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STORY LINE

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On Whose Side?

Mrs. Cooper rightly earned the title "bargain buyer." She combed the advertisements of her local stores weekly and knew just where to buy each item that week at the best price.

Mrs. Cooper had just finished shopping in Pathmark, where tuna fish was on sale. She packed a case in her car and went on to the Kosher Store, where meat was on sale.

While waiting on line, Mrs. Cooper met someone from her shul, Mrs. Fleisher, with a shopping cart containing thirty cans of tuna. "Is tuna on sale here?" Mrs. Cooper asked her.

"No," replied Mrs. Fleisher. "However, I'm hosting a lot of people for seudah shelishis this week, so I need a lot of tuna."

"I just picked up a case of tuna at Pathmark priced at three for $2," Mrs. Cooper said. "You may want to buy the tuna there."

"Thanks a lot for telling me!" Mrs. Fleisher exclaimed. "Watch my wagon for a minute, while I return the tuna to the shelf." She removed the tuna from the shopping cart and returned it.

The Kosher Store manager, who stood nearby and overheard the discussion, gave Mrs. Cooper a disapproving look. Although he didn't say anything, his frown made her wonder whether she was correct to tell Mrs. Fleisher about the Pathmark sale.

Mrs. Cooper came home and asked her husband what he thought. "I have this dilemma all the time," she said. "I could tell every customer where they could get a better bargain!"

"I guess that until Mrs. Fleisher pays for the tuna, there's no problem in her returning it to the shelf," he said. "I understand the ethical dilemma, though. You might want to hear Rabbi Dayan's perspective."

Mrs. Cooper called Rabbi Dayan and asked, "When I see someone in the process of buying something, can I tell her where she can buy it cheaper?"

"There are two conflicting responsibilities here," replied Rabbi Dayan. "There is a prohibition against causing damage to the storeowner. This includes not only direct damage, but also indirect damage (grama). On the other hand, there is a responsibility to spare the customer from loss, which is an extension of hashavas aveidah" (C.M. and Gra 378:1).

"So how do we deal with this?" asked Mrs. Cooper.

"The Gemara (B.B. 21b) indicates that

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Burnt Jacket

FROM THE BHI HOTLINE

Reuven, who is in the year of mourning, arranged a daily Minchah minyan in a conference room in the office building where he works. One day he forgot to extinguish the two tea lights that he kindles everyday on the windowsill. Shortly after Minchah someone entered the conference room and, without realizing tea lights were there, he leaned over the windowsill and his jacket caught fire.

Q: Is Reuven liable to pay for the ruined jacket?

A: The first issue that must be addressed is how to categorize the type of damage that occurred. The damage could be classified as eish (fire) and as such Reuven would be liable for damage that his fire causes, even to utensils and garments (keilim). Or it could be categorized as a bor (pit) and the Torah exempts the "owner" of the bor from damage to keilim (C.M. 410:21).

The defining characteristic of eish is that it moves when another energy propels it. In other words, wind is necessary to spread the fire from the location where it was initially kindled (B.K. 2a, 3b; C.M. 418:1). The defining characteristic of bor is that no additional input is necessary for it to cause damage. Its presence in a location where someone could become damaged is what defines it as a bor (B.K. 3b; C.M. 410:1).

In this particular case the flame will not

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STORYLINE CONTINUED

when someone is expecting sure revenue, such as a fisherman closing in on a certain fish, thwarting him is considered damage," replied Rabbi Dayan. "The Chasam Sofer (C.M. #379) extends this to a customer who has already decided to purchase. In that case you should not help the customer by causing the storeowner damage. However, if the customer is still deliberating whether or not to buy the item, the storeowner cannot consider the purchase as sure revenue. Therefore, the mitzvah of hashavas aveidah would warrant sparing the customer the extra cost" (Mishpetei HaTorah, Hashavas Aveidah #8).

"Are there other relevant factors?" asked Mrs. Cooper.

"If the customer initiates the dialogue and asks, you must respond with honest advice," replied Rabbi Dayan. "Also, you can advise a customer who is your relative, even if she already decided to buy the item; there is a priority to look out for the welfare of your relatives. In addition, if the storeowner is demanding an unfair price or cheating on quality, you should inform the customer; this is not considered causing the storeowner damage. In all cases, though, you must not speak lashon hara about the store. You can say, 'The item is cheaper elsewhere,' but should not say, 'Prices here are always sky-high!'" (see Chofetz Chaim, Rechilus 9:10).

"Does it matter who owns the store?" asked Mrs. Cooper.

"If the store is not Jewish-owned, you can alert a Jewish customer of possible savings even when already on line to pay," replied Rabbi Dayan. "Damaging a non-Jew is also prohibited, but discouraging potential customers in this way is not considered causing damage to them. Therefore, the mitzvah of hashavas aveidah to the fellow Jew remains in force. However, if store personnel are nearby and this will cause a chillul Hashem, it is not allowed!" (See Pischei Choshen, Geneivah 9:[1]; Nezikin 9:[2].)

FROM THE BHI HOTLINE CONTINUED

move from its set place to cause damage, nor will a wind blowing on it cause it to spread. Its only capacity to damage is for someone to stand close enough to it so that the flame should reach his clothing. Accordingly, the tea lights should be categorized as a bor and Reuven would not be liable for the damage to the jacket.

However, one could argue that coming close to the fire did not damage the jacket; the damage was the result of the flame rising and catching on something that was too close to it, but since the fire "reached up" to grab hold of the jacket, the damage should be categorized as eish, for which Reuven would be liable to pay for the damaged jacket (see Even Ha'azel, Nizkei Mammon 3:19 and Pischei Choshen, Nezikin 9 [1] and C.M. 418:12).

It seems logical, though, that Reuven should be exempt from the damage done to the coat, even if the damage is categorized as eish. It is reasonable to assume that burning tea lights are clearly visible and therefore cannot be categorized as a potential mazik (damager) for which Reuven would be liable. Although there is a principle that states that it is not common for people to pay attention to where they are going (C.M. 412:3), nevertheless, when tea lights are resting within the line of vision of most people, it is assumed that they will be seen and people will maintain a safe distance (see Tosafos, B.K. 27b d.h. lifi; C.M. 410:20; Talmid HaRashba, B.K. 32a; cf. Pnei Yehoshua).

Obviously the details of each situation must be considered to determine whether people should have seen the tea lights or not.

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Completing the Transaction #3

MONEY MATTERS

Q: How is real estate acquired through kinyan chazakah (act of possession)?

A: Chazakah: The buyer performs an act demonstrating possession of the property, either in the presence of the seller or upon his authorization. This act typically entails a capital improvement to the property, such as affixing a lock, constructing a fence or making an opening (C.M. 192:1-2).

Locking the door with a key is also considered chazakah by the Rambam and Shulchan Aruch. Simply handing over the key, however, is not considered chazakah, but is viewed as authorization to do chazakah (C.M. 192:3).

Collecting the fruit of a field or using the property is considered kinyan chazakah by the Rambam and Shulchan Aruch, but not by most other Rishonim and the Rema (C.M. 192:10-11).

Although chazakah is not commonly used nowadays for sale of property, it sometimes serves to finalize a rental, which also requires kesef, shtar or chazakah. According to many authorities, usage of the property (e.g., moving belongings in) would be a valid chazakah to finalize a rental even according to the Rema, since the rental "acquisition" itself is limited to usage of the property (C.M. 192:13; Nesivos 192:6).

DID YOU KNOW?

Paying a wedding band, plumber or handyman immediately at the completion of the service is a fulfillment of numerous mitzvos d'oraysa, akin to making kiddush on Shabbos, putting on tefillin, saying krias shema, and birchas hamazon.

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