



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

DAMAGED Menachem entered Sofer's Sefarim Store. "I'd like a sefer on the laws of Pesach that's user-friendly," he said to Mr. Sofer.

"A popular new sefer just came out: Practical Guide to the Laws of Pesach," said Mr. Sofer. "I've sold over twenty copies in the past week!"

Menachem browsed the table of contents and the first chapter. "Looks good," he said. "I'll take it."

Menachem immediately wrote his name in the sefer. As he learned, he underlined certain portions and made occasional notes in the sefer.

The following week, Menachem decided to learn outside in the yard. As he finished learning page 48, he realized that pages 49-64 were missing. "I'll have to return the sefer tomorrow," he said to himself, put the sefer down and went inside to get a drink.

When Menachem entered the house, the phone rang. "I need you to pick up bagels and lox now," his mother said. "We're having friends over soon."

Menachem jumped into the car and drove to the bagel store. He forgot about the sefer that he had left outside.

During the night it rained and the sefer got waterlogged. "What's the difference?" Menachem rationalized. "It was defective and has to be exchanged anyway."

Menachem took the sefer back to Sofer's Sefarim Store. "I bought this here last week," he said. "I've been enjoying it and learning from it regularly. Yesterday, I noticed that pages 49-64 were missing. I'd like to exchange it for an intact copy."

Mr. Sofer looked at the sefer. "Normally, I'd take it back without a question," he said. "However, you already wrote your name and underlined in the sefer. Moreover, it's waterlogged!"

"What difference does it make?" Menachem argued. "It was defective and shouldn't have been sold!"

"Now that it's ruined, though, the publisher won't accept it back," replied Mr. Sofer. "You should have taken proper care of it."

Just then, Rabbi Dayan entered the store. "What's the problem?" he asked with a smile.

Menachem related the story and asked: "Can I return the sefer after I wrote in it and it got waterlogged?"

"You can return the sefer, despite the writing inside," ruled Rabbi Dayan. "However, because of the rain damage, you are not entitled to a full refund."

"Could you please explain?" asked Mr. Sofer.

"If the customer, before realizing that the purchased item was defective,



BHI HOTLINE

TEN YEARS LATE Ten years ago a customer purchased an appliance

comprised of many parts. He recently opened the box and discovered that one of the pieces was missing. He wants me to replace it or refund his money. I do not doubt his story and am well aware that defective merchandise may be returned upon discovery (C.M. 232:1) and that I am responsible even though I was unaware of the defect at the time of the sale (ibid. 18). However, I am not the manufacturer and I sell the box sealed as I receive it. And had the customer informed me of the missing piece within a reasonable amount of time after the sale, I could have ordered the missing piece or given him a refund since I would have returned it to the manufacturer, but this model is no longer available and I am no longer in touch with the manufacturer.

Q: Am I obligated to reimburse this customer?

A: Shulchan Aruch (loc. cit.) addresses the case of someone who sold a cow without teeth. The buyer did not realize that cow did not have teeth until it died. The halachah is that the buyer may return the carcass and the seller must refund the buyer's money. However, if the seller is an animal dealer who buys and resells animals the day they are purchased, he is exempt from liability since he would not know that the animal is missing teeth. The reason is that the buyer should have examined the animal knowing that the dealer never examined the animal to confirm that it was blemish-free. Since the customer did not bother to examine the animal, he must bear the loss.

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STORY LINE

damaged it further through normal usage, he is exempt from that additional damage," explained Rabbi Dayan. "However, if he added unusual damage to the item, he is liable for the additional damage when he returns the item" (C.M. 232:13).

"What is the source for this?" asked Menachem.

"The Rambam (Hil. Mechirah 16:6) derives it from the halachah of a person who purchased an animal and discovered that it was a treifah after slaughtering it," replied Rabbi Dayan. "The customer can return it for a full refund, even though the animal is worth significantly less now that it was slaughtered. The Rambam explains that this is because it was expected that the customer would slaughter the animal" (Sma 232:29).

"How does this apply here?" asked Mr. Sofer.

"It is typical to write one's name in a sefer, and also to underline and add notes," Rabbi Dayan answered. "Thus, even after doing so, Menachem can return the sefer.

"However, the customer is responsible for the safekeeping of the defective item as a shomer chinam until he notifies the seller or returns it," continued Rabbi Dayan. "Leaving the sefer outside is negligence, so that Menachem bears liability for the damage done by the rain" (C.M. 232:22).

"How is this evaluated, though?" asked Menachem "The book was defective and not worth much even before being left outside."

"Correct, but we need to evaluate how much a defective sefer, missing those pages, is worth," replied Rabbi Dayan. "Menachem is liable for that amount, and is entitled to a refund of the difference between the full price that he paid and the minimal, reduced value of the defective sefer."



BHI HOTLINE

Nesivos (232:7) explains that technically the dealer should refund the buyer's money since he sold him a blemished animal. Nevertheless, the buyer bears the loss since he knows that the dealer will lose the opportunity to recover his loss. Therefore, it is as if the dealer says to the customer, "I am relying upon you to examine the animal to determine whether it is blemished," and thus, according to the halachos of garmi (indirect but inevitable damages), the customer is responsible (see op. cit. 306:6 for another example of this halachah).

The principle that emerges is that if the customer's negligence creates a circumstance that prevents the merchant from being able to replace the missing or damaged piece or obtain a refund, the customer bears the loss. However, Rema cites authorities who maintain that even when the customer was somewhat negligent, he does not bear responsibility. Rema writes that Halachah follows that opinion (see Shach 12), and Mishpat Shalom (232:22) contends Shulchan Aruch's opinion is rejected altogether. However, one could argue that when a customer does not examine his purchase for such an extended period of time he is considered negligent (since appliances are often discontinued) and he must bear the loss (see Nesivos [6], who contends that Rema would agree when the customer was fully negligent). Accordingly, each circumstance must be examined separately and the specific factors must be considered to lay the groundwork for an equitable compromise.

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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlitza

BEIS DIN AND CIVIL COURT #3 JEWISH CIVIL COURTS

Q: What is the status of Jewish civil courts, such as those in the State of Israel?

A: The Chazon Ish (Sanhedrin 15:4) and many other authorities ruled emphatically that although the judges in these courts are Jewish, they are not included in "that you should place before them" (Shemos 21:1). This is because they do not rule according to the Jewish law system but according to a conflicting code of civil law, which draws also from secular perspectives.

Furthermore, Jewish civil courts are included in the parallel exclusion, "before them and not before hedyotos (commoners)." The prohibition remains even if both parties agree and even if there is communal acceptance.

Thus, other than in certain cases (to be addressed later), a person is not allowed to adjudicate before them; one is required to approach a halachic beis din for adjudication. There are now many halachic batei din operating in Israel, and also in the U.S. and other countries.

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