

If a Caterer Borrows Flatware, Is He Responsible to Replace The Pieces That Get Lost?

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Question: A caterer was making a larger event than he is used to and needed to borrow extra flatware for another caterer. When it came time to return the borrowed flatware, a few pieces were missing. Is he liable to pay for them?

Answer: A *Shoel* is usually liable to pay for an *oness*. However, the exception to that rule is *meisah machmas melacha*. As we previously explained, the Rema explains this to mean that the owner understands that the item he lends out will be used, and he accepts the risks that this entails. Therefore, if the item is lost through its work, the borrower is *patur*. The Shaar Hamelech extends this halacha to a case where a woman borrowed a pot from her neighbor and inadvertently made it unkosher - for example, she put a milchig spoon in a fleishig pot. If the pot cannot be *kashered*, he suggests that the *Shoel* is still *patur* because this was a risk the owner took by lending out her pot and this case falls under the category of *meisah machmas melacha*.

Other Acharonim disagree and say that an owner never expects the borrower to make her pot *treif*. She does not expect the *Shoel* to be so absentminded as to do something like this and, therefore, never accepted to take this type of loss. Accordingly, they say that the *Shoel* would be liable in such a case.

Still, the Pischei Choshen proposes that a case where a caterer borrows flatware from another caterer, however, does fall under the category of *meisah machmas melacha*. He explains that every caterer knows that the waiters are not so careful with the flatware and it is very common for some pieces to inadvertently get thrown out when the tables are being cleared. Therefore, a caterer should expect this to happen and he does accept this potential loss when he lends out his flatware. Accordingly, the borrower would not be held liable.