

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

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## BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## HOW TO CALCULATE A SIXTH?

Mr. Lerner was discussing the Business Weekly at the Shabbos table with his family. One of the articles addressed *onaah*, unfair pricing, and distinguished between discrepancies of less than sixth, a sixth, and more than a sixth.

"How do you calculate a sixth?" his ten-year-old son, Shimon, asked.

"You learned that already," replied Mrs. Lerner. "You divide by 6; that's a sixth."

"A sixth of what, though?" asked their fifteen-year-old son, Moshe.

"I assume it means a sixth of what the item should cost," replied Mr. Lerner. "For example, if something costs \$60, a sixth is \$10 extra."

"Or maybe it should mean a sixth of what the customer paid?" asked Moshe.

"Maybe," replied Mr. Lerner. "I'm not sure if there's really a difference."

"Perhaps a sixth really means a fifth," chimed in their 18-year-old son, Menachem. "We learned that in various *halachos*, such as redeeming *maaser sheini*, a fifth mentioned in the *Chumash* is really a quarter, which is 1/5 of the total sum received after adding the 1/4."

"You're raising good questions!" Mr. Lerner complimented his children. "We can ask Rabbi Dayan!"

After Shabbos, Mr. Lerner emailed Rabbi Dayan and asked:

### "How do we calculate a sixth?"

"The simplest calculation is a 1/6 variance from the fair market value, whether underpayment or overpayment," replied Rabbi Dayan. "Thus, for an item worth \$60, a sales price of \$50 or \$70 – a variance of \$10 – is considered 1/6 *onaah* and warrants adding the \$10 underpayment or returning the \$10 overcharge" (C.M. 227:2).

"Rav and Shmuel (B.M. 49b) dispute whether to calculate also a sixth of the *payment*. The *halachah* is like Shmuel, that this is also considered 1/6. Thus, if a person paid \$60 for an item worth \$50 or worth \$70, this is also *onaah* of 1/6 since the \$10 differential is 1/6 of the amount *paid*.

"Mathematically, this corresponds to a 1/5 overpayment of value (e.g., \$60 for a \$50 item) or a 1/7 underpayment of value (e.g., \$60 for a \$70 item).

"Thus, for a \$60 item, presumably a payment of \$51.43 or \$72 would also be considered 1/6 underpayment or overpayment, respectively, since the differential of \$8.57 or \$12 from the \$60 value is exactly 1/6 of the \$51.43 or \$72 *paid*.

"This dual calculation led the *poskim* to a dilemma. As mentioned, whether a person paid \$70 or \$72 for a \$60 item, this is considered an exact 1/6 variance, in

## PRETEEN PAYMENT?

When I was eleven, I damaged property belonging to the summer camp I was in. At that point, no one knew about it, but I'm now bar mitzvah, and I would like to know: Am

I liable for damage I caused when I was a minor?

**A.** The *Gemara* (*Bava Kamma* 98b) deliberates whether someone who burned another person's loan contract is required to pay the amount of the loan. On one hand, since he only caused the lender to lose *proof* of the loan, but not the loan itself, perhaps he should not be required to pay. Ultimately, however, he must pay the value of the loan document, because when it turned out that he prevented the lender from collecting the loan, it is classified as *garmi* (direct causation of damage).

The *Gemara* then relates that Rav Ashi once burned someone's contract, and Rafram ruled that he must pay. Rashi (s.v. *v'achfayeih*) explains that Rav Ashi must have done this as a child, because we certainly would not accuse someone of Rav Ashi's stature of doing such a thing.

Some *poskim* (*Hagahos Ashiri*, *Bava Kamma* 8:9) point to this Rashi as proof that if someone damages something as a minor, he must pay for it when he becomes an adult (i.e., bar mitzvah). He explains that although the *Mishnah* (*Bava Kamma* 87a) states explicitly that a financial encounter with a minor is invalid, because if an adult damages the minor he is obligated to pay, but in the reverse, the minor is not obligated to pay, that is only true as long as he is a minor. When he grows into adulthood, he must pay.

Others argue, however, that an adult is not *obligated* to pay for damage he caused as a minor, and Rafram's ruling that Rav Ashi should pay was only *lifnim mishuras hadin* (going beyond the letter of the law) (*Taz*, *Orach Chaim* 343:2 & *Choshen Mishpat* 349:3; *Mishnah Berurah* 343:9).

The Shulchan Aruch (*Choshen Mishpat* 424:8) rules that an adult is not obligated to pay for damage he caused as a minor (see *Bi'ur HaGra* *ibid.* 15).

Shvus Yaakov writes (1:177; cited in *Pis'chei Teshuvah* 349:2; see also *Ohr Same'ach*, *Gezeilah* 5:4) that the ruling of the lenient *poskim* is limited to cases in which the person who caused the damage did not derive any benefit from the damage. But if he ate something that wasn't his — thereby benefiting from the damage — he must pay for it when he becomes an adult. He points to the case of a child who borrowed money to buy food, who must then repay that loan (*Shulchan Aruch* 235:15), as proof that when a minor derives benefit from something, he must pay for it once he is an adult.



## CASE FILE

which case the sale is valid; but the aggrieved party can claim the \$10 or \$12 differential. However, what if the person paid \$71? From the perspective of *fair value*, this is a differential of more than a sixth (11/60), in which case the aggrieved party can annul the sale, whereas from the perspective of *payment*, this is a differential of less than a sixth (11/71), which is considered *mechilah!*

“Rambam and Rema (227:3) write that, as a rule, we calculate based on the value, so that – for a \$60 item – \$51 is considered *less* than a sixth differential and \$71 *more* than a sixth. Only when the differential is exactly a sixth of the payment (\$51.43 or \$72), do we make an exception and consider this also a sixth (*Sma* 227:11; *Taz* 227:3; *Ketzos* 227:2).

However, Maggid Mishneh and seemingly Shulchan Aruch rule that the entire range, \$50-\$51.43 or \$70-\$72 is considered a sixth, so that only a payment of more than \$51.43 is considered a differential less than 1/6, and only more than \$72 is considered a differential more than 1/6 for a \$60 item (*Sma* 227:5; *Pis’chei Choshen, Onaah* 11:6.)

“This discussion is mostly theoretical, though,” concluded Rabbi Dayan, “since there are very few items with a specific fair market value that enables us to determine an exact 1/6. Almost all items have a price range, so that only a great discrepancy would invoke *onaah*.”

**Verdict: In the laws of *onaah*, unfair pricing, a discrepancy of 1/6 is calculated primarily based on the fair value of the item, but also based on the amount paid.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**MONEY MATTERS**  
Minhag Hamedinah  
Common Commercial  
Practice #27  
Auction Onaah

לע"נ ר' יחיאל מיכל ב"ר חיים זוגו' חל' בת ר' שמואל חיים ע"ה

### Q. I bought a painting at a public auction for a very high price. Can I claim *onaah* afterwards?

A: Some *poskim* maintain that there is *onaah* in a public auction, even if there is a common practice otherwise, since even an explicit condition that there should not be *onaah* is not valid if the amount of *onaah* is not specified (*Teshuras Shai* 1:456; *C.M.* 227:21).

However, many *poskim* rule that there is no *onaah* in a public auction for various reasons, among them *minhag hamedinah*, especially if non-Jews are also bidding and there is no *onaah* according to *dina d'malchusa* (*Sho'el u'Meishiv* 4:3:137; *Mishpat Shalom* 227:15).

Nonetheless, some *poskim* rule that if the auction was based on an appraisal that proved to be mistaken, there is an *onaah* claim (*Nesivos* 109:5).

Regardless, for items that do not have a defined market value, such as Judaica, works of art, etc., whose value is determined through the auction – there is no *onaah*, since their inherent value rises through the bidding (*Pis’chei Choshen, Geneivah* 10:15; *Hilchos Mishpat, Onaah* 227:25).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com



## BHI HOTLINE

Many *poskim* disagree with the Shvus Yaakov's limitation and rule that even if a child does derive benefit from the damage he causes, he is not obligated to pay as an adult. They reject his proof, explaining that the reason *Chazal* required the child to repay the loan was for the sake of his own livelihood (*kedei chayav*), because if he would not have to repay the loan, no one would be willing to lend him money (*Rosh, Kesubos* 13:7). But if a minor damaged something, even if he ate it and derived benefit from it, since there is no need to protect him *kedei chayav*, he is not obligated to pay (*Shu"t Maharam Schick, Yoreh Dei'ah* 375; *Erech Shai* 349; see *Shu"t R' Akiva Eiger* 147).

The Shvus Yaakov adds, however, that even if the minor did not derive any benefit from the damage, *latzeis yedei Shamayim* (to avert Heavenly judgment), he should pay for it once he reaches adulthood, but he is not obligated to pay the full value of the item he damaged; he must give the victim whatever it takes to make amends with him. Nevertheless, he notes, *middas chassidus* (virtuous conduct) would be for the person to pay the full value of the damage. (If the damage was caused by a very young child who doesn't recall what he did, then he is not obligated to pay even *lifnim mishuras hadin* [*Sefer Chassidim* 692].)

Returning to your case, according to the letter of the law, you are not obligated to pay, but *latzeis yedei Shamayim*, you should contact the camp administrator and make amends.

Realize that even if you are not liable for the damage you caused as a minor, you will benefit by taking responsibility for it. The Bach (*Orach Chaim* 433) writes: “We can apply to him (i.e., a minor who sins) the *passuk*, ‘Even without knowledge, it is not good for the soul’ (*Mishlei* 19:2),’ for although a child who sins is doing so without knowledge, it is not good for his soul, because he drew upon it impurity, from the realm of evil. It is therefore good for him to do *teshuvah* when he becomes an adult for everything he did in the past, whether those misdeeds were *bein adam laMakom* (between man and Hashem) or *bein adam lachaveiro* (between man and his fellow).”

[We remind readers that parents are not liable for damages caused by their children, as discussed at length in issue 516.]



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