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פרשת ויקהל-פקודי לז"נ ר' אהרן דוב ב"ר חיים משה ע"ה

CASE FILE

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לע"נ הרב שלמה אהרן בן ר' משה וזוג' חי' פריידא בת ר' אשר ע"ה

LOST BAG

The class was returning from an overnight trip. The hold of the tour bus was loaded with knapsacks and equipment they had taken.

"I'm not returning to the school," Shimon told his friend Avi. "I'm getting off at a town along the way."

When Shimon got off, he removed some knapsacks to get to his, which was deep in the hold. He returned them and the bus continued on.

When the bus returned to the school, Avi couldn't find his bag. The following day, he asked Shimon about it: "Did you see my bag?"

"I remember removing it to get to my knapsack," Shimon replied. "When I put the bags back, I must have missed yours and left it out. Did you have your name on the bag?"

"Yes," said Avi. "It had a tag with my name and phone number on it."

"Maybe someone will find it and call you," said Shimon.

"Hopefully," replied Avi. A week went by, but nobody reported the missing bag.

"I feel really bad," said Shimon. "It was my fault for leaving the bag out. I'll have to pay you for it."

"I don't know about that," replied Avi. "You were trying to get your bag out. It was an honest mistake."

"Still, it was my negligence," said Shimon. "Doesn't that make me liable?"

"You didn't exactly lose the bag, though," said Avi. "You left it at the bus stop and it had a name on it."

"Why don't we ask Rabbi Dayan?" suggested Shimon. Avi agreed.

They approached Rabbi Dayan and related what happened. "Am I liable?" asked Shimon.

"What a fascinating *she'eilah*!" exclaimed Rabbi Dayan. "The *Gemara* (*B.M.* 35a) teaches that a guardian who does not remember where he placed an entrusted item is liable. It is considered negligence on his part" (*C.M.* 291:7).

"Nesivos Hamishpat (291:14) writes that it is worse than regular negligence," continued Rabbi Dayan. "He considers it direct damage and writes that even a guardian who is exempt from negligence (e.g., *b'alav imo*), or even a person who is not a guardian, is liable in such a case. Even a person who hid his friend's item to protect it and forgot where he put it is liable,

Coming Next Week:

Special Coronavirus halachic discussions

May the Ribono Shel Olam send a Refuah shleima to all cholei Yisrael and protect us from all harm.

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

"I'LL PAY, DON'T REPORT TO MY INSURANCE"

Q. Someone hit my car, causing damage. He asked if he could pay me out of pocket rather than have me file a police report and sue his insurance company, which would waste a lot of time and likely cause his premiums to go up. His insurance would have covered a car rental for the days my car will be in the repair shop. I expected him to compensate me for the rental as well, but he only paid me $850 for the repair and claims that he is not required to pay for the car rental.

Who is right?

A. According to basic *Halachah*, when a person damages another person's car, he is *not* required to pay for a replacement rental during the repair period, because a *mazik* (person who causes damage) is responsible only for repairing the actual damage, not for additional expenses incurred as a result of the damage.

We find, for instance, that a person who places a lock on someone else's house, preventing him from using it, is not required to compensate the homeowner for the amount he spent to rent a house during the period he was unable to access his property (*Rosh, Bava Kama* 2:6; *Shulchan Aruch Choshen Mishpat* 363:6).

Similarly, someone who locks his friend's cow in a barn is not obligated to pay for the value of the work it could have otherwise done during that time (*Shach* ibid. 307:5). Someone who locked up another *person* and prevented him from working would be required to pay *sheves* (lost wages; *Shulchan Aruch* ibid. 420:11), but *sheves* applies only to lost wages due to injury or imprisonment of a human, not of an animal or an object (ibid. 307:6).

Although no payment would be due in *beis din* in

CASE FILE

since he acted on his friend's property and through his actions the item was lost by being placed where it couldn't be found."

"It seems, then, that I'm liable," said Shimon.

"According to the Nesivos, probably," replied Rabbi Dayan. "However, *Imrei Shefer* (Klatzkin, #24-26) partially disputes the position of the Nesivos. Although a person who had no right to take his friend's item is considered as damaging if he misplaced it, for a guardian — who is supposed to put the item away — it is not considered direct damage. It is still considered negligence, though, since a guardian is responsible to know where the entrusted item is, even though forgetting is not necessarily considered negligence in other contexts" (*Pischei Choshen*, *Pikadon* 3:[4]).

"How would this apply here?" asked Avi.

"When Shimon removed the knapsacks to get his, he did not intend to steal your knapsack nor accept responsibility for it as a guardian," replied Rabbi Dayan. "I suggest that he also is not comparable to one who took his friend's item without permission, since it is common to rearrange the contents of the hold and to reload the knapsacks as needed. Therefore, it is neither theft, nor negligence of a guardian, nor direct damage.

"Furthermore, there is another lenient factor, possibly even according to the Nesivos," added Rabbi Dayan. "The bag had identification; someone could have returned it. Therefore, Shimon's actions should be considered *grama* (indirect damage), for which there is no enforceable liability. Nonetheless, since Shimon was negligent and caused damage through his actions, he has a moral obligation to pay (*chiyuv b'dinei Shamayim).*" (*Shach* 32:2; *Pischei Choshen*, *Nezikin* 3:39).

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

HEFKER #22

(OWNERLESS PROPERTY)

Acquisition through Four Amos

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

Q: I was standing in an alley and the wind blew a $20 bill next to me. Before I picked it up, someone came and snatched it. Whose is it?

A: The Sages instituted that the 4 *amos* surrounding a person – a square of 4 amos (~6.3 ft.) in each direction – should acquire for him, like his courtyard, so that people should not come to argue (*C.M.* 268:2; *Sma* 268:3; *Rosh Eiruvin* 4:11).

This applies in an alley (*simta*) or edges of public areas (*tzidei reshus harabbim*), where people don't cluster, or a *hefker* field, but not in a public area or another person's property, since there we cannot grant an individual a right to the 4 *amos* surrounding him (*Sma* 268:4).

There is no need to declare that the 4 *amos* should acquire for you. Moreover, many maintain that the 4 *amos* automatically acquire, even without your explicit intent (*Beis Yosef* 268:6; *Taz* 268:3; *Machaneh Ephraim, Chatzer* #16).

Therefore, the $20 bill is yours.

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the above cases, all of these cases would be considered *grama* (causation of damage), which, if caused intentionally, would render the perpetrator liable for payment in order to avoid facing judgment in Heaven (*latzeis yedei Shamayim*; see *Bava Kamma* 55b). (According to many *poskim*, this payment applies not only to causation of damages, but also to causation of a loss of potential earnings; see *Mishpat Hamazik* 29:2.)

Therefore, if the *mazik* damaged your car intentionally or out of negligence, he should pay for the rental *latzeis yedei Shamayim*. If he wasn't negligent and the damage was caused unintentionally, the *halachos* of *grama* would not make him liable (*Minchas Pittim* 386).

So far, we have examined this case purely from the *hilchos nezikin* (damages) angle. There is another factor to take into account before rendering a final ruling, however.

Contemporary *poskim* debate whether a Jew is allowed to file a claim against another Jew's insurance company. The complexities of this dispute are beyond the scope this article. (*Kovetz MiBeis Levi,* vol. 7, p. 134 and vol. 9 p. 176; *Umka D'dina* vol. 3, p. 67; *Hayashar V'hatov,* vol. 2, p. 32; *Meishiv B'halachah* 42 are some of the sources that address this complex topic.)

In brief, some *poskim* rule that a person may file a claim even if he will be compensated for damages that would not be awarded in *beis din* according to *Halachah*.

Others maintain that if the *mazik* is willing to pay for the repairs according to what *Halachah* requires him to pay, the person whose car was damaged is *not* allowed to file an insurance claim if it will damage his counterpart (for instance, by causing his premiums to go up).

Your case depends on the outcome of this dispute. According to those who rule that you are allowed to file a claim, since you agreed to forgo the right to claim from his insurance in exchange for the *mazik's* commitment to pay whatever you would have received from his insurance company, he is required to pay for the rental even though he caused the damage unintentionally (based on the concept of *arvus*).

According to the second approach, however, since you would not be allowed to file an insurance claim without consent from *beis din*, you are not in a position to negotiate with the *mazik* to cover the cost of rental, and the *mazik* is required to pay only the amount he would have paid according to *Halachah*.

Bottom line, if you would have relied on the lenient *poskim* and reported the damage to the *mazik's* insurance company if not for his offer to pay, then he is required to pay for the rental car.

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