

KATAN PART 3: LOANS, CUSTODIANSHIP, AND DAMAGES

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

LENDING TO A KATAN

In this shiur, we will be discussing some other issues related to children within Choshen Mishpat. Let us begin with the subject of lending money to a *katan*. Picture the following scenario: An adult is in a grocery store on Erev Shabbos and a child approaches him, asking to borrow \$20 because he forgot his money at home. The adult recognizes the child from the neighborhood, so he agrees and gives him the money. The adult later meets the child and asks him for the money back. The child responds evasively and does not return the money. The adult then asks the child's parents to return the money, but they respond by saying that they are not involved and that he should not have given the child money in the first place. What is the halacha in this case? Must the child return the money when he becomes an adult?

The Shulchan Aruch (C.M. 235:15) addresses the question of a *halva'ah* given to a child and presents three opinions. The first is that the child is indeed responsible to return the money after he becomes bar mitzvah, the second is that he is not obligated to return the money even after turning thirteen, and the third is that if he needed the money for his necessities, such as food or business, then he must return it, but if not, then he need not return it. The Sema questions this ruling, since if the child is above the age at which the *takanah* for *peutos* applies (see the previous shiur), then how is it possible that he is not obligated to return the money? The Sema, therefore, maintains that the opinions in the Shulchan Aruch all refer to where the child is below the age of *peutos*, but a child above that age must return the loan when he becomes bar mitzvah according to all opinions. The Shach argues that loans have no relevance to children below the age of *peutos*, and the different opinions are in fact referring to children above the age of *peutos*. The accepted halacha follows the third opinion in the Shulchan Aruch. Consequently, the child must return the money in the case of the grocery store if the money was actually spent on food.

Rabbi Akiva Eiger discusses a case where an adult financially supported an orphan and did not specify that he wished to be repaid. Only later after the orphan reached maturity did he wish to withhold the orphan's assets as payment for his support for the orphan. Rabbi Akiva Eiger writes that the entire discussion of the Sema and Shach relates to giving a child a loan for him to use as he wishes. But in this case, where the adult intended the money as financial support

for the orphan, he concludes that the adult has no right to withhold any assets to repay himself.

CHILD CUSTODIANS

Another question that arises is whether a *katan* can be a *shomer*. A *kollel yungerman* once related that when he was a child, he had been asked to stand outside the *mikvah* before Rosh Hashanah and Yom Kippur to collect payment from those entering, and at some point, he took a break and left. When he returned, he noticed that \$200 was missing, and a certain suspicious individual was nearby, though he did not know whether the individual had taken the money or not. Now, many years later, this *yungerman* wished to know whether he must repay the amount of money that was missing due to his negligence.

According to the Shulchan Aruch (C.M. 291:21), the halacha is that a *katan* cannot be a custodian, and he is not responsible if an adult gives him an item to watch. An adult custodian who does so would be responsible to the item's owner as a *poshe'a* if the object was damaged or lost, and the child has no responsibility in such cases. Accordingly, in the case of the *mikveh*, the *yungerman* is *patur* from giving any compensation, as he should not have been asked to supervise the collection of money in the first place.

In the reverse case, where a child requests an adult to watch one of his possessions, the Rishonim argue whether a *halachic* custodianship can be established. According to the Rambam and Shulchan Aruch, someone else serving as a *shomer* for a child's property is a regular custodian and would even be obligated to take the *shevuas hashomrim* if the item was lost. The Rema argues that the adult *shomer* need not take a *shevuah* in such a case, as no *shevuas hashomrim* exists when the item belongs to a *katan*. The Shach cites the Ran and others who take a more extreme position that even if the adult was negligent, he still wouldn't be liable since children are entirely excluded from the laws of *shomrim*. However, the Shach concludes that if proof exists that the *shomer* was negligent, then he would be liable.

BORROWING AN ITEM FROM A KATAN

The Minchas Chinuch (60:10) discusses whether one may borrow an item from a *katan* above the age of *peutos* and explains that it may depend upon the opinions mentioned

above. According to the Rishonim that exclude *ketanim* entirely from the parshah of *shomrim*, then it stands to reason that one who borrows from a child is considered a *shoe'l shelo mida'as*, borrowing from someone without first obtaining their permission, which is categorized as stealing. If the item got lost or ruined, even in the course of regular usage, he would be liable. But according to the opinions that children are included in the *parshah* of *shomrim*, then it would be permitted to borrow from them, similar to the *takanah* of *peutos*. Therefore, one would be exempt if the object was ruined when used in the normal manner (*meisah machmas melachah*), just like a regular borrower. The Minchas Chinuch is unsure, though, whether the exemption of *ba'alav imo* (the owner works with the *shoel*) for a *shoel* applies to the item of a *katan*.

SHELICHUS FOR A KATAN

Before Sukkos, is one able to purchase *aravos* from a *katan* who is selling them? The Biur Halacha advises against buying from *ketanim*. Presumably, he is referring to a *katan* who is selling his own *aravos*. The *takanah* of *peutos* may not render the *kinyan* valid on the *deoraisa* level, and the *aravos* must belong to the adult on a *deoraisa* level as required for the first days. However, in many cases, the child is merely serving as the agent of the owner of the *aravos*. In such a case, may the *katan* be appointed as the *shaliach*, or may he appoint a *shaliach* of his own?

According to the Shulchan Aruch (C.M. 188:2), children cannot serve as a *shaliach*, nor can they appoint someone else as a *shaliach*. Thus, if one sends a child to purchase something for him, the transaction is invalid. However, the Nesivos points out (182:2) that sometimes the child's action may be defined merely as a "*maaseh kof*", a technical action that even a non-sentient actor can perform ("a monkey"), and no *shlichus* is necessary. Accordingly, he says that if a *katan* brings an item from the seller to the buyer and relays the price that the seller is offering and the seller's instruction that the buyer should go ahead and make a *kinyan*, if he does so the transaction is valid since this is not defined as *shelichus*. Conversely, if a buyer gives money to a *katan* and requests that he gives it to the seller, this too is not defined as *shlichus*, since the child merely serves the role of a delivery service. This approach of the Nesivos is very relevant in many stores today, where a child may be serving as a cashier. Based upon the Nesivos, this would be permitted, since the items are for sale and the price is predetermined, the *katan* simply collects the money (which the buyer could, in principle, leave there on his own for the owner) and is not an active participant in the transaction.

Returning to the case of the *aravos*, the halacha would depend upon the level of involvement of the *katan*. If he simply gives the *aravos* to the purchaser and receives the payment at a predetermined price, it would be a valid transaction. If the child negotiates with the buyer and sets the price, then this would constitute an act of commerce on the part of the child. Thus, the sale would be valid only on the level of the *takanah* of *peutos*, but it may not be on the *deoraisa* level which is necessary for ownership of the *arba*

minim on the first day of Sukkos.

DAMAGES CAUSED BY A KATAN

What is the halacha concerning damages caused by a child? For example, if a child stole or damaged an item belonging to someone else, or he took food from the grocery store and ate it without his parent's permission: is he, or the parent, responsible to pay? The Mishnah (Bava Kamma 87a) states that an encounter with a *cheireish*, *shoteh v'katan* is unfortunate, since if they cause damage they are *patur*, but if one damages them one is liable. The Mishnah indicates that a child would not be required to pay compensation for the damage even after his bar mitzvah (since the Mishnah only discusses this possibility of later compensation with regard to other cases). The Rambam (Geneivah 1:10) rules this way explicitly that a child need not compensate for money he stole while he was under the age of bar mitzvah, though if the object appropriated is still in existence, one would be obligated to return it.

On the other hand, the Gemara (Bava Kamma 98a) relates that Rafram [one of the Amoraim] compelled Rav Ashi to pay for a loan document that he had burned due to the category called *garmi* (direct causative damage), which Rashi explains had happened when he was a child. According to the Maharach Ohr Zarua, this story indicates that after he grows up, a child is obligated to pay for damages he had caused, which disagrees with the Rambam. The Shulchan Aruch (C.M. 349:3) codifies the opinion of the Rambam as the halacha. Nevertheless, the Pischei Teshuvah cites the Shvus Yaakov, who posits that even according to the Rambam, if the child benefited from the item he stole, he is obligated to pay when he becomes of age. He adds that even if the item was destroyed or lost, the child should still compensate the owner when he grows up "*latzeis yedei shamatyim*," to satisfy the demands of Heaven, although he concedes that in this case, he need not pay the entire value. The Mishnah Berurah (O.C. 343) writes as well that one should go *lifnim mishuras hadin* and pay for the damage (even if it was caused through *garmi*), which seemingly means that he should pay the entire amount (more stringent than the Shvus Yaakov). In contrast, R. Akiva Eiger writes that the Maharach Ohr Zarua represents only a *daas yachid*.

Rav Moshe Sternbuch (Teshuvos V'hanhagos 4:317) discusses whether a parent must pay in a case where the child caused damage. He notes that the damage done by one's child cannot really be classified as *mamon hamazik*, nor as *adam hamazik*. Nevertheless, it seems that there is a widespread *minhag* that parents do pay in most cases. Having said that, even if this *minhag* is enough to compel a parent to pay, it would not apply in cases of *grama* or significant damage.

To watch the video or listen to the shiur given by the Dayan, visit: www.baishavaad.org/yorucha-topics
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