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STORY LINE

by Rabbi Meir Orlan

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Laptop Liability

"Hi, Levi," said his friend, Moshe. "I've got a project to work on for the next two months. Do you have a laptop that you're willing to lend me for the duration?"

"Funny that you're asking," replied Levi. "I just bought a new laptop. If you want to borrow my old one for two months, I'd be happy to lend it."

A week later, while Moshe was working on the laptop, his neighbor Baruch came by to visit.

"I see you got yourself a computer," Baruch said. "When did you buy it?"

"Actually, it belongs to my friend Levi," said Moshe. "I borrowed it for two months to work on the project."

While they were talking, Baruch accidentally knocked the laptop off the table. It fell to the floor and cracked!

Moshe quickly picked up the laptop and ex-

amined it.

"It's ruined," he said to Baruch. "It's completely smashed, and there is no way it can be repaired. You'll have to pay me for the laptop."

"It wasn't your laptop," said Baruch. "I don't owe you anything. If Levi wants the money, let him ask me directly, or you can pay him and then I'll reimburse you."

Moshe called Levi. "I'm so sorry. My neighbor broke the old laptop that you lent me," he said.

"I still wanted it as a spare," said Levi. "You'll have to pay for it."

"My neighbor was the one who ruined the laptop, though," Moshe said to him. "Ask him for the money. He won't pay me unless you ask him directly."

"I don't even know him," replied Levi emphatically. "You borrowed the computer;

you are liable for it. Either pay or get the money from your neighbor and give it to me yourself."

"But why should I pay if he damaged the laptop?" argued Moshe. "I don't have the money to lay out until he reimburses me."

"It's not fair to push me from one to the other," said Levi. "Let's take it up with Rabbi Dayan."

Levi and Moshe went to Rabbi Dayan.

"Who is liable for the laptop?" asked Levi.

"Moshe, who borrowed it, or the guy who damaged it?"

"The Gemara (B.K. 111b) addresses a similar case," replied Rabbi Dayan. "If someone steals an item and then another person consumes it, both are accountable to the owner. The thief is liable because he stole the item. Nonetheless, the item still belongs to its owner, so that the one who consumed it

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Soda Swap

Submitted by H. C.

At our family Chanukah party, the one responsible for the drinks forgot to put the soda in the refrigerator. It so happened that there were several bottles of cold soda in the refrigerator of the hall where the party was being held.

Q: Is it permitted to exchange our bottles for theirs?

A: Stealing is prohibited even if one intends to return the stolen property (C.M. 348:1). This seems to indicate that you may not exchange your bottles of soda for theirs.

However, the Gemara (B.K. 60b) relates that Dovid HaMelech needed barley to feed his animals and wanted to take piles of barley and repay the owner with lentils. He inquired of the Sanhedrin whether he was permitted to do so, and they responded that although stealing with the intent to re-

pay the owner is prohibited, as the king, he had the right of eminent domain.

Poskim comment that lentils are a more valuable commodity than barley, and replacing barley with lentils is a zechus (advantage) for the owner. This is grounds to permit even ordinary people to replace barley with lentils. However, since Dovid Hamelech did not yet have the lentils to repay the owners, if he were not the king, it would have been forbidden to take the bar-

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damaged the owner's property. Therefore, the owner can collect in full from either party, or even a partial payment from one and partial payment from the other. The same is true in your case (C.M. 361:5)."

"But I didn't steal anything," objected Moshe. "I didn't do anything wrong."

"True, but a borrower is accountable to the owner for his item, even if it is lost through uncontrollable circumstances (oness)," replied Rabbi Dayan (C.M. 340:1). "Thus, you owe Levi. But since the laptop was Levi's property, Baruch is also liable to him, so Levi can collect from either of you."

"Can I demand payment of the laptop from Baruch now, or can only Levi do that?" asked Moshe. "Does Baruch owe me anything?"

"Because you are responsible to pay for the laptop, and Baruch caused you a direct loss

(garmit) by breaking it, he has accountability to you also," answered Rabbi Dayan (see Pischei Choshen, Geneivah 4:[34]).

"What about the fact that I don't have the use of the laptop to finish the project I am working on?" asked Moshe.

"The Nesivos (341:11) suggests a novel idea regarding this," said Rabbi Dayan. "Since you borrowed the laptop for two months, you have a legal right to use the item for that time; Levi cannot demand it back for the full two months. Therefore, the Nesivos suggests that the value of that usage, the laptop's depreciation, is owed to you, the borrower — not Levi, the owner. This only applies, though, if the item's nature and the duration of the loan are such that the usage entails an accruable depreciation of the item (see Chukei Chaim — Hichos She'eilah 2:12; P.C., Pikadon 9:[14])."

ley even with the intention to eventually replace it with lentils (Rosh, referenced in C.M. 359:2).

Furthermore, it is prohibited to engage in business with a friend's possessions without his knowledge, since there may be reasons why he values barley more than lentils, unless it is known that he will benefit from the exchange, e.g. if the items that are taken are for sale (see Shach 359:4).

Accordingly, in your case, since the hall owner will not benefit from the exchange, it is prohibited.

There is, however, another principle that applies in this case that permits you to exchange the bottles of soda, assuming that they are the same varieties. In the above discussion, the exchange

involved trading one commodity for another (lentils for barley) and in such a case, there is a genuine concern that the owner may not want to exchange one commodity for another.

In your case, if the flavors are the same, there is no reason the owner should prefer one bottle of soda over another. Considering the principle of "zeh neheneh v'zeh lo chaser" (lit., this one benefits and the other does not lose) that allows one to derive benefit from someone else's possession if the owner loses nothing, the exchange is permissible.

However, if the owner is present and protests the exchange, it may not be done against his protest (Beis Ephraim cited in Pischei Teshuvah 359:3).

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Damages #7

Q: While my roommate was frying chicken, I accidentally spilled milk into the frying pan, rendering the chicken and frying pan non-kosher. What am I liable for?

A: Damage that is not physically discernible but only halachic is called hezek she'eino nikar. A person is legally liable for such damage only if done intentionally, but not if it is accidental (C.M. 385:1). This is because, in

principle, damage that is not physically evident is not considered damage. Nonetheless, the Sages declared a person who intentionally damaged in such a manner liable - having to pay a fine - to prevent people from doing so. [Some authorities limit the liability to three specific cases mentioned in the Mishnah (Gittin 52b; see Shach 385:1).] Here, the taste of the milk is noticeable in the chicken. It is therefore considered he-

zek nikar, evident damage, and you are liable for the cost of the chicken (Ksav Sofer, C.M. #26).

However, there is no physically evident damage to the frying pan. Therefore, since it is hezek she'eino nikar, you are not legally liable if you spilled the milk by mistake (see Pischei Teshuvah, C.M. 385:1). Nonetheless, there may be a moral responsibility to pay (Pischei Choshen, Nezikin 1:[54]).

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