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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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האה"ח מרת מאטיל לאה (Marta) בת הר"ר יוסף אלימלך הלוי שראן ע"ה

## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### MONEY IN THE WALL (PART 2)

The Steins renovated their house. When the contractor, Mr. Hyman, tore down one of the walls, he discovered a faded envelope with $50,000 cash in it.

The house had changed hands a number of times and was owned years before by gentiles. Rabbi Dayan had ruled that the money was not acquired by the subsequent Jewish owners but rather belonged to the one who found it.

This raised a dispute between Mr. Hyman and Mr. Stein. "I found the envelope," argued Mr. Hyman. "Therefore, the money should be mine!"

"But you were working for me at that time," countered Mr. Stein. "I was paying you for what you did, so I should get the benefit!"

"That's not precise," replied Mr. Hyman. "First, I'm an independent contractor, paid by the job. I'm not exactly your employee. Second, even if I were your employee, what does the envelope of money have to do with the job?! I was hired to renovate the house; finding the envelope of money was completely incidental."

"Despite this, the money should be mine," insisted Mr. Stein. "Bottom line, you were working for me and I was paying you, and in the course of the work you found money in my house. At first you even thought that the money might be mine and asked me whether I hid money in the wall. We also counted the money together, and I checked into the house records. I'm willing to split the money with you."

"Why should I split the money?"" replied Mr. Hyman. "I don't think all this makes any difference. Bottom line, I found the money, so it's mine!"

The two turned to Rabbi Dayan, and asked:

"**Does the money found belong to the worker or to the employer?"**

"The *Gemara* (*B.M.* 12b) teaches that a worker who was hired for a specific task can keep what he finds, since finding the *metziah* is not part of his job," replied Rabbi Dayan. "This is true even if he was hired for whatever work the employer gives him."

However if he was hired to collect *metzio*s (findings), such as if the river were drained and the worker was hired to collect stranded fish, here the employer acquires them – even if it's money that the worker finds when collecting whatever is found – since the worker's hand is like the employer's. Similarly, if someone was hired for general work was then instructed



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

### A CHILD'S DAMAGES

**Q:** As a store owner, I deal with a common problem: parents bring their children into my store, and the child plays with an item and breaks it, typically when the parent isn't looking. Some parents claim that they are exempt from paying for damages caused by their children. Are they correct?

**A:** Parents are not liable for damage caused by their children, and the children are also exempt from payment for those damages (*Shulchan Aruch, C. M.* 424:8; in issue #167 we discussed whether the child is required to pay when he becomes an adult). Furthermore, although a person is required to pay for damage caused by his possessions (i.e., his animals) if he was negligent in preventing them from causing damage, a child is not "owned" by the parent, and therefore the Torah does not obligate him to compensate for the damages he inflicted.

It is said that the Chofetz Chaim illustrated the principle that *daas baal habayis* (a layman's mindset) is opposite to that of *daas Torah* (see *Sma* 3:13) by noting that a layman would assume that a person should be required to pay for damages caused by his child but not those caused by his cat or his rooster. The Torah tells us the opposite: we *are* responsible for damage caused by our animals, but *not* for damage caused by our children (in *Maaseh Ish*, v. 4, p. 98, this same point is made in the name of Rav Chaim of Brisk).

Some *poskim* deliberate whether a parent is obligated to pay for his child's damages if it was obvious that the child would eat or damage merchandise in a store. A halachic precedent for such liability can be derived from the liability of a person who places an animal – even one he doesn't own – directly onto another person's crops (*C.M.* 394:3).

The *Rishonim* dispute why the person is liable in this case.

## CASE FILE

to search for *metzio*s, whatever the worker finds belongs to employer, since this is now his job (*C.M.* 270:3; *Sma* 270:12).

In such cases, the employer acquires the *metzio*s even if the employee did not intend to acquire them for him. Moreover, *Machane Ephraim* (*Hil. Shluchin* #11) writes that even if the worker intended to acquire the *metziah* for himself, the employer still acquires it, since the worker's hand is like the employer's (*Nesivos* 188:1).

All this relates to a *po'el*, a time-based worker, who is paid an hourly, daily or monthly rate. However, regarding a *kablan*, who is paid a flat rate for the job and acts independently, his hand is not like the employer's, and any *metziah* he finds certainly belongs to him (see *Hafla'ah, Kuntress Acharon, E.H.* 93:28).

In our case, Mr. Hyman was an independent contractor (*kablan*). Even if he were a *po'el*, he was hired to renovate and demolish the wall, not to search for lost treasures. Thus, he can acquire the money for himself. Even if he were hired for general purpose work, the finding would still be his.

"Moreover, even if Mr. Hyman mistakenly thought that the money belonged to Mr. Stein, most authorities maintain that Mr. Stein would not acquire the money," concluded Rabbi Dayan. "Only if he had picked it up initially with intention to acquire it for Mr. Stein, would Mr. Stein acquire it" (*C.M.* 269:1; *Ketzos* 259:1; *Pischei Choshen*, *Aveidah* 9:14[36],29).

**Verdict: If a worker finds a *metziah*, it belongs to him, unless he was initially hired to finds *metzio*s or was later instructed to do so.**

## MONEY MATTERS

APOTROPUS #6
**(FINANCIAL GUARDIAN)**
**Fiduciary Guardian**

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

**Q: A close relative tended to the orphans' financial needs without official appointment as a fiduciary guardian. Are his actions valid?**

A: A person whom the orphans rely on to tend to their needs becomes a de facto *apotropus*. Even if they relied on someone who *beis din* does not generally appoint as an *apotropus*, such as a woman, or their mother, it is like she was appointed an *apotropus*, and her transactions on their behalf are valid (*C.M.* 290:4).

Some say this is only when the orphans are at least nine and have some financial understanding; others do not differentiate (*Tur* 290:31; *Pischei Teshuvah* 290:5).

Some suggest that a de facto *apotropus* should not buy or sell the orphans' assets without *beis din* overseeing, since there are many unscrupulous or even well-meaning but financially inexperienced people. If *beis din* sees that they acted properly, they will uphold their actions *(Aruch Hashulchan* 290:42).

[Note: Although *Halachah* recognizes a de facto *apotropus*, he will not be recognized in secular courts without official appointment.]

## BHI HOTLINE

*Tosafos* (*B.K.* 56b, s.v. *Hamaamid*) considers this a case of *shein* (lit. a tooth; figuratively, damages caused by an animal while it derives pleasure from the experience). Since the person caused the animal to eat the crops, we consider it as though it is his own animal and require him to pay. According to this approach, if the person directly caused an animal to eat in *reshus harabbim* (the public domain), he would not be required to pay, because no damages are awarded for *shein* in *reshus harabbim*.

The Rashba maintains that since the person placing the animal on the other person's property *knew* that it would eat the crops, the animal is considered an extension of the person, and it is considered as though the person himself caused the damage (*adam hamazik*), and is liable even for damages caused in *reshus harabbim* (the Rema rules according to the Rashba).

Some *poskim* write that according to *Tosafos*, since a child is not a person's property, even if a parent brought a child into a store where he was certain to do damage, the parent still isn't liable. But according to the Rashba, any adult – i.e., not only a parent – who brought a child into another person's house or store in such a way that the child would certainly inflict damage is no different from one who placed an animal on another person's crops, and the adult is required to pay for any damages the child causes (*Nachalas Eliyahu* 108; similarly, *Shu"t Har Tzvi* rules that when a person brings a child into a candy store and fails to watch him carefully, it is obvious that the child will eat some candy, and he is required to pay for whatever the child ate).

There are limitations to liability in such cases, however. The Rashba considers this a case of *adam hamazik* only if the person placed the animal in a position in which it doesn't have to move at all in order to eat. If the animal needs to approach the crops, it is not considered a case of *adam hamazik*, and the person's liability is subject to the rules of *shein* (see *Pischei Choshen, Nezikin,* ch. 5, fn. 87 and *Chazon Ish, B.K.* 1:7).

Accordingly, even the Rashba would require a person to pay for damages only if he placed a child directly in front of the candies. Furthermore, the child has to be young enough that it's unfathomable that he would exercise self-control and not eat any candy.

We must emphasize that if the parent was negligent in allowing his child to cause damage, he must pay *latzeis yedei Shamayim* (to avoid Heavenly judgment), as he would with any case of *grama* (causation of damage). But if he had no reason to believe that his child would cause damage, there is no obligation to pay even *latzeis yedei Shamayim*. Nevertheless, in many instances it is worth compensating the store owner in order to maintain peace. (See also *Teshuvos v'Hanhagos* 3:477; *Shu"t Vayeishev Moshe* 2:10; *Imrei Yaakov,* p. 148; and *Kava d'Kashyasa* 24.)

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com