



Business

a project of the Business Halacha Institute

weekly

PARSHAS VAYEIRA
FRIDAY, OCTOBER 22 2010
ISSUE #29
under the auspices of
Harav Chaim Kohn, shlita

Business Weekly has
been dedicated

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

STORYLINE

sunken treasure

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Although it was already fall, the weather remained warm.

"It's supposed to be sunny tomorrow," Mr. Bentzion Gluck said on Motzei Shabbos. "Let's have a family outing to the bay and rent a fast motorboat."

In the morning, the family headed to the bay. The waves were somewhat higher than usual.

"Make sure to put on life vests," Mrs. Gluck reminded them.

"There's going to be a lot of spray," Mr. Gluck warned his family. "Put all your valuables in this waterproof bag, so that they won't get wet."

He passed the bag around and they put in their wallets, cameras, MP3's, and Mrs. Gluck's pocketbook.

Mr. Gluck revved the engine and set out into the bay. After twenty minutes of straight

runs, one of the children asked, "How about making figure eights?"

"Sure!" said Mr. Gluck. "Hang on!" he yelled as he made became sharper and sharper turns, and the boat began to tilt heavily.

A powerful wave hit the boat broadside just as it headed into the turn. The combined effect of the sharp turn and the wave capsized the boat, tossing the occupants and their belongings into the water!

One by one, the family spluttered up to the surface and grasped the emergency oars that were floating nearby. The boat slowly began filling with water, while the waterproof bag slid below the surface and disappeared.

A family on a nearby boat made their way over to help. Someone tossed Mr. Gluck a bucket and he managed to bail enough water out of the boat to keep it afloat with him

in it. "I'll take the rest of the family back," offered another boater.

"At least we're all OK," said Mr. Gluck in a subdued voice when they returned to the dock. "Maybe someone will even find the bag."

"I certainly hope so," said Mrs. Gluck. "My diamond earrings were in there and they aren't insured. It will be a big loss if the bag doesn't turn up."

"I'll put up a sign at the marina," said Mr. Gluck. "Perhaps the bag will wash ashore." Months later, Mr. Feiner was walking along the shore when he spotted a black bag as it washed up on the sand. It had clearly been in the water for a long time.

Mr. Feiner examined the contents. Water had seeped into the bag and had already faded the money and ruined the electronics. However, the plastic driver's license clearly

continued on reverse side

FROM OUR HOTLINE

Submitted by
B. W.

a mezuzah mishap

I was packing to return home from Eretz Yisroel when a friend called and asked if I would mind taking some mezuzos with me, and he would pay me \$100 for the service. I needed the money, so I agreed and placed the package in my carry-on bag.

After landing, I discovered that my luggage had been lost and went to the office to fill out the necessary paperwork. In all the

chaos, I left my carry-on bag outside the office and it was stolen! I called my friend and apologized profusely. I then offered to pay for his stolen mezuzos. I was shocked to hear there'd been one hundred mezuzos in my bag – and at fifty dollars each, I would owe him \$5,000.

It was hard for me to believe that the relatively small package could have contained

that many mezuzos and reluctantly agreed to pay him on the condition that he take an oath regarding the number of mezuzos that were in the package. He refused to take an oath.

Q: Must I pay him \$5,000?

A: Since you were paid to transport the

continued on reverse side



HERMAN E. WEALCATCH, INC.
Insurance Services

Business Insurance (845) 426-5400
Personal Insurance (845) 369-9000



Auto Leasing & Sales Inc.

(800)223-5327
info@leaseland.com

To place your logo here, email
info@businesshalacha.com

STORYLINE CONTINUED

displayed the name, photo, and address of Bentzion Gluck. The expensive-looking pair of earrings that he found at the bottom of the bag were tarnished, but the diamonds sparkled as before.

Mr. Feiner picked up the bag and headed home. As he walked, he wondered whether he was obligated to return the bag that had washed ashore.

He emailed Rabbi Tzedek and asked for guidance.

Rabbi Tzedek responded: "You are not absolutely required to return the lost bag with its contents, unless there is a local law to that effect. However, it is usually proper for the finder to return it anyway."

Rabbi Tzedek then explained, "The mitzvah of hashavas aveidah, returning lost items, applies when the item is lost from the owner, but is expected to be found by someone. However, when the item is completely lost - not only from the owner, but from everyone - you are not absolutely required to return it. Some explain that this is because the owner certainly

loses hope of reclaiming it. Even if he declared that he did not abandon hope, his declaration is viewed as a futile statement (Rambam Hil. Aveidah 11:10; C.M. 259:7).

"Despite this, it is proper lifnim mishuras hadin (beyond the letter of the law) to return the lost item to its original owner. This is because a Jew is expected to do not only what is absolutely required, but also what is fair and proper. The beis din can even apply persuasive measures to encourage the finder to act this way (Pischei Teshuva 12:6). Furthermore, if the local law (dina d'malchusa) requires the finder to return the item, then halacha also obligates the finder to do so (Rama 259:7).

"However, since the reason for returning an item that is lost and the owner despaired of finding it is based on doing what is fair and proper, not the letter of the law, it is somewhat subjective. Therefore, if the original owner is wealthy and the finder is poor, he is not necessarily expected to return the lost object (Rama 259:5, see Ketzos 259:3)."

FROM OUR HOTLINE CONTINUED

mezuzos back to the States, you are considered a paid custodian - shomer sachar - and as such, you are liable even in cases of theft or loss (Choshen Mishpat 303:2). The problem in this case is the uncertainty about the number of mezuzos that you were given. To avoid this problem - and airport security concerns! - it is always recommended that a guardian verify what is being given to him at the time of the deposit.

Shulchan Aruch (Choshen Mishpat 298:1) rules that a shomer who is in a circumstance in which he is obligated to pay but doesn't know how much he owes is technically obligated to take an oath, similar to a modeh b'miktzas - one who partially admits to a debt. Since he cannot say for certain that

the claim is false because he really does not know how much he owes, he is obligated to pay the full amount. Others dispute this ruling for various reasons and relieve the custodian of paying more than he accepts as his obligation (Sm'a 298:1, see Aruch Hashulchan 298:2). There is also a disagreement between halachic authorities on whether the custodian may impose a cherem, similar to an oath, on the owner regarding the amount or value of the merchandise he deposited with him (C"m ibid). Since this case is subject to various halachic opinions, the responsible approach is for the two of you to speak with a Bais Din or someone who can arbitrate to decide what an appropriate compromise would be in your case.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

defective merchandise week #10

Q: I bought three containers of cottage cheese before the "sell by" date. They sat in my fridge for almost a week, and when I opened them, they were spoiled. Am I entitled to exchange them?

A: If you kept the cottage cheese containers in proper refrigerated conditions and they spoiled before the "sell by" date, you can exchange them, since they were clearly

defective. If you discovered that they were spoiled shortly after the date, it depends on how badly spoiled they were. If they were badly spoiled, they must have already begun to spoil when you bought them, so you can still exchange them (C.M. 232:16).

However, if they are only slightly spoiled, the seller is not obligated to exchange them, since the cottage cheese may have still been fresh when sold and only spoiled

in your fridge. Since the defect was first discovered when the products were in your possession, the burden of the proof is on you, as the seller is in possession of the money and we assume that they spoiled here (230:7; 232: 11, see also SM'A 232:35). Despite this, some stores allow you to exchange spoiled merchandise with no questions asked and just require the sales receipt.

WEEKLY STUDY GROUP

Mi Shepara:

When is an agreement final?

Monsey Night Seder Bais Medrash 29 Parker Boulevard **Sunday Mornings**
Chavrusos/Prep Shiur: 9:30 - 10:45 am Shiur: 10:45 - 11:15 am

For more information, please contact Aron Subar at 845-558-8734, or monseybusinesshalacha@gmail.com

Do you have an upcoming yahrtzeit or family simcha?

Why not sponsor the newsletter that is read around the world?

Email info@businesshalacha.com to reserve your week.

TO RECEIVE THIS NEWSLETTER FREE OF CHARGE, EMAIL SUBSCRIBE@BUSINESSHALACHA.COM
All new subscribers will receive a free copy of our popular publication, Money - The Bottom Line, in pdf form

Business Halacha Institute 718.846.2501 www.BusinessHalacha.com