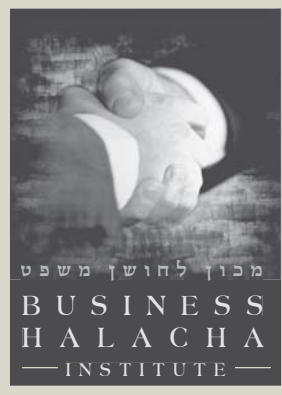


a project of the Business Halacha Institute

# Business

# weekly



PARSHAS KI SEITZEI  
FRIDAY, AUGUST 20 2010  
VOLUME 1 ISSUE 22  
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

### in the sand at the sea

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Camp Artzeinu was coming to an end. After a month of touring and learning in Israel, three days remained before the group of teenage boys returned to the States.

They set out for an afternoon of water fun at the separate beach in Ashdod.

"Catch!" said Uri to his friend, tossing a ten-shekel coin. Avi put out his hand, but the coin bounced off and disappeared into the soft, glistening sand.

"Sorry," said Avi. "I was never good at playing catch."

The boys poked around the sand a little, running their fingers through it, with no luck. Nearby were some young children building sand castles and making mud pies. They had a sieve with which they were sifting the "flour" for their pie.

"Selicha. Can I borrow your sieve for a few minutes?" said Uri in broken Hebrew. The

children nodded shyly and passed the sieve.

Uri sifted the sand where the coin had fallen. There were plenty of pieces of broken shell and some small coins, but no ten-shekel piece.

"What are you doing?" asked one of Uri's friends, jogging over.

"I lost a ten-shekel coin in the sand," explained Uri, "so I'm sifting the sand to find money. I already found four shekel, but not my coin."

His friends joined the search. At last, Dov shouted, "I found a ten-shekel!"

Uri walked over and stretched out his hand. "Thanks, Dov," he said. "I wasn't sure that I would find my coin in all this sand!"

Dov looked down. "Finders keepers; losers weepers," he mumbled.

"What do you mean?" asked Uri incredu-

lously. "This is a classic case of hashavas aveida!"

"Who says it's yours?" persisted Dov. "Maybe it fell from somebody else."

"That's crazy," responded Uri. "You saw that I dropped it right around here."

"Yeah," said Dov. "But you also found some other coins."

Uri seized Dov's hand and tried to forcibly grab the coin.

"That's not how we resolve disputes," the counselor said firmly. "When we get back to the youth hostel, we'll email Rabbi Dayan and ask whether Dov has to return the coin."

The next day, the counselor called Dov and Uri to his room. "Rabbi Dayan emailed back his answer," said the counselor as he printed the email.

He read aloud: "The Gemara (Bava Metzia 26b) teaches that if you drop a coin in the

*continued on reverse side*

## FROM OUR HOTLINE

### thawed and flawed

Submitted by  
E. Askenazy

We lost electric power for several hours during a thunderstorm in the grocery I own. After power was restored, I checked the freezers and it was evident that the ice cream tubs had melted. Ice cream that melts and is refrozen is nowhere near the quality of ice cream that never melted, so sharing this information with my customers will require me to sell it at a significant discount.

#### Q: Am I obligated to inform them?

**A:** A seller may not do anything to fool his customers by misrepresenting his products (Choshen Mishpat 228:6). Even if the misrepresentation does not change the price of the object, it is prohibited (Sema 228:7). This type of misrepresentation is called genaivas da'as. In the event that a seller vio-

lated the prohibition against genaivas da'as there is no recourse for the buyer as long as he was not overcharged more than a sixth – ona'ah. In this case, however, the issue is not merely that you are misrepresenting the product to the customers; it is considered a sale of defective merchandise. When people purchase ice cream, they assume that it was kept at the correct temperature.

*continued on reverse side*



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## STORYLINE CONTINUED

sand and someone else finds it, he is not obligated to return it. The reason is that when a coin falls in the sand, it's extremely difficult to find. Situations like this, where it is almost impossible to retrieve the lost item, are considered almost an automatic yei'ush; we assume that the person already gave up hope of finding his coin (C.M. 262:14)."

"But I didn't give up hope," protested Uri. "Didn't you see that I asked those nearby children for their sieve?!"

"Good point," said the counselor, as he continued reading the email. "The Gemara teaches that even if the one who lost the coin sifted the sand, this does not indicate that he expected to find his particular coin. Perhaps he simply hoped to find a comparable coin that someone else dropped, as you found other coins also."

"See, I told you," said Dov triumphantly. "I don't have to give it to you!"

"Let me finish reading," said their counselor. "Even so, although Dov is not legally obligated to return the coin, it is still

proper and right to return it, like it is proper to return any lost item even after yei'ush (259:5,7)."

"But still, maybe it's not his coin at all?" insisted Dov.

"Rabbi Dayan also addressed that point in his email," said the counselor. "Since Uri lost a ten-shekel coin in this immediate vicinity, and we are not aware that others did, we assume that that Dov found Uri's coin (Prisha 262:11).

"In addition," the counselor finished reading, "some authorities suggest that if the owner announced right away that he hopes to find his coin or intends to sift the sand, we do not automatically declare yei'ush (Aruch Hashulchan 262:20). The bottom line: although Dov cannot be forced to return the coin since we generally consider this a case of yei'ush, it is certainly proper for him to do so."

Dov reached into his pocket and handed over the coin.

## FROM OUR HOTLINE CONTINUED

People do not want refrozen ice cream. Although the taste of the ice cream remained unchanged, the texture is noticeably different. Shulchan Aruch (232:6) explains that defects are determined by what is locally considered defective merchandise that would be returned upon discovery. This raises an interesting point: What is the halacha when there is a defect that, if known, people would avoid purchasing but if it was not discovered until a person is home, he would not go back to the store to return it? Is a seller permitted to knowingly sell such an item? For example, a sefer may have a minor defect that, if known to the customer at the time of the purchase, he would search for another sefer that

is not defective, but it would not be worth it to go back to the store for it to be replaced once he has the sefer. Sefer Hilchos Mishpat (Siman 228:6 Mikor Mishpat 36) maintains that one may not sell merchandise, l'chatchila, that people would not have bought but will probably not return. This circumstance is included in the prohibition against genaivas da'as. Ice cream that melted and refroze at least falls into this category, so it is prohibited for a storeowner to sell the ice cream without notifying the customers of its inferior quality. Depending upon the extent of the melting, it may even be considered a defect and a customer would have the right to return the ice cream for a refund.

**Please contact our confidential hotline with your questions & comments**

877.845.8455 ■ ask@businesshalacha.com

## MONEY MATTERS

### defective merchandise week #3

**Q: I bought a new sefer four months ago. I now started learning it, and found it missing a whole chapter. Can I still return it?**

A: You are entitled to return defective merchandise whenever you discover the defect, even years later, provided that you did not continue using the item after discovering the defect (C.M. 232:3). However, if the

store has a return policy which clearly limits the time to return, you would be bound by the terms of that policy. There is an opinion that if you had the opportunity to check the sefer when you first bought it and did not, you forego your right to claim a defect, even without a stipulated time limit. Many authorities disagree and maintain that even though you did not bother to check the sefer when

you bought it, you can still return it later (Pischei Teshuva 231:1). Aruch Hashulchan rules this way, since you had no reason to assume that the sefer might be defective and had to be checked (232:5). However, since some authorities maintain that you are not entitled to return the sefer, if the seller adamantly refuses to honor the return, he cannot be forced to accept the sefer back.

## WEEKLY STUDY GROUP

*It's the first day of Sukkos and I realize I overpaid for my esrog.*

*What can I do?*

**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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