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RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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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

FOUND IN THE STREET

Moshe and Aharon were waiting one evening at the bus stop. Moshe noticed a book on the ground nearby. A few feet away, he saw an envelope that had been trampled on by passersby.

"Someone probably dropped the book when he got on the bus," Moshe said. He picked up the book. It turned out to be a *Gemara Eruvin*, with the name A. Cohen inside.

"That's a start," Aharon said, "but there are many A. Cohens!"

Moshe then picked up the envelope, which was sealed. He opened it and saw that it contained $1,200 cash.

"Do you think that the money also belongs to A. Cohen?" asked Aharon.

"Could be," said Moshe, "but it wasn't in a bag with the *sefer* or lying right next to it; it could be two separate people."

"Perhaps put up a sign that you found a *sefer* and an envelope of money," suggested Aharon.

"I can post a sign about the *sefer*," said Moshe, "but I'm hesitant about the money. It's a big city with a wide variety of people; I don't want to start getting phone calls from strange people asking me about an envelope of money. Anyway, with all the expenses of the recent Yamim Tovim, I could use the money."

"I guess you can start with the *sefer*," said Aharon.

Moshe put up a sign near the bus stop that he found a *sefer*. The following day, he received a phone call. "My name is Avraham Cohen," the caller said. "I took the bus home from work yesterday. When I got home, I realized that I had lost my *Gemara Eruvin*."

"That's what I found!" said Moshe. "It actually said A. Cohen in it; I'm happy to return it to you."

"By any chance, did you find an envelope with $1,200 cash in it?" asked Mr. Cohen. "That also fell out of my pocket on the way home."

"I'll have to get back to you about that," said Moshe.

Moshe contacted Rabbi Dayan and asked:

"Must I return the money that I found?"

"One who finds a lost item in a public place with a wide variety of passersby does not have an absolute halachic obligation to publicize or return it," replied Rabbi Dayan. "This is because we attribute the lost item to the majority of

Did You Know?

A non-Jew doing work for you on Shabbos, even unsolicited, can be a Shabbos violation?

Ask your Rav or email ask@businesshalacha.com for guidance.

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

DROPPED!

Q: Last week you wrote about a *bachur* and his friend who were partners in causing damage. I had a remarkably similar case, with one difference that might be significant in determining the *halachah*.

My friend and I set out to cut down a tree. The plan was that I would do the cutting and he would hold the branches to ensure that they don't fall into a neighbor's property and cause damage.

I was cutting one of the branches, assuming he was going to catch it, and he wasn't careful enough and it fell into a neighbor's property and ruined some property.

Does the fact that I clearly committed the act that caused the damage (*maaseh mazik*) make me responsible for it, or is my friend, who had agreed to catch the branches and failed to do so, liable?

A: A case in the *Gemara* provides precedence for your question.

A person threw a fragile object toward a place covered with blankets and cushions that would ordinarily have protected the object from damage. Before it could land, however, someone else came and removed the cushions, and when the object landed on the floor, it broke. The *Gemara* states that the person who threw the object is not liable, because his act in and of itself should not have caused any damage (*B.K* 26b; *C.M.* 386:3). The *Rishonim* debate whether the person who removed the cushions is responsible under the rubric of *garmi*, direct causation of damage (*Rif* and *Shulchan Aruch,* ibid.), or whether he, too, is absolved because he did not do anything to the object itself, which renders it a case of *grama*, indirect causation (*Tosafos,* ibid. *s.v. Kadam*; *Rosh, B.K.* 9:13; *Rema, C.M.* ibid. and *Shach* 18).

A similar case appears in another *gemara*: someone shot an arrow toward a person who was protected by a shield, and once the arrow left the bow, the shield was removed and the person

CASE FILE

passersby, to whom there may not be an obligation of *hashavas aveidah*. Furthermore, we assume that the owner abandoned hope of retrieving the item *(yei'ush)*, since he expects that it will likely be found by someonewho will not return it" (*C.M.* 259:3).

"Nonetheless, the *Gemara* (*B.M*. 24b) teaches that it is proper to return the item *lifnim mishuras hadin* (beyond the letter of the law) if a Jew provides a *siman*. This is because *yei'ush* is not like actual *hefker*, since the owner does not relinquish ownership willingly, or because there is no financial loss to the finder" (*C.M.* 259:5; *Shulchan Aruch Harav*, *Metzia* #18; *Aruch Hashulchan* 259:7).

"Moreover, some rule that the practice is to return in such a case, and we even pressure the finder to act *lifnim mishuras hadin* if he is financially well off. However, if the finder is needy and the owner well off, the finder does not have to act *lifnim mishuras hadin*. In some places, though, there is a *dina d'malchusa* or communal institution to return even after *yei'ush"* (*Rama* 259:5, 7; *Shach* 259:3; *Rama* 12:2; *Pischei Teshuvah* 12:6).

"In addition, if the item is one of clearly religious nature,, such as *sefarim*," concluded Rabbi Dayan, "some say that the owner does not abandon hope, since the item will most likely make its way to Jewish hands. Therefore, the finder must publicize and return the lost *sefer*" (*Rama* 259:3; *Sma* 259:8).

Verdict: In a public place where there is a wide variety of passersby, there is no absolute requirement of *hashavas aveidah*, other than *sefarim* and other clearly Jewish items, but one should do so *lifnim mishuras hadin* in most situations.

MONEY MATTERS

APOTROPUS #19

FIDUCIARY GUARDIAN

Based on writings of Harav Chaim Kohn, shlita

Removing an *Apotropus*

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

Q: On what grounds should an apotropus be removed from his authority and replaced?

A: If the *apotropus* turns out to be untrustworthy, and it is proven that he took unlawfully from the estate, we remove him and replace him. Moreover, some write that if an *apotropus* appointed by *beis din* begins living beyond his expected means, we are concerned that he is embezzling from the estate, and we remove him. However, if the father appointed him, we do not remove him unless it's proven that he took from the estate (*C.M.* 290:5).

If the *apotropus* is irresponsible with the orphans' assets and invests them in a risky manner, against the *rules*, he can be removed and replaced. If they suffered loss from such an investment, he is liable for the loss. However, if the *apotropus* is careless with his own assets, we do not remove him, since he may still act cautiously regarding the orphans' assets in order to uphold his integrity (*Rama* 290:5; *Sma* 290:12).

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behind it was injured. The shooter is absolved from payment, because when he shot the arrow, it could not have caused injury (see *Sanhedrin* 77a, with *Tosafos, s.v. Benazikin*). The fate of the person who removed the shield is subject to the same dispute between the *Rishonim* as the aforementioned case (*Chiddushei HaRan,* ibid.; *Chazon Ish, B.K.* 2:11).

Returning to your case, since your friend agreed to hold the branches to ensure that they would not damage your neighbor's property, your act of cutting them was not considered an action that was likely to cause damage (see *B.K.* 33a: *Tosafos, s.v. Vehotzi*; cf. *Zechor Davar* for a reason why this might not apply to your case).

Another reason you might be absolved is because you only cut the branch because of your friend's agreement to prevent the damage from occurring, and your action is therefore considered a complete *oness* (coerced action). Many *Rishonim* rule that although a person is generally responsible for damage he causes even through involuntary actions, if he took proper precautions and the damage occurred despite those precautions (*oness gamur*), he is not liable (*C.M.* 378:1).

Your friend, on the other hand, is likely responsible to pay for the damage.

At the very least, he is required to pay *latzeis yedei Shamayim* (to avoid Heavenly justice), like any case of *grama* (*B.K.* 55b).

But it is possible that a *beis din* can also mandate payment. There is a rule that when someone appoints a *shomer* (guardian) to ensure that his ox or pit don't cause damage, the *shomer* takes the place of the owner (*C.M.* 396:8, 418:8) in liability for damage caused. In your case, you appointed your friend as a *shomer* to ensure that the branch didn't inflict any damage. Since he agreed to provide that security, he is liable for the damage.

According to many *Rishonim*, however, since a falling branch falls under the category of *bor,* there is no liability for damage caused to the actual dwelling or to *keilim* (objects), because *bor* is only liable for damage caused to animals or people (see *Rosh, B.K.* 1:1; *Nachlas David,* ibid. 6b; *Kehillos Yaakov,* ibid. 4).

[It is possible however, that the entire *halachah* of a *shomer* taking the place of the owner is limited to damages caused by the owner's property, but when the person himself causes damage, the *shomer* does not take his place (see *Imrei Moshe* 29:5; *Shu"t Minchas Shlomo* 2:58 and *Zechor Dovor* 13, but cf. *Ulam Hamishpat* 386:3 and *Kehillos Yaakov* 2).]

The ruling that absolves you from payment and obligates your friend is predicated on the assumption that your friend was physically capable of catching the branch and preventing the damage and was negligent in doing so. If he was incapable of catching it, your failure to anticipate that before you began to cut it makes you liable for the damage, because it is not a case of *oness*.

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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