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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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BUSINESS WEEKLY FOR THE MONTH
OF KISLEV HAS BEEN DEDICATED

לעלוי נשמת
מיכל שרה אידל בת ר' יוסף
BY SHAMMAI BIENENSTOCK

STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Junior League

Dudi Kleiner was assistant coach of his community's Junior League basketball team. Among the players was his younger brother Dovy, who had just turned eleven. Twice a week, Dudi would meet with the boys after school in the park for practice. One afternoon, when practice was over, Dudi said to his brother, "I have to run to Mincha and then go learn. Could you please take the ball home?"

"No problem," said Dovy. "I'm going to play a little longer, and then go on the swings for a few minutes."

"You won't forget the ball?" asked Dudi. "It belongs to my chavrusa (study partner). I borrowed it for the afternoon."

"I can remember," said Dovy. "I'm already 11!" Dudi headed to Mincha. Dovy shot a few more baskets and then went over to the swings, placing the ball on the side of the

playground. While on the swings, some friends came to the park with their skateboards. Dovy ran over to join them.

Half an hour later, as it grew dark, they all headed home.

Boys will be boys, and the basketball remained at the swings...

Late that night, Dudi returned home. He looked in his room for the ball, but didn't see it.

"Did Dovy bring the basketball home, as he was supposed to?" he asked his parents.

"I don't recall seeing it," replied Mr. Kleiner. "You know that children his age are not always reliable."

In the morning, Dudi asked Dovy about the basketball.

"Oops," said Dovy. "I ended up meeting my friends and left the ball near the swings!"

"You assured me that you wouldn't forget!"

said Dudi. "That was irresponsible of you!" Dudi biked to the park on his way to school, but the ball was gone. When Dudi got home that afternoon, he walked straight into Dovy's room.

"The ball's gone!" he exclaimed. "You're going to have to buy my chavrusa another one from your allowance money!"

Dovy stared at him. "You should have taken the ball with you!" he replied. "I'm not paying."

Dudi asked his parents what to do.

"This is an interesting question," said Mr. Kleiner. "How about asking Rabbi Dayan?"

"You mean the one who writes in *Business Weekly*?" asked Dudi. "The paper we read at the Shabbos table?"

"Yes," said Mr. Kleiner.

The three went over to Rabbi Dayan. Dudi related what had happened.

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Bumped Bumper

My neighbor backed into the bumper of my car and agreed to pay to have it repaired. Before I could bring it to the body shop, I was involved in an accident that totaled the car.

Q: Is my neighbor still obligated to pay the cost of what it would have cost to repair the damage?

And if he is not obligated, but already paid for the damage, do I need to reimburse him?

A: One who damages another's property must reimburse the owner. The damager must pay for the decrease in value caused by the damage. In other words, we calculate the difference between the object's value before the damage and its value subsequent to the damage, and the damager must pay that difference. Often, a scratch on a car's bumper will not decrease the resale value of the car. However, if the damage is the type that people would commonly

repair, the damager is obligated to pay the cost of the repair.

There are two explanations of the character of this obligation. According to one approach, the damager's primary obligation is to repair the damage (Shach 95:18 and 387:1), but he has the option to pay for someone else to repair the damage (Tumim and Nesivos 95:6).

The second approach contends that the damager is not obligated to repair the dam-

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"Who is liable for the basketball?" asked Mr. Kleiner. "Dudi, Dovy, both or neither?"

"Dudi is liable for the basketball to his friend, who lent it to him," answered Rabbi Dayan. "Dovy is not liable, though, even after he becomes bar mitzvah."

"Why is that?" asked Mr. Kleiner. "A child under bar mitzvah is considered unreliable to entrust with something," explained Rabbi Dayan. "Therefore, Dudi was negligent in entrusting his friend's ball to a minor, even a member of his own household, such as his younger brother (C.M. 291:21)."

"And why isn't Dovy also liable to me for his negligence in leaving the ball in the park?" asked Dudi.

"A child cannot accept legal liability of guardianship," replied Rabbi Dayan. "By choosing to place the ball in the hands of someone who is liable to lose it, you displayed a lack of con-

cern for it and a willful risk of loss (see C.M. 188:2; Pischei Choshen, Pikadon 1:17)."

"Do I have to pay when I become bar mitzvah?" asked Dovy. "I remember I once broke something and was told we should pay."

"A child who damages or steals, although not legally liable when he is a minor, carries a moral responsibility to pay when he becomes bar mitzvah," replied Rabbi Dayan (C.M. 349:3,5; Rema, O.C. 343:1). "However, in this case, you do not even have a moral obligation, since Dudi displayed recklessness in entrusting the ball to you."

Rabbi Dayan then turned to Mr. Kleiner. "Dovy does not owe anything," he said. "However, if you feel that he should be encouraged to pay partially as an educational measure, to teach him responsibility for property, that is your prerogative as an educating parent."

age, his obligation is to pay the owner for the damage to be repaired. According to the second approach, this obligation is no different from any other monetary obligation, and the owner may collect that money even if he has no intention of actually repairing the damage (Chazon Ish, B.K. 6:3; Dibros Moshe, B.K. 57).

A practical difference between these approaches is the problem that arises if the cost of the repair increases from the time of the damage to the time of the repair. According to the first approach, since the damager's primary obligation is the repair, if the repair is now more expensive, he must pay that additional amount. According to the second approach, the damager is only obligated to pay what it would have cost to repair the damage at the time the damage occurred.

Similarly, if the cost of the repair decreased from the time of the damage to the time of

the repair, according to the first approach the damager pays the lesser amount, whereas according to the second approach, the damager must pay the initial, higher amount.

In your case, according to the second approach, the damager is obligated to reimburse you for the damage he caused, and the fact that the car was subsequently totaled has no bearing on his obligation. In contradistinction, according to the first approach, since the primary obligation is to repair the damage, since the car was subsequently totaled, the first damager does not have to pay for the damaged bumper since there is no car to be repaired.

On the other hand, if the damager already paid for the damaged bumper, the owner is not obligated to refund the money, since he can rely on the second approach that maintains that the owner is owed money for the damage.

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Lost and Found #19

Q: Someone loaded his car with bags. A package of batteries fell out, but he drove off before I had a chance to alert him. What can I do with the batteries?

A: When a person would typically abandon hope of retrieving his lost item, e.g. there is no siman but he is unaware of the loss, this is called yei'ush shelo midaas. This is not considered yei'ush, and you may not take

the batteries for yourself (B.M. 22b; C.M. 262:3).

There is a dispute about what to do if you pick up the batteries. Although some rule that once you already picked them up, you may use them meanwhile, Rema and most authorities rule that "Yehei munach ad sheyavo Eliyahu" — they should sit unused until Eliyahu Hanavi arrives. Moreover, you become responsible for them as a shomer,

even after the owner subsequently notices his loss (C.M. 260:9-10; Shach 260:26).

One approach is to have intention not to become a shomer when you pick up the batteries. Then, when sufficient time passes that the owner will have unloaded his bags and realized his loss, you may keep them (Hashavas Aveidah K'halacha 5:4[18]). B'ezras Hashem, next week we will mention another option.

MONEY MATTERS

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