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

STORYLINE

lost and found

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

The Daf Yomi shiur was full as the participants celebrated the siyum of Maseches Menachos.

Rabbi Dayan concluded the Maseches and announced, "G-d willing, we will begin Chulin tomorrow evening!"

"Are there any seforim that you would recommend for Maseches Chulin?" asked Mr. Bellin, one of the regular attendees.

"Maseches Chulin deals a lot with the slaughter of animals and the examination of their inner organs," said Rabbi Dayan. "It is helpful to have a book with pictures and diagrams. There are a number of good ones available, such as Chulin Illuminated."

The following day, Mr. Bellin went to the local seforim store and bought a copy of Chulin Illuminated. He showed it to Rabbi Dayan that evening, and saw that a number of oth-

er people had also bought the same sefer. On Shabbos, Mr. Bellin left his sefer in shul after the daf shiur. However, when he came to the shiur on Sunday evening, he couldn't find it.

"I left my sefer on the table," he said to his neighbor, "but I don't know what happened to it."

"Look around the shul," said his neighbor. "Also check the shul library."

Mr. Bellin searched the shul and finally found a copy of Chulin Illuminated on a shelf in the shul library.

"It was a big mistake not to write my name on it right away," Mr. Bellin said to himself. He thumbed through the sefer to see if there was any writing, underlining, coffee stains, or other identifying features, but there were none. It was still in perfect condition.

Mr. Bellin asked the gabbai whether the shul had purchased a copy of Chulin Illuminated. "No, we haven't," said the gabbai. "Someone must have left his sefer by accident."

Mr. Bellin took the sefer home.

"I think I found my missing sefer," he told his wife. "There was a copy on the back shelf in the shul library."

"But maybe it's someone else's," said his wife. "You said that a lot of people bought that sefer. It could even belong to a visitor who joined the Daf Yomi shiur over the weekend."

"It could be, but it could just as easily be mine," said Mr. Bellin thoughtfully. "I'll ask Rabbi Dayan tonight if I can keep the sefer." After the Daf shiur that night, Mr. Bellin asked Rabbi Dayan, "I lost my copy of Chulin Illuminated on Shabbos. I found a copy

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FROM THE BHI HOTLINE

Submitted by
L. S.

the right to return

A friend agreed to sell me two candelabras for a price that others would pay for the pair. I took them home last week, expecting to pay about \$1,000 dollars for the set. To my surprise, he told me today that he had found people who would pay \$1,300 for them.

I can't afford to pay that much, but when I told him that I would like to just return them, he replied that we had made a transaction and I could no longer cancel it.

Q: Am I obligated to pay him \$1,300, or may I cancel the deal?

A: A necessary prerequisite to a binding sale is an agreement between the two parties regarding the price of the item that is being sold (Choshen Mishpat 200:7). Without that agreement firmly in place, the transaction is not complete, even if the buyer already took physical (kinyan) and halachic possession of the merchandise.

The question in this case is whether the agreement between the two parties to sell the candelabras "for what others would pay" is considered a binding agreement regarding the cost.

It would seem that this case is similar to a situation in which two parties agree to sell an object according to the assessment of a third party. Such an agreement is in fact considered as though a fixed price has been set with the consent of both parties,

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yesterday on the back shelf in the shul library. Can I assume that it is mine?"

"You can take it meanwhile," replied Rabbi Dayan. "You should ask at the shiur whether anyone else lost his sefer. If no one else claims it within a reasonable time, you can assume that it's yours and keep it."

"Let me explain a little," continued Rabbi Dayan. "The requirement of hashavas aveidah, returning lost items, is when there is a siman, which is an identifying feature that allows the owner to identify and claim the item. Therefore, if someone loses a brand new sefer, with no identifying features, the finder may keep it, since the owner has no way of identifying the sefer and abandons hope of retrieving it (Choshen Mishpat 262:21)."

"Do you mean that anytime I see a brand new book with no name I can take it?" asked Mr. Bellin incredulously.

"Absolutely not," said Rabbi Dayan. "This halacha only applies if the book was lost, such as if you found it lying in the street. However, if the book was

intentionally placed somewhere, it should not be touched (260:9). Furthermore, the location of the object can even serve as an identifying feature if someone did end up taking it. The Gemara (B.M. 23b) teaches, though, that if the item was left in a place where people commonly leave such items, it cannot serve as positive identification. For example, if you left your sefer on the table where we learn, that is not considered positive identification (C.M. 262:9)."

"Then why can I take this sefer?" asked Mr. Bellin.

"The poskim discuss whether an item that is missing, and then a similar one is found, can be assumed to be the missing item. Regarding hashavas aveidah, since there is no known owner, you are allowed to take the item meanwhile under the assumption that it is the one you lost. You should wait to see if anyone else posts a notice of missing that item. If, after a reasonable time, no one else seeks the item, this indicates that it is yours and you may keep it (Minchas Yitzchak 3:17)."

although the two parties do not yet know the value that the third party will assign to the merchandise (Choshen Mishpat 227:25).

Similarly, if two parties agree to sell some merchandise according to its market value, and the market value for that merchandise is already fixed, the transaction is binding. This holds true even though the two parties were ignorant of its market value at the time of the transaction (Minchas Pitim 209:3).

However, the above criteria do not apply in your case. A third party was not specified, and you and the seller did not agree to sell the object at its market value. You just

agreed to sell it according to "what others pay"; this is not a clearly defined value, as some people might be willing to pay an amount that differs from the market value.

Halachic opinions maintain, therefore, that an agreement between two parties to sell something according to "what others would pay" does not represent a final agreement regarding the cost of the item (Teshuvos Tomas Yescharim, cited in glosses of Rav Akiva Eiger to Choshen Mishpat 199:1).

As such, the transaction is not binding and you may return the candelabras to your friend.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

laws of interest week #4

Q: Is it permissible to take a mortgage from a Jewish mortgage broker or a Jewish-owned mortgage company?

A: Although a Jew may not lend to another Jew with interest, it is permissible for him to serve as a loan officer in a non-Jewish bank, since it is clear that the money is not his and he is serving only as an agent. Similarly, it is permissible to take a mortgage through

a Jewish mortgage broker if the mortgage capital is provided by a non-Jewish bank (or a Jewish bank with a heter iska), and the broker is serving only as a mediator. This is permissible even if the broker takes a fee for his services (Y.D. 163:23-24; Shach 71).

Mortgage companies, on the other hand, often grant the loan from their own capital and then sell the mortgage to a bank. In this case, it is not permissible to take a loan from a Jew-

ish-owned mortgage company unless they have a heter iska, because the loan is initially granted by the Jewish-owned company with a stipulation of interest, and because they maintain the loan for a short time. A person considering taking a loan from a mortgage company should first verify its ownership (The Laws of Rabbis, R' Reisman, 13:24-25). If it is difficult to obtain this information, a competent Rav should be consulted.

PLEASE BE AWARE

Using your friend's credit card for purchases or taking advantage of his special finance offers can involve serious ribbis (interest) issues.

For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at:
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