

Business weekly

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under the auspices of Harav Chaim Kohn, shlita

STORYLINE

no parking

The commercial district had grown rapidly during the past decade; office buildings and stores lined the streets. Traffic became a nightmare and street parking was almost impossible. Parking lots sharply increased their rates, charging over \$20 for a day's parking. Nestled among the office buildings stood a lone house, a relic of the residential days of the area. Mr. Spitz refused to move from his home of forty years, and steadfastly refused the many offers for his property. He resented the encroaching commercial development. In front of the house was a private parking area where Mr. Spitz kept his car. Whenever he was out, people eyed the empty spot enviously. However, Mr. Spitz had no interest in renting his spot.

Mr. Abrams owned the adjacent store and drove in every morning and parked in the nearby parking lot.

As Mr. Abrams was leaving the store one evening, he saw Mr. Spitz lugging suitcases into his car.

"Are you going somewhere?" Mr. Abrams asked.

"Yes," Mr. Spitz answered with a smile. "One of my grandchildren in Israel is getting married, so we are flying there tonight."

"Mazal Tov!" Mr. Abrams wished him. "How long will you be there?"

"We'll be away for a month," said Mr. Spitz. "My son will meet us at the airport and keep the car until we return."

The next morning, as Mr. Abrams headed to-

ward the parking lot, he noticed Mr. Spitz's vacant parking area. A sudden thought came to him.

"Mr. Spitz is away for the month," Mr. Abrams said to himself. "What's it to him if I use his spot meanwhile?" He pulled into the spot and parked there. "That's \$25 saved," he thought.

After parking there for three weeks, he encountered Mr. Spitz's son one day. "What are you doing on our property?" the son asked. "I own the adjacent store," explained Mr. Abrams. "Your father mentioned that he would be away for the month, so I've been parking here."

"Don't you realize this is private property? You're trespassing!" the son said. "My father

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FROM OUR HOTLINE

Submitted by
J. Goldshmidt

the case of the camera

I bought a camera recently and I was having difficulty charging the battery. I called the manufacturer to complain. They informed me that their policy is that I can return it to the store where I purchased it within thirty days of the purchase, and they will swap the defective camera for a new one. The store is far from my home. I won't be able to get there for a couple of weeks.

Q: Am I permitted to use the camera for the next couple of weeks even though I intend to exchange it for another one?

A: Shulchan Aruch (Choshen Mishpat 232:3) rules that whenever one discovers a defect in merchandise that he purchased, he can demand a refund – even if the de-

fect is not discovered until years later. If, after discovering the defect, the customer decided to continue using the item, it is considered as though he has forgiven his right to demand a refund and may no longer return the item.

However, in our case, there are many reasons to allow the customer to use the camera, but the main one is the following.

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STORYLINE CONTINUED

doesn't want people to get into the habit of using his spot. Do not park here anymore."

However, the next morning, Mr. Abrams was running very late. He parked in Mr. Spitz's spot and ran into the store. "I don't think it's nice of him not to let me park here," he rationalized. He continued to park there for the remainder of the week.

When Mr. Spitz returned from Israel, he was angry. He walked into the store and demanded an explanation.

"You were away anyway," Mr. Abrams responded. "What difference does it make to you?"

"It's my property, and I don't have to let anyone else use it," Mr. Spitz retorted. "You trespassed!" He handed Mr. Abrams a bill that read: "20 days parking @ \$25 per day. Total = \$500."

Mr. Abrams looked at the bill. "Even if I was wrong to use the driveway, why should I pay you?" he said. "You had no plans to rent it!"

"Why shouldn't you pay," shot back Mr. Spitz. "You benefited from my spot. Otherwise, you would've had to pay the parking lot."

Mr. Abrams was perplexed. He called Rabbi Dayan and explained the situation.

Rabbi Dayan said: "It would have been nice for Mr. Spitz to allow you to park there in his absence, but he is entitled to refuse, and you were wrong to park there without his permission." (Rama C.M. 363:6)

"What about the bill?" asked Mr. Abrams.

"This is the classical case of zeh neheneh v'zeh lo cha'ser discussed in the Gemara (B.K. 20a)," answered Rabbi Dayan. "You typically paid for parking and gained, but Mr. Spitz had no intention of earning rental, so he lost nothing. The halacha is that although you were wrong to use his property, you are exempt post facto, provided that you didn't cause any damage or loss."

"So I don't owe anything?" asked Mr. Abrams.

"You do owe something," concluded Rabbi Dayan. "You are obligated to pay for the usage from the time you were explicitly told not to park (C.M. 363:6). Thus, you have to pay for the last week, \$125."

FROM OUR HOTLINE CONTINUED

Pischei Teshuvah (232:1) discusses the case of someone who purchased a horse. After travelling a great distance, he discovered a blemish that cancels the sale. On the one hand, he should not be permitted to use the horse, since doing so would be an indication that the blemish is not significant, and he would no longer be able to demand a refund. On the other hand, he is stuck in this distant location with no means of being able to return. Pischei Teshuvah rules that in a case of oness such as this, the customer is permitted to ride the horse to return home and cancel the sale. The use of the term oness is not specific

and is not intended to mean that there was no alternative. The term is meant to convey the fact that use of the item does not communicate a mechila. As such, in our case using the camera is to avoid what otherwise would be an inconvenience. We therefore do not interpret the use of the camera as a mechila and thus it would be permitted to use it until it can be returned.

**Please contact our confidential hotline
with your questions & comments
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ask@businesshalacha.com**

MONEY MATTERS

completing the transaction week #3

Q: I placed an order over the internet. When I click "confirm", is the transaction binding?

A: According to almost all poskim, such transactions are binding based on the concept of situmta. The Gemara (B.M. 74a) teaches that the wine merchants would often make a sign on wine barrels that had been sold as an indi-

cation that they were sold. If the common business practice is to consider the sale binding on the basis of this marking – even if no other kinyan was made – then the sale is binding. The poskim extend this idea to any common business practice, minhag hasocharim, as a binding form of kinyan (C.M. 201:1-2). Thus, if the common business practice is to consider internet transactions as binding when the customer clicks on the "confirm" button, this action is also given halachic validity as a mod-

ern form of situmta. Other possible examples of situmta include affixing a signature on an order form and "mazel and bracha" in the diamond business. Many poskim even suggest that cash payment does finalize transactions based on situmta nowadays, since that is the common business practice these days.

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