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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

IDENTICAL COPY I need a set of Mishnah Berurah for yeshiva next year," Benzion Lerner told his father.

"I'll be happy to pick one up on the way home from work tomorrow," Mr. Lerner said.

The following day, Mr. Lerner went to the local sefarim store and chose a set of Mishnah Berurah. "Do you accept returns?" he asked the store owner. "I want to make sure this is the edition my son wants."

"We allow refunds or exchanges within two weeks," replied the manager.

When Mr. Lerner came home he showed Benzion the set. "Is this the kind you wanted?" he asked.

"Yes," replied Benzion. "Thank you very much!" He immediately wrote his name in each volume of the set.

The following week was the Avos Ubanim (father-and-son learning) raffle. Benzion won a Mishnah Berurah, exactly the kind his father had purchased!

"Guess what!" Benzion exclaimed when he returned home. "I won an identical Mishnah Berurah in the Avos Ubanim raffle. Do you still have the receipt for the Mishnah Berurah you bought me?"

"I think so," replied his father. "Why? Do you want to return it?"

"I already wrote my name in the set you bought me," said Benzion, "but I can return the one I just won in Avos Ubanim."

"I'm not sure you can do that," said Mr. Lerner. "That's not the set I bought from the store."

"What's the difference whether I return that set or the set that I won?" asked Benzion. "It's identical and brand new!"

"There doesn't seem to be any real difference, but I'd like you to check with Rabbi Dayan before doing this," said Mr. Lerner. "He's happy to talk to young, budding talmidei chachamim!"

Benzion went to Rabbi Dayan's beis hora'ah. "My father bought me a set of Mishnah Berurah and I wrote my name in the volumes," Benzion related. "Can I return an identical set instead of it for a refund or exchange?"

"You cannot return it for a refund without alerting the storeowner," answered Rabbi Dayan, "but you might be able to return it for an exchange."

"That's an interesting psak (ruling)," noted Benzion. "Could you please explain the rationale behind it?"

"The store grants its return policy only to the original item purchased in the store," explained Rabbi Dayan. "To return another item under the guise of the original one would be geneivas daas (misrepresentation)." (C.M. 228:6)

"What difference does it make to the store-



BHI HOTLINE

CANCELED CAR RIDE I needed a ride from the Catskills to the city, so I made a reservation with someone

who advertises that he leaves the mountains at 9 a.m. and is available to take passengers for \$30 a ride. Shortly before 9 a.m., I called to cancel my reservation because I found a cheaper ride.

Q: Do I owe the driver money for cancelling my reservation at the last minute?

A: Whether you must pay the driver is subject to many conditions:

1. If your cancellation caused the driver a loss, you are liable to pay him. For example, if potential passengers contacted him and he turned them down because the available seats were reserved; and if he can't find a replacement passenger at this point, you are obligated to pay him for his loss (C.M. 333:2). Normally, when an employer cancels a worker's employment in a circumstance which causes his employee a loss, he pays him a prorated salary (k'poel batal) rather than his full salary, since the employee benefited from not having to work, which is generally half of his anticipated salary (Taz 333). In your case, however, since the driver is driving to the city in any case, he does not benefit from the fact that you cancelled, so a passenger who cancels his ride must pay the full fare (Rema 335:1).

2. If the driver does not suffer a loss, i.e., either no potential passengers inquired about a ride, or another passenger fills the seat; even if finding another passenger entails effort on the driver's part, the passenger who cancels is exempt from responsibility. But though

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STORY LINE

owner," asked Benzion, "whether I return the original sefer or an identical one?"

"When you purchased the sefer, the storeowner made a profit on the sale," explained Rabbi Dayan. "When you return the sefer for a refund, he loses his profit. Although his return policy allows a refund for the original sefer, despite the loss of profit, that does not mean he is willing to lose his profit for a different copy."

"How is an exchange different?" asked Benzion.

"Assuming that the profit margin is similar for all sefarim, it could be zeh neheneh v'zeh lo chaser (you gain and the store owner doesn't lose)," replied Rabbi Dayan. "When you exchange the set that you won for a sefer of comparable cost, the storeowner retains his profit either way. Thus, it might be permitted and not considered geneivas daas" (C.M. 363:6-7).

"Why did you say 'might' be permitted?" asked Benzion.

"It is hard to ascertain that the storeowner has no loss whatsoever when you exchange one sefer for another," replied Rabbi Dayan. "First, it's possible that the original sefer is in lower demand, and the storeowner was happy to see it sold. Second, the profit margin on the original sefer might have been higher. Third, you might have decided to purchase the other sefer in the future, so that he could have made additional profit. Moreover, some maintain that geneivas daas applies to misrepresentation even if there is no monetary ramification." (See Hilchos Mishpat 228:6.)

"So what should I do?" asked Benzion.

"You should be upfront with the storeowner and explain what happened," replied Rabbi Dayan. "He will probably allow an exchange. In rare cases, he might even be willing to grant a refund."



MONEY MATTERS

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Q: May I copy a music disc for a friend who is not a potential customer for it, as I am absolutely certain he would not buy it?

A: According to the opinion that the creator of intellectual property has ownership, many consider copying as "stealing" (gezel). This is prohibited even if the person receiving the copy is not a potential customer.

"Zeh neheneh v'zeh lo chaser" (in this case, the third party gains while the creator of the intellectual property does not lose by it) would not be a reason to allow copying, since the Shulchan Aruch (C.M. 363:6) rules that one may refuse use of his property to another even when he does not lose anything by doing so. Moreover, "zeh neheneh v'zeh lo chaser" applies to temporary use, not to taking permanent possession of another's property.

Even according to the opinion that halachah does not recognize ownership of intangible "intellectual property," it is still morally wrong to copy a disc. Please note that copying a computer program would be halachically prohibited even according to this opinion, since nowadays programs are almost always "licensed," not "sold," and the company retains its rights to them.

In many places, copying the disc would also be prohibited based on dina d'malchusa.

(See Emek Hamishpat, Zechuyos Yotzrim, Intro. ch. 3; ch. 28-29.)



BHI HOTLINE

the passenger is not obligated to pay the driver, the driver has the right to harbor resentment (ta'arumos) for the cancellation (C.M. 333:1). Even when there is no loss to the driver, some opinions maintain that it is prohibited for the rider to cancel the ride, due to his obligation to fulfill his oral commitment (mechusar amanah) (Sema 333:1).

3. The above applies when the parties did not make a kinyan. But if the parties made a kinyan, the rider is obligated to pay the full fare whether or not the driver suffers a loss due to the cancellation, unless the cancellation was due to circumstances beyond the passenger's control (ones). In the context of employment, starting to work constitutes a kinyan and binds the two parties to their agreement. Moreover, traveling to the worksite is also considered a kinyan, similar to starting to work. For that reason if a passenger cancelled his ride after the driver was on his way to pick him up, the passenger is obligated to pay the full fare (see Meishev B'Halachah 15, cf. Mishpetei Hachoshen p. 75). Even in this case, though, if the driver was able to replace the passenger who cancelled, the passenger is not obligated to pay the driver anything.

4. If the passenger cancels due to circumstances beyond his control (ones) he is exempt from any liability, even if the driver suffers a loss as a result of the cancellation (C.M. 333:1).

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