

Is There an Obligation of Hashavas Aveidah on an Item Lost by a Child?

Question: In my development, there are many scooters, coats, toys, etc., which were obviously dropped by children. Do I have to pick up and return all of these lost items?

Answer: The truth is that anything knowingly entrusted to a child has the status of an *aveidah m'daas*. The Mishnah in Bava Basra (87b) discusses a case where a parent sends a child with a jug to purchase oil from a storekeeper. If the jug falls and breaks on the way home, the Mishna says that the storekeeper is liable to pay for it. The gemara there explains that if the storekeeper would have simply filled the jug and sent the child on his way, he would not be liable. The reason the Mishnah says he is *chayav* is that it is specifically referring to a case where the storekeeper first used the jug for his own purposes, thereby becoming a *shoel shelo m'daas*. Since a *shoel shelo m'daas* is considered a *gazlan*, the storekeeper now has an obligation to return the jug to its owner. If it breaks before being returned, he is liable.

Both the Ketzos Hachoshen and Nesivos Hamishpat conclude from this sugya that one is not obligated to protect something that a parent entrusts to a child. Although one cannot take the item for himself, he also is not responsible to guard it.

If the parents entrust an item to the child, no one else is obligated to protect it any better than they did. If the parents know that a child may lose or break an object they give to him, and they decide to give it to him anyway, they have accepted that something may happen to the object and no one else is responsible to do more than they did by returning the object to them.

Therefore, one would not be obligated to return a coat, toy, or scooter that was given to a child. Of course, if the object is in a place where someone may trip over it he should move it to the side, but there is no mitzvah of *hashavas aveidah*.

Question: What if someone already picked it up?

Answer: He can still put it back down. It is clear from the Rishonim there that when parents entrust an object to a child, they accept that no one is obligated to return it to them, even if they already picked it up.