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STORYLINE

minor damage

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"C'mon Dovi," Yoni Balsam said to his twin brother. "The sun's out! Let's play catch." The two eleven-year olds grabbed their gloves and a softball. "We're going outside to play ball," Yoni called to his mother. "Please be careful," Mrs. Balsam said, "and keep the ball away from other people's property, especially the Glazers'." Last year, the boys had broken their neighbor's window and the Balsams had paid to replace it. After tossing the ball back and forth a few times, Dovi suggested, "How about a high fly?" Yoni threw the ball wildly in the air. The ball soared up, slanting to the side. Dovi chased after the ball, running through the Glazers' bushes into their yard. As he reached up to catch the ball, he heard a loud, "Crash!" Dovi looked down. He had knocked over a large, artistic planter in the

Glazers' garden and smashed it. Mr. Glazer came outside. "What's going on here?" he yelled. "We were playing catch, and I knocked over this planter," Dovi said apologetically. "I warned you many times not to play ball near our house," said Mr. Glazer sternly. "I'm going to speak with your parents." He walked the boys home. "Your boys damaged our property again," Mr. Glazer told the Balsams. "They're going to have to pay." "I'm sorry about the damage," said Mrs. Balsam. "We'll talk to them." "Last year we paid for the window," Mr. Balsam said to the twins. "This time, you're going to have to pay from your allowance money, as a lesson to be more careful. We'll drive to the gardening shop now and you'll buy the Glazers another planter, similar to the one you broke."

The Balsams chose a nice ceramic planter and the boys brought it over to the Glazers. "We brought this to replace the planter we broke," Dovi said. Mrs. Glazer looked at the planter. "Thank you," she said, "but this will not suffice! The planter you broke was artistic and more expensive than this." Dovi and Yoni looked at each other, flustered. "We thought this planter looked almost the same," Yoni said. "I'm sorry," said Mrs. Glazer, "but the other planter was worth more. I expect you or your parents to fill in the full value of the damage." The boys returned home dejected. "What should we do now?" they asked. "We spent almost all of our saved allowance!" "Let this be a lesson about how careful you have to be with other people's property,"

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FROM OUR HOTLINE the careless custodian

Submitted by
H. E.

I had to ship equipment to Miami for a trade show. I called my friend to ask if I could ship the stuff to him. He was hesitant, so I offered to pay him for the favor. He agreed and placed the equipment in his garage as soon as it arrived. He didn't lock the garage door, though, and thieves stole my projector.

Q: He paid for the projector. Am I still obligated to pay him for the favor as agreed?

A: The job description of a shomer sachar (paid custodian) - and the question of payment if the object is stolen due to his negligence - is subject to debate. One perspective is that the shomer sachar is a contractor who is paid for the job that he does, and he is paid for taking care of the item in his care. Another view is that the shomer sachar is like an insurance company, and he accepts the obligation to reimburse the owner if the item

is not returned. Ketzos HaChoshen (227:11) states that a shomer sachar is paid to watch the object in his care. His proof is the Gemara Bava Metzia (58a) that discusses a paid custodian for the coins that go to the Bais HaMikdash. The Gemara rules that he must take an oath that he took proper care of the coins in order to receive wages. This clearly indicates that the shomer sachar must demonstrate that he did his job of watching the

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STORYLINE CONTINUED

said their father. "But we'll talk the issue over with Rabbi Tzedek."

After Ma'ariv, Mr. Balsam, the twins, and Mr. Glazer sat down with Rabbi Tzedek. "It's already the second time the boys damaged our property with their ball-playing," said Mr. Glazer. "Isn't it my right to demand full compensation for the damage?"

Rabbi Tzedek said, "A child who damages is legally exempt from paying, even when he grows up, but it is proper for him or his parents to pay nonetheless."

Rabbi Tzedek then explained: "The Mishna (B.K. 87a) teaches that a child under bar-mitzvah who damages is legally exempt, since he has no legal culpability. Even when he matures, he is not accountable for the damages of his childhood (C.M. 424:8).

"Similarly, a child who stole must return whatever he still has, but is legally exempt from returning what was lost, even after he matures. However, Beis Din or his parents should discipline the child for having stolen or damaged, so that he should not continue doing so (C.M. 349:3,5)."

"Are you saying they don't have to pay at all?" asked Mr. Glazer incredulously.

"No. The Gemara (B.K. 98b) relates that Rav Ashi was made to pay for a loan document that he destroyed," said Rabbi Tzedek. "Rashi explains that he burned it when he was a child. Many authorities derive from this that although the child is legally exempt, there is a moral responsibility for him to pay when he matures. Nowadays, the parents usually pay instead, to relieve him of that responsibility."

"Rama (O.C. 343:1) also writes that if a child sinned, it is proper that he do something for atonement when he matures. Thus, if he stole or damaged, it is proper to pay (Mishna Berura 343:9). Some infer from the Rama's language, 'do something,' that it is not necessary to pay the full amount, but Sefer Chasidim advocates paying fully to achieve complete atonement (Pischei Teshuva 349:2; Yechaveh Da'as 8:6). It is especially advisable to properly compensate and appease neighbors, to preserve good relations with them."

FROM OUR HOTLINE CONTINUED

object in order to receive pay. Chazon Ish (Bava Kama 7:18) rejects this proof, since that particular paid custodian would not be obligated, for technical reasons, to repay the Bais HaMikdash if the coins were stolen. Therefore, in order to be paid, he must demonstrate that he did his job. However, in regular cases of a shomer sachar who is obligated to pay if he cannot return the object, he does not lose the right to his wages even if the object is not returned - since the money he receives was for guaranteeing the object. By reimbursing the owner for the stolen object, he did his job. In other words, according to Chazon Ish, a shomer sachar is paid for accepting liability for the object, whereas according to Ketzos HaChoshen, he is paid to watch the object.

Teshuvos Maharil Diskin (Kuntres Acharon 5:249), however, writes that although there are differences be-

tween these two positions, there is no practical difference between them when it comes to the issue of compensation. Say your projector was worth \$500 and your friend was to earn \$100. According to the Chazon Ish, the shomer sachar owes the owner \$500, but the owner owes the shomer \$100. When combined, the result is that the shomer owes the owner \$400. According to Ketzos HaChoshen, the shomer should pay the owner \$500 for the projector. However, had the projector been properly returned, the owner would have been obligated to pay \$100. This means that the owner would have been left with \$400. Since the shomer is obligated to cover only the owner's loss, he is only obligated to pay the net loss of \$400.

Thus, for your question, the shomer would be liable for only \$400 according to all authorities.

MONEY MATTERS

payment of wages week #2

Q: I asked an appliance repairman on my block to check my faulty refrigerator. He immediately ascertained that the outlet was defective and simply plugged the fridge into another outlet. He left a bill for \$50, explaining that his standard rate for an initial visit is \$50. Must I pay the full amount of this bill, since he really did nothing?

A: You are required to pay this bill fully. By withholding payment of this bill you would be stealing from him, neglecting the mitzvah of paying wages, and violating the additional prohibitions mentioned last week (SM"A 339:4).

Although the repairman did not explicitly mention that he was going to charge you, if you asked him to come in a professional

capacity he is entitled to charge payment. Only if there was a clear understanding or indication that he was coming as a neighborly favor is he unable to charge you (see Rama C.M. 246:17, 264:4).

It is always advisable to agree ahead of time with a worker what the charge will be, to avoid misunderstandings later (Ahavas Chesed, end of Part I).

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