

BUSINESS WEEKLY

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



Issue #531 | Lech Lecha | Friday, October 30, 2020 | 12 Cheshvon 5781

לז"נ ר' יחיאל מיכל ב"ר חיים הכהן ע"ה



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

DELAYED BRIS "It's a boy!" declared the doctor. "Mazel tov!"

This was the Bunims' first boy, after three girls.

When Mr. Bunim left the hospital, he began arranging the *bris*. His first call was to confirm the *mohel*.

He then began looking into a location and caterer. He was able to book the function hall in his shul. The following day, he discussed with his wife various catering options. Mrs. Bunim decided to go with her neighbor, who catered small events, and arranged it with her.

Three days before the *bris*, Mrs. Bunim noticed that the baby's color was darker. "What do you think about this?" she asked her husband.

"I hope the baby's not turning yellow," replied Mr. Bunim. "If so, we might have to delay the *bris*."

"Please check with the *mohel*," Mrs. Bunim said.

The *mohel* came by the following day and examined the baby. "The baby is a little yellow, but the issue should resolve itself," he said. "We can most probably do the *bris* on time. However, if the yellow remains, the *bris* will have to be delayed. I'll check again tomorrow evening, before the *bris*."

The following evening, the *mohel* came again. "Unfortunately, the baby is still yellow," he said. "We will have to delay the *bris* until the color recedes. You'll have to take him for a bilirubin count."

Mrs. Rubin called her neighbor. "Unfortunately, our baby is yellow," she said. "The *mohel* said that the *bris* will have to be delayed."

"I already bought the food and did most of the cooking," said the caterer. "You can't tell me now!"

"It's not our fault," said Mrs. Bunim. "The *mohel* thought the issue would resolve itself, and we didn't get a final answer until now."

Mr. Bunim called Rabbi Dayan and asked:

"Do we have to pay the caterer?"

"The *Gemara* (B.M. 77a) addresses the case of a person who hired workers, but uncontrollable circumstances made the job impossible," replied Rabbi Dayan. "For example, workers were hired to dig a field, but it had rained; the workers came and found the field filled with water. Rava ruled that the workers are not entitled to payment if the employer was unaware of the potential problem, but if he was aware while the workers were not – the



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

COMPENSATION FOR CONFISCATION

Q. The scene is familiar enough: a child causes a disturbance by playing with a toy during class, and the *Rebbi* confiscates the toy and places it into his desk drawer.

The Business Halachah Institute recently received two *she'eilos* related to such scenarios:

When cleaning out his desk drawer at the end of the year, the *Rebbi* threw out everything in the drawer, including the toy he'd confiscated earlier in the year.

The *Rebbi* locked his desk drawer, but one night, a burglar stole the contents of the drawer, including the toy.

In each of these scenarios, is the *Rebbi* liable for the toy?

A. When a child plays with something at a time when he should be learning, it is permissible – perhaps even obligatory – for the *Rebbi* to confiscate the toy in order to be *mechanech* him (see *Makkos* 8b; *Yoreh De'ah* 245:10).

Although it is generally forbidden to steal something even if one plans to return it (*ibid.* 348:1), in this case it is permissible, because there is a *chinuch* need.

Nevertheless, some *poskim* write that a *Rebbi* must exercise careful judgment as to whether he should confiscate the toy forever, or simply take it away temporarily. If there's no benefit to permanent confiscation, which is usually the case, then this would be akin to stealing the object from the student (even if he is a *katan* – see *Choshen Mishpat* 348:2; 270:1-2; furthermore, it's probable that the object actually belongs to the father; see *ibid* 270:2 with *Sma* 8).

In most cases, then, since the confiscation is only temporary, the *Rebbi* or teacher is required to place the toy in a safe place so s/he can return it. [*Mishpetei HaTorah* 1:77. *Shoalin V'dorshin* 3:61, however, quotes a ruling from Rav Shlomo Zalman Aurbach, z"tl, that when a *Rebbi* confiscates a toy from a child it is not considered *gezel*.]

Did You Know?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered *schar Shabbos*.

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



CASE FILE

employer must pay the workers" (C.M. 333:1; 334:1).

The Rosh (B.M. 6:3) explains that when the employer and employee are equally informed or uninformed, we attribute the misfortune to the workers because of *hamotzi meichaveiro alav hare'aya* (the burden of the proof is on the plaintiff). They are responsible to stipulate that they expect payment even if the work is impossible due to *oness*. However, when the employer alone is aware of the potential problem, he should have stipulated that the job is contingent on it's being doable; if not, he accepted the risk.

Moreover, when the worker already began working (as in the *Gemara's* case, by walking to the field), the employer is obligated when he was aware, even if the worker did not have an alternate job offer for that day (Sma 333:6; Shach 336:7).

Thus, since the Bunims were aware of the potential delay, whereas the caterer was not, they are responsible to pay her. Nonetheless, it is not necessary to pay the full amount, but rather a certain percentage is deducted since ultimately the caterer did not have to work that morning (*k'polel batel*) and some of the food and drink can be saved for a later occasion (C.M. 334:1-2; *Pischei Choshen*, *Sechirus* 12:1-3).

"It is advisable, especially in situations prone to cancellations," concluded Rabbi Dayan, "to agree ahead of time on a clear cancellation policy in the contract."

Verdict: A worker who began working, but uncontrollable circumstances stopped the job, if the employer alone was aware of the potential problem and did not stipulate otherwise, he is responsible for the worker's salary as a *po'el batel*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

APOTROPUS #21

FIDUCIARY GUARDIAN

Completion of Responsibility

לע"נ ר' יחיאל מיכל ב"ר חיים דו"ג ח' בת ר' שמואל חיים ע"ה

Q: What is required of the apotropus at the completion of his responsibility?

A: When the orphans mature and become self-responsible, the *apotropus* returns to them whatever assets remain of the estate. If he was appointed by *beis din*, *Halachah* requires that the *apotropus* swear a severe oath that he did not embezzle any of the assets. Nowadays, though, *beis din* almost always refrains from administering oaths (C.M. 290:16).

If the *apotropus* was appointed by the father, he is not required to swear unless there is a definitive claim against him.

An *apotropus* appointed by *beis din* is not required to give a final accounting. Some say that an *apotropus* appointed by the father is required to; Rama writes that we should follow this opinion. Even where not required, the *apotropus* should be very careful of his own accord before Hashem, who is "Father of Orphans" (C.M. 290:27).

An *apotropus* appointed by secular courts must give an accounting, since that is their rule (Rama 290:17).



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In the first of the two queries we received, if the *Rebbi* throws the toy in the garbage, thereby damaging it, he is required to pay the value of a used (i.e., not new) toy. Some *Acharonim* consider this a payment for direct damage (*mazik*), because throwing the toy in the garbage is guaranteed to make it lost forever (*Nesivos* 291:7), while others consider him liable under the rubric of *garmi* (direct causation; see *Avnei Hachoshen ibid.*, *Shu"t Chavos Ya'ir* 165, and *Mishpat Hamazik* 2:25).

The second question is more complex. We must first determine whether the *Rebbi* who now has a student's toy in his drawer is considered a *shomer chinam* (unpaid guardian), *shomer sachar* (paid guardian), or not a *shomer* at all. His status will determine whether he is required to pay for the loss or theft of the item he confiscated.

On one hand, we could make the case that the *Rebbi* is a *shomer sachar*, because he is paid to be *mechanech* his students, and this confiscation is part of that work. This would be akin to a craftsman who receives an object to work on or repair, and is considered a *shomer sachar* as long as he is working on it (C.M. 306:1).

On the other hand, since he is paid for teaching students, not for guarding objects he confiscated, it is more likely that he is not a *shomer sachar*.

We find a dispute among the *poskim* regarding a domestic worker who resides in the home of his employer, and an object is stolen while he is there. Some *poskim* consider him a *shomer sachar* since he is being paid for his work (*Ketzos Hachoshen* 191:6; see *Shu"t Maharsham* 3:54), but others maintain that he is *shomer chinam* since he is paid primarily for tending to the house, not for guarding the contents (*Machaneh Efraim*, *Shomrim* 31, cited in *Pischei Teshuvah* 303:1, and see *Ritva*, B.M. 42b).

Some *poskim* differentiate between a situation in which the employer specifically requested that the worker guard the contents of the home, or if guarding the home was considered part of his job, in which case he is a *shomer sachar*. and a situation in which security is not part of the worker's job, in which case he is not a *shomer sachar* (*Shu"t Divrei Malkiel* 3:172 and 5:215).

In our case, the *Rebbi* was never asked or instructed to safeguard the confiscated toy as part of his employment package. We might posit, therefore, that he would be categorized as a *shomer chinam*, taking the place of the owner of the object in safeguarding it because the owner is unable to do so. Since a *shomer chinam* is not liable for theft, the *Rebbi* would not have to pay for the stolen toy.

There is an argument, however, that the *Rebbi* is likely not even a *shomer chinam*, because he never accepted upon himself to guard the toy, and his confiscation of it was for the benefit of the child. Therefore, he would not be liable for it even if he was negligent in guarding it (see *Pischei Choshen*, *Geneivah* ch. 1 fn 17.).

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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