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STORYLINE

the grapes over the fence

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Summer was rapidly approaching its end. The neighborhood children had all returned from camp; school was starting up again. Bright rays of sunlight continued to shine, but the days were becoming noticeably shorter.

Mr. and Mrs. Adler were sitting in their backyard on Shabbos afternoon and enjoying the remaining days of sun. A pleasant breeze blew, rustling the leaves of the trees all around. Luscious clusters of grapes hung over the fence from a neighbor's vine, adding a beautiful splash of purple to the green leaves. The neighbor across the fence, who enjoyed gardening in his spare time, was particularly proud of these grapes and used them to produce home-made wine.

Mr. Adler was reading a recent issue of *Business Weekly* and came across the article

"Whose Tomatoes?" which discussed ownership of fruit growing in a rented property. Suddenly, a gust of wind shook the grapes and a few of them fell down into their yard.

Mr. Adler looked up at the clusters of grapes hanging over the fence and wondered: To whom do these clusters belong? Although the vine clearly belonged to the neighbor who planted it in his property, many of the clusters grew over the fence in their yard. Sometimes, the vine got out of hand and had to be trimmed.

He turned to his wife. "I wonder about these grapes," he said, pointing to the grapes hanging over the fence. "To whom do they belong?" "Hmmm, I never really thought about it," she replied. "I don't know. I suppose that what grows over the fence may be ours."

"I'll see Rabbi Dayan at Mincha and Seuda

Shlishis this afternoon," said Mr. Adler. "If I get a chance, I'll ask him."

On the way to shul, Mr. Adler passed by the house of a non-Jewish neighbor, whose apple-tree protruded out over the street. "Could it be that one has to be even more stringent if the tree belongs to a Gentile? I'll check about these apples also," he thought to himself. After Mincha, people began walking downstairs to the function room for Seuda Shlishis. Mr. Adler accompanied Rabbi Dayan.

"I thought of an interesting monetary question this afternoon," Mr. Adler said. "Our neighbor has a grape vine growing on the backyard fence, and some clusters of grapes hang over the fence into our yard. To whom do they belong?"

Rabbi Dayan thought for a moment. "This question was posed to Rav Moshe Fein-

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FROM THE BHI HOTLINE

Submitted by
H. O.

a pricey purchase

Reuven sent his future son-in-law, Yaakov, to buy a silver kiddush cup. He instructed the silver store over the phone to allow Yaakov to choose a cup for up to \$1,000 and he would pay for it. Yaakov went to the store and chose a kiddush cup that sold for \$950. He called Reuven, who gladly paid for the cup. On the Shabbos of the aufruf, Reuven was at Yaakov's house, and Yaakov showed him his purchase. Reuven couldn't believe that the store had sold this particular cup for \$950 when he

was sure he had seen it sold in a comparable store for only \$750. Research after Shabbos confirmed that this cup sold for much less elsewhere. Reuven called the storeowner and demanded a refund of at least \$200, since the amount he had overpaid certainly exceeded 1/6 of the total (see C.M. 227:2). The storeowner finally admitted that he usually does sell this cup for much cheaper but claimed that since a number of months had passed, he was under no obligation to refund

the overcharge. Both parties agreed to have a phone conference to determine the Halacha.

Q: Is Reuven entitled to a \$200 reimbursement?

A: Shulchan Aruch (227:7) rules that a buyer only has a limited amount of time within which to determine whether he was overcharged. This time frame is the amount of time it usually takes to show the mer-

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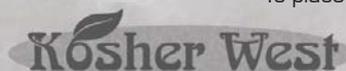
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stein zt”I many years ago (Igrot Moshe, C.M. 1:43). He ruled that the fruit belong to the owner of the vine. Rav Moshe explains that although the Gemara (B.B. 27b) debates whether bikkurim can be brought from a tree whose roots or branches extend into someone else’s property, ownership of the fruit is determined solely by where the stem emanates from the ground. Since the vine’s stem emanates from your neighbor’s property, the clusters of grapes over the fence are also his. The Rama also rules that the branches follow the base of the tree (C.M. 167:2)."

"If the grapes are his," asked Mr. Adler, "am I allowed to trim the branches that interfere with my yard?"

"Yes," said Rabbi Dayan. "The Mishna (B.B. 27b) teaches that branches of a tree that interfere with public traffic can be cut down. The same would seem true of branches that interfere with someone else’s private property. Nonetheless, despite your right to trim these branches, the fruit belong to their owner." Rabbi Dayan and Mr. Adler

washed and sat down for the seuda.

Mr. Adler turned to Rabbi Dayan, "I guess then that it makes no difference whether the neighbor is Jewish or not."

"Correct," replied Rabbi Dayan. "Rav Moshe writes explicitly that since monetary ownership is determined solely by the stem, there is no difference between a Jew and a non-Jew. Stealing from a non-Jew is also prohibited."

Mr. Adler took a drink and thought for a moment of the grapes that had fallen to the ground. He turned again to Rabbi Dayan, "What about individual grapes that fall onto the ground?"

"In principle, there is no difference between whole clusters and individual grapes," said Rabbi Dayan. "Both belong to your neighbor. However, in practice, we can assume that he is interested only in the whole clusters, not in individual grapes that fall into your yard. Therefore, you can typically take individual grapes that fall, since he most likely doesn't mind, but you cannot take the clusters without asking his permission."

chandise to another merchant to confirm its price – k'dei she'yareh l'tagar.

The question here is: Who is the purchaser? Is the son-in-law, Yaakov, the purchaser, in which case he has lost the right to demand a refund, since the kiddush cup was in his possession for enough time to have it assessed? Or is Reuven, who paid for the cup, the purchaser? If so, as he didn't see the cup until the Shabbos of the aufruf, his time frame to have the merchandise assessed started only then, and his demand for a refund would have to be honored since he responded immediately (see 227:8).

In this case, it seems that Yaakov was the purchaser of the kiddush cup and Reuven's role in the transaction was that of an arev, a guarantor. The basis for this categorization is that Reuven committed to paying the silver shop for

the kiddush cup that Yaakov chose. Since Reuven never intended to acquire the cup for himself, he is merely a guarantor for Yaakov's purchase. Consequently, since Yaakov allowed the timeframe of k'dei she'yareh l'tagar to transpire, he may no longer demand a refund for the amount that he was overcharged.

There is, however, another mechanism that allows Reuven to demand a refund. As mentioned, Reuven played the role of an arev to cover the cost to the silver shop. As such, he did not obligate himself to pay any more than the value of the purchased item. Since the kiddush cup in this case is worth \$750, Reuven did not obligate himself to pay any more than that – and the additional \$200 that was taken by the silver shop was unauthorized and must be returned (see Hilchos Mishpat pg. 196 quoting Ria's Enzil 84).

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MONEY MATTERS

laws of interest week #12

Q: I am renting a summer home for July and August at \$2,500 a month. The landlord is willing to accept \$4,500 if the entire sum is prepaid. Can I accept this offer?

A: The Mishna (B. M. 65a) teaches that although prepayment discounts for merchandise are considered ribbis, it is permissible to provide a discount for rental prepayments. One explanation of this distinction is that in

prepayment for merchandise, there is no monetary obligation before consummation of the sale. Therefore, any advance payment is considered a loan to the seller: potential ribbis. However, in prepayment of rental, there exists a monetary commitment from the beginning of the rental, even if the actual payment is due only month by month. Therefore, the prepayment is not viewed as a loan to the landlord, but as payment of an existing obligation, so

it is permissible to provide a discount for the months ahead (Y.D. 176:6; Bris Yehuda 26:1 fnt. 1). According to many authorities, it is permissible to provide this discount even before the renter moves in. For example, the landlord may demand that payment be made by June 1, a month before the rental period. However, there must be a binding commitment to the rental, through a signed lease or kinyan sudar (Taz 176:7; The Laws of Ribbis 11:14-22).

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