PROJECT FELLOW

WHAT'S THE LAW? ™ – ISSUE 152: P.A. MALPRACTICE VICARIOUS LIABILITY?

Lisa's last visit to Amfield County Medical Center unfortunately turned out to be disastrous. While presumably a generally healthy woman, Lisa came down with a cold and an earache on Monday Sept 3rd. After a few days of unrelenting suffering, compounded with neck pain and dizziness, Lisa's friend Minna drove her to Amfield County Medical Center to have her condition checked out.

They were finally seen by a man, whom they presumed was a medical doctor. In fact, the man was not a medical doctor, but a physician's assistant, employed by the Coastal Physician group which was contracted by Amfield medical center. Lisa was discharged with a diagnosis of a sore throat and ear infection. The physician's assistant prescribed due medication and a treatment plan.

Two days later, the situation worsened drastically and Lisa began to become disoriented and soon lost consciousness. Minna immediately called 911. The ambulance brought her to the emergency room. Lisa was immediately transported to the South Georgia Medical Center in Valdosta, Ga.

A spinal tap showed that Lisa was suffering from bacterial meningitis. She slipped into a coma and Minna was told that Lisa might not survive. However, a week later, Lisa came out of the coma.

Unfortunately, as a result of the untimely diagnosis of bacterial meningitis, Lisa suffered near blindness, balance and ambulating deficiencies, as well as severe damage to her inner ear. As a result, Lisa, who was declared totally disabled by the Social Security Administration, must use a walker to ambulate.

- *According to Torah law, is a doctor liable for sicknesses which could have been averted with proper and timely diagnosis?*
- *According to Torah law, who is liable for a Physician's Assistant's malpractice – the PA, the physician who employed her, or the medical facility which contracted with the physician?*

What's the Law?

Please email us with your comments, questions, and answers at weekly@projectfellow.org

LAST WEEK'S CASE # 267: ELECTION BREAKDOWN!

If one New Hampshire region is synonymous with recreation, it's the White Mountains. 48 4,000 foot peaks are found here, along with the highest mountain in the Northeast, 6,288-foot Mt. Washington; but it is the 800,000-acre White Mountain National Forest, that truly shapes the region.

The Kancamagus Scenic Byway offers one of the most beautiful routes through New Hampshire's White Mountains, especially during the fall foliage season.

A trip across the "Kanc" is a highlight for most visitors to the 800,000-acre White Mountain National Forest. Rushing rivers, a covered bridge, breathtaking vistas and

possibly a glimpse of an elusive moose are some of the cherished memories.
Kalman Klein and his adventurous high school roommates planned a weekend getaway to the Kanc; renting a 2001 white Subaru Forester from patriotic Grandpa Erich, the school's cook; on condition they hang a flag supporting incumbent A on the vehicle's antenna.
Driving under normal conditions; their Forester broke down on route 302. The roadside mechanic was rather infuriated to discover an enormous promotional roof bag supporting incumbent B.

The Forester broke down under normal usage conditions. The Klein crew altered the rental conditions, yet the mishap occurred irrespective of which promotional material they hung from the vehicle.

- *Who is responsible for the repair?*

The Answer
Grandpa Erich pays for the repair.

Detailed Explanation

1. While a borrower is liable even for unforeseen damages *(onsim),* A renter is usually absolved from paying for unforeseen damages and damages due to normal usage [Choshen Mishpat § 307:1, 5 §340:1].
2. A rented a donkey on provision to trek with it up a mountain. A decided to lead it through the valley instead. The donkey inadvertently slipped and broke its leg, due to no recklessness on A's part. As the risk for slippage while walking in the valley is *less* than while trekking up a mountain, A is absolved from paying for damages.

3. A rented a donkey on provision to lead it trough the valley. A decided to climb with it up the mountain instead. The donkey inadvertently slipped and broke its leg. As the risk for slippage while climbing a mountain is more than while walking through a valley, A is liable to pay for damages.

   In other words, a renter who changes from the terms of the rental agreement is liable for any damage that ensues which can be fairly attributed to the changed conditions [Choshen Mishpat §309:1].

4. By using the article in conflict with the rental terms, the game rules change.
   Liability probability increases. The payment for usage conceivably decreases.

Explanation:

By changing the terms of the rental agreement, the renter becomes liable for any damage that can be attributed to the change – even unforeseen occurrences. Liability probability increases! Yet by overstepping the rental terms, he effectively dissolves the rental agreement even if the article remains intact. Using the article beyond the rental parameters - the user pays for benefiting from the article even if the benefit value is less than the agreed upon rental fee [Ketzos HaChoshen §309:1].

Application:

The Forester broke down as a result of normal management of the vehicle. Renters (lessees) are absolved from paying for damages resulting from normal usage thereof. While the boys may have used the vehicle outside the parameters of the rental agreement, the breakdown could have occurred irrespective of which incumbent they chose to promote. As the breakage cannot be attributed to the Klein crew's misuse, they remain absolved from paying for its damage.