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

STORYLINE

silver sale

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"Mazal Tov," Sol said to his friend, Yisrael. "I heard you had a boy recently!"

"Thank you," said Yisrael. "The pidyon haben, redemption of the firstborn son, will take place next week."

"Mr. Kahn has five real silver coins with the proper weight of 3.4 ounces," said Sol. "He offers to sell the coins, if you want, so that you can do the pidyon with real silver coins that you bought."

"How much do they cost?" asked Yisrael?

"At my son's pidyon haben three years ago, the value was about \$50," said Sol. "Silver went up, though."

Yisrael arranged with Mr. Kahn to serve as the officiating kohen at the pidyon. "I'd like to buy the silver coins from you," he added.

"Sure," said Mr. Kahn. "They're worth \$100 now."

On the day of the pidyon, Yisrael paid Mr. Kahn \$100 for the coins. He then gave them to him for the pidyon haben ceremony.

"How much were the coins?" Sol asked afterwards.

"Mr. Kahn asked for \$100," Yisrael said.

"That's all?" said Sol. "I saw yesterday that silver prices have rocketed over the past two years. The 3.4 ounces for pidyon haben are now worth \$140."

"You're kidding," said Yisrael with dismay.

"That's not good!"

"What's the problem?" said Sol. "You saved yourself \$40!"

"There is a concept of ona'ah, overcharging or underpaying," answered Yisrael. "If the discrepancy between the price paid and the item's value is more than 1/6, the sale is annulled. I underpaid by 30%, so the coins

may not have been mine at all!"

"But Mr. Kahn only asked for \$100," said Sol. "You didn't try to cheat him."

"Yes, but he erroneously thought that was the value," said Yisrael. "He wasn't trying to give me a discount."

"I don't know," said Sol with a shrug. "But I have Rabbi Tzedek's phone number if you want to give him a call."

"That would be great," said Yisrael.

Sol gave Yisrael the number, and he called Rabbi Tzedek.

"I bought coins from Mr. Kahn for pidyon haben, but he greatly undervalued the coins," he said. "Is this ona'ah? Is there a problem with the pidyon?"

"This is definitely a case of ona'ah, mispricing, and Mr. Kahn can annul the sale of the coins (C.M. 227: 4; see also Aruch Hashul-

continued on reverse side

FROM THE BHI HOTLINE

Submitted by
P. B.

the neighbor next door

My landlord, Yaakov, is looking to sell the apartment I have rented for the past twenty years. I am interested in purchasing it, and we are scheduled to sign a contract next week. In the meantime, Shmuel, who owns and lives in the apartment next door, found out about our intentions. He asserts that, as a neighbor, he should have been offered the apartment first.

Q: Is his claim correct, or may I go ahead

with the purchase of the apartment?

A: Your question relates to the halachos of bar metzra – lit. the owner of the adjacent property. Based on the principle of v'asisa hayashar v'hatov that obliges a conduct beyond the letter of the law, Chazal granted the owner of the neighboring property the right of first refusal. As such, a neighbor who owns the adjacent property is given the first option to buy it. Furthermore, if some-

one other than the bar metzra purchases the property and the bar metzra insists on exercising his rights, Chazal dictate that the buyer acts as an agent for the bar metzra. Therefore, upon completion of the purchase, the title is assigned to the bar metzra, who must pay the buyer the amount he advanced for him.

If two neighbors own adjacent properties, both have equal rights for first refusal. Your claim for bar metzra as the current tenant

continued on reverse side

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STORYLINE CONTINUED

chan 227:2)," said Rabbi Tzedek. "However, there is no problem with the pidyon haben." "Why not?" asked Yisrael. "There is an important difference between a mistaken sale, where the wrong object was sold, and a mispriced sale, where there is ona'ah," explained Rabbi Tzedek. "When the wrong object was sold, the sale is inherently null and void (233:1). However, in cases of ona'ah, the sale remains valid unless the aggrieved party annuls it due to the mistaken price. Therefore, since Mr. Kahn does not care to annul the sale of the silver coins, it remains valid. The coins were yours and your son is properly redeemed." "What if he should want to annul the sale later?" asked Yisrael. "There is a time limit on ona'ah claims," said Rabbi Tzedek. "Once the person had time to check the proper price and didn't, he can no longer claim ona'ah. The seller's right usually does not expire, since he does not hold the item to have it evaluated. However, the value of silver is readily available, without need to show the coins, so his rights would also expire (227:7-8)."

"Can the aggrieving party also annul the sale?" asked Yisrael. "Actually, he wouldn't want to do that; he gained." "He might want to," said Rabbi Dayan with a twinkle in his eye. "Let's say that you bought something and underpaid by 25% and then the market crashed and prices dropped by 50%. You thought you got a bargain, but would be happy now to annul the sale and buy the item at the new, very low price. Conversely, let's say that you sold an item and overcharged by 25% - and then the market soared by 50%. You thought you made a killing, but would be happy now to annul the sale and sell the item at the current, very high price." "Okay, so can he annul the sale?" asked Yisrael. "In general, there is a dispute whether the aggrieving party can annul the sale," answered Rabbi Tzedek. "The Rambam maintains that he cannot, whereas the Rosh maintains that he also can annul it. However, in the examples mentioned, he cannot annul the sale, so that he should not cheat and also benefit (227:10-11)."

FROM THE BHI HOTLINE CONTINUED

of the apartment is a matter of halachic dispute and is not definitively resolved (C. M. 175:59-63). Shvus Yaakov (3:165, cited by Pischei Tes-huvah 175:28) rules that if a tenant and a neighbor express an interest in purchasing the property before it is sold, the neighbor takes precedence, since he is a bar metzra according to all opinions while the tenant's rights as a bar metzra are subject to dispute. However, if the tenant already purchased the property, he can claim the position of kim li - that he is a bar metzra and is not obligated to transfer ownership to the neighbor. In your case, since the question arose before the sale of the property, it would seem that Yaakov should sell the property to Shmuel, yet your neighbor's interest in purchasing the property needs to be determined. If he is interested in purchasing the

property to expand his present living space, he may exercise his rights as a bar metzra. If, however, he wants to purchase the property as a business investment, he is not entitled to exercise his rights (175:49). If his intent is to eventually combine the two properties into one, but before doing so he will lease the property to others, he retains his bar metzra privilege to purchase the property. On the other hand, if you offered to purchase this apartment and pay in full without a mortgage and your neighbor wishes to purchase with a mortgage contingency, you retain the first right for purchase. The preference granted to the bar metzra may never inhibit on the seller's interest. As such, if the seller prefers to sell this property without a mortgage contingency, he may insist to sell it to you so that he will be paid upfront (175:8).

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

laws of interest week #18

Q: Can I borrow and repay Israeli shekalim (NIS) in the States even if the shekel rises?

A: This question actually relates to merchandise loans (se'ah b'se'ah), not monetary loans, because foreign currency is considered merchandise or a commodity relative to the local currency (C.M. 203:8). Therefore, it is permitted to borrow foreign currency only in the three situations mentioned last week:

1. Yesh lo: If the borrower already has a shekel, he may borrow more. The lender may even sell or give the borrower a shekel, and then lend him additional shekalim (Y.D. 162:2).
2. Yatza hash'a'ar: Some authorities suggest that since NIS are readily available on the foreign currency exchange, it should be considered as yatza hash'a'ar. However, most disagree, because the exchange rate fluctuates constantly (The Laws of Ribbis, 14:14).

3. Davar Mu'at: The application of davar mu'at to foreign currency is highly questionable, since it is not common to borrow foreign currency from neighbors. All these halachos apply, conversely, to borrowing and repaying dollars in Israel. Although the use of the dollar is fairly common there, it is not a legally acknowledged currency and therefore considered a commodity (Bris Yehuda 20:9).

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