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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Minor Deal

A handful of fifth-grade boys were playing ball in the park one afternoon. Yosef zoomed into the park on his rollerblades with a broad smile on his face.

"What's up, Yosef?" asked his friend Eliyahu.

"My father bought me new rollerblades for my birthday," Yosef answered happily.

"What are you going to do with your old rollerblades?" Eliyahu asked. "They're still in good condition."

"I don't know," replied Yosef. "I put them away in my closet."

"I'll tell you what," said Eliyahu. "I'll pay you \$40 for them."

"Deal," said Eliyahu.

The following day, Eliyahu went home with Yosef. He gave Yosef the \$40 and took the old rollerblades.

A week later, Yosef's father inquired about his old rollerblades.

"I sold them to Eliyahu last week for \$40," replied Yosef.

"I'm upset that you did that," said his father. "I told your younger brother that I would give them to him."

"I'm sorry," said Yosef, "but what should I do now?"

"Tell Eliyahu that you need the rollerblades back; that I did not allow the sale," said his father. "You had no right to sell them without asking me first."

The next morning in school, Yosef told Eliyahu that he wanted the rollerblades back.

"But you already sold them to me," argued Eliyahu. "You can't retract."

"My father insists that I get them back," said Yosef. "He promised them to my younger brother."

"Well, I'm not giving them back," said Eliyahu. "I bought them fair and square! Any-

way, they're yours, not your father's."

As their tones rose, the rebbi came over. "What's going on?" he asked.

"Yosef sold me his old rollerblades," said Eliyahu, "and now he wants them back."

"My father says that I shouldn't have sold them without checking with him," explained Yosef. "He wants them for my brother."

"I heard that there is a special shiur today with Rabbi Dayan," said the rebbi. "We can ask him!"

After the shiur, the rebbi introduced Yosef and Eliyahu to Rabbi Dayan.

"I sold my rollerblades to Eliyahu, but my father insists that he return them," Yosef said. "Does Eliyahu have to give them back?"

"The sale of a minor (below the age of bar mitzvah) who is supported by his father is subject to his approval," said Rabbi Dayan.

"Therefore, your father can annul the sale."

"Therefore, your father can annul the sale."

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Theft and Ribbis

Submitted by S. A.

I bought a sefer and later realized that pages were missing, so I intend to return it.

Q: Am I permitted to use the sefer before I have a chance to return it?

A: Your inquiry involves two issues, theft and ribbis (interest).

The concern for theft is as follows. Since the

sefer is damaged, the purchase is null and void and the sefer belongs to the merchant. One who uses someone else's property without permission (shoel shelo midaas) is considered a thief.

However, if the damaged merchandise cannot be resold, the owner has no basis to protest against someone using it (zeh neheneh v'zeh lo chaser), since it cannot be further damaged. Accordingly, you may use the sefer before you return it.

This reasoning is important for another matter. When someone uses a purchased item after discovering a defect, it indicates that the defect is insignificant, and consequently he forfeits the right to return that item (C.M. 232:3). However, if the principle of zeh neheneh v'zeh lo chaser permits the customer to use the defective merchandise, his use does not indicate that the defect is insignificant and he retains the right to return it (see Pischei Teshuvah 232:1).

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"Why is that?" asked Eliyahu. "Selling is a legal transaction that requires da'as, legal competence," explained Rabbi Dayan. "Therefore, the Torah does not attribute legal significance to transactions initiated by minors, since they lack daas. However, the Sages rule that the transactions of minors — with the exception of real estate — should be valid, so that a child should be able to obtain his needs (Gittin 59a; C.M. 235:1)."

"From what age?" asked Yosef. "From a minimum of six or seven, provided that the child has some sense of value and business," replied Rabbi Dayan. "By age ten, it is assumed that almost all children have reached this stage, unless it is known to be otherwise (see Sma 235:3)."

"If so, what's the problem?" asked Eliyahu. "Yosef is already ten!"

"Elsewhere, the Gemara (Kesubos 70a) qualifies that the Sages only instituted that ruling for cases when there is no guardian to look after the child's welfare, but not if there is a guardian," explained Rabbi Dayan, "because a guardian will tend to the child's needs."

"Thus, the child can only sell with the approval of his guardian; if the guardian upholds the purchase or sale, it is valid. All the more so when the child has a father to look after him; then his sale is subject to his father's approval (C.M. 235:2; Sma 235:18; Aruch Hashulchan 235:1,11)."

"Furthermore, in many instances, gifts given to children are not viewed as owned by them, but are considered as belonging to the father," added Rabbi Dayan (Rema 270:2; Aruch Hashulchan 270:4). "Therefore, Yosef's father can annul the sale if he objects to it."

The second issue is ribbis. When one has the halachic right to return merchandise for a refund, the money that he gave the merchant is, retroactively, a loan rather than payment for a purchase. Accordingly, when the merchant (borrower) refunds the money to the customer (lender) it is essentially repayment of the loan. If the customer uses the "purchased" item while it is in his possession, that additional benefit constitutes ribbis (Y.D. 174 and C.M. 232:15). In order to avoid this issue, the customer must pay the value of the benefit he received from use of the object.

However, in your case, there is no such concern. Ribbis issues arise when the borrower provides benefit to the lender in consideration of the loan,

but when it is evident that the merchant permits use of the merchandise for reasons other than the loan, e.g. customer satisfaction, it is permitted. In this case, the fact that this permission is not in consideration of the loan is evident from the fact that even if the customer had bought the item on credit, the merchant would not charge for the use of the defective item.

For this reason, a business may have a return policy that allows customers to use the item even if it will be returned, because that policy is adopted to attract customers (Nesivos Shalom 174:5, 7). Since it is clear that the benefit is not given in consideration of the loan, it is permitted to use the sefer before it is returned for a refund.

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Damages #15

Q: My friend was holding money in his hand. I knocked the money out of his hand and it rolled into the gutter and down a drain. We see it lying three feet below. Must I reimburse him?

A: The Gemara (B.K. 98a) writes that if someone knocked money into clear water and it can be retrieved by a diver, he is

exempt. The money is still present and the cost of hiring a diver is incidental.

Nonetheless, the Shulchan Aruch, following the Rambam, rules that you are liable as a form of garmi. However, the Rema rules that this is considered grama and you are not legally liable, in accordance with the simple reading of the Gemara (C.M. 386:1, 3). The Shach (386:7) concurs with this ruling.

If it is not possible to retrieve the coin, though — e.g. the water is murky — you are liable even according to the Rema (see Pischei Choshen, Nezikin 3:[44]).

Furthermore, if you grabbed the coin and threw it away, you are then considered a thief. You are responsible to return the coin even if it entails expenses to do so, or to pay for it (see Shach 386:8).

MONEY MATTERS

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