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STORYLINE

lost lessons

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Mr. Hirsch taught Hebrew at the local Jewish day school. In addition, he gave bar mitzvah lessons and tutored neighborhood boys in Jewish studies in the evenings. Tonight he was booked solid from 6:30 to 9:45 PM, with two lessons at his house and a third in a nearby neighborhood. Thus, when Mrs. Blum asked if he could tutor her son in the evening, Mr. Hirsch had to decline. At 6:30, Mr. Hirsh settled down for the first lesson. Yaakov was usually prompt, so when he hadn't arrived ten minutes later, Mr. Hirsh called to find out what was happening. "Oh, I'm sorry," said Yaakov. "I have a bad case of strep. I've been in bed all week and completely forgot about the lesson." Mr. Hirsch wished him well. He usually looked forward to tutoring, but tonight he had papers to grade and didn't mind some

extra time. Shortly afterwards, Shlomo called. "Hi, Mr. Hirsch. I'm supposed to have a lesson at 7:30, but my friends are getting together tonight. I'll see you next week." He hung up before Mr. Hirsch had a chance to respond. "He could use a little lesson in responsibility and derech erez," Mr. Hirsch mused. He immediately notified Mrs. Blum that he now had time available, but she had already arranged with another tutor. At 8:30, Mr. Hirsch got into his car for the final lesson at Yechiel's house. While driving, his cell phone rang. "Hello, this is Yechiel's mother. I apologize, but Yechiel would prefer not to meet tonight. My brother came over with his kids and Yechiel hasn't seen them in a while. I hope you haven't left yet." "As a matter of fact, I'm almost at your

house," said Mr. Hirsch. "Is there a chance Yechiel would be willing to learn?" "I don't think so," said his mother. "He's quite close with his cousins." Mr. Hirsch turned around and drove home. He was glad to finish grading the papers, but the loss of all three lessons amounted to a considerable sum. It was particularly annoying because he could have tutored Mrs. Blum's son had he known ahead of time. Furthermore, he had driven ten minutes to Yechiel before the call came in. Couldn't people notify him earlier?! He began to wonder whether he was owed pay for any of the missed lessons. The following night, Mr. Hirsch met Rabbi Dayan at a bar mitzvah. He described the frustrating evening and inquired whether he was entitled to any pay for the lost lessons.

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FROM THE BHI HOTLINE

Submitted by
T. F.

the use of juice

I realized last Shabbos that the local grocer had forgotten to send me the grape juice and soda I had ordered. My neighbor, whose spare key I have, was not home for Shabbos, and I know that he always has plenty of drinks in his home.

Q: Would it have been permitted for me to take grape juice and soda from his house with the intent to replace it right after Shabbos?

A: The prohibition of geneivah (stealing) applies even when there is intent to return the stolen object (C.M. 359:5). This includes taking an item without permission even if it is clear that the owner will not mind after finding out about it. This is due to the principle of ye'ush shelo m'daas (abandonment without knowledge), which states that one's ownership is not terminated without the owner's awareness (C.M. 262:3). Therefore, taking another person's object without

his knowledge is forbidden even if he will not mind once he becomes aware of it. As such, Tosfos (Bava Metzia 22a) rules that it is prohibited to consume someone else's food even if it is assumed that he will not mind once he finds out about it, since at the time that it was consumed, the owner was not aware that his food was taken. However, according to Shach (C.M. 258:1), the principle of ye'ush shelo m'daas only applies to lost objects where the owner is

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Rabbi Dayan thought for a moment. "It's fascinating!" he replied. "Your three scenarios parallel three different halachos. The first boy, Yaakov, was sick and unable to come for the lesson. Since he was forced to cancel the appointment he owes you nothing (C.M. 333:1)."

"What about the second boy, Shlomo?" asked Mr. Hirsch. "He could have come for his lesson, but decided to go out with his friends instead."

"In this situation, it depends whether you were caused a loss by the cancellation," responded Rabbi Dayan. "Here you turned away Mrs. Blum's son on account of the expected lesson, so Shlomo owes you for the cancellation. However, since you did not have to spend the time tutoring and had free time to mark your papers, he does not owe you the full amount of the lesson. We call this k'poel batel, like an idle worker, which is approximately half the amount (C.M. 333:2 and Taz)."

"Then I suppose the last boy, Yechiel, doesn't owe me," said Mr. Hirsh, "since he didn't cause

me a loss."

"Actually, he does owe you, since you had already set out to his house," replied Rabbi Dayan. "This is considered by many poskim as having started the job (SM"A 333:6; Shach 333:7). Once a worker begins, the employer owes him compensation for cancelling willingly, even if it did not cause a loss. Once again, though, since you had the remainder of the evening free to finish grading the papers, he does not owe the full amount. He owes for whatever part of the job was done, and for the remainder k'poel batel."

"I guess that means I can ask Shlomo for half payment and Yechiel for slightly more," concluded Mr. Hirsch.

"Correct," said Rabbi Dayan. "Nonetheless, if there is a clear local practice or stated agreement otherwise, that would supersede these default halachos. For example, many health practitioners have defined rules about notification and cancellation of appointments. Whoever makes an appointment with them does so with that understanding."

forced to relinquish ownership as a result of its loss. Consequently, he retains ownership until he has no alternative, i.e. he becomes aware of its loss. In contrast, in circumstances in which the owner voluntarily relinquishes his rights, like giving his friend some food, implied consent of the owner is enough to be considered a voluntary relinquishing of his rights. Since the relinquishment is done voluntarily, there is no reason for explicit permission (see Teshuvos Oreg Yom Tov Y.D. 161 for an elaboration).

Because this distinction is a matter of dispute on a possible Biblical prohibition, one should generally adopt a stringent approach (see

Ketzos 209:5 and 262; Nesivos 66:28, 195:1, 197:4 and 244:1). For this reason, it would seem that you should preferably not use your neighbor's food without explicit permission.

Nevertheless, it seems in your particular situation that the issue relates to the rapport of neighbors that have a generous relationship with one another, similar to a son giving a small donation to a poor person from his father's money. Based on this principle, you would be permitted to take food or beverages that neighbors are generous about, particularly if your intent is to return it at the first opportunity (Imrei Baruch to Shach 358:1).

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MONEY MATTERS

laws of interest week #6

Q: What is the basis of the heter iska? Can it be used for all loans?

A: The heter iska is based on the distinction between a loan and a business venture. Only interest on a loan is prohibited; profits from a business venture are permitted. Conversely, a loan must always be repaid by the borrower and carries no risk of loss (other than default), whereas a business venture bears

the risk of loss of capital and carries no guarantee of gain. Therefore, the basic idea of the heter iska is to redefine the interest-bearing loan as a (joint) profit-bearing business venture, similar to the "iska" arrangement mentioned last week, with built-in clauses to protect the capital of the financier and facilitate the expected profit (Y.D. 177; The Laws of Ribbis, Rabbi Reisman, ch. 22).

As such, the heter iska is most appropriate for

commercial loans or real-estate mortgages, where there is a real expectation of profit or capital appreciation. The validity of the heter iska for personal loans is questionable, especially when the borrower does not have other profit-bearing assets (TLOR 22:31-35). Modern Jewish banks and financial institutions usually have an "all-purpose" heter iska that covers all their transactions (TLOR 23:12-13).

PLEASE BE AWARE

Using your friend's credit card for purchases or taking advantage of his special finance offers can involve serious ribbis (interest) issues.

For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at:
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