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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### CONFISCATED CALCULATOR

Menashe was approaching the end of tenth grade. During science class, he was playing with his calculator, which he received as a present when he graduated elementary school. "Please put the calculator away," said the teacher, Mr. Berger, giving him a quick glance.

Menashe put the calculator in his desk. A few minutes later, though, he was again playing with it under the desk.

Mr. Berger walked over. "Give me the calculator," he said. "You'll get it back tomorrow."

Menashe handed the calculator to Mr. Berger, who put it in his attaché case.

At the end of the day, Mr. Berger went to his car and put the attaché case in the trunk. He picked up his wife from an appointment and they did a few errands on the way home.

When the Bergers got home, it was already late. "I'm not going to do any schoolwork now," Mr. Berger said to his wife. "I'm going to leave the attaché case in the car so that it will be ready for tomorrow."

The following morning, when Mr. Berger prepared to drive to school, he saw that his car had been broken into during the night. The thief had taken the attaché case!

When Mr. Berger got to school, Menashe timidly asked him for the calculator. "I'm sorry, but I left my attaché case in the car overnight and the case was stolen!" Mr. Berger said.

"The calculator cost $50," Menashe said. "You said that you would to return it."

"It's not my fault that the calculator was stolen," said Mr. Berger.

After class, Mr. Berger and Menashe called Rabbi Dayan and asked:

**"Is Mr. Berger liable for the calculator? Does he have to pay the full cost?"**

"A person who takes someone's property without permission is tantamount to a thief and liable for it even in cases of *oness* – circumstances beyond one's control," replied Rabbi Dayan (*C.M.* 366:3).

"This does not apply here, though. Depending on the educational policy of the institution, Mr.



## BHI HOTLINE

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

### DOUBLE TROUBLE PART II

In the previous issue, we began to address the halachos of a bechor's (firstborn's) entitlement to pi shnayim (a double portion) of an inheritance. We concluded that a bechor has a right to pi shnayim only from an inheritance from his father, not his mother (Shulchan Aruch, C.M. 278:1).

**Q:** If several sons inherited a house from their father and mother, does the bechor receive a double portion?

**A:** The first step in resolving this she'eilah is to determine who, exactly, owned the house.

It is possible that the house was owned solely by their father, in which case the bechor is entitled to a double portion — even if their father passed away before their mother. The fact that their mother continued to reside in the house after their father passed away does not mean that she inherited the house from their father, because a woman does not inherit her husband's estate (Rambam, Hilchos Nachalos 1:8). Rather, she is entitled to dwell in the house after his passing because he commits to it in the kesubah (Shulchan Aruch, Even Ha'ezer 94:1).

If the house was owned solely by the father, then, the bechor does receive a double portion of the value of the house after his mother's passing.

If, however, the house belonged to the mother (e.g., if she received it as an inheritance or she bought it before her marriage), then although her husband has the rights to use it or to benefit from its "yield" (i.e., the rent) (ibid. 85:13), if he dies before her, the house remains hers and the bechor is not entitled to a double portion.

If, however, the mother dies first, then her husband inherits her estate (ibid. 90:1), and when the father dies, the bechor receives a double portion.

If the parents bought the house jointly, the halachah is more complicated. There are several possibilities, depending on the circumstances — and this is just one of many reasons why a tzavaah (halachic will) must be written with exactitude, to ensure that it has proper halachic and legal standing.

If the mother dies first, then it is clear that her portion

## CASE FILE

Berger is likely considered as having confiscated the calculator with permission. If the policy allows confiscating without returning, and this had been Mr. Berger's initial intent, Menashe would have no claim" (*C.M.* 2:1).

"However, if the policy allows only temporary confiscation, or circumstances warranted only this, or this was indeed Mr. Berger's initial intent, he is considered a guardian – *shomer* – of the item.

"We know that a paid guardian – *shomer sachar* – is liable for theft, whereas an unpaid guardian – *shomer chinam* – is not, provided that he safeguarded the item in the normal manner" (*C.M.* 291:1; 303:2).

"Mr. Berger is considered a *shomer chinam* since he has no gain, even incidental, from guarding the calculator. Although a paid worker is generally considered a *shomer sachar* for holding items related to his work — even if not paid directly to watch them — since he benefits indirectly from them, holding confiscated property does not seem included in the responsibilities for which Mr. Berger gets paid" (*C.M.* 306:1).

"Nonetheless, in this situation Mr. Berger is liable, since even a *shomer chinam* is required to guard in the normal fashion. One can argue that leaving items in the trunk while doing errands is normal, but leaving them overnight is not the normal manner of guarding. This is considered negligence – *peshia* – for which even an unpaid guardian is liable" (*C.M.* 291:13-14).

"In any case, *Halachah* requires paying only the current value of the item, so since the calculator was already in used condition, Mr. Berger is not required to pay the full cost of a new calculator" (*C.M.* 291:4; 362:1; *Ketzos* and *Nesivos* 291:1).

"Thus," concluded Rabbi Dayan, "Mr. Berger is liable for the calculator according to its current value, since he did not guard it properly while in his hands.

Verdict: A teacher who confiscates an item expecting to return it is responsible to guard it in the normal fashion. If not, he is liable for the item according to its current value.

## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
***Dayanim* (Judges) #48**
**Summary**

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

**In this series we discussed various aspects of Dayanim and beis din, among them:**

The halachic requirement to establish *batei din*; their halachic and legal mandate nowadays; the composition of *beis din*; the *zabla* process; the adjudication procedure in *beis din*, elements of compromise within the framework of *beis din*; the halachic limitations of awarding legal expenses; the integrity of the *Dayanim*; and details pertaining to rulings of *beis din*.

Adjudication in *beis din* – beyond its halachic requirement and the prohibition of adjudicating in civil courts (addressed in a previous series) – is a viable legal option nowadays, conducted in a professional manner, and upheld legally through an arbitration agreement.

Through adjudication in *beis din* one is also assured that the money he is awarded – or held liable to pay – is in accordance with *Halachah*.

Restoring the primacy of *Choshen Mishpat,* and of *bein din* in monetary matters, is the mission of the Business Halacha Institute, in accordance with the prophecy of Yeshayah (1:26): "I will restore your judges as at first ... Zion will be redeemed through justice." May we merit this speedily in our day!

## BHI HOTLINE

of the jointly owned property is inherited by her husband, and when he dies, the bechor is entitled to a double portion.

What happens, however, if the father dies first?

There are three factors to consider:

1. It is possible that when they bought the house, the husband wanted his wife to own half of it (see *Shu"t Beis Yitzchak, C.M.* 72; *Yeshuos Yisrael* 62, *Ein Mishpat* 3; *Shu"t Maharsham* 5:38). Even if the money used to buy it belonged to him alone, by registering the property with her name alongside his, he transferred (was *makneh*) half of it to her.

If that was the case, the *bechor* is entitled to a double-portion inheritance of the half of the house that belonged to his father, but not to a double portion of the half that belonged to his mother.

2. If the deed was set up in a way that whichever partner remains alive would become the full owner (referred to in legal terms as "rights of survivorship" or "tenancy by entirety" [TBE], as opposed to "tenancy in common,") it is possible that the arrangement is binding in *Halachah*. This discussion is beyond the scope of this article.
3. It is possible that the husband had no intention of transferring ownership of half the property to his wife, and her name appears on the deed because of other considerations — e.g., because it would help them get approved for a mortgage, or for her dignity — but she is not actually a part-owner of the house (*Aruch Hashulchan*, *C.M.* 60:21 and 62:6; *Pischei Choshen, Ishus* ch. 8, fn. 175; see *Kovetz Teshuvos* 2:145).

A dayan dealing with such a case must investigate exactly what the parents' intentions were when they purchased the house, and these deliberations must be undertaken with an extra dose of patience (Aruch Hashulchan ibid.). He will often have to suggest a fair compromise between the bechor and his brothers, because it may be impossible to reveal the exact intentions of the parents (see Igros Moshe, C.M. 1:17 and Teshuvos V'hanhagos 5:341).

We reiterate that parents can — and should — prevent the need for this sort of unpleasant interaction between their children by having an expert draw up a will that is binding both halachically and legally.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com