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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

giving a gift

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Rivka came home from school and handed her mother a note, which read:

"As class representative, I am collecting money for the annual end-of-year gift for the teacher, Mrs. Melamed. Each parent is asked to contribute \$30 for the gift, cash or check. Thank you in advance for your cooperation, Mrs. Roth."

Rivka's mother promptly put the money in an envelope and sent it over to Mrs. Roth. During the course of the week, Mrs. Roth collected about \$1,000. She brought the money to the school and gave it to the school secretary, Mrs. Green.

"Thank you very much," Mrs. Green told her. "The teachers look forward to this gift." "I'm glad that the parents were responsive," said Mrs. Roth. "Sometimes it takes a while to collect all the money and that's not fair to

the teacher."

Ten minutes later, the principal, Mr. Weinberg, returned from a round among the classes.

"One of the mothers brought in money for Mrs. Melamed's gift," Mrs. Green said. "Should I put it in her box?"

Mr. Weinberg sighed. "You know that we have been struggling to keep up with salaries," he said. "In order to alleviate the financial strain, the board has voted to utilize the class gift this year to defray part of this month's salary."

"You mean you're not going to give her the money as a gift?!" asked Mrs. Green, shocked.

"Unfortunately, no," replied Mr. Weinberg. "The board felt that it is more important that the teachers receive a proper paycheck

than get a gift."

"I understand that," said Mrs. Green, "but I don't think it's fair to the parents. They gave the money as a gift for the teacher, not as a donation to the school to fund salaries."

"Their money will be going to the teacher in the end," said Mr. Weinberg, "so I don't see a problem with it."

"But the parents expected this money to be an additional gift to the teacher to express their appreciation," protested Mrs. Green.

"The parents don't have to know exactly how the money was given," replied Mr. Weinberg. "The main point is that the teacher ends up receiving it."

"I apologize for sticking my nose in, but if I were one of those parents, I would feel cheated," said Mrs. Green. "Perhaps the school should consult with Rabbi Tzedek

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FROM THE BHI HOTLINE

Submitted by
S. C. T.

the broken bureau

I placed a dresser at the curb to be picked up for a move. A drawer loosened and fell, hitting my neighbor's car as he drove by and denting the hood.

Q: Am I responsible to pay for this damage?

A: Whether or not you are liable for the damage caused by the falling drawer depends on how we categorize the damage

that was done. The Mishnah in Bava Kama (2a) presents four general categories of damages, each represented by a model. The two categories relevant to our case are aish, lit. fire, referring to damage caused by fire, and bor, lit. pit, referring to damage caused by an obstacle (e.g. a person or animal falling into a hole in the ground). Aish is characterized as damage caused by an element that moves and damages with a force similar to fire.

By gezeiras hakasuv (Divine decree), in a case of bor, one is not liable for damage to keilim (movable objects). In contrast, in a case of damage by a cause similar to aish, one is liable for damage to movable objects.

In the case of a wall or tree that causes damage while falling (see Bava Kama 6b), there is a disagreement between authorities whether to characterize the damage that resulted as aish or bor. Seemingly, a

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before doing this.”

“That’s a good idea,” said Mr. Weinberg. “I’ll give Rabbi Tzedek a call and check with him.” Mr. Weinberg called Rabbi Tzedek and presented the issue to him. “Can we utilize the money that parents gave for the teacher’s gift to defray part of her salary?”

Rabbi Tzedek ruled: “If the money was collected with the intention to give it as a cash gift to the teacher, the money is already hers and cannot be used for another purpose. Even if the money was meant to buy a gift for the teacher, it cannot be used to pay payroll if this will cause a delay in giving the gift.”

Rabbi Tzedek then explained, “When a person accepts a gift on behalf of someone else, the recipient acquires it immediately based on the rule of zachin l’adam shelo b’fanav – it is possible to acquire for someone not in his presence. Therefore, if the money was meant to be given directly to the teacher, whenever Mrs. Roth received the money, the teacher immediately acquired it (C.M. 243:1).

“Nonetheless, it is not necessary to give these exact bills to the teacher. The class representative can exchange them for larger bills or utilize them and replace them immediately with her own money (see SM”A 183:12; Nesivos 183:4).

“If the money was meant to be used to buy the teacher a gift and not to be given in cash, the money does not become hers yet; rather, it still belongs to the parents. They entrusted it to the class representative or school to buy the gift for the teacher.

“There is a dispute amongst the authorities whether an agent who was given money to purchase something may borrow the money temporarily for his own needs (Shach 121:33; Nesivos 121:10). However, everyone agrees that to use the money for payroll and not to buy a gift, or to delay purchase of the gift, would be cheating the parents. Their intention was that the money should be used to purchase a gift at the end of the school year in addition to the regular salary (see also Pischei Choshen, Pikadon 5:20,21).”

falling wall is similar to an object placed on a wall that blew off in an ordinary wind. The Gemara characterizes this as aish and holds the person who placed the object on the wall responsible for the resulting damage. Similarly, the owner of a wall that collapsed and caused damage to other objects should be held liable. However, Rosh (Bava Kama 1/1) explains that in the case of the object that was blown off the wall, there was another force at work that caused the damage (the wind), whereas the collapse of the wall was just a consequence of the weakness of the wall. There was no other force at work. In addition, a defining characteristic of bor is that the damaging agent remains stationary and the damaged property moves to the bor. To this end, the size of the damaging agent

is defined by the distance that it can fall by collapsing on its own, not by the distance that the wind could carry it. If a wall collapses, it will not fall farther than the space next to where it stood; in order to be damaged by the wall, the damaged party must approach the place where the wall can fall. In contrast, a defining characteristic of aish is that the damaging agent moves towards the object that it damages. Therefore, if wind blows an object off of a wall, the object may travel farther than a tumble caused by its own weight. It is thus characterized as aish (see Nachalas Dovid (ibid 6a). Accordingly, in your case, since the drawer loosened on its own, any damage caused by this falling shelf is considered bor. You are not liable for the damage to your neighbor’s car.

Please contact our confidential hotline with your questions & comments

877.845.8455 ■ ask@businesshalacha.com

MONEY MATTERS

laws of interest week #5

Q: What is a “heter iska?”

A: With the greater involvement of Jews in banking and commerce, there was a need to enable Jewish financiers to achieve secure returns on their capital without violating the prohibition of ribbis, to encourage the granting of loans and facilitate modern finance. Over the generations, this evolved as the “heter iska,” based on an arrangement

drafted by R’ Menachem Mendel ben Avidgor of Cracow over 400 years ago, known as “tikun Maharam” (Y.D. 167:1). The heter iska is patterned after a business venture in the Gemara (B.M. 104b) called “iska.” A financier would provide capital to an entrepreneur to open and operate a business for a defined time, after which the capital would be returned and the two would share the profit. To achieve this, half the capital remained the

financier’s (from which he would take profit) and half was granted as a loan to the entrepreneur (from which he would take profit). In the eventuality of loss, the two would share the loss (Y.D. 177:2). Rav Moshe Feinstein zt”l emphasizes that since the heter iska redefines the loan as a business venture, it is important that both parties understand how the heter iska operates, which we will explain in the next two weeks (Igros Moshe Y.D. II:62).

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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