weil damaged my car," said Mr. Braun. "I'd like to have it repaired at a dealer-authorized body shop, but he has



## BHI HOTLINE

### TESTIMONY OF RELATIVES

I loaned someone money and insisted that the borrower have a guarantor. The loan document was drafted and signed by all the parties as well as the witnesses. I subsequently discovered that one of the witnesses is the guarantor's first cousin through marriage.

**Q:** Is the entire transaction voided?

**A:** In terms of obligations, if the borrower and guarantor acknowledge the loan, the loan and guarantor's obligation remain in force, even if the witnesses and the loan document are invalid. Witnesses are necessary only when one of the parties denies the agreement (C.M. 195:1). The question that would arise is whether the witnesses remain valid vis-à-vis the borrower — to whom they are not related — if the borrower denies the loan.

In the *Gemara* (Makkos 7a) Rav Huna the son of Rav Yehoshua rules that witnesses to a loan agreement who are related to the guarantor may not testify about any aspect of the loan. Since the guarantor is responsible if the borrower defaults, any testimony about the borrower has direct impact on the guarantors (C.M. 33:16). Accordingly, in your case, the witnesses are invalid.

However, a point that requires consideration is whether the fact that the borrower and guarantor also signed on the loan document makes a difference.

The *Gemara* (Gittin 4a) indicates that an internal disqualification (*mezuyaf misocho*), like invalid witnesses, invalidates the document altogether, even if it is ultimately delivered to the

### DID YOU KNOW?

**Buying and/or serving non-kosher food in business settings can present *shailos* of benefiting from *basar b'chalav* and *shailos* of doing commerce with *neveilos*?**

If your business purchases and/or serves non-kosher food, please speak to your Rav or contact the Business Halacha Institute for guidance.



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a cheaper estimate. Is he liable for the full cost?"

"A person who damages is liable for the loss in the item's value," replied Rabbi Dayan. "However, if the item is meant to be repaired, not replaced, he is liable for its repair. The *Shach* indicates that he is responsible for the actual repair, while the *Chazon Ish* writes that he owes the cost of the repair at the time of the damage (C.M. 387:1; *Shach* 95:18, 387:1; *Chazon Ish*, B.K. 10:3).

"If the same repair can be done at different prices, Mr. Weil is not liable to pay more than it costs at the cheaper place," continued Rabbi Dayan. "This is like any other case of *hamotzi mechaveiro*; you can demand only the lower amount."

"What if the cheaper place is less convenient?" asked Mr. Braun.

"That is usually not a sufficiently valid reason to pass a greater charge to Mr. Weil," said Rabbi Dayan. "If you had to pay and were tight on money, you would seek a cheaper place, even if less convenient."

"However, if the other shop is less qualified and will not repair as well," concluded Rabbi Dayan, "or if there is some other valid reason that the average person would choose to repair at the more expensive place, such as if using an unauthorized dealer would void the warranty or lower the value of the car, this decision is at the discretion of the *dayan*" (See *Pischei Choshen*, *Nezikin* 10:7[18]; *Tzohar* #11, 5763, p. 293; *Tel Talpios* #66, 5767, p. 233).



## MONEY MATTERS

### INHERITANCE #7 Rights of Inheritor

From the writings of Harav Chaim Kohn *shlita*

**Q:** A person borrowed or rented something before he passed away. Do his inheritors inherit his usage rights? What about other rights, such as legal claims against others?

**A:** The inheritors inherit the rights to use an item borrowed or rented by the deceased (unless the agreement states otherwise) for the duration of the stipulated term. There is a dispute whether the inheritors can discontinue a rental and avoid paying the remaining fee (C.M. 341:3; 334:1; *Shach* 334:2).

However, a partner of the deceased can refuse to continue a partnership with the inheritors, since he can claim that he does not have confidence in them as he had in the deceased. The same is true for a "silent" partnership based on a *heter iska* (C.M. 176:19; *Sma* 176:50; *Nesivos* 176:35).

The inheritors inherit any money owed to the deceased, or claims that he has against others for theft, damages, etc. (C.M. 278:3; 367:4).

Similarly, they inherit in his place the deceased's share in the estate of relatives who subsequently pass away (C.M. 276:3).



## BHI HOTLINE

other party in the presence of valid witnesses (*eidei mesirah karti*; see C.M. 45:12 and 51:3 with *Nesivos* 4) and even if the borrower signed the document (see *Mechiras Chametz K'Hilchasa*, *Shevivei Eish* 24).

The above is true regarding a contract that presents the testimony of the witnesses. However, when the contract is written from the perspective of the borrower, e.g., "I hereby acknowledge borrowing money, etc.," it is technically not a contract (*shtar*) and does not involve testimony about the loan (C.M. 69) even though witnesses also signed the document (*Erech Shai* 69:3; *Divrei Geonim* 102:4). Since such a document is essentially an admission of the borrower, if the witnesses are invalid, it does not undermine or invalidate the borrower's written admission (see *Kinyan Torah* 3:53; *Minchas Yitzchak* 10:36).

It is important to note that not every first cousin by marriage is an invalid witness. When it comes to defining relatives for testimony-related matters, the rule of thumb is *ishto k'gufo* — one's wife is like himself. Meaning, if one may not testify for someone because that person is a relative, e.g., a brother testifying for his sister, he may not testify for her husband either (C.M. 33:3). This extends even to someone testifying for his wife's sister's husband (i.e., two men married to two sisters) even though it involves invoking the principle of *ishto k'gufo* twice. When it comes to first cousins, however, the disqualification applies only when the principle of *ishto k'gufo* is invoked once, and does not apply when it must be invoked twice. Therefore, a man may testify for his wife's first cousin's husband (C.M. 33:4).

For questions on monetary matters,  
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