

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

BAR-MITZVAH GIFTS

Yehuda Stern celebrated his bar mitzvah. In addition to *sefarim*, he received cash gifts and checks from relatives and friends.

"What should I do with the checks?" Yehuda asked his father. "I don't have a bank account of my own."

"We can deposit the checks into my account," said Mr. Stern. "I'll hold the money for you until you're old enough to warrant your own account."

Yehuda signed all the checks written in his name, and his father deposited them into his account. "The checks come to \$4,250," Mr. Stern told Yehuda.

Years passed by. As Yehuda finished high school and turned 18, he wanted to open his own account.

"Do you remember that you have my bar-mitzvah money?" Yehuda asked his father.

"I certainly do," replied Mr. Stern. "I've been holding it for you. Some was also invested."

"How much was it?" asked Yehuda.

"I don't remember offhand," replied Mr. Stern. "It's been five years, but I wrote it down."

Mr. Stern checked his records. "I found it," he told Yehuda. "The checks came to \$4,250."

"You said that some of the money was invested for me?" asked Yehuda. "I assume that money appreciated."

"Yes, but I can't tell you for sure how much," said Mr. Stern. "It's not that I kept your money separate. I'll give you 6% per year on what you deposited in my account."

"Excuse me for asking," said Yehuda. "But is that OK? It sounds a little like *ribbis* to me."

"That's a good point," acknowledged Mr. Stern. "I wasn't thinking of that. On the other hand, although we deposited your money in my account, I wouldn't quite say that I borrowed it from you. I'll have to check."

Mr. Stern called Rabbi Dayan and asked:

"Can I return the money to Yehuda with an additional amount?"

"The prohibition of *ribbis* applies even to loans between relatives," replied Rabbi Dayan.

"However, the question here is whether you deposited the bar mitzvah money for your own use meanwhile, to repay when Yehuda matured, in which case it is like a loan, or intended to hold Yehuda's money in your account and invest it on his behalf, in which case it is like a *pikadon* (entrusted money).

"If you 'borrowed' the money, you cannot add payment when returning it. Although no interest was stipulated initially, so that it would not

DID YOU KNOW?

Assigning an employee to perform his duties on Shabbos, Yom Tov, or Chol Hamoed can be *isur of schirus v'kabanus* (working on behalf of a Yid).

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



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

RUNAWAY SHOPPING CART

Q: I had just returned to my car with a shopping cart full of packages. I loaded the bags into my trunk, and was about to return the cart to the store, when a gust of wind blew off my yarmulke. I abandoned the cart and ran to grab my yarmulke. As I turned to walk back to my car, I realized that the same wind was now pushing the shopping cart directly toward another parked car. I ran toward it and caught it just as it was about to collide with the other car, where it would undoubtedly have caused damage. I was wondering: Had I not caught it, would I have been liable for the damage?

A: *Baruch Hashem* your question is only hypothetical, because you caught the shopping cart before it could inflict damage. Had it caused damage, in certain cases you would definitely have been liable, in others you definitely would not have been, and in some cases there would be halachic uncertainty, as we will elaborate.

Had the cart rolled toward the other parked car as soon as you let go of it, by the force of gravity alone - i.e., if there was a slope toward the parked car - you would certainly have been liable for the damages. This is not a case of *grama* (causation), but rather a case of *adam hamazik* (a human who damages), through the power of his body. A person is responsible for damages he inflicts even in cases of *ones* (circumstances beyond his control), unless it is an *ones gamur* (absolutely beyond his control; see *Shulchan Aruch, C.M. 378:1* and BHI Issue #430), and your circumstance is not considered beyond your control (see *Mishpat Hamazik 12:18*).

The source for this is a case in the *Gemara (Sanhedrin 77b)* regarding a person who removes something that is blocking water from flowing toward a place where it can cause damage, and the water begins running as a direct result of his action and hits someone immediately (see *Rashi and Yad Ramah*). The *halachah* is that he is liable for the damages, and we derive from this that if someone who is holding a



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entail *ribbis d'Oraysa*, Chazal prohibited adding interest or giving a gift when returning a loan, even when not stipulated initially, and even when offered by the borrower in acknowledgment for the loan. This is called *ribbis me'ucheres* (post-facto interest) (Y.D. 160: 4, 6).

"However, if you held the money on Yehuda's behalf as a *pikadon* and invested it for him in your accounts, his money justly earned the amount that the investments appreciated.

"When it is unclear whether the money was given as a 'loan' or as a '*pikadon*,' there is room to be lenient, since when a person is unsure how much he owes, he can pay the larger amount if he wishes. It is not considered interest since he is doing this to fulfill his possible obligation" (Raavad in *Temim De'im* #60; Bris Yehuda 5:10).

"Nonetheless, it is preferable to give the additional amount some time after returning the principal, without stating that it's for the money you held," concluded Rabbi Dayan. "*Chazal* prohibited *ribbis me'ucheres* only when there is a link between the repayment of the loan and the additional amount, either verbally or through context. However, when two parties have a preestablished relationship, so that you might grant Yehuda a gift unrelated to any loan, it is permitted to add not in proximity to the repayment. *Shach* (Y.D. 160:10) writes that if the additional amount is substantial, we would correspondingly require that a significant time pass" (see *Bris Pinchas*, #13,79).

Verdict: If the parent intended to invest the money for the child rather than borrow his money, he can add a realistic return, but is better to add later as a separate, unspecified gift.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #31 (Bordering Property) Questionable Rights

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

Q: What is the halacha in cases where it is questionable whether the *bar-metzra* has rights?

A: When it is questionable whether the *bar-metzra* has rights, if the outside buyer already bought the property, he is in possession and the *bar-metzra* cannot take the property from him (C.M. 175:44-45).

For example, if the buyer claims that the seller sold the property for the urgent need of paying taxes, so that the *bar-metzra* is not granted rights, whereas the *bar-metzra* denies this purpose, the burden of proof is on the *bar-metzra* (*Pischei Choshen, Shutfim* 11:39, 81-82).

Similarly, if there is a halachic dispute among the *poskim* whether the *bar-metzra* has rights, he cannot take the property from the buyer. However, if the outside party did not yet buy the property, the seller should give the *bar-metzra* priority (Rama 175:45).

Furthermore, if one *bar-metzra* has definite rights and another *bar-metzra* has questionable rights, the owner should sell to the one whose rights are definite (*Pischei Teshuvah* 175:19).



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rock loosens his grip and it falls and causes damage, he is liable. This is considered a direct result of his action, because removing an obstacle from something that will then inflict damage is deemed equivalent to inflicting the damage directly.

Similarly, if someone is holding a bow and arrow with the arrow poised to shoot, and he leaves go of the arrow, he is responsible for any damages it inflicts (*Yad Ramah* ibid. and *Chazon Ish, B.K. 2:16*; see *Mishpat Hamazik* 2:12).

In this regard, a shopping cart is no different from an arrow or a rock, and if a person leaves go of it and gravity rolls it into a car, he is liable for the damages.

If the wagon would not have moved of its own accord, however, and a strong wind would have blown it toward the car, then that is not a case of *adam hamazik*, and we have to determine whether there is any liability due to *mammon hamazik* (a person's possessions causing damage).

This case would fall under the rubric of *eish* (lit. fire, but more broadly defined to include items that cause damage in a similar manner, as explained below). If a person leaves a fire unattended and a wind blows the fire to a place where it causes damage, he is responsible for that damage (C.M. 418:1). This principle applies to any object that can cause damage with the help of a common natural force. Therefore, if a person leaves a stone, a knife or a package on a roof, and it is blown off by the force of a wind that is commonplace in that locale, if it causes damage while in flight, he is liable for the damage (ibid. 2).

But if the object could not have been blown off by a typical wind, and it was blown off by an unusually strong wind, he is not liable – unless that strong wind had already begun to blow before he set down the package, in which case he would be responsible (418:9 and 11).

In your case, since the wind that was already blowing when you left go of the shopping cart was strong enough to blow it into the car, you would have been responsible for any damages it would have caused, under the rubric of *eish*.

But since this is a case of *mammon hamazik*, there is no liability if the damage happened through *oness*, and the person bears no responsibility unless he was negligent in guarding the object that caused damage (ibid. 410:26-27).

We would have to determine, therefore, whether your yarmulke blowing off, which caused you to lose your equilibrium, is considered *oness* and would have exempted you of liability, or whether you would have remained responsible for the damage caused by your shopping cart.

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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