



Shabbat Table Discussions

ENGAGING CONVERSATIONS TO ENHANCE YOUR SHABBAT EXPERIENCE

www.yutorah.org/shabbattable



Yeshiva University
CENTER FOR THE JEWISH FUTURE

USING OTHER PEOPLE'S PROPERTY WITHOUT PERMISSION

ISSUE #13
FEBRUARY 2012
ADAR 5772

Shimon occasionally borrows Ari's car. He didn't think he needed to ask permission to borrow Ari's car from the company parking garage because Ari was in a meeting and Shimon would be back well before the end of the meeting. The garage requires everyone to leave their keys in the car, so Shimon got into the car and ran a quick errand. When he returned, the police were on the scene after someone reported that their car was stolen from the garage. Shimon accidentally took the wrong car. While he didn't get into any trouble, he learned an important lesson about borrowing something without permission.

We all know that taking something against the will of its owner is a terrible thing, whether we plan on returning it or not. However, we have all been in situations where we needed to borrow an item from someone who was not available to ask their permission and we were not completely sure if they would allow us to borrow it.

Let's look at the following scenarios:

CASE ONE	Leah is walking home from school when it starts to rain. She would like her mother to pick her up and walks into an office building to use their phone, but there is nobody in the lobby of the building. May she use the phone at the receptionist's desk without permission?
CASE TWO	Mr. Goldman asks the cashier at a pizza store for directions to a certain place. The cashier offers Mr. Goldman use of the store owner's computer who is out for the day. Mr. Goldman is not sure whether the cashier is really authorized to let customers use the computer. May he use the computer?
CASE THREE	While on a school trip, the students discover an unsecured wireless internet signal from a neighboring office building. It is difficult to determine who the owner of the network is and Shira, one of the students, is not sure whether the owner would want the students using the network. May Shira connect to the network?

Examining the sources

The Talmud records a dispute about the legal consequences of someone who uses property without permission and it breaks during use:

The argument is about one who borrows [something] without the knowledge of the owner. One rabbi is of the opinion that such a person is legally considered a borrower, and the other rabbi is of the opinion that he is considered a thief.

Bava Batra 88a

בשואל שלא מדעת קא
מיפלגי מר סבר שואל הוי
ומר סבר גזלן הוי.
בבא בתרא פה.

Chapter 359 of *Choshen Mishpat* deals with the *prohibition* against stealing. In that chapter, R. Yosef Karo codifies the discussion about borrowing something without permission:

Even one who borrows an item without permission of the owner is considered a thief.

Shulchan Aruch, Choshen Mishpat 359:5

אפילו הלוקח בשאלה שלא מדעת הבעלים
נקרא גזלן.
שלחן ערוך חושן משפט שנט:ה

Question for the Table

- What are the arguments to consider borrowing without permission a form of theft? What are the arguments to say that this is not a form of theft?

R. Yom Tov Ishbilli (commonly known as Ritva) notes a situation that may not violate the borrowing without permission rule and provides us with further insight into the prohibition:

*One who borrows without permission has no intent to cause a loss to the owner, but rather use it and return it to its proper place and even willing to pay for its use, if it is something that is normally rented. Nevertheless, in using it there is a (potential) monetary loss to the owner [and that is why it is considered theft]. Even if it won't get worn through usage, it is possible that it will break or get damaged, for **if we are dealing with something that cannot get damaged, nobody is of the opinion that the borrower is a thief because nothing wrong was done.***

Commentary of Ritva to Baba Metzia 41a¹

ושואל שלא מדעת אין דעתו להסיר לבעלים
כלום, אלא שרוצה להשתמש בו ולהחזירו
למקומו, ואם הוא תשמיש שראוי לשכר,
דעתו לתת שכר לבעלים. ומיהו בתשמיש
שהוא עושה יש קלקול לממונם של בעלים
ואע"פ שאינו מתחסר בתשמיש אפשר היה
דאידי דמטלטל לה תשבר או יארע בה נזק,
דאלו בדבר שא"א לבא לידי נזק בטלטולו
ליכא למ"ד דשואל שלא מדעת גזלן הוי
דהא לא עביד ולא מידי.
ריטב"א בבא מציעא מא.

Questions for the Table

- Think of examples of commonly borrowed items. Which of them fit into the category of items where the owner stands to lose?
- Why do you think Ritva believes that you may borrow an item without permission if there is no possibility of it getting damaged?
- Do you think Ritva would allow one to use an unbreakable item that has a sign on it stating explicitly "do not use without permission"?

Case #1

R. Shneur Zalman of Lyadi discusses the role of implied consent. His comments may shed light on the opinion of Ritva:

*It is prohibited to go to one's friends house, to read books without permission, even occasionally, and this certainly applies to other items, unless it is clear that the owner does not mind or **if it is an item that people are not generally particular about lending because there is no concern for loss or damage in using it.***

However, regarding something which some people are hesitant to lend because they are concerned for loss, even if most people are

אסור לילך לבית חבירו לקרות שם מספרו
אפילו באקראי שלא מדעתו ... ואין צריך לומר
להשתמש בשאר חפציו אלא אם כן ידוע לו
בבירור שלא יקפיד עליו בעל החפץ או שהוא
דבר שאין דרך כל בני אדם להקפיד עליו
כלל מפני שאין חשש הפסד וקלקול כלל
בתשמיש זה אבל דבר שמקצת בני אדם
מקפידים עליו מפני חשש קלקול אע"פ שרובן

not particular due to the slim chance of damage or loss, one does not follow majority and assume that the owner will not care. Even if one is sure that it won't break, it is still prohibited since the owner might be concerned that it will break ... and one [who uses it] becomes a borrower without permission who is considered a thief even if [it turns out that] there is no damage.
Shulchan Aruch HaRav, Hilchot She'eilah no. 5

אין מקפידין מפני שהוא חשש רחוק אין הולכין בזה אחר הרוב לומר שמן הסתם לא יקפיד בעל החפץ זה ואפילו אם ברי לו שלא יקלקל כלל אסור כי בעל החפץ חושש עכ"פ שמא יקלקל ואם היה יודע שזה משתמש בחפציו אפשר שהיה מקפיד ונמצא זה שואל שלא מדעת הבעלים והוא גזלן אף שאינו מקלקל כלל.
שלחן ערוך הרב הלכות שאלה ס' ה

Application to Case #1

- How would R. Shneur Zalman understand Ritva's leniency to borrow an unbreakable item without permission?
- How would you apply R. Shneur Zalman's ruling to case #1? Can we assume that the owners of the office don't care that Leah is using their phone? Should we consider the fact that Leah is in a pressing situation?
- What other options should Leah explore?

Case #2

A computer is not only susceptible to damage. It may contain private information and one cannot assume that there is implied consent. While the cashier did give Mr. Goldman permission to use it, Mr. Goldman's concern that the cashier is not empowered to make such a decision has validity. Who is responsible if someone permits you to use someone else's property and they weren't really authorized to do so?

A responsum of Rabbeinu Asher discusses a case where Reuven took a loan from Shimon and gave books as collateral. Shimon, the lender, then gave the books to a third person, Levi, with instructions to return the books to Reuven, the borrower and owner of the books, when the loan is repaid. When the books were returned, however, Reuven sees they are damaged, and wants Levi to pay for them. Levi claims that Shimon gave him permission to use the books and if Reuven wants someone to pay for the damage, he should take it up with Shimon. Rabbeinu Asher responds:

This claim (of Levi's) would be valid if he believed that they were actually Shimon's books. However, he knew that the books belonged to Reuven ... Therefore, even if Shimon gave him permission to use them, Levi should not have listened because what right did Shimon have to give Levi permission to use them without Reuven's permission? Shimon never claimed that Reuven permitted Shimon to learn from them.

Responsa of Rabbeinu Asher 93:2

טענה זו היתה מועלת לו, אלו היה סבור שהיו הספרים של שמעון, אבל הוא היה יודע שהספרים היו של ראובן ... הילכך, אפילו הרשהו שמעון ללמוד בספרים, לא היה לו לשמוע לו, כי מה כח היה לשמעון להרשות ללוי להשתמש בהם בלא רשות ראובן והוא לא טען שהרשה ראובן לשמעון ללמוד בהם.
שו"ת הרא"ש כלל צג סימן ב

According to Rabbeinu Asher, if someone else lets you use a third person's property, you should not automatically assume that it's acceptable unless they state explicitly that the owner allowed them to let others use it.

Application to Case #2

- How would you apply Rabbeinu Asher's comments to Mr. Goldman's dilemma? Does it make a difference if the person giving permission is an employee, friend or relative of the owner of the item?
- What other solutions should Mr. Goldman explore?

Case #3

It is arguable that the impact of an individual using an unsecured wireless connection is so negligible that nobody really minds occasional use. [Let's assume that the owner's private data is not compromised.] However, if an entire class starts to use the connection, it can put a tremendous strain on the network. Does that prevent each individual in the class from using the connection? The Talmud Yerushalmi discusses a similar situation:

R. Shimon b. Kahana was being escorted by R. Elazar. They passed a vineyard. R. Shimon said "bring me a splinter [from the fence] so that I may use it as a toothpick." He then retracted and stated "Don't bring me anything. If every individual would do this, the entire fence would be destroyed."

Talmud Yerushalmi, Demai 3:2

רבי שמעון בר כהנא הוה מסמיך לרבי לעזר
עברון על חד כרם אמר ליה אייתי לי חד קיס
מיחצד שיניי חזר ואמר ליה לא תיתי לי כלום
אמר דאין אייתי כל בר נש ובר נש מיעבד כן הא
אזיל סייגא דגוברא.
תלמוד ירושלמי, דמאי ג:ב

Shulchan Aruch comments:

One may not steal or extort even the slightest amount ... If it is something that nobody is particular about such as taking something from a rope or fence to pick one's teeth, it is permissible. The Talmud Yerushalmi states that pious people should not even do this.

Shulchan Aruch, Choshen Mishpat 359:2

אסור לגזול או לעשוק אפילו כל שהוא ...
ואם הוא דבר דליכא מאן דקפיד ביה שרי
כגון ליטול מהחבילה או מהגדר לחצות בו
שיניו ואף זה אסור בירושלמי ממידת
חסידות.
שלחן ערוך, חושן משפט שנט:ב

Application to Case #3

- How does Shira's situation of using the unsecured wireless network compare to the case in the Talmud Yerushalmi? How is it different?
- Does it make a difference how many students are using the connection at the same time?

Rashi writes that lending an item to someone else is included in the mitzvah of *gemillut chesed* (providing acts of kindness).² Lending an item generally has no downside. We would like to think that everyone else is just as generous as we are and would easily lend out their items, but we cannot assume that this is true. Some people may have had bad experiences with lending items to others and other people may need the item at that moment or are concerned about damage. If we use something without permission and there is no implied consent, we are stealing that item and depriving the owner of their rights to their own property. In our quest to be *yesharim*, just people, we are challenged to be abundantly generous to others while recognizing and respecting the absolute rights of others to their own property.

Compiled by Rabbi Josh Flug, Director of Torah Research, Yeshiva University's Center for the Jewish Future

BIOGRAPHICAL SKETCHES OF AUTHORS CITED

R. Yosef Karo (1488-1575) is most well known for his *Shulchan Aruch*, The Code of Jewish Law. Born in Toledo Spain, his family was forced to leave Spain in 1492 when they settled in Portugal and then Bulgaria. He eventually settled in the Land of Israel about 1535. Aside from *Shulchan Aruch*, he authored numerous works including *Kesef Mishneh* and *Beit Yosef*.

R. Yom Tov ben Avraham Ishbilli (also known as Ritva, 1250-1330) was a Spanish scholar. He is most well known for his Commentary on the Talmud. His clear and concise comments make his commentary popular among those who study medieval commentaries on the Talmud.

R. Shneur Zalman of Lyadi (1745-1812) was the first Chabad Rebbe. He is also known as "the Ba'al HaTanya," after his work *Tanya*, which is the foundation for Chabad philosophy. His writings continue to have an influence on Jewish thought and Jewish law.

Rabbeinu Asher (also known as Rosh, c. 1250-1327) was one of the last of the Tosafists. He studied under R. Meir of Rottenburg in Germany and was forced to flee to Spain when R. Meir was imprisoned. His comments on the Talmud are extremely influential in the determination of practical halacha.

R. Shlomo Yitzchaki (also known as Rashi, 1040-1105) is arguably the most popular commentator on Tanach and Talmud. His commentaries are considered standard for almost all printings of Tanach or Talmud containing commentary. He lived in Northern France.

¹ See *Machaneh Ephraim, Hilchot Gezeilah* no. 20, who contends that other Rishonim do not allow borrowing without permission even if there is no possibility of damage. [Click [here](#) to access *Machaneh Ephraim*.]

² Rashi to *Sukkah* 49b, s.v. *U'VeMamono*: מלוה לו מעות משאילו כלים ובהמה: [לשון הגמרא גמילות חסד בין בגופו בין בממונו] ובממונו- מלוה לו מעות משאילו כלים ובהמה: [The Talmud states that acts of kindness can be performed with one's body or one's property] With one's property- Lending money, utensils or livestock.