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STORY LINE

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A Drill for a Saw

Betzalel was a "fix-it" man who enjoyed carpentry as a hobby.

As he drilled into a thick piece of lumber one day, he hit a knot in the wood. The bit caught and stalled; the drill fell silent, and a burnt smell began to waft from the motor.

"The motor went," he said sadly. "I'll have to get another drill."

Betzalel called his neighbor, Dan, and asked, "Do you have a drill that I can borrow?"

"Sure," said Dan. "I'll tell you what. I've been planning to make a small cabinet, but don't have a circular saw. I'll lend you my drill if you'll lend me your saw when you finish."

"Deal!" laughed Betzalel. "When I finish, I'll bring my saw together with your drill."

Two days later, Betzalel returned Dan's drill and brought his saw with it. Dan took the tools and put them in the shed in his yard.

During the night, there was a severe thunderstorm. A bolt of lightning hit a tree in Dan's yard, splitting it. One heavy branch landed squarely on the tool shed, flattening it. When Dan checked in the morning, he saw that Betzalel's saw had gotten crushed.

"I put the saw away securely in the shed," Dan apologized to Betzalel. "There's nothing I could do about the lightning and the tree."

"When you borrow, you are fully liable, even for such circumstances," said Betzalel. "That's the rule of a sho'el (borrower) (C.M. 340:1)."

"But why am I a sho'el?" said Dan. "I lent you my drill as payment for using your saw!"

"That wasn't payment; we both borrowed," argued Betzalel. "I borrowed your drill and you borrowed my saw! Had something happened to your drill, I would be liable; the tree fell on my saw — you're liable. It's that simple!"

"It's not simple to me!" cried Dan. "Let's ask Rabbi Dayan."

"Am I liable for the saw as a sho'el?" Dan asked Rabbi Dayan later.

"A person is considered a borrower (sho'el) only when the benefit is entirely his," answered Rabbi Dayan. "However, if the lender also has a tangible benefit from lending the item, the borrower is considered a renter (socher).

"Since Betzalel lent his saw in return for borrowing Dan's drill, each benefitted from granting the loan," continued Rabbi Dayan. "Betzalel gained use of the drill and Dan gained use of the saw. Therefore, you do not have the rule of borrowers but that of renters (C.M. 305:6; Pischei Choshen, Pikadon 10:4-5)."

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FROM THE BHI HOTLINE

Inheritance Law

Q: I have seen advertisements alerting people to make sure that their wills conform to halacha. Why does a standard legal "Will and Testament" form not suffice?

A: Generally, a transfer of property requires a kinyan (proprietary act). In absence of a kinyan, the property remains in the possession of the original owner (C.M. 241:1). When a man dies, his halachic heirs (primarily his sons) inherit his property. For instance, a father cannot demand that his sons share their inheritance with his daughters and wife, since upon inheritance the property is the sons'.

In limited circumstances there will be a mitzvah to fulfill the wishes of the deceased (l'kayem divrei hameis). Consequently, if one wishes his estate to be distributed in a manner that differs from the halachos of inheritance, it is necessary to distribute that property with a proper kinyan while he is still alive. For a better understanding of this matter, we present a brief synopsis of several aspects of determining the validity of a will.

Chazal enacted that a deathbed bequest (matnas shechiv meira) transfers ownership of property even in the absence of a kinyan out of concern that the dying person may become distressed that his last wishes will not be carried out. This enactment does not validate a will that is drawn up while a person is healthy. A will uses language indicating that the property is being transferred after death,

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STORYLINE CONTINUED

"What is the rule of a renter?" asked Dan.

"A renter is liable for negligence, and even theft or avoidable loss, but not for circumstances beyond his control (oness)," answered Rabbi Dayan. "Thus, since the saw was destroyed through oness, Dan is not liable for it as a sho'el but is exempt as a socher. Had the saw been stolen, though, he would be liable (C.M. 303:2-3)."

"I assume it makes no difference whether the drill and saw were borrowed on separate days or simultaneously?" inquired Betzalel.

"Actually, there is," replied Rabbi Dayan, "in cases such as theft."

"Really?" exclaimed Betzalel. "Why should that be?"

"It's a bit complicated," answered Rabbi Dayan. "When you borrow an item, you are responsible for looking after it, which may be a kind of service to the owner. The Rema cites two opinions whether we apply here the concept of shemirah b'baalim."

"What is that?" asked Dan.

"When the owner of the borrowed item is serving or employed by the borrower at the time of the loan, the borrower is exempt unless grossly negligent," explained Rabbi Dayan (C.M. 346:1-2). "Thus — according to the lenient opinion that considers borrowing from a borrower as shemirah b'baalim — had Dan borrowed the saw while Betzalel still had his drill, Dan would not have to pay if the saw were stolen, since Betzalel was 'serving' him by looking after his drill!"

[However, Betzalel could withhold the drill, in accordance with the stringent opinion that does not consider him as "serving" Dan, and does not view this as shemirah b'baalim.]

FROM THE BHI HOTLINE CONTINUED

whereas a deathbed bequest compares to a gift that transfers the property (C.M. 250).

According to most Poskim, secular law's recognition of a person's right to bequeath his possessions to whomever he chooses has no bearing in halacha (C.M. 369:11; see Igros Moshe, E.H. 1:104). Moreover, a will cannot affect a conventional kinyan (situmta) since it indicates that the property transfers after the owner has passed away, but once a person passes away he cannot make an effective kinyan and has relinquished control to his sons who inherited the property (Achiezer 3:34).

A will is, in fact, conceptually similar to the construct of mitzvah l'kayem divrei hameis (C.M. 252:2). It is generally necessary to deposit the designated property into the possession of a third party for this construct to apply in order to assure that the benefactor is serious about giving the gift. One who has a will drawn up by a lawyer also demonstrates that he is serious regarding his intent to transfer ownership of his property and thus it should be binding (Achiezer 3:334, 4:66; Minchas Shai 75; Cheishev HaEphod 2:106). Some disagree with this approach (Kovetz Teshuvos 3:225; Pischei Choshen Yerushah 4:[85]).

Even if one chooses to follow the approach of mitzvah l'kayem divrei hameis, if the heirs refuse to follow the wishes of the deceased and the matter is presented to beis din, besides the ill will that will be generated, it will likely be necessary to reach a compromise, and the benefactor's intent will not be carried out.

Consequently, if one wishes for his estate to be distributed in a manner that differs from the halachos of inheritance, it is necessary to have it done in a halachically valid fashion.

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