

BUSINESS WEEKLY



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

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

MAFTIR YONAH In the shul where Rabbi Dayan *davened*, *Maftir Yonah* was auctioned off on Yom Kippur night. Mr. Amitai bought the *aliyah* for a significant sum.

In the morning, Mr. Amitai did not feel well. As *Shacharis* progressed, he felt even weaker. He had preexisting medical conditions, so he consulted one of the doctors in the shul whether he could continue fasting.

"Given your medical history and how you feel, you need to get liquid into you," the doctor replied.

Upon consultation with Rabbi Dayan, they concluded that drinking in small quantities with 10 minutes intervals should be enough, provided that Mr. Amitai remained stable. "If you get weaker, the doctor says that you need to drink regularly," Rabbi Dayan warned him. "We don't take chances with *pikuach nefesh* (danger to life)!"

By the afternoon, Mr. Amitai felt much better, enough to return to shul. Just before *Minchah*, the *gabbai* approached him. "I understand that you weren't feeling well this morning," he said. "How are you feeling now?"

"Thank G-d, much better!" answered Mr. Amitai. "The doctor said that I should drink in small quantities, and it helped."

"I know that you bought *Maftir Yonah*," said the *gabbai*. "If you're not fasting, though, I'm not sure that I can give you the *aliyah*."

"I very much want *Maftir Yonah*," replied Mr. Amitai. "I pledged a very respectable sum but won't give it if I don't get the *aliyah*."

"It's not up to me," said the *gabbai*. "I'll have to ask the Rabbi whether I can call you up. If not, I don't know what to say about the money. The shul can't afford to lose out entirely on the sale of *Maftir Yonah*. It's a significant portion of the Yom Kippur donations!"

Mr. Amitai and the *gabbai* went over to Rabbi Dayan and asked:

"Can Mr. Amitai be called up for *Maftir Yonah*? If not, what about his pledge?"

"*Shulchan Aruch* writes not to give an *aliyah* on a fast day to one who is not fasting," replied Rabbi Dayan. "However, the *poskim* qualify that this relates to a *leining* that is due to the fast. However, if *leining* is required regardless of the fast, then he can receive an *aliyah*" (O.C. 566:6).

"Yom Kippur is a holiday, in addition to it being a fast day. Therefore, Rabi Akiva Eiger (Responsum 1:24) rules, even one who does not fast can receive an *aliyah* for *Shacharis*, since



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

PARENTAL LIABILITY, PART 2

Q: In the previous issue, we discussed the liability of a person who gives a child a banana to eat, and the child throws the peel onto the ground, causing someone to fall and get injured. We determined that the parents are liable for injury caused if the person falls directly onto the peel. What is the *halachah* if the person slips on the peel but is injured by hitting the ground next to the peel?

A:

We must preface our discussion by delving into a fundamental dispute regarding the liability of a person who creates a *bor* (lit. pit, but halachically defined as any obstacle placed in the public domain).

The *Amora Rav* (B.K. 50b) opines that when the Torah discusses a *bor* it is referring to a pit into which an animal falls and dies from the rancid air inside. But if the animal trips and is killed by the impact of the fall into the pit, the person who created the pit is not liable because the injury was caused by "*karka olam* (the ground of the world)," which doesn't belong to him. Even Rav agrees, however, that if the obstacle is an object, such as a knife, stone or package (as discussed in the previous issue), the owner is responsible, since the damage was caused by his object (*Tosafos* ibid. s.v. *L'Shmuel*).

Shmuel argues that even if the animal dies as a result of the impact of the fall, the Torah holds the person who created the pit liable. We rule according to Shmuel, but the *Rishonim* dispute how to interpret his opinion. Some *Rishonim* limit liability to cases in which

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CASE FILE

every holiday has *leining* in *Shacharis*." [Nonetheless, some recommend that he avoid the fifth and sixth *aliyos*, since they mention fasting explicitly (*Piskei Teshuvos* 621:1).]

"However, Rabi Akiva Eiger remains in doubt regarding the *leining* in *Minchah*, which does not exist on a regular holiday, whether it parallels the *leining* and *haftarah* on a fast day (even though we read different portions) or also results from the sanctity of the day.

"This question is not resolved. The prevalent practice is to require someone who is fasting, but *Chasam Sofer* (1:157) and *Minchas Elazar* (2:74) are lenient. Where it will cause embarrassment to the donor, the *gabbai* can rely on the leniency.

"Moreover, since Mr. Amitai ate or drank only minimal *shiurim*, many consider him as still fasting, so that he can receive the *aliyah* (*Shemiras Shabbos K'Hilchasah*" 39:38[122]).

"If Mr. Amitai could not be called up, he would not be required to pay his pledge, unless he decides to award the *aliyah* to the Rav or a relative," concluded Rabbi Dayan, "since he was prevented on account of medical *oness*. The pledge was made with the understanding that he would receive the *aliyah*. The *gabbai* could give the *aliyah* to the bidder preceding Mr. Amitai, who should pay what he had offered" (*Y.D.* 232:6, 12; *Magen Avraham* 154:23).

Verdict: It is questionable whether a person who needed to eat or drink on Yom Kippur more than minimal *shiurim* can be called for *Maftir Yonah*. If he was not called up, he is not required to honor his pledge.



MONEY MATTERS

APOTROPUS #17 FIDUCIARY GUARDIAN

Based on writings of Harav Chaim Kohn, shlita

Donating to Charity

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

Q: Should the *apotropus* contribute to the *Yamim Nora'im* appeal from the orphans' assets?

A: *Tzedakah* is generally not levied on minor orphans, even if the estate is substantial and even for a great *mitzvah* like *pidyon shevuyim* (redeeming captives), since the *mitzvah* of *tzedakah* has no defined limit. However, the *apotropus* can give charity with the permission of *beis din*. Similarly, the *apotropus* can donate *tzedakah* so that the orphans should have a good reputation, if the estate has sufficient money (*C.M.* 290:15; *Y.D.* 248:3).

However, if the *tzedakah* has a fixed amount, such as a recommended donation for *Yamim Nora'im* seats, the *apotropus* should give (*Rama*, *Y.D.* 248:3; *Aruch Hashulchan*, *C.M.* 290:30).

Furthermore, if the *apotropus* wants to give charity in the merit of the orphans, such as if one of them became ill, he may do so. Even if the child did not survive, the *tzedakah* recipient does not have to return the money to the remaining orphans (*Pischei Teshuvah*, *Y.D.* 248:2).



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the injury is caused when a person falls directly onto the obstacle created by the *mazik* or the ground beneath the obstacle (*Tosafos*, *B.K.* 28b, s.v. *Venishof*, and 50b s.v. *L'Shmuel*, according to the first answer). Others maintain that even if the person is injured by falling onto the ground, not directly onto or into the obstacle, the *mazik*, who is solely responsible for his fall, is still liable (*ibid.*, according to the second answer; *Rashba*; *Nimukei Yosef*).

A case in point would be if a person spilled water or oil in the public domain, causing someone else to slip and fall. According to the latter *Rishonim*, the *mazik* would be liable even if the injury was caused by the ground outside the area of the spill, whereas the former *Rishonim* would hold him liable only for a fall directly into the area of the spill (*Sma* 412:9).

The *Shulchan Aruch* (*C.M.* 411:1; *Sma* 410:47; 412:9; see *Sma* 410:30 and *Derishah* 411:1) rules according to the first approach, stating that if a person trips on a stone and falls on the ground, the person who placed the stone there is not liable. Others (*Bei'ur HaGra*, *C.M.* 411:5) cite the second opinion as well. The Chazon Ish (*B.K.* 5:11) rules that there is no conclusive ruling on the matter.

Returning to our case, based on the above dispute, we cannot hold the parent fully liable for the damage caused if a person is injured by the ground next to the banana peel.

Since their negligence caused the damage, however, they should compensate the victim *latzeis yedei Shamayim* (to avoid Heavenly Justice), as is the case with any *grama*. Some *poskim* rule that since the Torah limited the liability caused by a *bor* to personal injury (*nizkei adam*), there is no obligation to pay for damage caused to objects (*nizkei keilim*) even *latzeis yedei Shamayim* (*Minchas Shlomo*, *B.K.* 29:4; *Chazon Ish*, *B.K.* 2:7 deliberates about this matter; see *Shu"t Maharsham* 2:138, based on *Tosafos*, *Chullin* 130b). But that's only true because the Torah specifically releases the person from liability for property damage through a *gezeiras hakasuv*. In the case of a person who is injured outside the immediate area of the *bor*, there is no *gezeiras hakasuv*, and such a case is therefore treated like any other case of *grama*, for which the *mazik* should pay *latzeis yedei Shamayim*.

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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