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STORY LINE

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On a Fling

The eleventh-grade boys were a rambunctious bunch. They were not violent, but their "playing" involved occasional roughhousing.

Shimshon was standing in the hallway during recess talking to a friend when Dan walked over and jumped on him. After a brief struggle, Shimshon flung Dan off. Dan reeled backwards a few steps, off balance, and fell against a ceramic vase that was decorating the hall. The vase fell over and broke.

A teacher heard the crash and hurried over to restore order. He then took the two boys down to the principal's office for a discussion. After addressing the issue of violence, the principal pointed out that they broke the vase and would have to pay for it.

"Why should I have to pay?" Shimshon asked the principal. "Dan broke the vase, not me. He fell on it."

"What do you mean?" replied Dan. "You threw me into the vase. I was totally off balance and could not avoid it. You were the one who broke it!"

"It's still your fault," argued Shimshon. "You started the fight. I was just protecting myself. "

"I'm not saying the fight wasn't my fault, but that's a different issue," Dan shot back. "You threw me against the vase, so you are responsible for breaking it!"

They both looked at the principal, waiting for a resolution.

The principal leaned back in his chair. "You both have valid points. I'm really not sure who is liable here," he said. "I'd like to consult Rabbi Dayan on this. I'll arrange to meet him tomorrow evening."

The following evening, the principal, Shimshon and Dan met with Rabbi Dayan.

"Dan attacked Shimshon, who flung him back in defense, knocking over a ceramic vase," said the principal. "Who is liable for the vase?"

"A person who damages is liable, even if it was accidental and not under his control," replied Rabbi Dayan. "Therefore it might seem that Dan is liable. However, when you fling away another person, the second person can be considered like a 'tool' or object in your hand, as if you had flung a brick at the vase. Thus the damage is primarily Shimshon's: his active force caused the damage, even though he wasn't in direct physical contact with the vase" (see C.M. 378:1; Chiddushei HaGrach, Hil. Yesodei HaTorah 5:1, s.v. "v'yesh lomar").

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FROM THE BHI HOTLINE

Shikur Donor

On Purim I collected funds for hachnasas kallah. One person gave me a very generous donation, but he was clearly under the influence of wine when he gave me the money.

Q: Should I be concerned that if he were sober he would not have given such a generous donation?

A: Shulchan Aruch rules that transactions performed by one who is drunk are valid and binding unless one was "as drunk as Lot." The transactions of someone who is that heavily influenced by alcohol are not valid since he is considered shoteh, insane (C.M. 235:22).

Accordingly, if it seems that he was not as drunk as Lot, you may keep the donation, but if he was as drunk as Lot, you are obligated to return the money to him. What requires clarification is the point at which a person is considered as drunk as Lot. Some authorities maintain that the degree of drunkenness like that of Lot is achieved when a person is totally unaware of what he is doing (Maggid Mishnah, Yibum 2:4; Pri Chadash, E.H. 121:3).

Some add that if, after becoming sober, one recalls what he did while he was drunk, he did not reach the drunken state of Lot (Maharitatz 211). Others distinguish between those who can recall everything that happened while drunk and those who have only vague memories of what took place, and it is the latter condition that is like the drunken state of Lot (Taalumos Lev 1:32).

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STORYLINE CONTINUED

"So, does this approach exempt Dan completely?" asked the principal.

"I don't think so," answered Rabbi Dayan. "The reasoning is most compelling: Had Shimshon thrown Dan intentionally or if Dan were completely blameless; then Dan is considered merely a 'tool' or object. However, while Shimshon was not intending to break the vase, although he played a prominent role in the damage, Dan is not completely a 'tool' in his hand. Moreover, since Dan began the fight, he was flung by a force that came about through his negligence. This is somewhat comparable to the question of who is liable if a person stood carelessly on a roof and was flung off by the wind. Therefore both boys are parties to the damage and have to share the liability" (see C.M. 378:1-2; 410:34; Pischei Choshen, Nezikin 7:33).

"What about the fact that I was attacked and acted in self-defense?" asked Shimshon. "Is that not reason to exempt me?"

"Even a person whose life is threatened and saves himself through damaging another's property — e.g., a person who escapes by breaking through his neighbor's fence — has to pay for the damage he did," answered Rabbi Dayan. "The fact that you were threatened or attacked does not exempt you from damage to a third party's property" (C.M. 380:3).

"I would add, though," concluded Rabbi Dayan, "that it would be appropriate for Dan to cover part of Shimshon's liability in appeasement for attacking him. Although we do not enforce payment for inflicting pain nowadays, there is still a moral obligation. Covering some of Shimshon's liability is an appropriate means to appease him" (C.M. 1:2; 422:1).

FROM THE BHI HOTLINE CONTINUED

Alternatively, some authorities say that regarding business transactions, measuring the clarity and soberness of a person is determined by whether he has the capacity to distinguish between good and bad and can consider the consequence of his actions. One could be in this state even though he is aware of what he is doing and will later recall that he did it. Nevertheless, since his capacity to properly reason is diminished, he has reached the drunken state of Lot. This, in fact, was the intent of Shulchan Aruch in describing a person who is too drunk to make a transaction as "not knowing what he is doing," meaning that he cannot consider the consequence of his actions (Get Mekushar Istanbul, 5527 16:1. See also Ohr Sameach, Yibum 2:4).

It would thus seem that if the donor was so drunk that he was completely unaware of what he was doing, you must return his money. If he was merely confused and his reasoning ability was compromised, the halachah is subject to the debate whether this state of mind is classified as "drunk as Lot." If he was drinking but remained capable of reasoning, the donation is valid.

However, when a person sits down to eat the seudah on Purim with the intent to consume alcoholic beverages and has money that he intends to distribute to collectors, if he does not wish to give away large sums of money to a single collector he should appoint someone to oversee his donations to prevent him from doing so. The fact that he did not appoint someone to watch him indicates that his intent was to give away the money as he sees fit while drunk, and thus all opinions might agree that the donation may be valid (see Yam Shel Shlomo, B.K. 3:3).

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Lost and Found #35

MONEY MATTERS

Q: When I find an aveidah that has no simanim and I can keep it, how does it become mine?

A: In order to acquire an aveidah, you need to perform an act of acquisition appropriate for that particular item. Thus, most small items need to be picked up (hagbahah); larger items need to be dragged (meshichah) into a private or semiprivate area (C.M. 268:1; 198:1).

Your property can also "acquire on your behalf," even without your awareness, if the property is secure. This applies on condition that you are likely to discover the aveidah. Thus, in a place where there are many other people — a bank, hotel, large store, etc. — the property will not acquire for its owner. If the property is not secure, though, you need to be standing nearby and aware of the metziah with intention to acquire it (C.M. 268:3; Hashavas Aveidah K'halachah 14:3).

In addition, the Sages instituted that when a person approaches an aveidah in a semipublic area, whoever comes first within four amos (approx. 7 feet/2.13 meters) acquires it, in order to reduce disputes. In a public area, though, you must take actual possession of the item (C.M. 268:2).

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