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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

'BUY COFFEE, I'LL PAY EXTRA!'

Sruli was an avid coffee drinker. His local supermarket was having an unbelievable sale on coffee, selling a case for $100, with a limit of one per customer.

Sruli turned to his neighbor, Chaim, who also shopped at that store, and asked whether he planned to buy the coffee.

"Nobody in our house drinks coffee," replied Chaim.

"When you shop," said Sruli, "I'd be happy if you bought a case of coffee. I'll give you $110 for it."

"I'm willing to buy the coffee," replied Chaim.

Chaim bought the coffee. Sruli came to pick up the case and offered him the $110.

"I'm not sure that I can take the extra $10," said Chaim.

"Why not?" asked Sruli. "I told you initially that I would pay you $110 for the coffee."

"I only laid out $100," replied Chaim. "I'm concerned that the extra $10 would represent *ribbis*."

"What *ribbis*?" asked Sruli. "You didn't lend me anything!"

"I laid out money for you," replied Chaim. "That's like a loan."

"Who's to say that you laid out money for me?" countered Sruli. "You bought the coffee from the store for $100 and I'm buying it from you for $110. Furthermore, you deserve $10 for your effort on my behalf. I'm not giving the $10 because you laid out the money."

"I perceive that I bought the coffee for you, on your behalf, not for me," replied Chaim. "Thus, I did lay out the money for you. I'm happy to do it as a *chessed* and not take money for the effort."

Sruli called Rabbi Dayan and asked:

"Is there an issue of *ribbis* when paying someone more than he paid to buy something for me?"

"Although *ribbis* applies primarily to loans," replied Rabbi Dayan, "money laid out by an agent for his sender is considered a loan. Thus, if Chaim serves as your agent to buy the coffee on your behalf, there is concern of *ribbis* in paying him extra.

"On the other hand, if Chaim does not serve as your agent, but rather bought for himself and you subsequently buy from him, there is no issue of *ribbis*, since there is no loan.

"How can we ascertain whether Chaim acts as an

DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos.

Ask your Rav or email ask@businesshalacha.com for guidance and solutions.

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לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

STOLEN SILVER

Q: A number of years ago, I stole a large sum of money along with some silver objects, which I then sold at a low price.

I have now done *teshuvah*, and I want to know how much I must pay for the items I stole – the amount they were worth when I stole them, or their current value? (The price of silver has risen dramatically since then.)

Furthermore, the victim of my theft claims that since he invests his money, I caused him a significant loss of potential investment earnings by stealing the cash. Am I responsible to compensate him for that loss?

A: In your question, you considered the value of the silver objects you stole at only two possible times: when you stole them, and now. But there's also a third time when the value of the silver is relevant in determining how much you are required to repay: the time you sold the items.

In *Halachah*, only two of these times are relevant: the time of the theft and the time when the stolen goods were no longer available for return, which, in your case, is when you sold them. The *halachah* is that you have to pay the higher of the two values.

But this applies only if you were directly responsible for the goods not being available because you sold or damaged them. If they got lost or ruined on their own, you are required to pay the amount they were worth when you stole them regardless of whether their value increased or decreased later. (*Shulchan Aruch, C.M.*354:3 with *Sma* 5 and 362:10. Cf. Shitah Mekubetzes, *B.K.* 66a, who rules that selling it is not akin to damaging it; see also *Afikei Yam* 21:11.)

There are two different approaches for the underpinning logic for this *halachah*. The *Ketzos Hachoshen* (34:3) explains that a thief becomes liable for the object he stole as soon as he removes it from the owner's property. Therefore, if it later increases in value, and it gets lost or ruined and he can no longer return it, he is obligated to pay only

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agent? Two indicative 'rules of thumb' are: Can the parties retract and refuse to follow through with the final transfer? Who would bear the loss if an *oness* ('act of G-d') occurred and the coffee was ruined while in Chaim's hands?

"If Chaim acted as an agent, he initially acquired the coffee on your behalf. Thus, neither party can retract, and any uncontrollable loss would be yours. On the other hand, if Chaim purchased for himself and resold to you, the parties could retract in certain situations, and uncontrollable loss would be his" (*C.M.* 200:12).

"This can be reflected in the terminology used. If you say, 'Buy coffee and I'll pay you $110 for it,' this indicates that Chaim is buying and selling at a profit, which does not entail any *ribbis*.

"On the other hand, saying: "Buy the coffee *for me* and I'll *pay you back*," indicates that Chaim is your agent; you would then not be allowed to pay him extra.

"Even so, if you say, 'I'll pay you an extra $10 for your effort,' you clarify that the extra is for the effort extended, not the money laid out. Provided that the extra amount is reasonable for the effort, it is permitted even if Chaim serves as your agent, since you are repaying him only the principal that he laid out for the coffee, with a separate payment for his effort.

"Alternatively, if you gave Chaim $110 ahead of time, he does not lay out anything and there is no issue of *ribbis*."

"One can question the ethics of asking others to buy a sale item limited to one per customer," concluded Rabbi Dayan, "but when the neighbor is doing a shopping there anyway, it would not seem a problem."

Verdict: It is prohibited to pay someone extra for money that he laid out for you, but you can buy the item from him, pay him explicitly for his effort, or give him money ahead of time.

MONEY MATTERS

BAR METZRA #25
(Bordering Property) Woman

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

Q: A self-supporting woman bought or sold a property. Can the *bar-metzra* claim the property?

A: *Chazal* did not grant the *bar-metzra* rights to take the property that a woman bought, because she does not have someone to toil on her behalf and it could be difficult for her to acquire an alternate property. This applies when the woman is not married or has her own money and is not serving as a front for her husband to evade the *bar-metzra's* claim (*C.M.* 175:47; *Sma* 175:83).

[B'e"H, we will discuss next week the rule of a husband and wife who bought jointly, as is common.]

Some say that *bar-metzra* rights were also not granted when someone bought from a woman, to encourage people to buy from her without concern. Here also, some limit this to a woman who does not have a husband to help her, and only post-facto, after she sold, but initially she should sell to the *bar-metzra* (*Rama* 175:47; Sma 175:87; *Pischei Choshen* 11:42[101]).

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the amount it was worth at the time he stole it. As long as it is around, however, the thief is obligated to return it as is, so if he destroyed it or sold it, he is liable for the higher value, because we view it as though the increase in value occurred in the possession of the owner, and the thief is liable as a *mazik* for having damaged it at its more valuable price.

The *Nesivos* (34:5) explains that the thief is required to pay the higher price because it is considered as though he committed two acts of theft – one when he removed the item from the owner's property, and another when he sold or destroyed it. When the thief first took the item, it was still considered the owner's even while it was in the thief's property. His second act of destroying or selling it makes it impossible for it to ever be returned to the owner, so he is responsible for the higher of the two values at the times of these two acts of theft.

In your case, you must pay your victim the value of the silver at the time of the theft, unless the value had risen before you sold it, in which case you must pay the higher value. (Although we cited *Shitah Mekubetzes's* differentiation between sale and damage of the stolen object, if the thief does not know to whom he sold it and has no way to retrieve it and return it to the owner, he is considered a *mazik* and must pay the higher value.) You are not liable for more than one of these values even if the price of silver has gone up dramatically since then and the victim cannot buy the same object for the amount you are giving him.

Regarding the victim's claim that by stealing his cash, you prevented him from investing that money, there is no absolute imperative in *Halachah* for you to compensate him for that loss, because a thief is only required to pay the amount he actually stole (also see *Shach* 292:15).

Sefer Chassidim (598) writes, however, that *latzeis yedei Shamayim* (to avoid Heavenly justice), if a thief did not return the money he stole within a short time of when he stole it, he should repay the additional amount he caused the victim to lose, considering how much he would likely have earned during that interval from investing it. (He adds that *latzeis yedei Shamayim*, he should also compensate the victim for the pain he caused him.)

The problem we face is: How do we estimate the value of the silver when you sold it so that we can determine how much you owe the victim?

We will discuss this question in next week's column *iy"H*.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com