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In Honor of the Aufruf of Dovi Werdiger



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

'WHO GAVE YOU PERMISSION?!'

The weekend was approaching. Men, who worked during the week in the city, began arriving at the bungalow colony. Yehuda's family, though, was heading to the city for a family *simchah* over Shabbos and Sunday.

Yehuda had an electric bike, which he usually kept locked. Occasionally he would rent it to other people in the bungalow colony for an hourly fee.

Yehuda's neighbor, Asher, noticed that the bike was left unlocked. He had once asked to borrow the bike, and Yehuda hadn't even charged him the rental fee.

"Yehuda is away for the weekend," Asher said to himself. "I can ride the bike while he's away; he won't be any the wiser."

On Friday afternoon, Asher took the bike, and rode the trails around the bungalow grounds for a couple of hours.

As he neared home, Asher drove over a nail lying on the road, which punctured the inner tube.

Asher walked the bike back to Yehuda's house, and returned it to its place. Yehuda's family returned late Sunday night.

In the morning, Asher approached Yehuda. "I saw that your bike was unlocked, and thought I'd take a spin," he said. "Unfortunately, I rode over a nail on the road, and the inner tube got punctured."

"Who gave you permission to use the bike?!" replied Yehuda. "I don't let people take it without permission."

"I know, but you were away," said Asher. "You once let me ride the bike, and I expected to return it intact. I'll pay you for the repair."

"It's not your fault that the tire got punctured," said Yehuda, "but I do expect the hourly rental fee."

The two called Rabbi Dayan and asked:

"Does Asher have to pay for the repair? Must he pay the rental fee?"

"The *Gemara* (B.M. 43b; B.B. 88a) teaches that one who borrows without permission, when it is not clear that the owner would allow use, is tantamount to a thief," replied Rabbi Dayan. "A person who steals, or borrows without permission, is required to return the item itself when intact, or its value when changed



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לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

LEASE INHERITANCE

Q. A person had an open lease on a store, and he was *niftar*. When his sons got up from *shivah*, they found out that one of the grandsons had called the owner of the store and arranged to take over the lease. The sons claim that since the store had been rented by their father, as his heirs they have the rights to it. Since the landlord had no right to lease it to anyone else, the grandson must return it to them.

The grandson claims that the rented store is not part of his grandfather's estate, and when he died, he lost rights to his lease, and the grandson was therefore entitled to rent it from the owner.

Who is correct?

A. We preface our words by pointing out that the same *she'eilah* would pertain to a rented dwelling, if a tenant dies and his children want to continue to rent the dwelling until the end of the lease, and the landlord wants to end the lease (see issue #510 for the opposite case, where the heirs want to end the lease when their father passes away, and the landlord wants them to pay the rent until the lease is up).

When a person borrows a property or an object and he dies, his heirs are allowed to continue using it (*Shulchan Aruch*, C.M. 341:1 and 3).

Similarly, heirs inherit the rights to a lease taken out by their father (*Tosafos*, B.B. 51b s.v. *B'matanah*, *Rabbi Akiva Eiger* 341:3, and *Bach* end of 312, cited by *Shach* 334:2). Obviously, since the father was only allowed to use the dwelling by paying rent, his heirs must pay the rent to keep the rights to it (see *Chiddushei Rabbi Akiva Eiger* loc. cit. and *Shaar Mishpat* 107:2).

Some *poskim* write that the *halachah* that the heirs have the rights to continue using a borrowed or rented item applies only if they are dependents of their father. They explain that when someone lends or leases something to another person, we assume that he does so with the mindset that the borrower's

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from its initial state" (C.M. 360:1).

"Moreover, a thief acquires a pseudo-ownership (*kinyan gezeilah*) of the item, and therefore is fully liable for the item, even if lost or damaged through uncontrollable circumstances or normal usage. Conversely, because of this pseudo-ownership, a thief, or one who borrows without permission, is not required to pay for use of the item, whether he returns the intact item or its value" (C.M. 363:3; see *Kuntresei Shiurim*, B.K. 20:5).

"Nonetheless, the *Gemara* (B.M. 97a) teaches that if there was depreciation of the item due to the wear and tear of usage, but not of sufficient nature to render the item 'changed' and not in its initial state, the thief is required to pay the depreciation, as part of his absolute liability for the item" (C.M. 363:5).

"Even if a person stole something intended for rent, due to the thief's pseudo-ownership he is not required to pay the rental fee or compensate the owner for the lost revenue. The same is true if someone borrowed an item without permission, without intent to pay rental. However, if he intended to pay the rental fee, but took it without permission, the owner has the choice of claiming either the depreciation or the normal rental fee" (*Shach* 363:8; *Chazon Ish*, B.K. 20:4; *Pischei Choshen*, *Geneivah* 7:1-5[12]).

"Thus, in our case," concluded Rabbi Dayan, "it was wrong of Asher to take Yehuda's bike, since it was not clear that Yehuda would have allowed it. Asher is liable for the damage, even though it was not his fault and occurred through normal use. However, since Asher had no intent to rent the bike, he does not have to pay the rental fee."

Verdict: A person who borrows without permission is tantamount to a thief. He is liable for any damage to the item, but does not have to pay rental.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #4

Dayanim Nowadays

לע"נ ר' יחיאל מיכל ב"ר חיים זוג' ח"י בת ר' שמואל חיים ע"ה

Q: What is the authority of non-semuchim dayanim to adjudicate nowadays?

A: We previously mentioned that we no longer have *dayanim semuchim*, who were formally ordained in Eretz Yisrael in an unbroken chain from Moshe Rabbeinu. Although the Torah does not authorize non-*semuchim dayanim* to adjudicate, the Sages authorized them to rule nowadays in certain monetary matters as "agents" of the *dayanim semuchim* of old (*Sma* 1:1).

Many *poskim* maintain that the authority of non-*semuchim dayanim* nowadays remains Rabbinic, and that their monetary rulings are based on *hefker beis din hefker*. However, some explain that once the Sages authorized them to adjudicate in these areas, their authority takes on *Torah* status (see *Nesivos* 1:1).

In addition to certain monetary matters, the Sages authorized non-*semuchim dayanim* to serve as *beis din* in other necessary areas, e.g., accepting converts or coercing *gittin* when appropriate.

Regardless, the practice nowadays is to grant *dayanim* ordination to publicize that they are worthy of adjudicating and that they rule with their teachers' permission (*Rema*, Y.D. 245:14; *Shach*, Y.D. 245:22, C.M. 1:4; *Kesef Kodashim* 1:1).



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wife and children will use it as well (C.M. 291:21). But that pertains exclusively to family members living at home, so when the father dies the rights are passed to those family members only (*Nesivos* 341:3).

Others point out, however, that the *poskim* didn't spell out this limitation. Therefore, although someone who borrows or rents an item is not allowed to give it to others, because the owner can say that he didn't want his item used by anyone else, *b'di'eved* we don't invalidate the transfer of the item by the borrower or renter to others. In this case, since the leased store shifted to the heirs as part of the estate, they already secured the rights to it, because we don't know for certain that the owner wouldn't allow them to use it (*Machaneh Efraim*, *Sechirus* 19, *Erech Shai* 341:3 and *Divrei Chaim*, *Shomrim* 20).

Others offer another explanation for this *halachah*: When the owner allowed the renter or borrower to use his item or property until a certain time, he did not specify that those rights would expire if the person passed away. The owner realized, therefore, that the children would inherit those rights up until the loan or rental period expires (*Dvar Avraham* 2:17, 7).

[One practical difference between these these last two reasons would occur if the heirs want to move a larger family into the dwelling than that of the original tenant. Generally, a landlord may prevent a tenant from subletting to a larger family than his own (C.M. 316:1). If the tenant died, according to the first reason the landlord may prevent the larger family even *b'di'eved*, but according to the second reason the landlord accepted, when drafting the lease, that the heirs will take over the lease (see *Shu"t Rabbi Akiva Eiger* 3:39 and *Emek Hamishpat* 49).]

In your case, since the rented store is a property, all *poskim* agree that there is no reason for the landlord to prevent the heirs — even those who were not members of the deceased's household — from using it, because there is no concern that they will abscond with it (C.M. 342:1). (If furniture was included in the lease, it would be subject to the discussion above.)

Furthermore, because when a store is sold, the rights to the lease generally transfer from the original landlord to the buyer, when the tenant dies his rights should transfer to his heirs as well.

It would seem, therefore, that the sons are correct, and the grandson must relinquish the rights to the store to the sons.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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