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

STORYLINE

cool return

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"Would you like to use our bungalow for Shabbos?" Jack asked his neighbor, Ben. "We have a simcha in two weeks and won't be at our bungalow."

"That would be great!" exclaimed Ben. "Is it hot there?"

"It might be," replied Jack. "I installed air conditioners, but have to return them this week."

"Oh, really?" asked Ben. "You borrowed air conditioners?"

"No," said Jack, "I bought them at Walmart, but intend to return them and get my money back."

"They let you return the air conditioners after using them for the summer?" asked Ben, astonished.

"They have a 'no-questions-asked' return policy," explained Jack. "However, they have a 30-day limit on air conditioners in-

stead of the usual 90 days, so I can't keep the air conditioners for the full summer."

"This whole idea sounds dishonest," said Ben. "If you know that you don't intend to keep the air conditioners, it's not fair to the store if you buy and return them."

"That's what the refund policy is all about," said Jack.

"Not really," said Ben. "The point of a return policy is for consumer satisfaction. If a product is defective, the customer can return it. Return policies expand this if the customer was not satisfied with the purchase in any way, such as if it wasn't as powerful, versatile or useful as he expected. But to buy something that you know ahead of time you don't want, just to get free use of it, seems like cheating."

"Why?" said Jack. "They can refuse to accept the return; if they choose to accept it,

that's their business. What's wrong?"

"You are misleading them," said Ben. "When you purchase the item, they think you are intending to keep it, or at least give it a fair trial. You are also causing them a loss, since they will not be able to sell it new again."

"They probably return it to the manufacturer," said Jack.

"And what about the chilul Hashem involved?" said Ben.

"Where is there chilul Hashem?" asked Jack. "I'm not doing anything illegal."

"Chilul Hashem does not only mean doing something illegal," said Jack. "It also means doing something that is of questionable moral or ethical character. You would do well to discuss with Rabbi Dayan whether it's acceptable to buy something and then return it like you plan to do."

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FROM THE BHI HOTLINE

Submitted by
M. K.

limited liability

I sold merchandise to a limited liability company (LLC) with tens of thousands of dollars to be paid. The corporation declared bankruptcy before I received payment. I eventually received only pennies on the dollar. According to the law of the land, the corporation owes me nothing, but I know that some of the partners own other businesses and assets.

Q: Does halacha grant me the right to

demand reimbursement for the money I never received?

A: Strictly halachically speaking, dina demalchusa (the law of the land) cannot supersede Halacha; therefore, the Torah obligation to repay a debt remains in force even though the borrower is legally exempt (see Shach C. M. 73:14). However, many Poskim maintain that filing for commercial bankruptcy is beneficial for commerce and

as such considered a takanas hamedina, a vital regulation of the authorities that is halachically binding (see Igros Moshe C. M. 2:62, Bais Yisrael [Landau] 172), but others disagree (Chelkas Yaakov 3:160).

On the other hand, it is commonly understood that a loan or advanced credit to a corporation restricts the creditor's power of collection to the assets of the corporation, and he may not touch the borrower's personal assets. This is similar to an apotiki

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STORYLINE CONTINUED

Jack called Rabbi Dayan. "May I buy air conditioners with intention to use and return them according to the store's return policy?"

"Even though the store takes into account in its return policy that some people might do this," answered Rabbi Dayan, "it is clearly wrong for a number of reasons. First of all, there is a serious issue of geneivas da'as (misleading) in doing this. When you buy an item, you give the seller the impression that you are interested in buying it, at least on a trial basis, whereas you intend ahead of time simply to use and return it. This misrepresentation causes the seller a financial loss, so that it is a severe form of geneivas da'as."

"Does geneivas da'as apply also to a non-Jewish seller?" asked Jack.

"Yes," replied the rav. "Stealing from a non-Jew is prohibited, so misleading him to gain a benefit, especially when there are monetary ramifications, is also prohibited (C.M. 348:2; 228:6)."

"Secondly, this 'ploy' may well be considered a form of damage," continued Rabbi Dayan. "You took a new item from the store

and made it a used one, which the store or manufacturer will no longer be able to sell without re-manufacturing (C.M. 378:1; Pischei Choshen, Nezikin 1:1).

"Thirdly, the concern of chilul Hashem is a most serious one," added Rabbi Dayan. "The Mishna in Pirkei Avos talks of the severity of chilul Hashem, even if done unintentionally (Avos 4:4). Chilul Hashem is a sin for which even repentance, Yom Kippur and affliction do not completely atone for, until death. Questionable business behavior that raises eyebrows, even if completely legal, is a form of chilul Hashem (Yoma 86a). Conversely, integrity in business dealings is a source of Kiddush Hashem."

"Are there additional issues if the store is Jewish-owned?" ask Jack.

"Since the Torah prohibits charging a fellow Jew interest, there is an additional problem of ribbis – gaining free usage of the item in return for allowing the store use of the money for the month – and also ona'as devarim (Y.D. 174:1; Bris Yehuda 28:4-5)," concluded Rabbi Dayan. "From any store, though, it is deceitful and wrong."

FROM THE BHI HOTLINE CONTINUED

mefurash (lit. "only from here you will collect") that restricts the creditor's right to recover designated objects only. Consequently, if the corporation goes bankrupt, the creditor loses the ability to recover his money beyond the assets of the corporation. This assumes, of course, that the corporation uses bankruptcy as an option of last resort and does not deliberately take advantage of this opportunity to relieve themselves from debts.

In addition, a corporation raising money for its business endeavors must provide all necessary information to the creditors/investors stating the condition of the business (due diligence) and may not rely on the assumption that the credi-

tor conducted his own investigations. Otherwise, even if the corporation succeeded in defending itself in court by contending that they acted in good faith, the monies are halachically not covered by laws of bankruptcy (see Shevet Halvei 3:306, Imrei Bina Gevias Chov 2).

An additional point must be emphasized. Sometimes the heads of a corporation that filed for bankruptcy for various reasons circumvent the guidelines of court and decide to distribute a preferred share to some of the creditors. One must be aware that since this law is halachically binding it is prohibited for a creditor to accept this money (see Igros Moshe 2:62).

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MONEY MATTERS

laws of interest week #9

Q: Can businesses list one price for immediate cash payment and a higher price for credit or payment in installments?

A: This two-tiered pricing is considered a form of rabbinically prohibited ribbis. Payment for an item is due upon consummation of the sale, and therefore the price charged for immediate cash payment is viewed halachically as the "true price." Therefore, if the vendor

charges more for credit or payment in installments, he is considered as charging interest for the delay in payment (Y. D. 173:1). In the absence of a heter iska, a customer faced with two-tiered pricing should pay the lower, immediate cash price (Bris Yehuda 22:7-8). Some authorities maintain that if the credit price clearly reflects the true price, and the cash price is a discount from the true price, it is allowed (see Chochmas Adam 139:5).

It is permissible to quote a single price factoring in the credit or payment in installments if the price discrepancy is not evident. For example, one may offer an item for 12 installments of \$99, even if the item might have been sold otherwise for less, provided that the item does not have a clearly defined value. After the sale is concluded, it is also possible to offer a discount for immediate cash payment (Y.D. 173:3; Rabbi Reisman, The Laws of Ribbis, 6:5-14).

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