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STORYLINE

the bicycle burglar

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"Happy birthday, Yosef!" said Uncle Shlomo. "I want to buy you a new bike as a present." "Oh, thank you!" exclaimed Yosef. "The chain on my old bike keeps slipping, and the brakes are going." Yosef and his uncle went to the bike store and chose a Schwinn 21-speed hybrid bike. "You also need a lock," said Uncle Shlomo. "Get a Kryptonite U-lock." Yosef brought the bike home and showed it to his parents. "That was very generous of Uncle Shlomo," said his mother. "You should write him a nice thank you note." The following day, Yosef arranged with his friend Dovid to go bike riding together. He stood his bike at the entrance to Dovid's house and rang the bell. "I'll be out in a minute," said Dovid. "Come in

and close the door while I put on my coat." Three minutes later, the two boys walked out. Yosef stopped in his tracks, pale. "What's the matter?" Dovid asked with alarm. "I left my bike outside your door!" exclaimed Yosef. "It's gone! Someone stole it!" "You didn't lock it?" asked Dovid. "I always do," Yosef replied. "But I didn't think I needed to for just the three minutes." "I feel really bad," said Dovid. "We'll post 'Missing' signs around the neighborhood. Maybe the bike will turn up. Meanwhile, I have an extra bike you can borrow." A week later, Dovid and another friend spotted Yosef's bike locked outside a store. They waited a few minutes until they saw Avromi come out and unlock the bike. Dovid walked over and grabbed the handle bar. "Hi Avromi, where'd you get this new

bike?" he asked with a suspecting look. "I... I... I got it two weeks ago," Avromi stammered. "Why do you ask?" "This looks like Yosef's new bike," Dovid said. "Someone stole it from my house a week ago." He glared at Avromi piercingly. Avromi looked down uncomfortably. "I took it from there," he admitted quietly. "I'll return it now. Please don't tell Yosef." Dovid walked with Avromi back to Yosef's house. Avromi put the bike quietly in the backyard. A half hour later, Yosef heard a sharp "Crash!" from outside. He looked out his window and saw that their tree had fallen down. Underneath, he spotted his new bike... mangled beyond repair. "How did the bike get here?!" he cried out. Yosef called Dovid immediately. "Someone

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FROM THE BHI HOTLINE

Submitted by
M. M.

on one condition

I asked a friend for a loan. He loaned me money for a period of two years - on the condition that I do my grocery shopping at his store. I recently learned that this agreement violates the prohibition against ribbis (interest), because I did not regularly shop at his store before I borrowed the money (Y.D. 160:23 and Bris Yehudah Ikrei Dinim 10:35). I therefore stopped shopping at his store. He now claims that the terms of the loan were violated and demands that I im-

mediately return the money to him.

Q: Am I obligated to pay him back now?

A: It is clear that the lender lent you the money with the intent to benefit from the loan, and it is forbidden to fulfill his condition due to the prohibition of ribbis.

What is the consequence of making a stipulation that cannot be fulfilled? One could argue that since the lender made the loan con-

ditional on your shopping in his store, if that stipulation is not fulfilled, the loan should be canceled. On the other hand, there is a principle that if a stipulation violates halacha, the stipulation is ignored and the rest of terms remain valid - ha'tenai batel v'hama'aseh kayam (E.H. 38:5). How will halacha balance these seemingly conflicting principles?

Generally, an unfulfilled condition would cancel a sale. The exception is a condition that involves violating a prohibition; the principle

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returned the bike to my backyard," he said excitedly, "but our tree broke and fell on it. It's ruined now! I wonder who took it?" "I have a clue," said Dovid, "but I have to speak with Rabbi Dayan first."

"All right," said Yosef with a puzzled tone. "But let me know ASAP!"

Dovid went to Rabbi Dayan's beis midrash. "Someone stole my friend's bike," he said to Rabbi Dayan. "The bike was returned to the owner's backyard, but a tree fell down and broke it. Is there a point in telling him who the thief was?"

"A person who steals something becomes fully responsible for it," said Rabbi Dayan, "even if it is lost due to uncontrollable circumstances (ones). The thief continues to be responsible until the item is safely returned to its owner (C.M. 355:1)."

"Does the owner have to know that it was returned?" asked Dovid.

"That depends on whether the owner knew that the item was stolen," answered Rabbi Dayan. "If the owner did not know that

the item was stolen, the thief is exempt once he returns the item to its place. However, if the owner knew that the item was stolen, the thief remains responsible until the owner knows that the item was returned."

"Why is there this difference?" Dovid wondered.

"The primary reason," explained Rabbi Dayan, "is that the owner has to know to look after his item. If the owner was not aware of the theft, he will watch it now just as he did before the item was stolen. If he knew that it was stolen, though, he has to be made aware that the item was returned, so that he will resume looking after it (SM"A 354:1). For example, had your friend known that the bike was returned, he might have brought it inside his house."

"So the thief remains obligated to pay for the bike?" asked Dovid.

"Yes," said Rabbi Dayan. "If the thief doesn't pay willingly, you should inform your friend, so that he can demand payment. Either way, it is proper that the thief also apologize to the owner (Rambam Hil. Teshuva 2:5)."

ha'tenai batel v'hama'aseh kayam would apply, and the sale is not canceled.

At times, a stipulation may be related to the means of payment. In such a case, if the stipulation is not fulfilled, the transaction is null and void. In other words, there is a fundamental difference between a condition of the sale (tenai) and a condition related to payment (tashlumin). Since the transaction cannot be completed without payment, the rule ha'tenai batel v'hama'aseh kayam cannot be applied when the condition relates to the means of payment.

If one rents his car to someone else and stipulates that the renter must drive the owner on Shabbos as part of the rental fee or return the car, the stipulation is in effect, although it would require chilul shabbos. Since the owner was not compensated in the manner he stipulated, the rental agree-

ment is canceled.

The same applies in your case. Since the lender only agreed to loan you the money if you would shop at his store, which is halachically prohibited, the loan is cancelled, because his stipulation regarding payment was not fulfilled (Chavos Da'as 161:5. See also Machaneh Ephraim Ribis #37 and Even Ha'Azul Malveh 8:1).

Although there are authorities who disagree and maintain that the loan is not canceled in this case (see Bris Yehudah 1:11), nevertheless, since both parties were unaware that the stipulation involved ribbis, all opinions would agree that the loan was made under false pretenses (mekach taus) and the lender may demand the return of his money (Imrei Yosher 1:149).

You should be aware that it is possible to retain the conditions of the loan if a proper heter iska is drawn up (Dagul Mervavah to Shach 177:41).

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

borrowing and lending week #11

Q: A Jewish debtor filed for bankruptcy. Does the settlement exempt him also from his Jewish creditors according to halacha?

A: Bankruptcy settlements generally entail compromises on the part of the creditors to accept partial payment of their loans. For a compromise to be binding in halacha, it must be accompanied by an act of kinyan (acquisition) to give it binding status (C.M. 12:7). In

addition, there is a discussion whether a compromise that was coerced on the other party is valid (12:11). However, if the person actively took part in the settlement process, this is indication of his agreement to the settlement. Therefore, only if the creditor made a kinyan and took an active part in the bankruptcy settlement, the borrower would be exempt according to halacha. Otherwise, the debt remains, even if a long time passed from the

loan (98:1). Nonetheless, since the bankruptcy settlement has secular legal status, some maintain that the rule of dina d'malchusa dina applies here (Igros Moshe C.M. 2:62; see, however, Chelkas Yaakov C.M. #32). Furthermore, for loans involving businesses, there is an additional consideration of the common commercial practice (minhag hasocharim) (Pischei Teshuva 12:19; Pischei Choshen, Halva'ah 2:26).

COMMON RIBBIS ISSUES

A summer camp is offering a \$150 discount if I pay by March 31st.

Is this a Ribbis concern, and if so, what is the solution?

Sunday mornings at Cong. Kneseth Yisroel (White shul)

Shacharis 8:30 am, Breakfast 9:15 am

Prep Shiur/R' Ari Bergman 9:20 - 10:15 am

Halacha Shiur/R' Moishe Kaufman 10:15 - 10:45 am

For more info, contact R' Ari Bergman at 516-305-2815 or choshenmishpat@crefacorp.com

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