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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

PLANE AISLE "Welcome aboard El Al flight LY008 to Israel," the pilot announced. "Please fasten your seatbelts and move your seats into the upright position for takeoff."

Mr. Weiss straightened his seat and buckled himself in. He recognized an old acquaintance, Mr. Leiber, sitting just across the aisle.

"Mr. Leiber, how nice to see you!" Mr. Weiss said. "What brings you to Israel?"

"There is a Yarchei Kallah this week in Yerushalayim," replied Mr. Leiber, "a week-long program of all day shiurim by leading Rabbanim."

"Fascinating!" replied Mr. Weiss. "I go twice a year to visit my children living in Israel."

"That's wonderful!" exclaimed Mr. Leiber. "I wish I could do that!"

After the meal had been served, Mr. Leiber slept for about two hours. He got up and headed down the aisle to the rear of the plane. When he returned to his seat, he felt something hard under his shoes and heard the crunch of glass. He looked down and saw that he had stepped on a pair of glasses

The crunching noise woke up Mr. Weiss. "What was that?" he asked Mr. Leiber.

"I'm sorry," apologized Mr. Leiber. "It seems that your glasses fell into the aisle while you slept, and I didn't notice them. I'll pay for them."

"No, it's my fault for dropping them in the aisle," said Mr. Weiss.

"Even so, I should have watched where I walked," Mr. Leiber replied. "I'm liable."

"How could you have expected my glasses to be there?" argued Mr. Weiss. "You shouldn't have to pay."

"I have an idea," said Mr. Leiber. "Rabbi Dayan is supposed to speak at the Yarchei Kallah on Wednesday. If you want to come, we can ask him there!"

"That's a great idea," said Mr. Weiss. "I'll be happy to come that day."

At the Yarchei Kallah, the two approached Rabbi Dayan. "A monetary question arose during our flight here," Mr. Weiss said. "My glasses fell into the aisle while I was sleeping. Mr. Leiber stepped on them and cracked them. Is he liable?"

"The Mishnah (B.K. 27a) teaches that if a jug is left in the street and a passerby bumps into it and breaks it, he is exempt," replied Rabbi Dayan. "Thus, Mr. Leiber is exempt from the damage to the glasses that were lying in the aisle" (C.M. 412:1)

"Why is the passerby exempt?" asked Mr. Leiber. "Isn't a person always held accountable for damage he causes?"

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THE DAMAGING STUDENT

A child was expelled from school because

he was regularly destructive to school property. An askan advocated for the child, but they refused to readmit him unless someone guaranteed to pay for whatever he would break.

Q: Would such a verbal commitment be halachically binding?

A: Poskim discuss a similar question that could serve as a precedent. Reuven was considering hiring a young man, Levi, to work in his house but was concerned that he would damage some property. Shimon guaranteed verbally that he would reimburse Reuven if Levi damaged anything. Since Reuven agreed to hire the young man because of Shimon's commitment, Shimon is liable as a guarantor (Nesivos 315:2). Similarly, the commitment of the askan should be binding. However, there are other opinions that would not obligate him.

A well-known principle is that an asmachta agreement (a conditional commitment that is dependent on a future event) is not binding. Since at the time of the commitment it is impossible to know whether the party will have to fulfill it, it is assumed that he did not fully commit and thus it is not binding (C.M. 207).

An exception to this rule is a loan guarantor who is responsible to repay the lender even though at the time of his commitment it was not known whether he would become liable to repay the lender. The guarantor's liability is in consideration of the benefit he received from the lender. The lender's willingness to extend the loan was due to his trust in the guarantor; in recognition of being deemed trustworthy, the guarantor unconditionally commits to repay the loan. For that reason if someone



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(C.M. 378:1).

"The Gemara (27b) explains that people are not typically expected to look down at their feet when they walk," explained Rabbi Dayan. "The walking path is presumed to be clear. Rather, the person who left the jug in the street, or the glasses in the aisle, is considered negligent with his own property."

"I wasn't really negligent," pointed out Mr. Weiss. "The glasses slipped off while I slept." "Even so, since your glasses didn't have a right to be there, Mr. Leiber is not liable," replied Rabbi Dayan. "It is considered oness (beyond his control), since people don't typically look down. Furthermore, often the plane is darkened so that the person walking has difficulty seeing what's in front of him" (Pischei Choshen, Nezikin 8:[21,26]). "What if it were common to leave objects in such a place?" asked Mr. Weiss.

"If people often leave objects there, such as in a loading zone, the passerby is liable, unless it was dark and he couldn't see," continued Rabbi Dayan. "He should have considered that there might be an object there and should have walked with caution" (C.M. and Sma 412:2; see, however, RA"E 412:2 citing Maharshah).

"If I had left a handbag in the aisle, would that be included in this?" asked Mr. Leiber. "People sometimes leave bags jutting out."

"The aisles are narrow; nothing should be left in the aisle!" replied Rabbi Dayan. "However, if Mr. Leiber had squeezed by, and knocked off the glasses from your face or lap, he would be liable, since he should have been careful about that."



BHI HOTLINE

commits to guarantee a loan after it was issued, the commitment must be ratified with a kinyan to make it binding, since in this circumstance the lender did not rely on the guarantor to issue the loan (C.M. 129: 1-2).

Some Poskim contend that when the guarantee is itself an asmachta, it is not binding. For example, Reuven sold property to Shimon without a guarantee to reimburse him if the land is repossessed, and Levi offers Shimon that guarantee. Since Levi's commitment is conditional on someone repossessing the land, it is not binding (C.M. 131:9). This is fundamentally different from a loan guarantor. On one hand, Levi's commitment is conditional on the borrower defaulting on the loan, but on the other hand at the time of his commitment the borrower became responsible to repay the loan and the guarantor had the satisfaction of being considered reliable. Consequently, his commitment is not categorized as an asmachta.

In your case, since no obligation is generated at the time of the commitment (even on the damager) and the askan is obligating himself if and when the child will damage, his commitment is an asmachta and he is exempt (Gra 131:19; Beis Ephraim, C.M. 34; and Beis Yosef). But other opinions do not make this distinction (Tur, C.M. 131; and Sma 131:18).

Since the matter is subject to debate, if the school wants the askan's commitment to pay for any damages they would have to draft a contract that would remove the asmachta element of the commitment.

However, if the school insists that the father commits to pay for damages caused by his son, it would be binding without having to draft a special agreement, since that would represent a binding stipulation to the agreement of their relationship (Ketzos 315:2).

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MONEY MATTERS

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Q: For centuries, sefarim were printed with rabbinic haskamos (approbations) prohibiting others from reprinting the sefer for a certain number of years, often with a curse (niduy or cherem) attached. What is the basis for this?

A: Many based these haskamos on hasagas gevul (encroachment). In situations where this is not applicable, other reasons were advanced: 1) A takanas chachamim (rabbinical enactment) of the Sages of each generation to enable the creator to profit. 2) Mutual agreement of the publishing trade. 3) To strengthen those doing mitzvos so that they shouldn't suffer losses. 4) An established practice without dissent that became entrenched.

According to the opinion that Halachah recognizes ownership of IP (intellectual property), which is sufficient reason to prohibit republishing, we can explain the need for such haskamos in a number of ways: 1) To strengthen the prohibition in people's eyes. 2) For publishers of old works over which there is no ownership. 3) Not every new work is sufficiently a "new mental creation" to be considered IP. 4) On account of the mitzvah to teach Torah, ownership in Torah IP may be limited, to a certain degree. (See Emek Hamishpat, Zechuyos Yotzrim, intro. 21; ch. 17-20.)

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