

BUSINESS WEEKLY



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

Issue #526 | Rosh Hashana | Friday, September 18, 2020 | 29 Elul 5780

Donated L'Zchus those in Klal Yisroel seeking a shidduch



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

HOTEL TOWEL The Blau family spent Rosh Hashanah with their relatives at a hotel far from home. When the family came home, Mrs. Blau noticed that a hand towel from the hotel had gotten mixed in with their laundry and was accidentally brought home.

"That's strange!" exclaimed Mrs. Blau. "I guess the towel fell in, or someone accidentally threw it into the laundry bag instead of the towel pile," she thought. "I'll wash the towel," she said to herself. "When my husband comes home, I'll ask him what to do."

That evening Mrs. Blau told her husband that she found a hand towel from the hotel mixed in with the laundry. "What should I do with the towel?" Mrs. Blau asked. "I'm not going to travel back to the hotel just to bring it to them!"

"Obviously not," agreed her husband. "But maybe you should mail it back to them?"

"Do you really think they care about a hand towel?" asked Mrs. Blau. "I'm sure this happens occasionally, and they replace the towels frequently anyway."

"The hotel may not care," said her husband, "but I can't say that for sure."

"Anyway the mailing expense is probably more than the cost of the towel," noted Mrs. Blau. "They don't gain anything unless we pay for the mailing."

"It is a bit strange to expect us to pay more than the towel is worth just to get it back to them," commented Mr. Blau.

"Could you find out for me?" asked Mrs. Blau.

Mr. Blau called Rabbi Dayan. "I'm sorry for troubling you with this question..." he began.

"No problem, go ahead," said Rabbi Dayan.

"We were at a hotel for Rosh Hashanah and accidentally brought back a hotel towel," Mr. Blau said. "What should we do with it?"

"There is a dispute about the law of one who steals by mistake," replied Rabbi Dayan. "This is based on a *Gemara* (B.K. 79a) that addresses the case of someone who told another to take and guard an item for him, but it actually belonged to someone else. Another *Gemara* (*Kesubos* 34b; B.K. 112a) addresses the case of inheritors who slaughtered an animal they mistakenly thought was theirs.

"Some say that even an unintentional thief is liable for the full value of the item should it

"Did You Know that vendor agreements can have clauses that may be ribbis concerns but can often be corrected with halachic guidance."

Ask your Rav or email
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guidance.



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

PARENTAL LIABILITY, PART 1

Q: I read in one of your recent issues (#516, published in *Hamodia* on July 8, 2020) that parents are not responsible for damages caused by minor children, except in certain cases where damage was certain to occur, in which case they are required to pay under the rubric of *garmi*.

I'm wondering whether your ruling applies to two cases that are somewhat common: (1) a parent leaves an object – such as a tool – on a porch, and a child throws it over the side, causing damage on the way down; (2) a parent gives a child a banana, and the child discards the peel onto the ground upon finishing it. A person slips and falls on the peel and gets hurt or has their clothing or other belongings ruined.

Would parents bear responsibility in these cases?

A: Before examining the absolute letter of the law relevant here, we would like to reiterate what we already wrote in the essay you referred to: even if parents are technically absolved from paying for damages wrought by their children, if they knew that the damage was likely to occur, their failure to prevent that damage is considered *grama* (causation). While *beis din* cannot compel the responsible party to pay for *grama*, he is required to compensate the victim to avoid Heavenly justice (*latzeis yedei Shamayim*).

In the cases you described, however, there is a more direct reason to require the parent to pay, because he would be considered directly responsible for the damages.

Chazal (B.K. 6a) taught that if a person places an object where it can be carried to another location by the wind and cause damage en route, he is responsible for damages under the category of *eish* (lit. a fire). Therefore if someone places a stone, knife or package on a rooftop, and a wind that is typical for that locale (*ruach metzuyah*) sends it aloft and it causes damage before it



CASE FILE

get lost, even if lost through *ones*. However others maintain that he is not fully liable as a thief, only as a regular guardian or in the case of food, for the benefit he had from it" (*Ketzos* and *Nesivos* 25:1; *Nesivos* 291:10; *Pischei Choshen*, *Geneivah* 4:[19]).

"Nonetheless *Machaneh Ephraim* (*Gezeilah* #7) writes that this discussion applies only when the person intended to take responsibility for or possess the item, albeit without knowledge of the theft. However, if a person simply took an item because he erroneously thought that it was his, he certainly is not considered a thief. All the more so if the hotel's towel got mixed with your laundry unknowingly. Nonetheless, there is a *mitzvah* of *hashavas aveidah* in this situation, and using it without permission could constitute theft. Although the item is not expensive and the owner will probably not demand that you return it, since you took it wrongly, you should not rely on this.

"Therefore, you should call or email the hotel and ask what they want you to do with the towel," concluded Rabbi Dayan. "Most likely, they will respond not to bother returning it; you can then use it. If they want the towel back, you have the responsibility to mail it. Although the owner is usually responsible to collect his lost item from the finder, here you distanced the towel from its place, which is a form of damage, and are required to return it to its proper place" (see *Aruch Hashulchan* 367:1; *Nesivos* 232:10; *Chashukei Chemed*, *R.H.* 22a).

Verdict: Accidentally taking something is not considered theft, but there is a responsibility of *hashavas aveidah*. Therefore, you should contact the hotel and ask whether they want you to send the towel back.



MONEY MATTERS

APOTROPUS #16

FIDUCIARY GUARDIAN

Usage and Expenses

Based on writings of Harav Chaim Kohn, shlita

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

Q: What expenses can the apotropus fund from the assets of the orphans?

A: The *apotropus* should provide for all the living expenses of the orphans, such as food, clothing, housing, medical expenses, etc. He should provide them moderately, according to the standard of living in their father's lifetime (*C.M.* 290:7).

The *apotropus* can also use assets of the estate to cover his own expenses on the orphans' behalf, such as travel or proper attire, if necessary, for him to better represent them. However the orphans can protest against such use if they choose (*C.M.* 290:4; *Sma* 290:10).

The *apotropus*, or even *beis din*, should not grant gifts from the orphans' assets; if he did – the gifts are void, since a person cannot give what is not his. However, he can forgo their rights or even disburse part of their assets for their benefit, such as to quiet dispute or compromise with a litigant, as mentioned previously. Furthermore, the minor orphans themselves can give gifts, with the *apotropus*'s approval (*C.M.* 12:3; 235:1-2,26).



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lands, he is required to pay.

Similarly, if a person leaves one of his possessions in a place where a rooster can move it and do damage with it, he is responsible for the damage, assuming the rooster is *hefker* (ownerless); if the rooster belongs to someone else, the owner might be responsible for not ensuring that his rooster didn't do damage (see *Shulchan Aruch*, *C.M.* 390:10).

Regarding the first case you mention, if someone places an object on a porch, the prospect of a child throwing it over the side is considered a *ruach metzuyah* – a typical occurrence – and if the object causes damage while in flight, the person who placed it there is responsible to pay, under the category of *eish* (see *Chazon Ish*, *B.K.* 5:17; this is only true, however, if the object is likely to be thrown by a child *and* cause damage if it hits something on the way down).

If the parents were careful to safeguard their possessions but a child managed to grab hold of something and cause damage with it, the parents are absolved from payment; they are responsible only if they were negligent in safeguarding their belongings (a minimal safeguard is sufficient; see *op. Cit. C.M.* 396:1).

If an object was left on a rooftop and blew off, causing damage not while in flight but after it landed, since the damage was not caused through another force (i.e., the wind), it falls under the category of *bor* (lit. a pit), not *eish*.

The banana peel discarded by the young child would be a classic case of *bor*. Since the parent should have realized that the child would throw down the peel after finishing the banana, the parent is considered to have "dug the pit" – i.e., created the *bor* that caused the damage.

As we have emphasized numerous times, however, the Torah limited the liability of a *bor* to damage caused to humans and animals, but not to the objects (including clothing) on them. Therefore, if the person who slipped on the peel dirtied his clothing, the child's parents would not be liable for payment (see issue #373 regarding whether there is an obligation *latzeis yedei Shamayim* in this case). The parents are responsible for injuries caused to the person but their liability is limited to *nezek*, loss of value (cf. *Nesivos* 340:3; *Chazon Ish*, *B.K.* 13:2; *Mishpetei Torah* 1, p. 40), and they would not be required to pay the other forms of damages assigned in cases of assault (*tzaar*, *ripui*, *sheves* and *boshes* – pain incurred, medical costs, loss of employment and humiliation); see *C.M.* 405:1).

A question that remains is what would happen if the person slipped on the peel and then injured himself by landing on the ground, not directly on the peel. We will address this question *b'e"H* in the next issue.

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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