



## WHAT'S THE LAW?™ – ISSUE 138: SOUR MILK

Gliding on her easy chair in her air conditioned salon overlooking Jerusalem's biblical zoo, Emily Fried reminisced to her grandchildren about her scores of summers spent in the Borscht Belt. Her animated legends of dessert sales, one public phone for fifty seven families, three washing machines for 400 children ¼ mile from the closest hamper and happy go lucky primitive wholesome lifestyle kept her brood spellbound for hours.

Emily vividly recalled some sensational shopping scenarios; surprisingly contemporary experiences.

Thursday night lines at *Shop n Kosher Market* were no sneezing matter. After waiting on line for an hour, the cashier began ringing Emily's bill when she realized that she forgot to pick up the family magazine from the front of the store. "Please do me a favor and bill me for the magazine. I'll pick it up on the way out."

Pushing her towering shopping cart, Emily reached the magazine stand...but none were left. Trying to

push her ways through the crowd, Emily hollered to the cashier and asked for a refund. "I'm sorry Ma'am but you've got to take this up with the manager. She's the one who can issue you store credit."

The thought of going upstairs and working through all the red tape to get her \$3.00 refund or credit was less than appealing to her. "That's it, I'm just going over to the shelves and taking three dollars worth of chocolate bars," she told herself.

Emily returned to her bungalow, unloaded her groceries, poured herself a bowl of cornflakes and milk.

"Aw! this milk is sour!" Emily ran back to the store, saw the line and reckoned, "They owe me a container of milk. I'll simply pull a new one of the shelf instead of standing on line for another hour."

### What's the Law?

Please email us with your comments, questions, and answers at [weekly@projectfellow.org](mailto:weekly@projectfellow.org). Read next week's issue for the answer!

### LAST WEEK'S CASE ♦ CASE 251 ♦ DOUBTFUL DIGITAL DEFECTS

Renee Berger purchased a 12.0-Megapixel Digital Camera on Cyber Monday 2012, (November 26, 2012) on her Visa Card. She received the camera on Dec. 3rd.

On December 6<sup>th</sup>, she submitted the following complaint to the manufacturer.

"My camera worked well the first time I turned it on. The second time I turned it on, the lens extended, the icons appeared on the screen, but the screen itself was black. I went to take a photograph to see what the

issue was, but the photograph came out black as well. I am demanding that you accept my return and refund my purchase."

Renee received the following response.

"No product leaves our factory without passing due inspection. We assume the malfunction was due to a mishandling on your end. As such we will not honor your request."

### What's the Law?



## WHAT'S THE LAW?™ – ISSUE 138: SOUR MILK

**The Answer:**

**The onus of proof lies upon Renee unless local business practices determine otherwise.**

### Detailed Explanation

**Doubtful Digital Defects** invokes the following laws

Renee's claim and the manufacturer's counter claim raises an uncertainty appertaining to the condition of an article.

**Did the camera malfunction due to an inherent defect or due to the consumer's mishandling?**

The issue on the table is:

**Q, On whom lies the onus of proof? Does it matter if Renee paid for the product or purchased it on credit?**

A. Halacha provides two approaches contingent on the degree of rational conviction of the plaintiffs claim.

1. When the plaintiff is rationally convinced of his/her claim, we apply the following theorem:

*"The onus of proof lies upon the party interested in altering the fund's status quo"*

[Bava Kama 46, Shev Shamtza 2].

Consequently, if the consumer already paid for the merchandise, the onus of proof would lie upon the consumer. If the consumer had yet to pay for the merchandise, the onus of proof would lie upon the merchant.

2. When the plaintiff cannot propose a rational claim with conviction, we apply an alternative theorem:

*"The onus of proof lies upon the party within who's territory the uncertainty appertaining to the article's condition unexpectedly surfaced"* [Choshen Mishpat 224, 232:11].

Our scenario meets both interpretations of this law [Rif and Rosh]. The camera is both in Renee's physical domain and legal authority.

Renee would thus have to prove that the defect occurred prior to the sale whereby invalidating the sale irrespective of whether or not she paid for the article.

Unless otherwise stipulated, transaction terms are subject to local accepted custom.

3. Unless otherwise stipulated, transaction terms are subject to local accepted custom [Choshen Mishpat 232:6].

### Application

Even assuming Renee was absolutely certain that she did not mishandle the article, the burden of proof lies upon her because she already paid for the camera.

If Renee could not have proposed a rational claim with conviction, the onus of proof would lie upon Renee even if she did not pay for the camera as of yet, as the unexpected uncertainty surfaced when the camera was both in Renee's legal and physical domain, the onus of proof lies upon Renee.

If however, local business practices favor the consumer, the merchant must comply accordingly. ♦