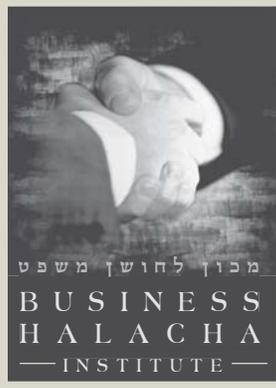


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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

shattered glass

By Rabbi Meir Orlian, Yerushalayim
Halacha Writer for the Business Halacha Institute

Chaim, Yosi and Dov were walking through Meah Shearim, choosing gifts to bring back with them from Yeshiva. Chaim and Yosi had already chosen theirs, but Dov kept browsing. It was his parents' 25th anniversary and he was looking for something really special. Dov finally spotted an exquisite glass tray for Shabbos candlesticks with a delicate gold-tone design of Yerushalayim. "This is exactly what my parents like," he exclaimed. "With the silver candlesticks on it, every Shabbos will be special!" Pleased with their purchases, the boys headed back to Yeshiva. "Let's stop off for falafel," Chaim suggested. "There's a mehadrin store two blocks away that has room outside to sit." "Sorry, but I've got to run to a doctor's appointment," said Dov. "Would you mind taking the tray back to Yeshiva for me? I don't

want to schlep it around." "No problem," Yosi assured him. "I'll take good care of it." Yosi and Chaim headed to the store and chose a table outside. They put the gifts down on the chairs and had falafel. After some time, the boys picked up their gifts and headed back to their Yeshiva. Halfway there, Yosi stopped in his tracks and groaned, "Oh no! We forgot Dov's tray at the falafel store." Chaim turned to him, "Do you think it's still there? Someone could have taken it by now!" "I hope no one took it," said Yosi. "I'll go right back." He ran back with his heart pounding. He was almost there when he saw a large stray dog bound by and bang into the chair which the tray was on. Yosi watched dumbfounded as

the tray fell to the ground and shattered. He picked up the box with the shattered tray, and returned to Yeshiva. "Did you find the tray?" Chaim asked him. "I did," said Yosi, "but a stray dog ran by and knocked it over. It's shattered!" "Oh no!" exclaimed Chaim. "Just wait till Dov hears this!" In the evening, Dov came by to get the tray. "I'm really sorry," explained Yosi. "I forgot the tray on a chair, and when I came back, a stray dog knocked the chair over and broke the tray." He gave Dov the box with the shattered tray. Dov opened the box. "I spent a lot on this tray," he moaned. "I can't afford to buy another one. You assured me you'd take care of the tray!" "But it's not my fault that it's broken," responded Yosi. "Who expects a wild dog

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FROM OUR HOTLINE

Submitted by
S. K. Englander

an uneven exchange

My eight-year-old son confided to me that he had traded an album of "rebbe cards" – which I gave him as a reward – for a Slurpee. He now realizes that it was a foolish transaction. He'd like to pay his friend for the value of the Slurpee and reclaim his album, reversing the sale.

Q: Does he have the right to do this?

A: It would seem that your issue is the fact that the Slurpee your son received in exchange for the album is worth significantly less than the album, and the exchange should be nullified due to a violation of ona'ah (exploiting). Shulchan Aruch (227:4) rules that a buyer who is overcharged more than a sixth of the item's market value has the right to cancel the sale. Accordingly,

you would like to claim that the discrepancy between the value of the Slurpee and the album would cross the line of ona'ah and the exchange should be cancelled. This claim isn't valid because the laws of ona'ah do not apply to bartering (exchanging objects). Sema (227:35) explains that when two people barter, they are not involved in a sale, since each party is interested in ac-

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STORYLINE CONTINUED

to come bounding down the street?”

Dov walked out shaking his head. “I really don’t know what I’ll do.”

Yosi went over to Chaim and said, “Dov is very upset at me.” “You did take responsibility for the tray,” Chaim reminded him gently. “It was negligent of you to leave it at the store.”

“I know,” said Yosi, “but it’s not my fault that it broke; it was that dog!”

“Whether it’s your fault or not, you accepted responsibility,” said Chaim. “You owe him for it.”

“My parents mentioned that Rabbi Dayan is visiting Israel,” said Yosi. “I’ll give him a call.”

Rabbi Dayan heard the story and said: “Had you been watching the tray when the stray dog ran by, you would not have been responsible. However, since you forgot the tray and left it unattended, you are responsible to pay fully for the tray, based on the principle of t’chilaso b’peshia v’sofo b’ones.”

“What does that mean?” asked Yosi.

“Generally, a person who ac-

cepts responsibility for an item is responsible for negligence, p’shia, but not for an unexpected or uncontrollable circumstance, oness,” explained Rabbi Dayan. “However, if the person was negligent and, in the end, an oness resulted from this, the person remains accountable (C.M. 291:1,6).”

“How does that apply here?” asked Yosi.

“When you forgot the tray at the falafel store, you were negligent,” answered Rabbi Dayan. “Another customer could have easily walked off with the tray or accidentally knocked it off the chair. Although this did not happen, but rather something unexpected happened – since the oness resulted from leaving the tray outside unattended, you remain fully responsible.”

“That’s going to cost me a lot,” said Yosi, “but Dov will be relieved that he’ll be able to buy another tray.”

FROM OUR HOTLINE CONTINUED

quiring the object he needs. Since your son was more interested in the Slurpee than the album at the time of exchange, the deal is binding. There is, however, a reason why the exchange can be reversed. According to the Torah, a minor does not have the ability to execute a transaction.

[Gittin 59a mentions that Chazal allow children who have an understanding of the value of objects (i.e. he can differentiate between a stone and a nut) to make transactions. He is capable of buying, selling, and even giving gifts (Choshen Mishpat 243:15). This allowance is limited to orphans who do not have a guardian and must obtain their basic needs of food, clothing, etc. (Choshen Mishpat 235:2. See Ne-

sivos HaMishpat 235:10 regarding a child who has a living parent).]

Therefore, when your child made an exchange with his friend, it was not a transaction recognized in halacha, and the transaction can be reversed. Another important factor is the discussion found in the Poskim if a parent’s gift to a child becomes the possession of the child or if it halachically remains the property of the parent. If it were to remain the property of the parent, the child would certainly not be able to exchange the album for the Slurpee (See Rema Choshen Mishpat 270:2 with commentary of R’ Akiva Eiger and Machaneh Ephraim Zechiah U’Matanah siman 2).

**Please contact our confidential hotline with your questions & comments
877.845.8455 ■ ask@businesshalacha.com**

MONEY MATTERS

defective merchandise week #1

Q: What is considered “defective merchandise” according to halacha?

A: Defining “defective merchandise” depends on social norms and the nature of the sale.

According to the Shulchan Aruch, “Anything that the area’s people agree is a defect that invalidates this sale can be returned; any-

thing that they agree is not a defect cannot be returned... because whoever buys and sells relies on the local practice (C.M. 232:6).” Nowadays, there is strong emphasis on quality control. Many defects would invalidate a sale. This depends on whether the item is marketed as high-quality or cheap.

A regular book with one misprinted, albeit

readable line would probably not be considered “defective” (although the printer would have to provide a proper patch for those lines); if a line is missing from the book, that is a defect. A cheap pen that sometimes writes poorly would not be considered defective, while an expensive pen would. A piece of furniture that is noticeably scratched would be considered defective.

WEEKLY STUDY GROUP

A naïve tourist asked whether the price marked is in shekels or dollars. Can I immediately ‘raise’ my price to dollars?

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