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STORYLINE

the keyboard in the cupboard

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"There will be a small office party next Tuesday," Mr. Storch announced to his workers. "We're celebrating the five-year anniversary of Storch Studios."

"Congratulations!" they chorused.

"I heard that you play beautifully on the keyboard," Mr. Storch said to Jay Farber, a freelance worker there. "It would be nice to have some music."

"I have another job that day," replied Jay, "but I'd be happy to lend my keyboard to you if someone else can play."

"Actually, I can play," Mr. Storch said. "Please bring it with you when you come to work on Monday, so it will be available for the party." On Monday, Jay Farber brought his keyboard and gave it to Mr. Storch. "Here it is," he said. "Please take care of it."

"Thank you very much," said Mr. Storch. "I'll

put it away in the cabinet till tomorrow."

The next morning, when Mr. Storch opened the cabinet to set up the keyboard, he saw that it was not there.

"This is really bad," said Mr. Storch. "I guess we'll have to use music CDs for the party."

When Jay Farber came to work the following day, Mr. Storch told him, "I'm awfully sorry about your keyboard. I put it in this cabinet, but it wasn't there when I came in yesterday morning."

"You're kidding me!" said Jay. "I've been playing on this keyboard for the past three years, and I love its feel! It costs \$500 to get a new one."

"It's three years old, though," Mr. Storch pointed out. "Its value as a used item is only half that."

"That doesn't help me," said Jay. "I need to

buy a new one to continue playing."

"You can buy one second-hand," suggested Mr. Storch. "Besides, I know I locked the cabinet. It's really strange that it got stolen." While they were debating the issue, another worker piped up: "This sounds like a question from the *Business Weekly*. Go ask Rabbi Dayan!"

Mr. Storch and Jay said, "Great idea!" They asked Rabbi Dayan if they could meet with him.

"Is Mr. Storch responsible for the keyboard?" Jay asked. "How much does he have to pay?"

"A person who borrows an item is responsible for it, even if it's damaged or lost through circumstances beyond his control, and certainly for theft (C.M. 340:1)," said Rabbi Dayan. "However, when borrowing or damaging

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FROM THE BHI HOTLINE

Submitted by
M. C.

esrog agent

I sell esrogim on commission. As I was putting the esrogim on display before Sukkos, I saw a magnificent esrog and decided that I would keep it. I simply paid the supplier for that esrog myself.

When I later mentioned this to my chavrusa, he wondered if I, as an agent assigned to sell esrogim, was allowed to purchase the esrog for myself. I find it hard to believe that there is an issue with what I did, but I would like to confirm that the sale was valid.

Q: Was I allowed to purchase the esrog for myself?

A: The concern that your chavrusa brought up is indeed an issue that arises regularly. Consider, for example, a manufacturer who delivered merchandise to a salesman to sell on commission. After a period of time, market conditions changed, causing an increase in the value of the goods. The salesman is now interested in buying the

merchandise so that he can pocket the additional profit. He claims that when he originally obtained the merchandise, his intent had been to purchase it at the price specified by the manufacturer. The manufacturer contends that the salesman was only an agent to sell the merchandise to others, and as long as the merchandise has not yet been sold, it remains the property of the principal and the increased value is his.

Shulchan Aruch (C.M. 185:2) rules that

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STORYLINE CONTINUED

a used item, it is not necessary to replace it with a new one. The loss or damage is evaluated at the item's current worth, taking into consideration its depreciation."

"So he owes me \$250, then," said Jay Farber.

"Actually, in this particular case," continued Rabbi Dayan, "Mr. Storch is not legally responsible for the borrowed item, based on the principle of b'alav imo (the owner is with him)."

"What's that?" asked Jay.

"The Torah states regarding one who borrows: 'If the owner is with him,' the borrower is not responsible," explained Rabbi Dayan. "The Gemara (B.M. 94a) interprets this to mean that if the owner of the item is in the employ or service of the borrower, the borrower is not responsible for the item."

"Why is that?" asked Mr. Storch.

"One of the rationales offered for this law," answered Rabbi Dayan, "is that when the owner of the item is in the service of the borrower, there is an expectation that the owner will continue to keep an eye on it. Therefore,

the Torah granted an exemption (Sefer Hachinuch #60)."

"But I wasn't working that day," asked Jay Farber.

"The owner must be in the service of the borrower at the time that he borrowed the item," replied Rabbi Dayan, "since that is the point at which the borrower assumes responsibility for it. Even if the owner is no longer in his employ at the time that the item is lost, the borrower remains exempt (C.M. 346:1)."

"What if the item was lost through negligence, such as if I hadn't locked the door?" asked Mr. Storch.

"There is a dispute about this in the Gemara (95a)," answered Rabbi Dayan. "Most authorities rule that it is not possible to make the borrower pay, and he remains exempt. However, if the borrower actively damaged the item, he is responsible for it as any other person who damages (see 301:1; Pischei Teshuva 176:13)."

"This is the halacha," concluded Rabbi Dayan. "However, Mr. Storch should take into consideration interpersonal decency and gratitude."

FROM THE BHI HOTLINE CONTINUED

an agent may not purchase the merchandise he was assigned to sell, even at the price specified by the principal. The reason is that the agent was authorized to sell the merchandise, thereby precluding him from being able to purchase it for himself. A sale, by definition, involves the transfer of merchandise from the domain of one party to the domain of another; one who is authorized to sell merchandise cannot effect a sale to himself, since the property has not left the domain of the seller (Tur in the name of Rashba, see also Nesivos 185:1).

Shach 3 cites authorities that allow the agent to purchase the merchandise for himself. The rationale is that once the principal sets a price, he remains the owner of the property, and when the agent

purchases it for himself, it is transferred from the domain of the principal to the domain of the agent (Machaneh Ephraim: Shluchin #20).

Since the matter is subject to debate, one would not be able to collect from the one who is in possession of the disputed property (Erech Shai).

However, in your case involving an esrog, all opinions would agree that you performed a valid kinyan (proprietary act) on the esrog. The reason is that it is assumed that the supplier would have no issue with the salesman purchasing the esrog for himself, since he certainly is not interested in the agent purchasing his esrog from another supplier. As such, all opinions agree that you made a valid kinyan on the esrog (Shoel U'Meishiv Mahadurah 5:22).

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MONEY MATTERS

laws of interest week #20

Q: My uncle lent me money to buy a house. When I repay the loan, may I attach a letter of profuse thanks?

A: Our Sages prohibited the lender from receiving any form of benefit from the borrower, even verbal benefit. This is referred to as ribbis devarim and is associated with the verse, "neshech kol davar" (any word). It is even prohibited for the borrower to go out of

his way to greet the lender, if he was not accustomed to do so beforehand (Y.D. 160:11-12). Some authorities indicate that even simple, cordial thanks are prohibited, but many contemporary poskim allow a "Thank you" offered as common courtesy (The Laws of Ribbis, 3:14-18). Therefore, you should suffice with attaching a simple letter of thanks, without profuse writing. You may also give the lender greetings that are unrelated to the

loan, such as "Mazal Tov" on the occasion of a simcha (Bris Yehuda 11(63)).

The prohibition of ribbis devarim, such as greeting the lender, is usually limited to the duration of the loan or the time of repayment, but is permitted afterwards. It is questionable, however, whether it is permitted afterwards if directly linked to the loan, such as thanking profusely for it (Bris Yehuda 10(8), but see Darchei Teshuva 160:87).

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