

Can a Borrower Claim Compensation for Damage Done to a Borrowed Item?

Rabbi Shmuel Honigwachs

Case: Reuven borrowed a bike from Shimon, and Levi then accidentally drove over the bike. Reuven demands that Levi pay for the bike since he ruined it. But Levi says, “the bike is not yours, Reuven, you have no right to make a claim for it. I will deal with Shimon directly.”

Question: Is Reuven, the borrower, permitted to make a claim against Levi to pay compensation for the damaged bike, or may Levi refuse to deal with Reuven?

Answer: This case was brought to the Bais Havaad for adjudication. The reason that Levi wished to deal with Shimon directly is because Reuven told him that Shimon would not make a claim for the bike against him, but would rather waive his right to compensation. Reuven, though, felt bad that he could not return the bike intact as he borrowed it. The two relevant questions here are as follows:

1. Is Reuven considered a *baal davar* in this case to make a claim vs. Levi given that he is not the owner?
2. Does the fact that Shimon likely will ultimately waive the claim against Levi mean that the claim does not exist, and that Reuven cannot make a claim on his behalf?

In this case, we decided that Reuven did have a right to make a claim vs. Levi based on the following considerations. First, the Gemara states that a borrower is considered a type of *shomer* (custodian) and has the right to make a claim (question #1).

Second, we have not yet established that Shimon will not make a claim, since he is not aware of what transpired yet. Therefore, we cannot assume at this point that he will not make a claim. This is similar to the ruling in the Gemara that *ye'ush shelo mida'as* (despair of recovering a lost object before one realized it is lost) is not considered valid *ye'ush* (i.e., the assumption that when the owner discovers it is missing he will despair immediately of recovering it does not render the object the property of the finder at this point). The reason is that we do not assume that *ye'ush* occurs automatically before the person discovers that the object is missing.

Here too, we cannot assume the *mechila* occurs automatically, we must wait until he hears about the incident and decides himself whether to make a claim. Based on these considerations, Reuven is permitted to make a claim against Levi.

Question: What is the halacha if Levi does pay Reuven for the bike, but when Reuven later informs Shimon of what happened, Shimon says that no compensation is necessary? May Reuven keep the money given to him by Levi?

Answer: It would seem that Reuven cannot keep the money in this case, since Reuven is merely Levi's *shaliach* (agent) to transfer the money to Shimon and has no authority to retain the money for himself. Although the

Gemara does mention some cases where a *shomer* can gain money through his agreement, our case does not appear to be comparable to those.