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

STORYLINE

when in doubt...

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

The doorbell rang. "Butcher delivery!" Mrs. Kirsch opened the door. "Thank you! How much do I owe you?" she asked. "\$143.70," replied the delivery man. Mrs. Kirsch checked her purse but found only \$100. "Can I give you a check?" Mrs. Kirsch asked. "Sorry," the delivery man replied. "Cash only on deliveries." "I'll borrow \$50 from our neighbor," her husband said. Mr. Kirsch saw Mr. Maimon, who lived across the street, and asked, "Do you have \$50 I can borrow? I need to pay a delivery man now." "Sure," said Mr. Maimon. Mr. Kirsch ran back home. "Here's \$150," he said to the delivery man. "Keep the change as a tip."

Two weeks later, Mr. Maimon approached Mr. Kirsch. "Do you remember that I lent you \$50 for the delivery man?" "Yes," said Mr. Kirsch. "Didn't I repay you?" "No," said Mr. Maimon, "you didn't." "I did try a number of times the next few days, but you weren't home," said Mr. Kirsch. "I simply don't remember whether I finally caught you." Meanwhile, the neighbor joined the discussion. "By the way," he said to Mr. Kirsch, "four months ago, I lent you \$400 for your cleaning woman." "I remember that we were short on cash in our house at the time," said Mr. Kirsch, "but I don't remember whether we borrowed money in the end. I think we found cash in one of the drawers." "You did borrow from me," the neighbor said.

"Do you have an IOU note?" asked Mr. Kirsch. "When I borrow a sum like \$400, I almost always write an IOU note." "No," replied the neighbor, "You said that your cleaning lady was in a very big rush to leave." "I don't remember exactly what happened," said Mr. Kirsch, "but this doesn't sound like me." "Well, what now?" asked Mr. Maimon. "I wouldn't want to take money that you don't owe me, but I feel sure about this." "I also don't want to hold money that I owe you," said Mr. Kirsch. "But don't we usually say that when in doubt, the plaintiff has to prove that he is entitled to the money?" "That would make sense if you said with certainty that you didn't owe me," said Mr. Maimon. "However, I'm sure about this and you are not. Shouldn't my definite word be

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FROM OUR HOTLINE

satisfaction guaranteed?

Submitted by
C. K.

My wife purchased two skirts for our 14-year-old daughter from a store owned by Jewish people. Both of the skirts were similar in material and construction and were made in the USA exclusively for that store and labeled under the store brand. Both skirts had issues where a seam opened up. Our daughter only wore them a couple of times and used them in a normal fashion.

We called the store owner, who said that she has had no other complaints about these skirts and refused to take them back. After much discussion, she finally said that she would give us store credit to repair the skirts but adamantly refused to give us a refund. We all agreed to contact your hotline.

Q: Am I obligated to accept that offer, or

may I insist on a cash refund?

A: Shulchan Aruch (C. M. 232:7) writes that purchases are made with the assumption that the product is not damaged. In the event that it is discovered that merchandise was damaged or blemished in a way that people would return the damaged item to the store, the buyer has the right to a refund

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accepted against your doubt?" "I wonder what Rabbi Dayan has to say about this!" said Mr. Kirsch.

The three went over to Rabbi Dayan. "I lent Mr. Kirsch \$50," Mr. Maimon began, "and he did not pay me back."

"I lent him \$400," said the neighbor, "which was not repaid."

"What do you claim, Mr. Kirsch?" asked Rabbi Dayan.

"I don't remember whether I borrowed the \$400. I borrowed the \$50, but don't remember whether I repaid it," replied Mr. Kirsch.

"I thought, though, that without proof the plaintiff cannot collect when there is doubt."

"You're half right," said Rabbi Dayan. "You are exempt from paying the \$400, although it is meritorious to pay, but you have to pay the \$50."

"Why is that?" asked Mr. Kirsch.

"The Mishna (B.K. 118a) distinguishes between these two cases," explained Rabbi Dayan. "When a person is uncertain whether he borrowed, he is not required to pay without evidence, even if the plaintiff claims with certainty. However,

if the person definitely borrowed and is uncertain whether he repaid, he is required to pay (C.M. 75:9)."

"What is the logic of this?" asked Mr. Kirsch.

"A basic principle in monetary law is hamotzi mei'chaveiro alav ha'raaya. When the defendant is in possession of the money, the burden of the proof is upon the plaintiff when there is any doubt," answered Rabbi Dayan. "However, when there is a known debt, the status quo is that the borrower owes. This status quo supports the definite claim of the lender against the uncertain claim of the borrower. Therefore, you must pay the \$50 unless you counter with a definite claim that you already paid."

"And what if I did actually borrow the \$400?" asked Mr. Kirsch.

"It is possible," replied Rabbi Dayan. "For this reason, one who wants to fulfill his obligation towards heaven should pay when there is a definite claim, even if he is in doubt whether he borrowed. This is only meritorious, though, not required (Shach C.M. 88:36)."

of his money (C. M. 232:6). The fact that the store has not had issues with these skirts in the past does not exempt them from liability for the ones that are damaged. Similarly, the store cannot deflect blame to the manufacturer. They are obligated to refund the purchase and, if need be, deal with the manufacturer themselves.

What makes your circumstance different is the owner's insistence to give you store credit towards the repair of the skirts. Upon the discovery of a defect, may the seller insist that the item should be repaired or does the customer have the right to demand a full refund?

Shulchan Aruch (C. M. 232:5) teaches that if a sold item is discovered to be blemished but can be repaired, the sale remains in force and the sell-

er must provide the means to repair the blemish (see Ulam HaMishpat). The only limitation to this is that if the repair is so extensive that it amounts to manufacturing a new item altogether (panim chadashos), a customer may demand a full refund of his money and is not required to accept the "new" item. These are the principles that are to be applied to your circumstance. If the necessary repair is minor, the store owner has the right to have the skirts repaired and is not required to issue you a cash refund. If the repair would essentially involve the making of a new skirt, it is not necessary for you to accept that offer and you may return the skirts for a full refund of your purchase money unless a policy of no cash refunds was declared at the time of the purchase.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

defective merchandise week #11

Q: I purchased Tefillin for my son at his bar-mitzvah. He had them checked five years later when he was in Yeshiva, and the parshas were found to be pasul. Am I entitled to new parshas from the sofer that wrote them?

A: This depends on nature of the p'sul. If the defect was clearly there from the time

that they were purchased – e.g. a missing or improperly written letter – the sofer owes you new parshas even if this was discovered many years later (C. M. 232:3). However, if a letter was cracked or faded, the sofer does not owe you new parshas. The reason for this is that it is possible that the parshas were kosher when he sold them to you, and the ink faded or cracked

over time.

Even if a letter was cracked in a manner that may have been there from the time the Tefillin were first bought, the sofer would still be exempt out of doubt. Since the defect was discovered in your possession, we assume that it developed here later on (C. M. 224:1 and Kesef Hakodoshim 232:11).

WEEKLY STUDY GROUP

Mechusar Amana: I agreed to use a certain mortgage broker, but I found a better rate elsewhere. May I back out?

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

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