

ACQUISITIONS AND PARENTAL RIGHTS

Rav Baruch Fried, Dayan at the Bais Havaad

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

INTRODUCTION

In this series, we will focus on the halachic status of minors with respect to commerce and their ability to own and acquire items on their own. By way of introduction, we should note that despite their young age and lack of halachic *da'as*, halacha views *ketanim* as people with all the legal rights that adults have, and one is generally not allowed to take advantage of them in any way. Although a parent shoulders the responsibility of chinuch, this alone does not automatically create unlimited rights for the parents. Rather, as we will see, there are halachic rules as to what is permitted and what is not.

In addition, the Gemara (Sukkah 46b) indicates that one may have an even higher responsibility of keeping one's word to a *katan* than to an adult. The Gemara says that one may not promise to give something to a child and then retract since this teaches the child to lie. As a rule, one is not allowed to make promises to an adult and retract it either (called *mechusar amanah*), so the Gemara is seemingly raising the bar for a child to be beyond that of an adult. Thus, even in a case where one is permitted to renege on an agreement with an adult, such as in a case of *asmachta* where the individual's commitment was clearly insincere, one would still not be allowed to retract in the case of a child because one is teaching them to lie.

This concept can be illustrated with the following true story. An adult once took a few children bowling and at one point, after one child had bowled a "split," the adult offered him \$20 if he could successfully knock down the rest of the pins. After the child let go of the bowling ball and it sped down the lane, the parent raised the amount to even \$50 or \$60. Sure enough, the ball ultimately knocked down the other pins, giving the child a "spare." In this case, the entire promise to give any money was an *asmachta* and was not meant seriously. However, due to the Gemara mentioned above, it would seem that at least the original promise to pay \$20, which may have been believed by the child, should indeed be fulfilled to prevent the child from learning to lie.

OWNING AND ACQUIRING MOVABLE OBJECTS

Does halacha allow children to own and acquire objects, and if so, in what manner? Take a case of a bar mitzvah boy whose parents wish to use some of his gift money to pay for the bar mitzvah itself. Is this permitted, or does the money belong to the child and he has the right to refuse?

With respect to owning property, the Mishnah states that even an infant can inherit property from a deceased relative, and can then bequeath it to other relatives upon its death. The halacha with respect to acquisitions isn't as simple. The Gemara (Gittin 64b) rules that a child who is old enough to differentiate between a rock and a nut i.e. he will discard a stone due to its lack of value but retain the nut because he recognizes its inner value, can acquire objects for himself - seemingly on a Torah level - but he cannot acquire objects on behalf of others. On the other hand, the Mishnah (Gittin 59b) says that a *metziah* found by a child (or *cheireish* or *shoteh*) belongs to him only due to *darkei shalom* (to prevent fighting over lost objects), but on a *de'oraisa* level, the child cannot acquire a lost object.

Tosafos (Sanhedrin 68b) resolve this by formulating a concept known as *da'as achareres makneh* (the intent of another individual transfers ownership): in the case of a lost object, no adult is transferring ownership to the child, and in such a case, his rights to take ownership apply only on a *derabanan* level. Whereas, if an adult gives an object to him, his *da'as acheres* allows the child to acquire it on a *de'oraisa* level.

The Shach (C.M. 243) disagrees with this suggestion of Tosfos, as there is no basis in the Mishnah or Gemara for such a concept of *da'as acheres*. Instead, the Shach suggests that a *katan* can fully acquire even a *metziah* on a *de'oraisa* level, and the mishnah that invokes *darkei shalom* refers to a child who is below the age of the child described in the other Gemara (who can differentiate between a rock and a nut).

The Ketzos defends the approach of Tosfos (which is accepted by other Rishonim as well) by explaining that a *katan* who can tell between a rock and a nut possesses a "yad" (the technical ability to acquire objects); however,

due to his age and lack of *da'as*, he lacks the “*kavanas kinyan*” (intent to acquire). Therefore, he cannot acquire a *metziah* on a *de'oraisa* level because there is no intent to acquire it. But if the *da'as acheres* of another adult is present, such as when an adult gives the child an item, then the adult inserts his own *kavanah* into the *kinyan*, and the child is capable of accepting it halachically with his “*yad*” even according to the Torah.

Tosafos note that a *katan* can also acquire through *sechirus*, wages. If one hires a child for a job, such as babysitting, one is obligated to pay them, and the child owns whatever money is given to them. Moreover, the Chafetz Chaim writes that one violates the *issur* of *bal talin* if one does not pay him on time.

THE RIGHTS OF A PARENT

Once a child has acquired money or items in one of the manners mentioned above, what is the status of the parents and what are their rights vis-à-vis this money? Do the parents subsequently have rights to these funds or items, or do they remain solely the child's? There's an important distinction here between sons and daughters. The Torah gives the father the right to marry his daughter until she reaches maturity, and the father also receives the rights to her *maaseh yadayim* (any amount that she works). Even if he does not support her financially, he is entitled to any additional money she receives beyond the amount of her basic expenses. For the same reason, the father is also entitled to any windfall she comes across. By contrast, a father does not receive these in the case of a son whom he is not supporting.

If the father is supporting his children financially, then Chazal provide different guidelines. The Mishnah says that a father is entitled to any ownerless objects found by his children, and the Gemara (Bava Metzia 12a) provides two different reasons for this. According to Shmuel, the *katan* plans to bring any lost object he finds to his father. Therefore, even though the *katan* does have a “*yad*,” the father acquires it because the child picked it up with the intent to give it to his father. Rabbi Yochanan (whose approach is accepted as the halacha) explains that the Mishna is specifically referring to a child who's being supported by the father, and the father is entitled to the *metziah* due to *eivah* (enmity) if the child will keep it for himself despite being supported. This applies to all children who are living at home and being supported, even after the child becomes an adult. Conversely, if the parent no longer supports the child financially, then the child is entitled to it no matter his age.

The halacha with respect to gifts received by a child is a bit different. According to the Ramban, a *matanah* given to a child belongs to the child. On the other hand, the Nimukei

Yosef cites the Ran who disagrees, maintaining that a child does not have his own *yad* for gifts, even if the father himself gives the child a present. The Sema explains this opinion, which is the accepted one in halacha (Shulchan Aruch, C.M. 270:2), that although no *eivah* exists when a gift is given to a *katan* (as opposed to lost objects, as discussed above), still, if the young child is supported by the father then we assume that the giver intends for the father to take responsibility for that gift and decide whether it is appropriate for the child and how he can use it. As opposed to if the child is already halachically an adult, then the child does have a “*yad*,” and he can decide for himself what to do with his gift, even if he is supported by his parents.

A related discussion appears in the Rishonim concerning the status of money earned from working (*maaseh yadayim*). Some Rishonim say that the child owns these earnings, while others, including the Rashba, hold that they belong to the father, and earnings are included in the *takanah* of *metziah* mentioned above. The Rema follows the opinion that the father has the right to the money (though R. Akiva Eiger quotes those that disagree), except where the father dies without asking for the money, in which case the child keeps the money.

PARENTS AND BAR MITZVAH GIFTS

Let us now return to the question of the bar mitzvah gifts. If money or gifts are given before the child turns thirteen, we have seen that according to the halacha, the father may take it, since the gift was given on the presumption that the parent decides what to do with it. Concerning money or gifts given after the bar mitzvah, it would seem that they were given on the presumption that the child may decide what to do with them, and not the parents.

However, in truth, the father may still be allowed to decide what to do with the money. The reason is that in principle, the parents are no longer obligated to support the child over the age of six. Thus, the father can argue that if the child wishes to decide himself what to do with his bar mitzvah money, the father may choose not to give the child other things that he desires (such as having a band at the bar mitzvah), or he can begin to charge the child for room and board, etc. On the other hand, it is not clear that the father can simply decide how to use the bar mitzvah boy's money without even informing him of his plan. Therefore, the parents and child should discuss the issue together, explain the different sides, and come to an agreement as to the best course of action.

To watch the video or listen to the shiur given by the Dayan, visit: www.baishavaad.org/yorucha-topics
Or signup to receive them via whatsapp: [📞 732.232.1412](https://www.whatsapp.com/channel/002997322321412)