

KATAN PART 2: COMMERCIAL TRANSACTIONS

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

CAN A CHILD ENGAGE IN COMMERCE?

In the previous shiur, we noted that a child can own and acquire items in certain situations. Let's discuss whether a child can engage in commerce and business transactions according to the halacha. Take the following scenario: A child walks into an electronics store and asks to buy an expensive music player. The owner sees that the child has money to pay for it and he sells him the device. However, the parent later calls the owner and claims that he or she was totally unaware of the child's actions; the child had used money that was intended for something else altogether. Moreover, the child accidentally ruined the music player immediately upon arriving home. The parent now demands the money back and that they be allowed to return the broken device. What is the halacha in such a case?

THE TAKANAH OF PEUTOS

Let us begin by citing the Gemara (Sukkah 46b) that says one should not give a child a *lulav* on the first day of Sukkos before fulfilling the mitzvah since a child can acquire the *lulav* for himself, but he cannot later be *makneh* it back to the owner. According to this, a child who is given something can acquire it as his own, but he cannot transfer ownership to anyone else afterward. If so, children would be unable to participate in commerce, which involves both buying and selling.

On the other hand, the Mishnah (Gittin 59a) relates that Chazal instituted a *takanah* called "*peutos*" in which a *cheireish* and *katan* may engage in business transactions for "*kdei chayav*," (to ensure they can receive their basic necessities to live), and such transactions are binding. The Gemara clarifies that below age six no child is able to sell, but beginning from somewhere between age six through ten are permitted to sell, depending upon their level of business acumen. If they have a good grasp of the concept of commerce, they may engage in dealings for movable items and even give away presents (which is included in *kdei chayav* to maintain good relations with the recipient).

According to the Gemara in Gittin, it is difficult to understand the basis for the Gemara in Sukkah. Why would a child be unable to transfer ownership of the *lulav* back to the adult? The Mordechai in Gittin offers two answers to this question.

The first is that the child referred to in Sukkah is below the age of the "*peutos*"; any child above that age may indeed transfer the *lulav* back to an adult. The second answer is that the child's father gave him the *lulav*, and in such a case, the rule of *peutos* does not apply. As support, he cites a ruling of the Gemara (Kesubos 70a) that the commerce of a child with an *apotropos* (executor) is not binding. Accordingly, the entire *takanah* of *peutos* applies only if the child does not have an *apotropos*, in order that he is capable of obtaining the necessary items he needs to live even if he does not have an adult supervising him. But if the child has an *apotropos*, or a father who supports him, the *takanah* does not apply.

Tosafos (Kesubos 70a) there cite the opinion of Rabeinu Chananel that a gift given would still be valid, since an *apotropos* cannot give a gift on behalf of the child. Because gift-giving also qualifies as *kdei chayav*, then it should be permitted for the child to give it himself. This approach differs from that of the Mordechai, who clearly understood that the ability of gift-giving, such as in the Gemara Sukkah, is also restricted if the child has someone looking out for it.

According to the Rambam and Shulchan Aruch (C.M. 235:2), children cannot give a gift if an *apotropos* is present, except if the *apotropos* upholds the gift. However, this ruling appears to contradict the parallel ruling of the Shulchan Aruch in Hilchos Lulav. The Shulchan Aruch there (O.C. 656) cites two opinions concerning the child who is given a *lulav* on the first day of Sukkos. According to the first opinion, the child cannot return the *lulav* back to an adult, while the second opinion holds that the child may indeed return it. The Biur Halacha explains that the two opinions disagree on whether the rule that the child may acquire ownership of an item from others (*daas acheres makneh osan*, discussed in the previous shiur) is *deoraisa* or *derabanan*. According to the first opinion, the child's acquiring of the *lulav* is valid *mideoraisa*, while his transfer in return is only valid *miderabanan* due to the *takanah* of *peutos*; therefore, the adult cannot acquire the *lulav* in return. According to the second opinion, the initial *daas acheres* is also of a *derabanan* stature, so the child's ability to return it on a *derabanan* level is effective.

A CHILD GIVING A GIFT

All seem to agree that even if the child has a father or *apotropos*, the transaction is valid on some level, and neither

opinion holds that the *takanah* does not exist altogether. Now, according to Rabbeinu Chananel, this question doesn't begin, because we are dealing with a gift that even a child with an *apotropus* can give. In fact, the Pischei Teshuvah (C.M. 235) cites the Maharam Alshich who rules that the halacha follows the opinion of Rabeinu Chananel and a gift is valid even without the *apotropus'* consent. Moreover, if it is clear that giving the gift is to the child's benefit, he posits even the Rambam might agree that the transfer is valid.

It would seem that the Shulchan Aruch in Orach Chaim accepts the opinion that *peutos* can transfer ownership of a gift to others even with an *apotropos*, with the caveat that the *apotropos* gives his consent. If so, they must have understood the *takanah* of *peutos* where an *apotropos* is present differently. In their opinion, the transactions and gifts transferred by *peutos* are always valid, including in the presence of an *apotropos*, but the *apotropos* possesses veto power. For this reason, the *apotropos* has the ability to validate a gift given by the child, even though the *apotropos* himself may not give a gift on the child's behalf. If so, then we can understand the ruling of the Shulchan Aruch that a *lulav* may be given by the child to an adult on some level (though it is unclear whether it is on a *deoraisa* or *derabanan* level), as the father or *apotropos* can approve the gift.

BACK TO OUR CASE

Let us now return to the case of the electronics store. According to what we have seen, the parent is correct that the owner should not have effected a significant transaction with the child without checking first that the parent consents. If he does, he runs the risk that the child may lose the item and he will still be forced to return the money if the parent claims that they did not approve. If a store owner frequently deals with many children, such as a canteen in a camp or a local makolet where many children come to buy food, the owner should ideally ask for written consent to be brought with the child when making the purchase, or the owner can ask the parents to sign a general written agreement that they agree to whatever purchases the child makes in the store, and then it is up to the parents to ensure that the children comply with whatever instructions they are given by the parents as to what to buy.

CHILDREN AND REAL ESTATE

With respect to real estate, Chazal added additional safeguards to the rules discussed above. According to the Mishnah, no child before bar mitzvah may ever engage in the sale of real estate. Moreover, if the property was inherited, according to most opinions no individual until the age of twenty can ever engage in such sales either (Bava Basra 155a). Chazal understood that teenagers have a certain propensity toward money, and they may be quick to sell real

estate if they are given what they think is a good deal. The Nesivos says that even if he really needs to sell it, there is no method for him to do so. His only recourse is to borrow money against the property, and then the Bais Din will take away the land to pay for the debt.

If a child under the age of twenty purchased the property or received it as a gift, the Shulchan Aruch states that he may sell it if he has particularly keen insight and understanding of the world of real estate, though here too, the Bais Din must carefully assess whether he fits this description. Once he is older than 20, he may buy and sell all forms of real estate even if he is not particularly intelligent (unless he qualifies as a *shoteh*).

RENTALS AND OTHER ACQUISITIONS

With regard to rentals, the Pischei Teshuvah writes that a child over bar/bas mitzvah may rent out their property. He explains that Chazal only restricted selling the property before the age of twenty. Since rentals are essentially a sale of the usage rights of the property rather than a purchase of the actual property, they left in place the Torah rule that any child over bar mitzvah may rent out a property.

There are a number of other issues related to acquisition discussed in the halacha with respect to children. A child is permitted to hire workers, as well as serve as an employee himself. Thus, if the child babysits, tutors, or shovels the snow on one's walkway, all of the regular rules governing workers apply to him as well. This includes the prohibition of *bal talin*, meaning that one must not delay payment. For example, one who returns from a wedding or an event must immediately pay the babysitter before she returns home. With respect to *mechilah*, children that are *peutos* may technically waive a debt owed to them. Some authorities hold that a child may also be *mochel* a normal insult or injury as well, similar to a debt or *onaah*, as these too are considered *kdei chayav*. However, others disagree and say that a child cannot be *mochel* personal insult or injury. It is reported that some gedolim came to ask *mechilah* from a child after their bar mitzvah for an incident that took place previously.

Finally, the halacha is that children do not have the right to render their possessions ownerless, since the ability to be *mafkir* is not considered to be *kdei chayav*. Rav Moshe Feinstein suggests a novel idea that if a child places an object in the garbage or in some location where it is abundantly clear that he did not want to keep it, and adults would have done the same, the object is indeed *hefker*. This is due to the nature of the item being in this location, rather than the child's *da'as*.

To watch the video or listen to the shiur given by the Dayan, visit: www.baishavaad.org/yorucha-topics
Or sign up to receive them via whatsapp: [📞 732.232.1412](https://www.whatsapp.com/channel/00299732221412)