

If Someone Disobeys Instructions When Renting a Car, Is He Liable For All Eventualities?

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Question: Reuven was going on vacation and rented a car from his neighbor, Shimon. Shimon clearly told him not to take the car off-road and to stick to paved streets. Reuven was staying in a cabin by the lake, at the end of a dirt road. Generally, he observed the rule and parked at the beginning of the road and walked the distance to the cabin. One hot day, he broke the rule and began driving the car down the dirt road. On the way to the cabin, he was carjacked at gunpoint and the car was stolen. Is he responsible to pay?

Answer: At first glance, this would seem to be classic case of *techilaso b'peshia v'sofa boines*. The Gemara says that if a person is negligent with an object he is watching, and the object is subsequently destroyed not because of his *peshia* but through some unforeseen event, he is liable. The Gemara illustrates this with a case where a *shomer* hid money in a thatched hut. This is a good *shemirah* for *geneivah* because thieves don't look for money in thatched huts, but it is a negligent *shemirah* for fire because these huts are very flammable. In the end, the money was stolen from the hut. The Gemara says that the *shomer* is *chayav* because the *geneivah* would not have happened if he had not been negligent by putting the money in that place. Even though it ended up being lost through theft, the *shomer* is liable for his negligence.

In the case in question, the *Shoel* was negligent by not listening to the owner and driving on the dirt road. Therefore, it would seem that even though the car was lost in an *oness*, he should be liable because he is *techilaso b'peshia v'sofa b'oines*.

However, there is a clear Mishnah that says otherwise. It speaks about a case where somebody rented a donkey to take it up a mountain and instead he brought it to a valley, where the air is hotter and could harm the animal. In the end, the animal died, but not from the heat of the valley. Instead, it slipped and fell, which usually is more likely to happen on the mountain than in a valley. The Mishnah says that the renter is *patur* even though he disobeyed his instructions and the *oness* only happened as a result of him not listening to the owner.

The Mefarshim explain the difference as follows: the rule of *techilaso b'peshia v'sofa b'oines* only applies in the case of a true *peshia*. If a *Shomer* doesn't listen to the owner's instructions, that does not automatically render his actions a true *peshia*. Since his actions weren't inherently negligent, he cannot be held liable under this rule. Here too, while driving down a dirt road went against the owner's instructions, it is not inherently an act of negligence. Therefore, the *Shoel* cannot be blamed for unforeseen occurrences and cannot be held liable.