

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

## Under the Hood

Noam had been driving his Toyota Camry for ten years; he now decided it was time to sell. The car was in fair condition overall, but its age was beginning to show. There was a slow leak in the water tank, the padding on one of the seats was wearing through, the car had been in two accidents and the trunk door had been replaced, a seat belt was missing, there were assorted dents and scratches on the outside, the tires were showing signs of wear and were going to have to be replaced soon, and the air conditioning was not as powerful as it used to be. Quite a list when you put it all on paper, but for a ten-year-old car, it was certainly in decent shape. To the best of his knowledge, the motor worked fine.

One issue that troubled Noam was the issue of disclosure. He wanted to be honest, emulating stories he had heard about

the Chofetz Chaim, who would disclose any possible defect in his merchandise. He began to feel, though, that he was scaring away potential buyers by pointing out more than necessary. After all, the car couldn't be expected to be in the same pristine condition as a new one.

He spoke to a friend, a used-car dealer, who told him: "Don't disclose anything that you can get away with. Otherwise, you'll never sell!"

This sounded wrong to Noam; he knew there were issues with the car and couldn't ignore them in good faith.

"Where is the balance in this issue?" Noam asked himself.

"How about discussing the issue with Rabbi Dayan?" his wife suggested. "Perhaps he can guide you."

"That's a great idea," replied Noam.

Noam called Rabbi Dayan. "I'm selling my used car, which has certain problems," said Noam. "What issues am I required to disclose of my own initiative, and what issues can I be quiet about?"

"A seller is not allowed to cheat the buyer or mislead him," answered Rabbi Dayan. "If the merchandise is defective, the seller is required to disclose this to the buyer (C.M. 228:6). The definition of defective is dependent on time and place: whatever is considered by the local people as defective is treated as such (C.M. 232:6)."

"How do I know what's considered defective for a used car?" asked Noam. "I clearly would not have to point out every scratch and dent."

"The seller is required to disclose things to the buyer of his own initiative in any one of four situations," answered Rabbi Dayan.

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## Donor's Discount

I am in charge of purchasing sefarim for my yeshiva. I solicit funds from donors to cover these expenses. Someone asked me to purchase a Shas for the yeshiva. The bookstore gives the yeshiva a 20% discount since we purchase many sefarim.

**Q: Am I permitted to charge the donor the regular price for the Shas and keep the difference to purchase other sefarim?**

**A:** We must begin with an introduction concerning the halachos of shelichus (agency).

If Reuven sends Shimon to purchase ten apples for \$10 and the apple merchant gives Shimon 11 apples, the additional apple is split between Reuven and Shimon (C.M. 183:6).

One explanation for this is that it is unclear whether the merchant intended to give the additional apple to the one paying for the apples (Reuven) or to the agent (Shimon). If the merchant said that he specifically wants the agent to receive the additional apple, it would belong exclusively to the agent (Rema

ibid.). Alternatively, other Rishonim explain that since Shimon would not receive anything without Reuven's money, even if the merchant wants Shimon to have the apple, it must be shared with Reuven (Shach and Taz ibid.).

There is also a disagreement regarding the halacha when the merchant gives a discount rather than an extra apple, charging only \$9 for ten apples. One suggestion is that granting a discount is not comparable to giving something extra, since the agent never re-

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“First are deficiencies that render the item not fit for proper use, e.g. a serious problem with the engine, chassis, or other significant mechanical component.”

“That seems obvious,” said Noam.

“Second are items that a buyer would be particular about and has no reason to expect in such an item,” continued Rabbi Dayan. “For example, one would have to disclose a slow water leak in a relatively new car; in an old car, not so. A missing seat belt would have to be mentioned, regardless.

“The third situation is where the aggregate of the deficiencies reduce the value of the item 17% below the price asked,” added Rabbi Dayan. “That would be a violation of onaah, mispricing the item, according to many authorities - even if each individual deficiency is not of great consequence (C.M. 227:1-2, 24).”

“What is the fourth situation?”

asked Noam.

“Whatever is required by law, which becomes a common commercial practice, the minhag hamedina (C.M. 201:1-2; 232:19; 331:2),” replied Rabbi Dayan. “Thus, if the law requires disclosing any accidents, one is required to do so.”

“What, then, do I not need to disclose?” asked Noam.

“Deficiencies that do not affect the use significantly; are reasonable for a car this age; that do not reduce its value substantially; and those not required by law to disclose - such as the tires and weakened a/c - you do not need to disclose of your own initiative. However, if you are asked about any of them, you may not lie or deny the problem. You may also stipulate that the car is being sold ‘as is,’ and tell the buyer to have it checked by his mechanic. Then you would have to reveal only deficiencies that a mechanic cannot identify (see Maharsham 3:128).”

ceived something that he could claim was his. Any money that the agent does not spend belongs to the principal (Pischei Choshen Pikadon 11:[29] citing Maharya HaLevi 2:123).

Another perspective is that the merchant sold nine apples for \$9; the tenth apple is the extra given by the merchant that the principal and agent would share (Minchas Shai 18, cited by Divrei Geonim, 98:11 and Minchas Tzvi, Poalim 8:2).

At first glance, it seems that your question is subject to the above dispute. You acted as the agent for the donor to purchase a Shas and the bookstore gives you, specifically, a discount. Accordingly, one opinion requires you to pass the entire discount to the donor; the second approach permits you to keep half of the discount for the yeshiva.

This approach, however, is not correct, since in your case you are not purchasing any se-

farim for the donor that would make you be considered his agent. The agreement is that the donor intends to provide a Shas for the yeshiva, whatever the cost. That said, you are not allowed to keep any money for yourself, even though the bookstore gives the discount explicitly for you. However, if the donor pledged to pay the cost of a Shas at the going rate, you can go to the store and purchase a Shas for yourself at the discounted rate that they give you and then sell that Shas to the yeshiva at the standard price.

Furthermore, this applies only when the donor wanted specifically to purchase a Shas, but if his intent was to buy the zechus (merit) of purchasing a Shas for the yeshiva, it is understood that there is a standard rate that is charged for that zechus and whatever funds are not necessary to purchase a Shas are deposited to the sefarim fund.

*For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM*

**Damages #34**

**MONEY MATTERS**

**Q: I noticed moisture on my ceiling, which increased to drops. The diagnosis was a leak in the plumbing of the apartment above mine. Who is responsible to fix the plumbing? What about the damage that already occurred?**

**A:** It is certainly prohibited to pour water that falls directly onto another’s property in a damaging manner. One is also liable for

such damage. If the water is minimal and gets completely absorbed in the ceiling at first, though, the person is not required to prevent it (C.M. 155:4).

However, in the case of a drainage hole that overflows and floods a neighboring basement, the Rosh required the person to move his drainage hole, because the damage is great and the damaged party has no easy way to protect himself (C.M. 155:20). On

this basis, the owner of the upper apartment is required to fix his leaky plumbing.

Regarding damage that already occurred, if the upstairs owner fixed the leaky plumbing promptly once the problem was diagnosed, he is exempt. However, if he tarried with the repair and the damage spread, he is liable (see Emek Hamishpat, Hilchos Shecheinim #27-28; Pischei Choshen, Nezikin 13:5[12-14]).

**PLEASE BE AWARE**

Using your friend’s credit card for purchases or taking advantage of his special finance offers can involve serious ribbis (interest) issues.

*For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at: phone: 718-233-3845 x41 · email: ask@businesshalacha.com*

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