

WHO IS RESPONSIBLE FOR DAMAGE CAUSED BY CHILDREN?

Children everywhere look forward to the summer months. After months of cold winter and a long school year, they finally have an opportunity to play and frolic outdoors in the hot sun. Bicycles and baseball mitts abound. Inevitably, however, something gets broken. Whether it's a wayward baseball that crashes through a window or a car that gets dented by an over-eager scooter rider, somewhere, at some point, someone's property gets damaged. Taking for granted that no decent, G-d fearing parents would be able to sleep at night without paying for damages caused by their child, that is true only on an "ethical" level. The question that this edition of the Newsletter will focus on is who, if anybody, is responsible, according to the letter of the law, to pay for damage caused by a minor?

The Mishna Berurah rules that "lifnim mishuras hadin", the child must in fact pay back the damages he caused.

**The Halachic Background
The Child's Obligation**

The *Mishna* in *Bava Kama* tells us that when it comes to *katanim*, minors, "*pigi'asan ra'ah*," it is bad to have a "run-in" with them. [A minor is any female under the age of 12 or male under the age of 13.] The *Mishna* explains that this is because if one causes damage to them, he would have to pay (the same as if he damaged an adult or an adult's property), but if they cause damage, they are exempt from any payments.¹ This ruling is cited as the *halacha* in the *Shulchan Aruch Choshen Mishpat* in 96, 3 and 424, 8 regarding damages and in 349, 3 regarding theft, where we find, without exception, a minor being exempt from any payments.

The Parents' Obligation

Surprisingly, it is clear from the *poskim* that even the parents of the child who damaged or stole are under no legal obligation to pay for the actions of their

child.² [Based on this, it is important to inform parents of a child who did damage that they are not bound by *halacha* to pay. If the parents pay for the damages because they think that according to the *halacha* they actually owe the money, the one who takes the money from them may be guilty of a form of *gezeilah* – taking money in an unlawful fashion.³] The parents do, however, have the responsibility of *chinuch* – to educate their children in the ways of the Torah. Since damaging or stealing another's property is prohibited according to the Torah, a parent, by law, must take a proper course of action – including punishments – to ensure that the child does not repeat this act.⁴ *Beis Din* also has the responsibility to punish a child for acts of theft or damage.⁵

**Going Beyond the Letter of the Law
The Child's Obligation**

Having dealt with the strictly legal responsibilities of the child and parent, it is now important to examine how the *poskim* advise us to act in these situations. The *Rema* tells us that even though a minor is exempt from punishment, and even when he becomes an adult he still does not even require *teshuva* (penitence) for that which he has done, it is still proper for him to accept upon himself some form of atonement for the acts he committed as a child.⁶ The *Mishna Berurah* extends this ruling

² HaRav Moshe Shternbuch, *shlit"א* (*Teshuvos ViHanhagos* vol. 3, 477) says this is actually implicit in the *Mishna* cited above. If the parents were in fact obligated to pay, then why would the *pigi'ah* of a *katan* be any worse than that of any other person – does the damaged party care who ends up paying for his loss? But we see from the *Mishna* that *pigi'asan* is, in fact, "*ra'ah*" – implying that no one has to pay for the actions of a minor.

³ *Sefer Chinuch Yisroel* 6, 3 based on *Pischei Teshuvah* 20, s.k. 1. See also (in a similar vein) *Tosafos Bava Metzia* 91a s.v. *BiVo latzeis*.

⁴ *Aruch HaShulchan Choshen Mishpat* 348, 3.

⁵ *Mishna Berurah* 343, s.k. 9. Both the *Mishna Berurah* and the *Aruch HaShulchan* cited above include hitting the child as a proper form of punishment/deterrent. Regarding whether or not this is appropriate today, see Rav Shlomo Wolbe, *shlit"א*'s *Ziriah U'Binyan BiChinuch* pages 23-25.

⁶ *Orach Chaim* 343.

¹ *Bava Kama* 87a

specifically to the case of a minor who damaged or stole and rules that “*lifnim mishuras hadin*,” on a level of going beyond the letter of the law, he *must* in fact pay back the damages he caused,⁷ even if the damage was in an indirect fashion – a *garmi*.⁸

The Parents’ Obligation

Based on this, there are *poskim* who indicate that this responsibility of paying “*lifnim mishuras hadin*” falls onto the parents. Not as a responsibility to the one who was actually damaged, but more as a responsibility to see to it that their child’s *teshuva* and *kapporah* are accounted for, lest the child forget to whom he “owes” this money by the time he reaches *halachic* maturity.⁹

Due to the “non-legalistic” nature of this payment, there is some discussion in the *poskim* regarding how much should be paid. Some maintain that since the purpose of paying is “only” in order to get atonement for what was done, whatever amount the damaged party will accept to be appeased is sufficient.¹⁰ However, it seems clear from the *Sefer Chasidim* and *Mishna Berurah* that this payment should be for the full amount of damages done.¹¹

Exceptions to the Rule – Cases Where the Parent is Obligated by Law to Pay Damages

Even though the general rule is that a minor’s parents are exempt from paying for damages their child has caused, the *poskim* discuss a few exceptions to this rule.

- **The parent negligently placed the child somewhere where it was very probable that the child would cause damage.** Especially with children that are too young to understand what taking and damaging other people’s property is, the parent must be very careful not to let the child free somewhere where they can cause damage. If, for example, a very young child was with his parent at a store and while the parent was not watching carefully the child took something off the shelf and ended up dropping and breaking it, in such a case the parent will have an actual

monetary obligation to pay for the damages.¹² This monetary obligation would not be applicable specifically to the parent, but rather to whomever was supposed to be caring for the child at that time (i.e. older sibling or babysitter).¹³

- **If the child has a track record of causing damage and, despite having been warned, the parents did not take proper precautions.** In such a case, it is the parents’ responsibility to protect others and their property from their child. If they fail to do so, they may be liable to pay true, legal monetary damages.¹⁴
- **If the damage was caused with an article that actually belongs to the parents.** If the parents left something unguarded that they should have realized was capable of causing damage if it fell into the hands of children, they may be responsible to pay for any damages caused.¹⁵

The parents’ responsibility of paying is as a responsibility to see to it that their child’s teshuva and kapporah are accounted for.

As always, there are very often details and mitigating factors that can affect the final *halachic* ruling in situations such as these. Should such a situation arise, a *shailoh* should be asked to a competent Rav or Posek.

To reach Dayan Wolfson regarding this or any *halachic* issue, please call the Kollel *Halacha Shailoh* Hotline at 973-614-0053 between 3:00-6:00 PM Sunday to Thursday. For more information on the kollel, for back issues of the newsletter, or to sponsor a future edition of the Newsletter, please see Rabbi Yerachmiel Landy or call the kollel. The Kollel *davens Mincha* daily (Sunday-Thursday) at 4:15 PM.

⁷ Ibid. s.k. 9. Also *Sefer Chasidim* #692 (referenced in *Be’er Heiteiv* in 343).

⁸ Ibid. *Sha’ar HaTzyun* s.k. 18. See Newsletter #4 regarding *garmi*.

⁹ *Sefer Chinuch Yisroel* 6, note 23 and *Mishpatei Torah* vol. 1, 4.

¹⁰ *Chinuch Yisroel* ibid. See also *Pischei Choshen* vol. 5 capter 10, note 115 who quotes from the *Sh’vus Yaakov* 1, 177. This is based on the language of the *Rema* in 343 of “*eizeh davar liteshuvah...*”

¹¹ See note 7.

¹² *Teshuvos ViHanagos* (Rav Moshe Shternbuch, *shlit”a*) vol.3, 477. He basis this on a few possible *halachic* precedents. This may be based on the case of *ma’amid behaimas chaveiro* (*Bava Kama* 56b) or based on *garmi* as discussed in Newsletter #4. Rav Shternbuch discusses and questions other approaches as well.

¹³ Ibid.

¹⁴ *Teshuvos VaYeishev Moshe* 2, 10 (cited in *Chinuch Yisroel* ibid.). He basis this also on the concept discussed in note 12 of *ma’amid*. He writes that *Dayan Yitzchok Weiss zt”l* (the *Minchas Yitzchok*) agreed to this *p’sak din*.

¹⁵ *Mishpatei HaTorah* vol. 1, 4. This is based on *Bava Kama* 19b where we learn that the owner of a utensil is liable for damages his utensil causes if left in a place that a “*ruach metzuyah*” can move it and cause it to damage others. The *Gemora* (and *Shulchan Aruch* 390, 10) learns that a chicken has a *din* of a *ruach metzuyah* as well. *Dayan Spitz* extends this to a child, who is also considered to not be a *bar da’as*.