

If Someone Takes His Friend's Item Without Consent and Pays for It, Is the Sale Valid?

Rav Yosef Dovid Josilowsky

**Question:** A fellow walks into someone's house, picks up an item that he wants, puts money on the table, and says, "I'm buying this item whether you like it or not." Is this a valid sale?

**Answer:** We said in the last segment that a forced sale is valid, and the Shulchan Aruch rules that this is true even if the seller does not say that he consents to the sale.

There is a difficulty with this ruling in that it seems to contradict a Gemara in Bava Kama that defines the difference between a *gazlan* and a *chamsan* in that a *gazlan* steals without paying, while a *chamsan* does pay. The Gemara then asks: If someone gives money, people do not consider this to be a sin at all. Why is he classified as a *chamsan*? The Gemara responds that we are referring to a case where the seller never consented to the sale. This Gemara seems to be saying that a forced sale is only valid if the seller says that he consents. If so, how could the Shulchan Aruch rule against an explicit Gemara?

The Nesivos Hamishpat explains that the Gemara is not talking about a sale that was forced by threatening to harm the seller. There, his expression of consent is not needed because we assume that he does agree to sell the item in order to save his life. This Gemara, however, is speaking about a case similar to the one in question, where someone simply took his friend's item against his will and paid for it. In this case, where the situation does not lead to the presumption that the seller probably consented to the sale, the Gemara says that his explicit consent is needed to validate the sale. Accordingly, we cannot say that the case in question is a valid sale unless the owner actually expresses consent to sell the item.