

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #522 | Shoftim | Friday, August 21, 2020 | 1 Elul 5780

Donated L'Zchus those in Klal Yisroel seeking a shidduch



## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### 'YOUR EMPLOYEE DAMAGED!'

Yoni owned a warehouse and rented out storage space to businesses. He allotted a certain amount of space free of charge to charitable organizations.

One organization had stored large quantities of medical supplies. It recently procured its own building, and wanted to move the supplies out.

"Thank you for your help during the past few years," the director said to Yoni. "We'd like to arrange for someone to move our supplies out."

"It was my privilege," replied Yoni. "Come anytime you want between 9 and 5."

"OK," said the director. "We'll send someone with a truck to clear it out."

A few days later, a truck pulled up outside the warehouse. The driver introduced himself to Yoni. "I work for Shlomo's Shipping," he said. "We were hired to move the medical supplies from your warehouse."

"Sure, I'll show you where they are held," Yoni said. "They're on the second floor."

Yoni took the driver to the room where the medical supplies were held. "There's an elevator just down the hall," he said.

The driver moved the supplies out of the room and then packed the elevator to the hilt. The elevator creaked under the heavy load as it went down, and then stopped.

The driver was able to unload the elevator, but it would not budge afterwards.

"I'm going to have to call the service company," Yoni said.

The serviceman came. "The elevator was overloaded," he told Yoni. "It put a strain on the brakes and they have to be replaced."

Yoni turned to the organization to cover the repair of the elevator. The organization forwarded him to Shlomo, who was hired for the move. Shlomo forwarded Yoni to his driver, who used the elevator. The worker denied responsibility, since he was allowed use of the elevator, and, furthermore, was hired by the organization and an employee of Shlomo.

Yoni called Rabbi Dayan and asked:

#### "Who is liable for the damage to the elevator?"

"Although you allowed the organization to use the warehouse, and the driver to use the elevator, you did not allow them to damage," replied Rabbi Dayan. "Had the worker used the elevator according to the regulations, he would be exempt, like any other borrower who is exempt if *meisa machamas melachah*, the damage occurred in the course of regular

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that allowing your  
employees to  
buy non-kosher  
lunch on your  
company's credit  
card can entail  
business (benefit)  
from Ma'achalos  
Asuros."

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## BHI HOTLINE

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

## THE GREAT ESCAPE

**Q:** A boy brought his pet parrot to camp. Another camper, who is above *bar mitzvah*, came into the bunk, opened the door of the cage and the parrot flew out and disappeared. Is the boy who opened the cage obligated to pay for the parrot?

**A:** If a person opens or unlocks the door to someone else's house, and thieves enter the house and steal the homeowner's belongings, the person who opened the door is only liable for *grama* on the damage he caused (*Shu"t Maharashdam, C.M. 365, cited in Shach 396:2; Yam shel Shlomo, B.K. 83:3*). As is the case with every *grama*, *beis din* cannot obligate him to pay damages, but he is required to pay *b'din Shamayim* (to avoid Divine judgment). The reasons this is considered only a *grama* are: (1) he didn't do anything directly to the objects he caused to be stolen, and (2) it was not certain that any damage would occur due to his action, as perhaps no one would enter the house.

Some *poskim* rule that this is true only for objects, not animals. If someone opened another person's door or broke his gate and then an animal escaped and got lost or was stolen, he is required to pay - provided that the gate was strong enough that the animal could not have escaped had he not created an opening for it (*Tur 396, citing Ramah*). According to these *poskim*, since an animal's nature is to escape when it sees an opening, leaving the door or gate open is considered certain damage (*garmit*), and the perpetrator is therefore liable for damages (*Perishah, ad loc.*). Furthermore, they explain, since the safety of the animal is dependent on the gate being in place, removing that gate is akin to directly damaging the animal (*Yam shel Shlomo, op cit.*).



## CASE FILE

usage" (C.M. 340:1).

"However, since the driver overloaded the elevator, he is liable for the damage to it. Although he did not damage intentionally, he was nonetheless negligent, and a person is liable even for unintentional damage" (C.M. 378:1).

"Although the driver is an employee of the shipping company, who was in turn hired by the organization, the rule is *ein shaliach l'dvar aveirah* (one is not considered an agent for prohibited activity), so that the responsibility of the damage is not transferred back to the shipping company or the organization" (Rama, C.M. 348:8).

"In truth, there is some discussion if someone was explicitly hired to damage. Some maintain that the hand of a hired employee is like that of the employer even in situations in which an unpaid agent would otherwise not be considered halachically an agent (see *Machaneh Ephraim, Shluchin v'Shutfin* #11). However, in this case, the driver was not hired to overload the elevator, but to move the supplies in a proper manner, so that he certainly would not be considered as an agent or extension of the employer for the damage" (*Pischei Choshen, Nezikin* 1:[44]; *Geneivah* 4:[67]).

"Nonetheless, in many situations the employee is covered by the employer's insurance. This does not relieve the employee completely of his liability, but since the common practice is to collect from the insurance, the worker could relieve himself in this manner. However, if it is not possible to collect from the insurance, the driver who damaged remains liable" (see *Pischei Choshen, Pikadon*, 8:18).

**Verdict: If the driver overloaded the elevator, he is liable for the damage, unless it is covered by his employer's insurance.**



## MONEY MATTERS

### APOTROPUS #12

#### FIDUCIARY GUARDIAN

Based on writings of Harav Chaim Kohn, shlita

#### Compromise on Behalf of Orphans

לע"נ ר' יחיאל מיכל ב"ר חיים זוג' ח"י בת ר' שמואל חיים ע"ה

### Q: Under what circumstances can *beis din* or an *apotropus* compromise on behalf of orphans?

A: Although we generally do not attribute forgoing (*mechilah*) to minor orphans (*B.M.* 22b), *beis din* can compromise and forgo within reasonable measure on behalf of the orphans to spare them from disputes, whether among themselves or with others. Furthermore, *beis din* can declare that the orphans should not be able to object when they mature (*C.M.* 12:3-4; *Rama* 110:11).

Similarly, an *apotropus* can compromise on behalf of the orphans, whether he was appointed by *beis din*, the father, or was relied upon by the orphans. He can compromise to save them from loss, for example, if a creditor is willing to settle for partial payment, or to gain otherwise, such as to provide a discount to a debtor for immediate payment of the remainder (*Pischei Teshuvah* 12:7; *C.M.* 290:24; *Respona Rashba* 1:891).

Preferably, the *apotropus* should consult with *beis din* on such issues (*Aruch Hashulchan* 12:4).



## BHI HOTLINE

Other *poskim* argue that even if an animal escaped because someone opened a door or destroyed a gate, it is still considered *grama*, and the perpetrator is required to pay only *midin Shamayim* (*Tur* and *Ramah, op. cit.* 4, with *Sma* 8).

Among those who rule that it is only *grama*, some maintain that this is due to the first reason discussed above regarding objects – i.e., he did not do anything directly to the animal by leaving the gate open (*Rosh, B.K.* 9:13; *Sma, ibid.*). Others say that the reason is that we can't be certain that the damage will occur, because it is possible that the animal won't escape, and even if it does, it is not guaranteed to be stolen or get lost (*Ramban, Dina D'garmi; Shach* 155:22).

This dispute has practical ramifications, such as in a case where the perpetrator did something directly to the animal – hitting it, for instance – to get it to leave. According to the first approach, as soon as he did something to the animal, he became liable for the damage. According to the second approach, however, this act is still only a *grama*, because we can't be certain that the damage will occur, because even if the animal does walk out it might not get lost or stolen.

Some *poskim* rule that *beis din* cannot assign damages in such a case (*Shach* 396:1), which indicates that these *poskim* follow the second approach (see *Mishpat Hamazik, vol. 2, 25:7*).

Another ramification is if the animal was secured to a gate, and someone unchained it and it walked off and cannot be found. Some *poskim* rule, in accordance with the first approach, that the perpetrator would be responsible because he untied the animal itself (*Chavos Ya'ir* 204; cited in *Pischei Teshuvah* 396:1).

(This *halachah* would seem to be limited to an animal that will walk off once it is unleashed. If someone unchained someone else's bicycle from a gate, and then it was stolen, that is more likely to be a *grama*, and his obligation to pay would be only *latzeis yedei Shamayim*.)

Returning to our question, opening the door to the parrot's cage is akin to opening another person's gate and allowing his animal to escape. Since there is a dispute between the *poskim* whether the perpetrator is liable in *beis din*, we cannot obligate him to pay, but he must pay *latzeis yedei Shamayim* for having caused damage.

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

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