**Breakages in Shops**

***My child knocked over a glass dish in a shop the other day and the shopkeeper tried to make me pay for it (which I refused to do): whom do Jewish business ethics support in this case, me or the shop-keeper?***

You will not be surprised to hear that the answer depends on the precise circumstances.

Secular legal liability generally depends on establishing a basis for responsibility, arising from a contract or from the negligence or other wrong-doing of one side or the other. As a general rule, without fault of some kind or a contractual or other legal assumption of responsibility, there will be no secular legal liability.

The halachah takes account of contractual responsibility and of the presence or absence of negligence; but they are not necessarily the determining factors. In the classic Biblical case of a no-fault accident between two items of property in the course of which one is damaged and the other is not (oxen, in the text, but they could just as well be motor-cars) the financial burden of the accident is in effect shared, rather than one person bearing the entire burden just because his or her property happened to be stronger on the day. In other contexts, the halachah is as rigidly fault-based as in secular law, and the maxim “the person who wants to extract money from someone else is the one who has to prove the liability” is applied. In other contexts, there is in effect a halachic presumption of fault without proof being necessary: the most obvious example being the borrower’s liability for no-fault damage.

The most obvious question in this case will be “whose fault was it?”, looking at all the circumstances. For example, piling dishes in stacks right on the edge of shelves may be making it almost impossible to avoid incidents of this kind (more so if this is a shop where children are expected or encouraged). At the other end of the spectrum, taking children into a shop selling only high-value and fragile articles, is asking for trouble. Which of these two extremes is your case nearer? You may also wish to ask yourself whether your child was having an occasional “off-day” or behaved entirely normally and reasonably.

Some shops have notices up to the effect that breakages must be paid for. Whether those are legally effective will depend in part on whether they are presented with sufficient prominence, and in such a way, as to be clearly requiring an acceptance of responsibility by those who choose to enter the shop. It will also be relevant whether and how the article was handled: no notice of this kind will be sufficient to pass to the customer liability for an article which simply falls apart when examined before purchase in the normal manner.

An additional legal and halachic issue that arises in your case is whether you are responsible for liabilities incurred by your child. Again depending on the precise circumstances, it will sometimes be possible both in secular law and in halachah to disclaim liability for your children’s behaviour; but it is not always an attractive position to adopt (or one that will play an effective part in building our children’s sense of personal moral responsibility – although requiring a contribution from pocket-money might well be part of that process!).

The application of these halachic principles will inevitably produce anomalies, as hard-letter law always does. It is one of the functions of Jewish business ethics to pick up where the strict halachah leaves off, and to suggest areas where people may choose to act *lifnim mishuras hadin* (over and above the legal requirements). For example, if you decide that you are not responsible for the damage you might choose to pay if the price of the dish is trivial for you but may be more significant to the shop-keeper; or you might wish to protect the person who filled the shelf carelessly from the anger of the shop-owner, by paying for the breakage but offering a friendly word of advice at the same time about stacking shelves in the future.

You and the shopkeeper may think it worth referring this case to a *beis din*. *Batei din* are required to pursue compromise before delivering a halachic ruling (in which respect the rabbis anticipated the modern fashion for alternative dispute resolution by a millennium or two). A skilful *beis din* should be able propose a solution which both sides will consider fair in the light of all the circumstances.

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