THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #747 | Pekudei | Mar 28, 2025 | 28 Adar 5785

זכות חודש אדר נתנדב ע"י ידידינו ר' יהושע עסטרייכער ני"ו לע"נ אביו ר' חיים משה יוסף בן ר' צבי ז"ל ת.נ.צ.ב. ה.

CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

WHOSE BALL?

The boys from Chilutz Atzamos High School were returning from a basketball game to their school. They won the game and were in high spirits... and a little rambunctious.

"I'll race you to the storage room where they keep the balls," Reuven said to Shimon.

"Deal!" exclaimed Shimon. The two raced ahead, with balls in hand.

As they neared the room, situated around a bend, Shimon said: "Let's see who can bounce his ball off the opposite wall into the room!"

The two boys hurled their balls at the wall forcefully, with precision, and both balls rebounded through the open door. Two seconds later, as they reached the room, they heard a shatter! One of the balls hit the window and broke the glass pane.

A minute later, the coach arrived. "What happened?" he asked.

"We threw our balls into the room, and one of them broke the window," Shimon apologized.

"That was reckless of you!" the coach reprimanded them. "You're going to have to pay the school for the repair."

"It was not my idea, so it's not really my fault," Reuven said. "Why should I have to pay?"

"Even if it was my idea, if Reuven's ball broke the window, he's liable — not me!" Shimon argued. "Who's to say that I have to pay?"

"I guess, then, each of you should pay half," said the coach. "That's fair."

"I don't think it's fair," insisted Reuven. "If my ball didn't break the window, why should I have to pay anything?"

"Then what do you suggest?" asked the coach.

"Ask Rabbi Dayan!" the two boys responded in unison.

Reuven, Shimon and the coach approached Rabbi Dayan and asked:

"Who is liable for the broken window?"

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

PURSUIT IN THE PARK

Q: While sitting on a park bench, I noticed that someone had left an object that had no siman **(identifying feature) on the bench. I took a quick look around to see who was nearby, and I saw someone who had just left the area. It seemed plausible that he might have inadvertently dropped the object, but it was also quite possible that the object was there before he arrived. Was I obligated to pursue him and ask him whether he had lost something?**

A: Someone who lost an object and did not realize yet that he lost it, has not consciously been *meya'eish* (meaning that he hasn't despaired of finding it), and *yi'ush shelo midaas* — despair that stems from a lack of knowledge that the object was lost — does not qualify as *yi'ush* (*Shulchan Aruch Choshen Mishpat* 262:4).

Chazal established that a person who is carrying money or valuables with him checks his pockets frequently to make sure that he hasn't lost them. Therefore, if the item you found is of value, you can assume that the person who dropped it already noticed that it's missing. In that case, if there is no *siman* on the object, we presume that the owner was *meya'eish* (ibid. 262:3&6; see BHI 256).

In your case, if the person who just left is indeed the owner, then he obviously hasn't noticed that he is missing the object, in which case you should pursue him and return it to him. But it is quite possible that it belongs to someone else. In fact, because the majority of people who pass that area are not the person who is leaving at that moment, we assume that someone else lost it. In that case, since it has no *siman*, you can assume that the owner was already *meya'eish* and you are not obligated to return it. Although monetary *halachah* is generally not decided by the principle of *rov*, in the case of a lost object, since *rov* is not being applied to take something away from someone (the *muchzak*), you need not concern yourself with the possibility that it belonged to the person you saw leaving at that moment (*Tosafos, Bava Basra* 23b, *s.v. Chutz*).

Now, the *Gemara* (*Bava Metzia* 34a) records a dispute between *Tanna'im* regarding whether a person who finds an object in a locale with a majority of non-Jewish

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"The *Mishnah* (*B.K.* 35a-b) addresses the case of two oxen, one of which gored and damaged," replied Rabbi Dayan. "If the oxen belong to different owners, the plaintiff — who suffered the loss — cannot sue either owner, because each owner can claim that perhaps the ox that gored was not his. However, if both oxen belong to the same owner, the plaintiff can sue him, because either way the owner is liable (*C.M.* 400:2).

"Even if the plaintiff was present at the time of damage and claims that it was A's ox that damaged, whereas the owners were not present and do not know, the burden of proof is on the plaintiff to bring evidence to his claim that A's ox damaged (*Shach* 400:1).

"Moreover, *Tosafos* (*B.K.* 46a) writes that even according to the opinion (which we do *not* rule like) that *bari v'shema bari adif* — if the lender claims definitively that he lent and the borrower does not know, the lender's definitive claim is superior and the borrower is liable — here the plaintiff must bring proof. This is because a person is expected to know whether he borrowed so that the lender's definitive claim vs. the borrower's doubtful stance is superior. However, in the case of the two oxen, where the owners were not present and they are not expected to know, A's doubtful claim is not considered inferior. [All the more so according to the halachic ruling that the borrower is exempt even with a doubtful claim, although there he has a moral obligation (*C.M.* 75:9).]

"Thus, because we don't know whether Reuven's ball or Shimon's ball broke the window, neither can be held liable, nor can we demand that each pay half.

"Nonetheless, since their joint recklessness, goading on each other, led to negligent damage, they possibly share some joint liability at least as *grama* and might have moral responsibility to compensate for the loss.

"In the opposite case, as well, where someone damaged, but it is not clear whom he damaged (e.g., one party was damaged by him, and one by natural causes), neither plaintiff can sue, since the defendant can evade each plaintiff and claim that he does not owe him, but rather the other plaintiff.

"In that case, though," concluded Rabbi Dayan, "one plaintiff can grant authorization (*harshaah*) to the other so that the second plaintiff can place a claim — either in his name, or in the name of the first plaintiff, as his attorney."

Verdict: When it is not known which of two people damaged, the burden of proof is on the plaintiff to bring evidence who damaged; otherwise, neither can be held liable.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Pesach and Chametz

 # 3

Shtar of Mechiras Chametz

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

Q: What are some points to note in the shtar mechiras chametz (document of sale)?
A: The individual seller usually signs an authorization form, in addition to the *shtar* between the Rav and the non-Jew.

The *poskim* discuss whether the *shtar mechirah* serves as a mode of transaction (*shtar kinyan*) or just as proof of sale (*shtar r'ayah*) (*Aruch Hashulchan* 448:21; *Divrei Malkiel* 4:24[34]).

The *shtar mechirah* should contain:

1. The date of sale. Some *poskim* recommend writing also the time of sale. If the date was incorrect, the *shtar* is invalid (*C.M.* 43:13, 239:2; *Divrei Malkiel* 4:24[49]).

2. The place where it was arranged and signed, but this is not required. However, either it or the authorization forms must contain the place where the *chametz* is located (*C.M.* 43:20,22).

3. The names of the seller and buyer. If the name of the buyer is wrong, the *shtar* is invalid, but if it was omitted, the *shtar* is valid, because he holds the sales document (*Mekor Chaim* 448:9).

The seller and buyer should both sign; if the seller does not sign, the *shtar* is invalid (*Divrei Malkiel* 4:24[82]; *Sdei Chemed* 8:8:13[3]).

The *shtar* (or authorization form) should preferably specify the types of *chametz*, but if it simply stated "all kinds of *chametz*," it is valid (*Biur Halachah* 448:3).

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residents is obligated to announce (be *machriz*) that he has found the object. *Halachah* sides with the opinion that he is not obligated to be *machriz* (*Choshen Mishpat* 259:3).

Tosafos (*Bava Basra,* ibid.; *Bava Metzia* 23a, s.v. *Veha*) wonder why there would be a dispute about this altogether. Because there is no *muchzak* (as explained above), we should assume that one out of the *rov* of non-Jewish residents lost it, so why should the finder be obligated to be *machriz*? *Tosafos* answer that since it is possible to determine the rightful owner, *Chazal* mandated that we not rely on the principle of *rov*.

So why does the other opinion maintain that he does not have to be *machriz*? The *poskim* debate how to understand *Tosafos'* explanation of that opinion. Some say that this itself was the subject of the dispute between the *Tanna'im:* If it is possible to determine the rightful owner, does that mean we are obligated to do so? The opinion that is ultimately upheld in *halachah* maintains that we are not (*Shu"t Maharsham* 3:156, according to *Shu"t Yehudah Yaaleh, Orach Chaim* 122; *Shu"t Chasam Sofer, Yoreh Dei'ah* 175). Others understand *Tosafos*' explanation to mean that the reason the finder is not obligated to be *machriz* is that we presume that the person who lost it was *meya'eish* because he assumes that a non-Jew found it (*Taz* 159:3; see *Divrei Mishpat* 3).

In your case, whether you are obligated to determine if it was dropped, the person who just left is subject to the above debate. According to the *poskim* who maintain that you can rely on the *rov*, you are not obligated to pursue him to ask whether he dropped it. But according to the latter approach, since, assuming it was his, he obviously wasn't *meya'eish* yet, you are required to ask him whether it is his.

It appears that according to the letter of the law, the *poskim* lean toward the first approach, and you are not obligated to ask him (see *Maharsham,* loc. cit.). Nevertheless, if the person seems trustworthy and you think he'll answer honestly whether it's his, it is proper to ask.