

Business weekly

VOLUME 1 ISSUE 1

STORYLINE

the broken necklace

Reuven hung up the phone in frustration. This was the third time in five weeks that the necklace had broken – the necklace he had chosen after hours of browsing at all of the local jewelry stores. After much deliberation on his part and input from his mother, six sisters, four aunts, and some well-meaning but completely clueless friends, he had finally settled on a beautiful chain from Mr. Gold's boutique.

Just two days after he'd presented it to his new kallah, Rachel, one of the links had cracked. It was a simple repair that the jeweler at Finery Fixers was able to complete in minutes. When a different link broke a short time later, however, Reuven brought it back to Mr. Gold.

"I'm sorry, Reuven." Mr. Gold shook his head

after hearing the story. "I can't issue a refund once you've brought the piece to a jeweler who isn't on our list of authorized repair services. I can fix it free of charge for you, though."

"All right," Reuven had agreed. "That's fair enough."

Now it was broken again. He took the necklace to the store.

"Policy still stands," Mr. Gold said firmly. "I can repair it again."

A week later, Reuven's cell phone rang. A glance at the screen told him it was Rachel. After the usual hellos, she got right to the point.

"The necklace is gone!" she blurted out. "Another link must have cracked sometime today

and it just fell. I've retraced all the steps I took. I've looked everywhere, but I can't find it. I'm so sorry."

"It's not your fault," Reuven replied. "The necklace was obviously defective. I'll call the jewelry store and get a full refund – and I'll find a new necklace for you as well."

Reuven walked purposefully into the store and told Mr. Gold what had happened. His jaw dropped in surprise when he was turned down.

"I am not obligated to give your money back if the merchandise is not returned," insisted Mr. Gold. "I just learned at my halacha shiur that when a buyer continues to use an object after discovering its defect, he waives his right to demand a refund. Consequently, when you

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FROM OUR HOTLINE

the unexpected guest bill

Submitted by
S. Frankel, Brooklyn NY

Yehuda was invited to be Shimon's guest at the local yeshiva's dinner. When Yehuda arrived at the dinner, he informed them that he was a guest of Shimon and he was given a seat at Shimon's table. A year later, Yehuda received a bill for the cost of the dinner. Yehuda called the yeshiva to inquire about the charge, and the financial administrator informed him that

Shimon had been delinquent on his pledges for over two years. Consequently, they were passing the cost of the dinner to his guests, since all of them had, after all, eaten a meal at the yeshiva's expense.

Q: Is Yehuda obligated to pay for this meal?

A: One could formulate an argument in favor of the yeshiva. Rema (264:4) rules that anytime someone performs a service or favor for his friend, the friend must pay for that benefit. He cannot excuse himself from payment with the claim that it must have been done for free since he never requested the service. This principle has a wide range of applica-

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STORYLINE CONTINUED

had the necklace repaired by that jeweler the first time that it broke, rather than immediately returning it to me for a refund, you waived your right to demand a refund."

"I disagree," Reuven argued. "I did not realize that it was flawed the first time it broke. Only later on, after it happened a number of times, did I realize that it was defective. I will call my rav tonight and get back to you."

Rabbi Klugman was thoughtful on the phone. "The general rule regarding defective merchandise is that if an object becomes ruined or lost as a result of an unknown defect, the seller must bear the loss. As such, since the necklace was lost due to its flaw, the seller should be obligated to refund the buyer's money even though the necklace cannot be returned. Another principle that might seem to favor you is found in Teshuva Maharash Engel. He writes that using a purchased defective object does not always waive the right to cancel the deal. It is only when the object could serve its intended function, albeit with difficulty, that we as-

sume that using it subsequent to discovering the defect constitutes a relinquishment of one's right to demand a refund. However, if the object is purchased for a specific purpose and the defect renders the object incapable of serving that purpose, it may be returned even if the buyer used it after discovering the defect."

"So that means that since the necklace was purchased to be worn by my kallah and due to its defect she could not wear the necklace, it may be returned for a full discount, even though it was used after discovering the defect?" asked Reuven.

"Well..." Rabbi Klugman paused. "Clearly there are numerous angles to this case. Although there are valid reasons for a refund, due to the various conflicting perspectives, my final ruling is that you cannot force Mr. Gold to refund the money."

"Thank you for your time," said Reuven. "Aunt Gertrude was right. I should have bought the earrings instead!"

FROM OUR HOTLINE CONTINUED

tions. One example is the case discussed in the Gemara Bava Kama (112a). A father passes away while in possession of a borrowed cow. His adult children, unaware that this cow is borrowed, figure that it belongs to their father, and they slaughter and eat the meat. When it is later discovered that the cow belongs to someone else, they are obligated to reimburse the owner at a discounted rate (two-thirds the market value of the meat). The basis for paying a discounted rate is because we are obligating them for the benefit they had from the cow. Based on this principle, it would seem as though Yehuda should have to pay for the meal.

There is, however, a fundamen-

tal limitation to this rule. The principle applies only when there was no existing agreement between the two parties. Barring any agreement between parties, the beneficiary must pay for whatever benefit he receives even if it was not authorized. In our case, there was an understanding between Yehuda and the yeshiva that Yehuda was not going to pay for the meal. Consequently, the yeshiva may not charge Yehuda for his meal even though Shimon was negligent in paying his commitments.

Please email us with your questions and comments at ask@businesshalacha.com

HALACHA CORNER

By Rabbi Meir Orlian, Yerushalayim



proper pricing week #1

Q: I called in the local plumber to fix a burst pipe, but didn't confirm the price before he began working. How much do I owe him for the job?

A: When a price hasn't been set, the general rule is that we follow the accepted going rate, k'minhag hamedina. (Choshen Mishpat 331:2)

If there is a broadly accepted standard rate, this is easy. However, often there is a range of fees, with some workers charging more and some charging less. In this case, Ketzos Hachoshen (331:3) cites the Ritva that the workman, who is claiming payment, has the weaker hand, and can only demand the lower end of the price range. However, Pischei Choshen (IV:8(11)) suggests that if this particular work-

man has a known fee-scale for his jobs, or if his quality of work is of a particularly high standard, we would follow that pay scale. To avoid misunderstandings and possibly cheating the worker, the Chofetz Chaim (end of Ahavas Chesed, Part I) strongly recommends getting a price-quote before beginning any work.

upcoming/recent activities

QUEENS, NY

February 15th:

50 Rabbonim,
4 Dayanim,
One Message

TORONTO

March 21st:

Kinyanim/Selling
Chametz -
How It Works

WEEKLY STUDY SESSIONS

Flatbush, Passaic,
Lawrence, Montreal,
Chicago & other cities

Document Drafting:

Halachic Wills, Iska, Shabbos Contracts

Business Consultation:

Ribbis Issues, Shabbos Issues and more...
Published Articles, Industry Seminars etc

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