WHAT’S THE LAW?™ – ISSUE 131: METAL MESH!

“O.K.” schemed the trio in confidence. Stealthily and efficiently, Ari, Benji, and David packed together - for the third time that day - a striking snow figurine. But this time...it would be different... This time...it would weather the storm...

“Mark, the bully from down the block, will learn a lesson that he might never forget... ”

Pleased with their enormous edifice, the trio trotted in to Benji’s home to warm their frigid diminutive bodies with some sweet piping hot chocolate. Calmly sipping their chocolademelk, the sudden motor sounds pierced the silence.

The freshly blanketed street was starkly desolate. Mark mounted his Suzuki GSX - R - 1000, eyed the snowman revved up the throttle and made a beeline towards his target.

Smash!!! Splat!!! Mark’s potential severe injuries were cushioned by the thickness of the snow, but his Suzuki and the veiled city’s dumpster transformed into an entangled metallic mesh.

(Based upon a story featured in Zman magazine)

1. Must the trio compensate Mark?
2. Who pays the City?

What’s the Law?

Please email us with your comments, questions, and answers at weekly@projectfellow.org. Read next week’s issue for the answer!

LAST WEEK’S CASE ♦ CASE 243 ♦ UNINSURED

New England: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, used to be known as the insurance capital of the world.

Israel Izkowitz, owner of New England Independent Insurers managed one of the most reliable and successful Independent Insurance Agencies in the region. His firm offered impressive and affordable coverage policies from a range of nearly twenty assorted providers. His unfailing dependability earned him a matchless reputation in the competitive market.

After years of searching, Jonathan Adams found his dream vacation home, perched atop a rolling mountain in The Berkshires. Adams contacted Izkowitz, and discussed with the CSR (customer service representative) various home insurance options. After downloading the appropriate forms from Izkowitz’ website, Adams submitted his application online for an HO-3 provided by The Berkshire Insurance Group, and authorized an automatic online monthly payment from his South Shore Savings Bank Account. A confirmation number was received.

Two months later, Adams wished to upgrade his policy to include coverage on all of the home’s contents. Izkowitz’s CSR told him she’d take care of his account immediately. Shortly thereafter, a horrific fire raged over the mountain, engulfed Adams home and left a pile of ash in its track.

When Adams submitted his claim, Berkshire denied coverage on all the home’s contents. Izkowitz’ CSR had forgotten to fill out the necessary paperwork for Adams’ policy.

According to Halacha, what are Izkowitz’ CSR’s liabilities towards Adams?

What’s the Law?
The Answer:

Izkowitz' CSR is absolved from compensating Jonathan Adams.

Detailed Explanation

Uninsured invokes the following few Halachos.

1. Beit Din commonly lacks authority to demand payment for grama or indirect damages resulting from the defendant's actions or inactions (see 4. below for exceptions).

2. Nevertheless, the defendant carries a personal moral responsibility lotzeis yedei shamayim, to compensate the victim for (a) intentional indirect damages (b) and/or indirect damages as a result of his/her legal negligence; though is generally absolved from such compensation for (c) unintentional/accidental indirect damages due to his/her action or inaction [Choshen Mishpat 386, Imrei Yosher].

3. Merely preventing a second party from accruing potential earnings is by and large categorized as no more severe than an indirect damage and absolved from legal consequences [Bava Metzia 73b, Talmud Yerushalmi Bava Metzia 5: 3], and according to Imrei Binah (see Responsum at end of Sefer on Choshen Mishpat) categorically lacks even the responsibility lotzeis yedei shomayim.

4. Nonetheless, a caretaker / custodian / shomer / bailee accepts upon him/herself a superior responsibility grade and is liable for indirect damages to the bailment resulting from his/her custodial negligence. (A borrower even pays for accidental damages thereof.) [Shemos 22: 6 - 13]

5. An employee is required to provide a duty of care to the employer similar to that of a paid custodian.

As such, Nesivos opines that an employee would be legally accountable for indirect damages resulting from a careless failre to effectively execute his/her prescribed duties. Chazon Ish however, limits such accountability towards articles of custody.

6. Whether to classify the phenomenon of forgetting to carry out a task as (a) legal carelessness/negligence or (b) accidental by nature is a point of consideration with sweeping Halachic consequences [see Orach Chaim 108: Magen Avraham 10, Yoreh Deah 232:12, Choshen Mishpat 291: 7].

(7. For our purposes, we will assume a CSR is an employee of the insurance firm, while an insurance broker at times functioning as an employee of the client and at times of the firm.)

Application

Jonathan Adams lost his home and belongings to a fire. Were his insurance policy in order, as a result of the fire, he could have earned money from Izkowitz commensurate with the sum of the fire damage.

Izkowitz’s CSR forgot to carry out her prescribed task. As a result of her forgetfulness, Adams lost the opportunity to earn money commensurate with his loss from a potential fire; ostensibly an indirect damage lacking even the moral compensation requirement.

Presumably, the CSR functions as Izkowitz’ employee as opposed to Adams’ employee. Thus, any discussion (point 5) of accountability for lost potential gains resulting from employee’s failure to execute prescribed tasks is relevant between the CSR and the firm, not between the CSR and Adams [See Divrei Malkiel Vol. 5 Responsum 232]. Hence, Izkowitz’ CSR is not responsible for Adams loss.