

If Someone Borrows a Shofar Without Permission and Cracks It, Is He Liable to Pay for It?

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Question: A *baal tokeah* left his shofar in shul after davening on Rosh Hashanah. A man whose wife had a baby that day had been unable to make it to shul for davening. He came in the afternoon and saw the shofar and decided to blow it to fulfill the mitzvah. He blew it normally, but it cracked from his efforts. Is he liable to pay?

Answer: The Shaarei Teshuva in Hilchos Rosh Hashanah says that he would have to pay for the shofar since he took it without permission. The general rule is that "*Shoel shelo m'daas*", one who borrows something without permission, is considered to be a *gazlan*; therefore, even if the shofar breaks in a way of *meisah machmas melacha*, in the course of normal use, he has to pay for it because he is a *gazlan*.

However, the Sdei Chemed questions the whole premise of the Shaarei Teshuva. He notes that there is a rule that since people are happy when others do a mitzvah with their possessions, they implicitly give them permission to do so. Accordingly, when one picks up shofar to blow it, he has the right to do so and cannot be considered a *gazlan*. This would mean that he is a regular *Shoel* and should not be liable for *meisah machmas melacha*.

At the end of day, it is a *machlokes* between the Poskim if he has to pay. So, it would be ideal if they could work out a compromise. If they cannot, *bais din* cannot force him to pay.

Question: What is the explanation of the Shaarei Teshuva? Why doesn't he say that the man has permission to use the shofar for a mitzvah?

Answer: One explanation might be that even though one normally allows others to use their possessions for a mitzvah, that rule would not apply to a shofar which is placed in the mouth, because people are worried about germs. According to this, we could differentiate between the first day of Rosh Hashanah, when the *baal tokeah* plans on blowing his shofar the next day and may be very worried about germs, and the second day, when he won't be using it again until a year later and probably isn't concerned about germs from today. Perhaps it could be argued that one would have less reason to be liable on the second day.