Eretz Hemdah, the Institute for Advanced Jewish Studies, Jerusalem, is headed by Rav Yosef Carmel and Rav Moshe Ehrenreich, founded by Rav Shaul Yisraeli, zt"l, to prepare rabbanim and dayanim to serve the National Religious community in the Israel and abroad. Ask the Rabbi is a joint venture of the OU, Eretz Hemdah, and OU Israel's Torah Tidbits.

לעילוי נשמת **יואל אפרים בן אברהם עוזיאל זלצמן ז"ל**

Parent's Responsibility for Child's Accident

QUESTION: Parents in the neighborhood let their 11-year-old child operate a somewhat powerful drone by himself. It ended up smashing through my large window, which costs a couple of thousand NIS to replace. I would like compensation, and the parents want to react "responsibly," but we all want an idea of the halachic outlook on the case before working out an agreement on payment. They agreed that I would approach you but did not commit to following an exact ruling. What are your thoughts?

ANSWER: I am happy with a non-binding discussion with the parents' blessing. I will therefore not investigate all the details and do enough research to arrive at a conclusive decision. However, the general analysis can hopefully help facilitate mutual agreement.

The *mishna* (Bava Kama 87a) states that if a minor (under bar mitzva) damages someone, the damaged party has no legal recourse. There are opinions that there is some level of recommendation to the child to make monetary amends when he grows up as *teshuva* (see Pitchei Choshen, Nezikin 10:(115)). However, that is not our issue at hand.

In many communities there is an expectation that parents take responsibility for their children's damages. It is difficult to claim that this is a binding norm, but it serves as encouragement for parents to pay much if not all of the damages, beyond the letter of the law. (My limited research indicates that Israeli jurisprudence, which sometimes plays a role in applying monetary Halacha, judges parents situationally rather than assigning automatic responsibility.)

The plot thickens halachically in cases where a parent's negligence allowed or even enabled their child to do something dangerous that resulted in damage. The *mishna* (Bava Kama 59b) rules: "One who sends a burning object with a minor is exempt from payment by human law (i.e., *beit din* cannot extract payment) and obligated in Heavenly law." The Shulchan Aruch (Choshen Mishpat 418:7, based on the *gemara* ad loc.) rules that the above is true if the adult gave the child a glowing ember, which often goes out before damaging, whereas if he gave him a flame, even *beit din* will obligate the adult. Looking at the case from a distance, a drone seems analogous to the coal – a device that isn't inherently destructive but poses a significant danger when placed in untrained hands (see government safety regulations).

The Ritva (Bava Metzia 10b) says that the reason the adult who sent the coals with the child does not have a full obligation is that the he did not instruct the minor to damage. The *mishna*'s moral obligation is thus for the adult's negligence in entrusting the child with something dangerous (as implied in Bava Kama 9b). This is likely analogous to our case. Others (including Machaneh Ephrayim, Nizkei Mamon 7) see in another *gemara* (Kiddushin 42b) a proof that the *mishna*'s case is where the adult sent the child to damage (and the exemption in *beit din* is on formalistic grounds). According to this approach, the moral obligation that applies to a purposeful indirect damager likely does not apply to the merely negligent. The Meiri (Bava Kama 59b) says the *mishna* refers both to intentional and negligence. The Shulchan Aruch (CM 418:7) and main commentators do not discuss this distinction, but the Aruch Hashulchan (CM 418:38) learns like the Ritva.

There are also different opinions on how to view an obligation of Heavenly law, generally and/or in this context. The Meiri (Bava Kama 56a) says that an obligation by Heavenly law is enough of a real obligation that until he pays, he is disqualified as a witness, like a thief. The Yam Shel Shlomo (Bava Kama 6:6) views most such cases as a lower-level, moral obligation – one of the ramifications is that if the potential recipient seizes payment (*tefisa*), we take it back from him.

In short, there is a halachic basis to expect parents to pay for damage their child caused, particularly when the parents share some blame for his actions. However, since there is not a clear halachic obligation, it is logical for the damaged party to not expect full payment. ■

Having a dispute?

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