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by his son, R' Shlomo Werdiger

STORYLINE

whose **tomatoes?**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

Eliyahu, a close student of Rabbi Dayan, came to visit him. "An interesting Choshen Mishpat question recently came my way," Eliyahu said. "It's a humble question, involving just a few tomatoes, but I would be interested in hearing the halachic perspective on the issues involved."

"Go ahead," said Rabbi Dayan. "I'd love to hear!"

"I rented a house to an elderly couple for a year," Eliyahu began. "Towards the end of the rental period, the couple was away for while. I stopped by the house and noticed a tomato vine, with a few ripe tomatoes on it, growing in the backyard amongst the weeds. It seemed clear that the tomato vine was not planted intentionally, but grew accidentally from a stray seed.

"As I stood there admiring the plant, I began to wonder: To whom do the tomatoes belong? Perhaps they are hefker (ownerless) and anyone can take them, since they grew by themselves? Perhaps they are mine, since they grew in my property? Perhaps they belong to the elderly couple, since they rented the property?"

"That's a lot of questions for a few tomatoes," Rabbi Dayan chuckled. "Had a money tree grown instead of a tomato vine, it would have been a weightier question. Even so, the halachic question and Choshen Mishpat principles apply just the same to a tomato vine, a money tree, or anything else!"

"First, is the tomato plant hefker, because it grew from a stray seed," Eliyahu asked, "or does the property owner acquire the plant, because it grew on his property?"

"It is clear that the plant is not hefker," replied Rabbi Dayan. "First of all, what grows from the ground is considered an extension of the ground, a capital appreciation of the property. Furthermore, even if a hefker item, such as a loose twenty-dollar bill, lands in a backyard, the yard acquires it for the owner (B.M. 11a)."

"Who, though, is considered the 'owner' of the rented property regarding these tomatoes," Eliyahu asked, "me or the couple? On the one hand, the property itself belongs to the landlord. On the other hand, the tenant has the rights to use the property."

"Based on the halachic principle that a rental is considered a 'sale' for that day (B.M. 56b), it would seem at first glance that the tomatoes should belong to the tenant," replied Rabbi Dayan. "After all, he is considered the 'owner' for the duration of the rent-

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FROM THE BHI HOTLINE

the briefcase **on the bus**

Submitted by
G. C.

I was at waiting at a bus stop when a good friend of mine approached me. He asked if I would take an attaché case to my destination, where his brother would meet me and pick it up. I obviously agreed. He gave me the briefcase and we exchanged phone numbers. Upon my arrival at the place where I was staying, I unloaded my luggage and realized that I had left this extra case somewhere along the way. I contacted the bus company to find out if someone had turned in the briefcase, but the response was negative.

I called my friend and told him what had happened. To my horror, he informed me that the attaché case contained expensive items worth about $1,000! I had no idea I was carrying such valuable things.

Q: I admit I was negligent with his case, but am I obligated to pay him $1,000 for the items? In addition, must I believe his claim if I suspect that he is not very truthful?

A: Shulchan Aruch (C. M. 291:4) rules that a custodian is liable only to the extent of the value of the item that he agreed to protect. If Reuven handed Shimon a gold coin, telling him it was silver, and Shimon lost it, he is only liable to the extent of the value of a silver coin. This is because that was the extent of liability that Shimon accepted upon himself.

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STORYLINE CONTINUED

al period. However, this issue is actually a subject of debate between the Rishonim."

"Oh, really?" said Eliyahu.

"The Gemara discusses the following analogous scenario," said Rabbi Dayan. "During the times of the Gemara, the organic waste of animals was considered a valuable product for use as fertilizer. When someone rents a house, who acquires the waste of stray animals that wander into the yard, the landlord or the tenant?

"The Gemara (B.M. 102a) rules that the fertilizer belongs to the landlord. However, Rashi explains that in the Gemara's case, only the house was rented, but not the yard. Had the yard also been rented, the tenant would acquire the fertilizer. Rambam, on the other hand, rules that the landlord acquires the fertilizer even if the yard is also rented. Shulchan Aruch (C.M. 313:3) cites the ruling of the Rambam."

"It seems, then," said Eliyahu, "that the tomatoes belong to the landlord!"

"It's not so simple," responded Rabbi Dayan. "Elsewhere, the Shulchan Aruch seems to rule like Rashi (C.M. 260:4). Later commentaries discuss this seeming contradiction at length and offer various, sometimes contradictory, resolutions.

"However, there is a major difference between a detached hefker item that falls into a property, such as the waste in the example above, and a plant that grows from and is attached to the ground," continued Rabbi Dayan. "Since the plant is part of the ground, the plant itself belongs to the landlord; the tenant cannot uproot it and take it with him when he leaves. Ownership of the fruit, however, depends on whether the tenant had permission to plant there according to the rental agreement or prevalent practice."

"The tenant had permission to plant there," said Eliyahu.

"Then the tomatoes belong to the tenant," concluded Rabbi Dayan. "However, since the couple is not around and will probably not use the tomatoes anyway, you can call and ask for permission to keep them."

"Seems like a quite a discussion for four ripe tomatoes," Eliyahu remarked, "but a Torah discussion is worth more than a money tree!"

FROM THE BHI HOTLINE CONTINUED

Maharshal (Yam Shel Shlomo B.K. 6:34) asserts that Shulchan Aruch's ruling is limited to where the owner misled the custodian regarding the value of the object; if a custodian agreed to watch an object without any indication of its value, he is liable for the full value of the object regardless of the value of the item. Shach (C. M. 72:40) suggests that the matter depends upon whether it is reasonable for the deposited object to be valuable. If the object is not commonly valuable, the custodian's liability would be limited, but if it is an object that could be valuable, the liability of the custodian would be greater. Since it is common for people to place valuable objects in attaché cases, you are liable for the value of the objects that were in the lost package.

The question that remains is whether the owner is trusted in his claim that the package contained items worth $1,000. Shulchan Aruch (C.M. 90:10) rules that when an owner claims that a package contained jewelry, and the custodian questions the validity of that claim, the owner swears that his claim is accurate and collects what he claims was its value. Nowadays, since Bais Din does not administer oaths, it would be up to Bais Din to determine how much the owner should forgo of his claim to be relieved of taking an oath (see Pischei Teshuvah C.M. 12:3; Divrei Malkiel 2:133).

Moreover, in view of the fact that there may be additional factors that could affect the halacha in this case, the two of you should speak with a qualified Rav or Bais Din for a definitive ruling.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

laws of interest week #10

Q: A car dealer offers a 10% discount on next year's model if payment is made by May 31, four months before delivery. May I take advantage of this offer?

A: Prepayment discounts are often a forbidden form of ribbis; they are the flip side of buying on credit for an added charge.

In the prepayment case, the customer advances money to the seller before the purchase is consummated, which is effectively a loan to the seller. On account of this prepayment "loan," the seller gives the customer a discount, i.e., sells him an item worth more than he paid. In our example, because the customer "lent" the dealer $30,000 for four months, the dealer agreed to sell him a car worth an extra $3,000.

There are a number of situations, however, in which prepayment discounts are permitted: 1. If the seller currently has sufficient quantities of the item in stock (yesh lo); 2. If the item has no set market value, such as a custom order item; 3. If the merchandise's worth is variable, and may turn out even less than the discounted price, such as buying a farmer's future crop. Even in these situations, the seller may not explicitly state that the discount is being offered because of prepayment, but should simply state that this is the price for payment now (Yoreh De'ah 173:7-9).