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

STORYLINE

mezuzah moves

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Mr. and Mrs. Judah Fine had lived in the city for almost twelve years. Their two-bedroom apartment, which had seemed spacious when they first married, was becoming quite crowded. When child number five came along and the oldest had to be moved into the living room, Mrs. Fine declared, "It's time to look for a house!"

After many months of house hunting, the Fines found a suitable home. It took another month of intensive bargaining until they negotiated a price they could handle. Finally, the deal was closed and a date was set for the move. A week beforehand, Judah met for the final time with Saul Eisner, the owner.

"Enjoy the space," Saul said. "You'll be able to give each kid his own room!"

"We won't do that," said Judah. "But we'll find use for each room."

"By the way, you're going to need a lot of new mezuzahs," Saul reminded him. "There are a total of twenty doorways and arches in this house."

The figure of \$2,000 immediately flashed through Judah's mind. "I assumed you would leave the mezuzahs with the house," he said to Saul.

"Are you kidding?" said Mr. Eisner. "We replaced all the mezuzahs two years ago, and bought top-quality ones from the sofer. Each one cost \$150! Some also have artistic cases that we received as special gifts."

"But I learned," said Judah, "that when you move out and another Jew is moving in, you're not supposed to remove the mezuzahs."

"I thought that I can take the mezuzahs with me if I put them in my new house," said Saul. "But even if you're right, you still

would have to pay for the mezuzahs. Add \$2,500 and I'll get new ones."

"I don't see why I should have to add," persisted Judah. "The mezuzahs go with the house. You sold me the house; the mezuzahs are included in the price."

"Absolutely not," said Saul. "The price was for the house, not the mezuzahs!"

"Why not?" retorted Judah. "If they stay as part of the house, they're included in the price!"

"Look, there's no point in arguing this," Saul said. "Let's ask Rabbi Tzedek."

They arranged to meet with Rabbi Tzedek, who ruled: "Unless stipulated by the sales contract, high-quality mezuzahs are not automatically included in the price of the house. Therefore, if the Fines will paint the house before they move in, which is common, Saul may remove the mezuzahs when

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FROM OUR HOTLINE snack snatch

Submitted by
C. M. Taub

My 10-year-old son and I were walking to shul one morning. As we passed a neighbor's yard, which had berry bushes that extended over the sidewalk, my son grabbed a handful of berries and ate them. The neighbor was on his porch at the time and witnessed the incident. He came running over and demanded that my son pay him for the berries. I immediately paid him for

the berries, not wanting to cause trouble.

Q: Was I actually required to reimburse him?

A: Shulchan Aruch (Choshen Mishpat 155:27) writes that one has the right to trim branches from a person's tree if they extend into the public domain in a way that inhibits

people from making full use of the public domain. As such, if the neighbor's bushes extend over the sidewalk as you describe, you have the right to trim those branches. One could argue that if you have the right to do this, you should also have the right to take the fruit from those branches as well. This, however, is not the case; since the bushes grow out of his property, the berries

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STORYLINE CONTINUED

he leaves (Igros Moshe Y.D. IV:44). However, if the house will not be painted, Saul should not remove the mezuzahs when he leaves. Instead, Judah should either pay to keep them, or affix his own mezuzahs and then return these to Saul."

Rabbi Tzedek then explained, "The Gemara (B.M. 102a) teaches that a tenant who rents a house from a Jew should not remove his mezuzahs when he leaves. Doing so revokes the mitzvah and removes the Divine protection from the house. However, he is entitled to reimbursement for the mezuzahs (Rama Y.D. 291:2).

"If the incoming tenant or landlord refuses to pay, most authorities maintain that the outgoing tenant still should not leave the house without mezuzahs, but he can replace his expensive mezuzahs with simple, kosher ones shortly before leaving. Even if the incoming resident will affix his own mezuzahs instead, it is preferable that he – not the one moving out – should remove the existing ones and return them (Pischei Teshuva Y.D. 291:7; Ya-

bia Omer Y.D. III:18).

"When selling a house, though, Binyan Zion maintains that the owner who moves out is not entitled to additional payment for the mezuzahs. Since they are attached to the house and are supposed to be left there, they are included in the sale price of the house (Pischei Teshuva Y.D. 291:8; C.M. 214:4).

"Shevet Halevi (II:129), however, argues. He maintains that although the mezuzahs are attached to the house, they are not part of the construction. Therefore, mezuzahs are not assumed to be included in the price of the house, especially if they are high-quality.

"It should be noted, however, that the standard New York State real estate contract stipulates that 'articles of personal property attached to ... the premises' are included in the sale, unless specifically excluded. If this language is used, the mezuzahs would be included, unless specifically excluded."

FROM OUR HOTLINE CONTINUED

ries are his (Rema Choshen Mishpat 167:2). Your right to trim branches does not divest the owner of his branches, and he remains the owner of the fruit. If he was not interested in keeping the berries, they would be considered hefker (ownerless), but since he protested when your son took them, he demonstrated the intent to retain proprietary rights to the berries. It is therefore an act of theft to take them.

The error in your neighbor's demand for reimbursement is that no one, not even a *bais din*, can demand that a child pay for stolen property that is no longer extant. The most that authorities could do is punish him to teach him a lesson. It is preferable (*lifnim meshuras hadin*) for

the child to pay for damage that he causes, but one cannot force him to pay (Mishnah Berurah 343:9). By extension, a parent is also not obligated to pay for damage that a child caused, unless the parent behaved negligently by placing the child in a circumstance in which the resulting damage was almost inevitable. Since that was not the case here, it was unnecessary for you to pay your neighbor for the berries. Nevertheless, it was certainly a meritorious act of pursuing a peaceful relationship with your neighbor.

Note: Rema mentions that when your son becomes a *bar mitzvah*, it is recommended that he try to make amends and appease the damaged party.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

defective merchandise week #4

Q: I bought food from a store. After I ate it, a new kashrus alert declared it non-kosher. Am I entitled to reimbursement?

A: This depends on the reason for the kashrus alert. If the food was declared non-kosher because of a Biblical prohibition (e.g. improper slaughtering, meat cooked with milk), then the seller must refund the

full amount of the money, even if the food was already eaten. If the prohibition was Rabbinic (e.g. chicken and milk, *terumos* and *ma'asros* nowadays) the buyer can return the food; if the food was eaten, the seller does not have to reimburse you (Choshen Mishpat 234:3-4). Later authorities rule that even if the prohibition was rabbinic, if the buyer did not pay yet, he needs to pay

only the cheaper price of non-kosher food (Pischei Teshuva 234:1). Furthermore, if the item is declared *assur b'hanaah*, forbidden to benefit from (e.g. *chametz* that was possessed by a Jew over *Pesach*), the sale is null and void even though the prohibition is rabbinic, and the seller must return the money even if the food was already eaten (C.M. 234:4).

WEEKLY STUDY GROUP

My contractor claims he made a mistake in his estimate, and refuses to complete the job unless I pay him more. What is the halacha?

Monsey Night Seder Bais Medrash 29 Parker Boulevard **Sunday Mornings**
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