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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

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### 'BUT IT ISN'T HIS!'

Mr. Schein wanted to go away with his family for the weekend, but had a very limited budget. Word of mouth led him to Mr. Miller.

"I'll rent you a house for \$250," said Mr. Miller. "It usually costs much more!"

"My budget is \$250," said Mr. Schein. He paid Mr. Miller the money and received the key.

The Scheins arrived Thursday evening and enjoyed the weekend. Sunday afternoon, as they were packing up, a man came by. "What are you doing here?" he asked.

"We rented the house for the weekend," Mr. Schein replied.

"Can't be," replied the man. "From whom?"

"From Mr. Miller," replied Mr. Schein. "What's the problem?"

"This is my house," said Mr. Hauser. "Mr. Miller rented you a house that isn't his! He was here last month and must have copied the key!"

"I charge \$500 rental for this house," added Mr. Hauser. "Please pay me now."

"But I arranged with Mr. Miller a fee of \$250," replied Mr. Schein.

"I don't care what you arranged with Mr. Miller!" exclaimed Mr. Hauser.

"I never would have come for \$500," objected Mr. Schein. "I had a clear budget of \$250. I'm willing to pay just that!"

"But \$250 is extremely low; I won't agree to it," insisted Mr. Hauser.

"And \$500 is very high," argued Mr. Schein. "The going rate is about \$400."

The two continued arguing. "I have no choice but to summon you to a *din Torah*," Mr. Hauser finally said.

"That's fine with me," replied Mr. Schein. "I am convinced that I am right."

The two came to Rabbi Dayan. "Someone rented my house to Mr. Schein without my permission," said Mr. Hauser. "I demand that he pay the full price, \$500."

"I shouldn't have to pay more than the \$250 to which I agreed," argued Mr. Schein. "Anyway, even the going rate is only \$400."

"The *Gemara* (B.K. 21a) teaches that if someone rents out another's property, which is intended for rent, the dweller must pay the true owner," said Rabbi Dayan. "Nimukei Yosef (B.K. 9a) writes that the renter must pay the going rate, even if he had arranged a low price; he cannot claim that he would not have rented at the going rate" (C.M. 363:10).

### DID YOU KNOW?

Did you know that signing a service contract that includes a late fee that accrues monthly is a Ribbis violation?



## BHI HOTLINE

### THE WAITING GAME

A group of friends from Yerushalayim hired a driver to take them to a wedding in Bnei Brak, wait for an hour, and drive them back. When they walked out of the hall an hour later, they could not find their driver. They called him, and he said that he would be there in five minutes — but only returned 45 minutes later.

It turned out that after they left his car, someone approached him and asked if he could drive him to Tel Aviv. Under ordinary conditions, he would have been able to drive there and back in time to drive them back to Yerushalayim, but a traffic jam caused him to be late.

**Q:** Do the passengers have to pay for the hour of waiting time, or does the fact that he drove another passenger during that hour (and beyond!) rather than wait absolve them from payment?

**A:** The *Poskim* dispute whether a driver who is being paid to wait so he can leave as soon as the passenger is ready, but instead uses that time to drive another passenger, is allowed to charge for the waiting time.

Some write that the reason a passenger commits to pay for the waiting time is for *s'char batalah* (payment for time one is not working) because the driver is unable to work during that hour (see *Shulchan Aruch, C.M. 333:2*). If that is correct, then in a case in which a driver picks up another passenger during the wait, he cannot claim *s'char batalah*. But on the other hand, he also cannot make plans to accept any other fare of his choosing, because he knows that he has to be back for his first passenger at a set time. Therefore, the driver and passenger should compromise and deduct up to half the fare he received from the second passenger from the amount he charges the first passenger to wait (*Shu"t Shevet HaLevi 9:310*).

Others write, however, that the driver does not have to reduce his price. Since he was back at the

 **STORY LINE**

"Could you please elaborate?" asked Mr. Hauser.

"The agreement between the other person and the renter is null and void," explained Rabbi Dayan. "A person cannot rent out a property that is not his. Thus, you essentially lived in Mr. Hauser's property without any arrangement. When the property is intended for rent, the dweller must pay, certainly when he typically rents. However, in the absence of a fee arrangement, the dweller pays the going rate for such a rental, \$400 in our case" (C.M. 331:2, 363:6; *Pischei Choshen, Sechirus* 2:[4], 8:4).

"But I never would have rented at that price!" objected Mr. Schein. "Why should I have to pay the regular value?"

"*Ketzos Hachoshen* (363:7) poses a similar question, based on another *Gemara* (B.K. #112a)," replied Rabbi Dayan. "Inheritors, who mistakenly slaughtered an animal that their father had borrowed, pay a discounted price for the animal, not the regular value, since they didn't expect to pay. Why shouldn't we say that here?" (C.M. 341:4; *Sma* 341:10) asked Rabbi Dayan.

"What's the answer?" asked Mr. Hauser.

"There are numerous explanations," replied Rabbi Dayan. "*Kehillos Yaakov* (B.K. #18[2]) explains that the renter could have verified who the owner was; he is not *anuss* (forced). Therefore, he must pay the owner's full loss, not only his own benefit. The inheritors, though, had every reason to assume that the animal was their father's, since it was in his possession. Therefore, they pay only for their benefit, which is evaluated at a discounted price.

"Alternatively, *Nesivos* (363:8) differentiates between a borrower, who can reclaim the payment from the other person and therefore pays the going rate, and a renter" (*Pischei Choshen, Geneivah* 7:14).

"Thus," concluded Rabbi Dayan, "Mr. Schein must pay \$400, the going rate."

 **MONEY MATTERS**  
(Based on writings of Harav Chaim Kohn, shlita)

**DINA D'MALCHUSA**  
**DINA #22**  
**Court-Imposed Interest**

**Q:** In many countries, the law imposes interest on judgments or award of damages. Is such interest acceptable on account of *dina d'malchusa*?

**A:** *Dina d'malchusa* cannot permit something prohibited by the Torah. Thus, it cannot permit the *ribbis* between Jews (*Rema, C.M.* 369:11).

Nonetheless, some authorities consider one who willingly refuses to pay what he owes as a thief, and maintain that *ribbis* does not apply to compensation by a thief who caused loss (see *Bris Yehudah*, ch. 4)

Furthermore, some understand that interest imposed by external sources, not the lender or borrower, is not considered *ribbis*, and may be included in *dina d'malchusa* (see *Rema, Y.D.* 165:1; *C.M.* 74:7)

In addition, Biblically prohibited *ribbis* pertains only to interest on loans that was agreed upon beforehand by the lender and borrower. Other forms of interest are Rabbinically prohibited, which do not always have to be returned once paid (*Y.D.* 161:2, 5).

Thus, in certain cases, a person may be allowed to accept or keep court-imposed interest. A competent halachic authority should be consulted.

 **BHI HOTLINE**

appointed place at the designated time, any profit he earned during the interim period belongs solely to him. They compare this case to that of a worker who has been hired by the day and finds a lost object during the day. The *halachah* in such a case is that the object belongs to him, because the person who hired him is not paying him to search for lost objects, so what he finds belong to him (C.M. 270:3).

In our case, since the agreement was that the driver would wait for an hour and would not work for the passengers during that hour, that time was his own, and the money he earned belongs to him (see *Nesivos* 176:20 and *Business Weekly* #429).

One could argue that the reason that the price for waiting is set at a lower rate than for driving makes it obvious that it is *s'char batalah*, and since the driver worked during that hour, he is not entitled to *s'char batalah*. But in reality, when a person orders a taxi, the price is set not item by item, but as one price for the entire trip, including the driving and the waiting time. Therefore, we consider it as though the driver was occupied during the entire time he was responsible to those passengers — as if he were digging a pit or transporting items for the person who hired him, which would render him incapable of doing any other task — and we consider his "finding" a fare similar to finding a lost object, which is his luck, and we allow him to keep it for himself and he does not have to deduct anything from the original passengers' fare (*Imrei Yaakov, C.M.*, p. 244, who writes that he believes that this is the customary practice in such cases).

But all this is true only if the driver returned to drive them back at the designated time, in which case it is considered *zeh neheneh v'zeh lo chaser* (one benefits while the other does not lose). Since in the case of the passengers from Yerushalayim, he did not return in time, it would seem that all *Poskim* would agree that they do not have to pay for the waiting time, because he did not in fact wait for them and caused them to be late because of his additional fare.

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