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

STORYLINE

deli dilemma

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

"Mazal Tov!" Ezra Green announced to his brother, Moshe, before Shabbos. "We had a baby boy this afternoon at 2:36."

"How wonderful! That means..." Moshe responded with a pause, "IY"H the bris will be on Rosh Hashana?"

"That's right," said Ezra. "It's a three-day Yom Tov, but we'd love to have the immediate family."

As it turned out, even "immediate family" was a small crowd and came to a total of thirty.

"How are we going to handle this?" Mrs. Green asked her husband when she returned from the hospital. "Thirty people for seven meals means 210 servings!"

"I ordered eight deli platters from the local deli," said her husband. "I also spoke with the family and everyone will bring something. Your sister agreed to coordinate the

food."

The night before Rosh Hashana, Mrs. Green was talking with her sister. "The food's all arranged," said her sister. "Mommy is making three roasts and rice, Ezra's mother is making chicken and kugels, Moshe already bought deli platters..."

"Wait," said Mrs. Green. "I think Ezra ordered deli platters from the local deli."

"Tell him to cancel, then," said her sister. "Moshe can't return his anymore."

Ezra called the deli store in the morning. "Someone else already bought deli platters for us," he explained. "I'd like to cancel our order."

"I already prepared your platters," said the deli owner. "What am I going to do with them now? If you don't take them, they will not be fresh after Yom Tov."

"Can you sell them?" suggested Mr. Green.

"I doubt it," said the deli owner. "I prepared extra for Rosh Hashana, in addition to your order."

"I'm really sorry, but I can't deal with this now," said Mr. Green. "We're having loads of guests and the house is nowhere in order."

"All right, mazal tov," said the deli owner graciously. "I'll hold the platters and sell what I can. I suggest we meet with Rabbi Tzedek after Rosh Hashana regarding the order."

"Fine," said Mr. Green. "Shana tova!" The following week, Mr. Green and the deli owner sat down with Rabbi Tzedek and asked whether he had to pay for the cancelled order.

Rabbi Tzedek ruled: "If the deli owner was not able to sell the platters and suffered a loss, you must pay him for them (C.M. 333:8)."

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FROM OUR HOTLINE

Submitted by
R. Joseph

whose property?

While unpacking groceries, I realized that one bag filled with perishable and non-perishable items that the bagger gave me wasn't mine. The items were obviously purchased by someone else who mistakenly left the bag behind. If I return the bag to the store and the person does not return for the items, they will probably go back on the supermarket shelf.

Q: Since the store was already paid, why should they gain extra inventory? Must I try to find the owner even if he already gave up on the groceries?

A: The status of these items is that of an aveidah, a lost object, that came into your possession while still legally owned by another person - and thus must be returned

to its rightful owner. Consequently, even if the owner gave up on it by now, you are still not relieved from your duty to return it (C. M. 262:3). One complexity to this case is that either one of two parties may be the owner. It is not known whether the bagged products remained the property of the supermarket or had already become the property of the customer at the time of the loss.

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STORYLINE CONTINUED

Rabbi Tzedek then elaborated, "This ruling might seem obvious, but its rationale is fascinating. Although a worker who completed his job faithfully must be paid fully, whether the employer benefited from the work or not (335:3; 336:1), the deli owner was not hired or contracted to do labor. There was only an agreement to buy his finished product, the deli platters (Nesivos 333:15).

"Moreover, this agreement was only verbal; no act of acquisition was made on the platters, and money hadn't been given yet. The platters still belong to the deli. While generally a person should honor even his verbal commitments, this is not sufficient basis to obligate you to pay if there is truly no longer a need (204:7,11; Chasam Sofer C.M. #102). Why, then, must you pay?

"The Rosh (Respona #104:6) bases this ruling on dina d'garmi, the requirement to pay for directly caused damage. Since you instructed the deli owner to prepare the platters, and he invested his time, effort

and materials based on your words, you are considered as having caused him damage if he cannot sell them.

"Thus, the obligation to pay is not based on salary or sale, but on damage. What emerges, therefore, is that if the deli owner can sell the platters to someone else without a loss, he has no claim against you. Similarly, if he can sell the platters for a reduced price, he can claim only the difference. According to SM"A (333:29), this is true even if it would entail some effort on his part.

"Furthermore, if you cancelled the order for reasons beyond your control, such as if the baby unexpectedly became yellow or got sick and the bris was delayed, you would not be obligated to pay for the deli platters. "However, if the store has a defined cancellation policy for orders, or if there is a clear minhag hamedina (common commercial practice) otherwise, it would be binding, as with any other monetary agreement."

Mr. Green pulled out his checkbook and began to write.

FROM OUR HOTLINE CONTINUED

That depends on the laws of kinyanim – proprietary acts. If a kinyan had already been made, then the perishables already belonged to the customer and should be returned to him/her. If a kinyan had not been made, the products remain the property of the supermarket and should be returned to them. Another complexity is that some of the items are perishable, which does not leave you much time to find the legal owner.

The halacha when these two factors are present is as follows. It is proper for you to make a sign that states that you mistakenly took someone else's groceries and that if someone can prove that he was the buyer, he should contact you. If the buyer is identified, you must be sure that the grocery agrees that

a proper halachic transfer of ownership took place. If they cannot agree, a Rav should be consulted to resolve the dispute. If you are not contacted by the owner, assess the current value of all the lost groceries that you have (Rema CM 267:24) and write down any indentifying marks and the groceries' value in a secure location so that you can return that amount to the owner if he ever identifies himself. After that, you may sell or consume the products. The rationale behind this ruling is that selling perishable items is in itself an act of preserving the lost objects, instead of allowing the products to spoil and lose their value entirely. Similarly, there is no obligation to guard lost non-perishable items if they are readily available on the market (C. M. 267:21).

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MONEY MATTERS

defective merchandise week #6

Q: Three months after buying a used car, I discovered that the dealer had turned the odometer back 100,000 miles. When I came to return it, the dealer insisted that since I used it meanwhile, I owe him the equivalent of three months' leasing.

A: A sale of defective merchandise is void. The item remains the seller's; he must repay the buyer. Shulchan Aruch rules that if one

bought a house and later found it defective, he must pay rent for the time that he lived there (C.M. 232:15). Later authorities debate whether the need to pay rent applies also to movable objects or to items that are not intended for rental (Ohr Sameach Hil. Mechira 16:8). Due to this dispute, we apply the principle of muchzak: whoever is in possession of the money wins. If the dealer has the money, he can withhold the equivalent

amount of leasing; if the buyer has not paid yet (e.g. the car was bought through seller financing) he would not have to pay. Beis Din would have to ascertain, though, whether there is a minhag hamedina on this issue. If there is a clear practice not to pay rental, the dealer would not be able to withhold money for leasing even if he were in possession.

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