

VOLUME I: NUMBER 17: LIABILITY FOR CAUSING ADDED EXPENSE

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Question:

1. Reuven recently became engaged to be married, and is interested in purchasing electrical appliances for his new home. He heard about a store in another city that for one day is offering a substantial discount on the appliances that Reuven and his bride are interested in purchasing. Reuven's friend Shimon happens to be going to that city on the day of the sale. Reuven asked Shimon to please go to that store during the time of the sale and purchase the appliances for him. Shimon agreed. Reuven gave Shimon cash to make the purchases. After Shimon traveled to the other city, he procrastinated and did not arrive at the store in time to benefit from the sale. As a result, Reuven now must pay full price in order to receive the appliances in time to set up his new home.
2. Reuven was late for work. He asked Shimon, who was going to the post office, to do him a favor and mail a check which was payment for a bill. Shimon agreed. Then, Shimon decided not to go to the post office that morning, and waited a week before actually mailing the payment. Because of this, Reuven was obligated to pay a penalty for late payment of his bill.

In the above two situations, does Shimon have any liability for causing Reuven additional expense through his negligence?

Answer:

- A. In the first situation, Shimon is not obligated to compensate Reuven for his additional expense at all. However, Reuven has legitimate complaints and grievances (Taromes-see below) against Shimon.
2. In the second situation, Shimon is obligated to compensate Reuven for the additional expense incurred to him as a result of failing to mail the payment when he agreed to mail

it.

Sources:

To understand the following discussion we must understand the following three concepts in the Halachos of Nezikin (torts).

1. Mazik - Someone who directly inflicts damage or injury on his friend is obligated to compensate him for the damage incurred. It makes no difference if the damage was inflicted intentionally or unintentionally.
2. Gramma - Someone who indirectly causes damage to his friend. In these cases, although it is forbidden to cause such damage, a Bais Din has no authority to force the damager to pay for the damages, except in certain situations called Garmi. (This is discussed in our class on Liability For Bad Advice Vol. 1 No. 6). Despite the fact that a Bais Din can not force the damager to pay, the Halacha still requires him to pay. This is known as Chayav B'Dinei Shamayim, liable in the Heavenly Court.
3. Michusser Amana - Someone who verbally guarantees that he will do something for you and then backs out of that agreement, causing you a financial loss. Such a person is not liable to compensate you even B'Dinei Shamayim (according to the laws of Heavenly Court). However, our Rabbis say that you are justified in having Taromes, complaints and grievances, against him. See the Mishna in Bava Metziah 6:1 for a classic example of this.

Il have not found a source that discusses any practical ramifications of the right to have Taromes. Perhaps it is relevant in that the damager would be obligated to ask the victim for forgiveness. From the Mussar perspective, it has been quoted in the name of Rav Yisrael Salanter, that we see from this Halacha the extent to which the Torah must govern our emotions. We are not permitted to even have a grievance against our friend unless sanctioned to do so by the Torah!]

The Rosh in Bava Kama (Perek 2 Siman 6) discusses the following scenario: If a person evicts an individual from the individual's own home and places a padlock on the home, causing the individual to have to rent a hotel room until the matter is settled and the individual is able to reenter his home, this act is an act of Gramma (Number 2 above). As stated above, in the Heavenly Court (Dinei Shamayim) he is liable, and therefore he must compensate the homeowner for the expense caused by his actions.

It is evident from the above Rosh that the laws of Gramma apply, not only where damage is indirectly inflicted on the victim, but even if your actions only caused him added expense, it still qualifies as Gramma, requiring payment but remaining unenforceable in Bais Din.

However, there is another Rosh in Bava Metzhiah that seems to contradict the above Rosh in Bava Kama. The Gemara there (73b) states that if a wine merchant appoints an agent to go to buy wine for him at the time of the grape harvest when wine is available at a low price, and that agent is negligent and does not acquire the wine on time, causing the merchant to have to purchase the wine at a higher price, the agent is not liable to pay the merchant for his loss. The Rosh there (Perek Eizehu Neshech Siman 6g) states that the agent is exempt because if someone causes someone else an added expense, he may only have Taromes (complaints and grievances) against him (Number 3 above).

The implication of this Rosh is that the agent can not be held liable even in Dinei Shomayim, whereas the Rosh in the case of the home eviction in Bava Kamma states that if someone causes someone else added expense, it is a case of Gramma (where the damager can be held liable in Dinei Shomayim and is obligated to pay, although the damages cannot be enforced in Bais Din)! How can this contradiction be reconciled?

It appears that the difference between the two cases discussed in the Rosh, and the determining factor in liability, is whether or not there is ownership of an item that would ordinarily produce revenue. If someone has in his possession something that generally turns a profit for him, or prevents him from expense (such as a home, that prevents him from incurring a rental expense) and because of someone else's actions he can not receive that profit or must incur that expense, this is considered an act of Gramma that it is forbidden and the damager is liable in Dinei Shamayim to pay for the loss of revenue incurred. By blocking my access to that which is rightfully mine, he is a Mazik (damager), albeit indirectly. This is the situation in Question B regarding paying the bill, where the person paying the bill has the money in hand and merely asked his friend to mail the check. In that case, the friend's failure to follow through on his undertaking deprived Reuven of the benefit of his possession - his money - similar to the case discussed by the Rosh in Bava Kamma concerning the home eviction.

This can be compared to a situation where someone has money designated for investment purposes, but due to the actions of another person he has no access to it and is therefore losing out on the interest revenue. In this case the Yam Shel Shlomo (Maharshal) in Bava Kamma (Perek HaGozel Siman 30), and the Shach in

Choshen Mishpat (292:15) both state that this is a case of Gramma and the damager is liable in Dinei Shamayim. This would also apply in a situation where someone has a store and someone else prevents customers from entering, causing him a loss of revenue.

However, if my friend is not blocking my access to something that is rightfully mine, rather I had entrusted him to do something that would have been profitable for me and he failed to do so, in such a situation the damager has no financial liability at all, but you are permitted to have Taromes (grievances) against him. Such a person is labeled by our Rabbis as a MiChusser Amana - someone who is not trustworthy, as it is stated in the S'MA (333:1) and in the Kitzos HaChoshen there (1) and in the Rema in Choshen Mishpat (at the end of Siman 204). This is the situation discussed in Question A regarding the new appliances for the newlyweds, and in the Gemara in Bava Metzia regarding the wine merchant.