

VOLUME I: NUMBER 24: UNINTENTIONAL DAMAGES

by Rabbi Aron Tendler

Question:

Reuven visited a friend for Shabbos. He woke up in middle of the night, and decided to take a drink. He went into the kitchen, opened a cupboard, took out a cup, rinsed it out, and took a drink of water.

The following morning his host informed him that there had been a diamond that he had kept hidden in that cup, and when Reuven had rinsed it out it had gone down the drain.

Is Reuven obligated to reimburse his host for the diamond?

Answer:

- A. There is a disagreement among the Rishonim (Tosafos and the Ramban) if a person is liable for damaging or injuring someone in a manner that was totally unintentional. Therefore, since Reuven is in possession (Muchzik) of the money in dispute, i.e. the money to be used for compensation of the diamond, he is not obligated to pay for the lost diamond.
 2. If the host had given Reuven explicit permission to use any of the household furnishings, or if Reuven was renting a furnished apartment for a week and received permission to use all of the household appliances, etc., and Reuven caused a loss to the host in a totally unintentional manner as stated above, according to all opinions, Reuven would not be obligated to pay for the damages.
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Sources:

The Mishna in Bava Kamma 2:6 states " A person is always a Muad (responsible for damages) whether (he damages) unintentionally or intentionally, whether he is awake or asleep". The Gemara there quotes Chizkiya, who says that this liability is even if he damages B'Oness, in an

involuntary matter. Tosafos (27b D"H U'Shmuel Omar, and 99b D"H Eima) write that we must make a distinction between damages that are totally unintentional, and unintentional damages that are the result of some negligence. If damages were caused in a totally unintentional manner, with no contributing negligence at all, according to Tosafos the person would not be held liable for them, although they are the result of his direct action. This is also stated by the Rosh in the beginning of Perek HaMeniach (the third Perek in Bava Kamma), and in the Rema (Choshen Mishpat 378:2).

The Ramban (Bava Metzia 82b D"H V'Assa R' Yehuda) disagrees with the Tosafos, and is of the opinion that the liability of a person is in all cases, even if he were to damage in a totally involuntary manner. The Chidushei HaRan there agrees with him. Therefore, in our case, since Reuven is the possessor of the money in dispute (the funds that the host is claiming to compensate for his diamond), he can not be forced to pay the host for his loss. This is because there is doubt as to whether the Halacha is like Tosafos or the Ramban, in which case he is not obligated to pay even in the Heavenly Court (Lotzais Yidei Shomayim. We will be elaborating on this concept in an upcoming class.)

Additionally, we find another Tosafos that would seem to exempt Reuven from any compensation. Tosafos (Bava Kamma 61b D"H Ella, and 62a D"H Mi Manchi) write that if someone were to throw out an item that belongs to another person, and afterwards we find out that there was money or jewels hidden in it, if it is not common for these valuables to be kept in such an item, he would not be held responsible for them. If there is a doubt whether or not these valuables are kept in this item, because we are in doubt we can not force him to pay. The Rema quotes this opinion of Tosafos as the Halacha (Choshen Mishpat 388:1), although the Rambam and Shulchan Oruch there disagree. At any rate, we would not be able to force Reuven to pay, since he can argue that according to the Rema and Tosafos he would not be obligated to.

The Ramban (ibid.) states that if the damager is using an item with the permission of the owner, and damages it in an unintentional manner during the course of normal use, he can not be held liable for the damages. This is known as a "Mazik BiReshus" - someone who damages with permission. Therefore, if the host had given Reuven permission to use the cup, he would not be liable to pay for damages to the cup or to its contents, even according to the Ramban.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bet Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in

Baltimore. Rabbi Tandler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to atandler@torah.org.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!