



Business weekly

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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

public return

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Abie Rubin drove home in his battered van, which said in faded paint, "Abie's Appliance Repair." He had been in the business for 30 years, but was finding less and less work. "People are not bothering to repair things anymore," he lamented to his wife. "When something breaks, they simply buy a new one!"

As his financial situation became desperate, Abie turned to petty theft. While doing repair jobs in people's homes, he would snatch "supplemental income," like a stray \$20 bill, a package of food, or a small electronic appliance that he could stuff in his pocket. Abie concealed from his wife what he was doing. Whenever she would ask, "Where did you get this from?" he would answer evasively, "I got it from someone I know." When a Business Halacha shiur began in his community, Abie sheepishly avoided it.

"It's a great shiur," his friend prodded him. "Why don't you come?"

After months of excuses, Abie finally confided to his friend what he had been doing. "I'm determined to turn over a new leaf, though," he said. "I will stop stealing immediately, but what do I do about the past?"

"The first step in repentance from theft is returning the theft," said his friend.

"But how can I do that?" Abie wondered. "I don't recall how much I stole from whom!"

"I guess you can estimate how much you stole," replied his friend. "But I don't know whom you should give the money to. Speak with Rabbi Dayan about this."

"I'm ashamed to approach Rabbi Dayan about this," said Abie.

"Of course it's not pleasant," said his friend. "But part of the Rabbi's responsibility is to direct people who are trying to improve."

"I guess you're right," said Abie with a sigh. "I'll meet with him."

Abie met with Rabbi Dayan privately and related the unfortunate circumstances of the past. "I would like to return the money," Abie said, "but don't know to whom. It could have been any of my clients, and any amount."

"First, you should know that the gates of repentance are never closed," said the rabbi. "Even for someone who stole from many people?" remarked Abie.

"Yes!" replied Rabbi Dayan. "In fact, Chazal instituted various enactments to make it easier for people to repent."

"Really?!" exclaimed Abie. "Like what?"

"The Gemara (B.K. 94b) relates there was a thief who wanted to repent. His wife pointed out that he would be left with nothing, not even his belt, which dissuaded him from

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FROM OUR HOTLINE

Submitted by
D. C.

not clear-cut

In issue #34 of *Business Weekly*, there was a question from a woman who purchased a sheitel at a sale. After having it cut by a sheitel macher, she received a call from the seller that the wig, which should have been sold at full price, was erroneously sold as a sale item. The article dealt with the issue of whether the customer is obligated to pay the full value of the sheitel. Your ruling was

that this was a mistaken transaction (mekach taus) and the sheitel can be returned for a refund.

Q: I have a follow-up question: is the seller obligated to reimburse the money that the customer spent on the cut?

A: Thank you so much for the feedback.

That article generated a stronger response than any other article we have published, and most of the responses related to the question you have raised.

Shulchan Aruch (232:21) discusses the case of one who sold damaged merchandise to someone who transported it to another location. After the goods were transported, it was discovered that the merchandise was

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STORYLINE CONTINUED

repenting. Rebbe then instituted that when a thief comes to return what he stole, people should refrain from accepting payment and forgo what he owes them, unless the thief insists on returning the money."

"That sounds wild!" said Abie. "I never heard of such a thing." Rabbi Dayan nodded. "Rabbeinu Tam maintains that Rebbe only instituted this leniency for his generation, but other poskim and the Shulchan Aruch cite this halacha. There are some stipulations, though. First: the thief wants to repent and comes to return the money of his own volition. Second: the stolen item, or its substitute, no longer exists and the thief must pay out of pocket. Third: the thief stole on a regular basis and would be dissuaded from repentance if he had to return it all (C.M. 366:1)." "Most of the money was already spent on food," said Abie, "but there are some stolen items that I still have. I'm also happy to say that I only stole occasionally and don't fulfill the third criterion." "Then you need to return the money," said Rabbi Dayan.

"Some maintain that Rebbe's leniency only applies when the victim is willing to forgo repayment, but not when you don't know from whom you stole (Pischei Teshuva 366:2)."

"What should I do with that money, though?" asked Abie. "Should I give it to tzedakah?"

"Tzedakah is not a way of returning theft," replied Rabbi Dayan. "The Gemara teaches that unscrupulous tax collectors who stole, but do not know from whom, should use the money for public works, i.e. digging water wells. Rashi explains that by using the money for public works, one will benefit the people from whom he stole (C.M. 366:2)."

"I don't think the Water Authority accepts donations," said Abie.

"Rav Moshe Feinstein zt"l (Igros Moshe C.M. 1:88) suggests giving the money for upkeep of the local mikveh," replied Rabbi Dayan. "You could also give it to local shuls for electricity and heating or to buy siddurim, which also benefit the public tangibly."

"I'll do that!" said Abie. "Thanks for the encouraging guidance."

FROM OUR HOTLINE CONTINUED

damaged. Shulchan Aruch rules that if the merchant was aware of the damage when he sold the goods, he is obligated to pay. He is exempt from liability if he was unaware of the damage at the time of the sale (see Mishpat Shalom 232:20 and Imrei Binah Hilchos Dayanim 21, who quote opinions that even if the seller was aware of the defect, he is exempt from liability).

The rationale behind these rulings is that the expenses incurred by the customer transporting the merchandise are categorized as garmi – indirect damage. If one intentionally causes damage that is categorized as garmi, he is liable, but if one unintentionally caused damage categorized as garmi, he is not liable.

Accordingly, if the seller knew

she was selling a sheitel that was actually not on sale, she would be liable to reimburse the customer for the expense of cutting the sheitel. If, however, the seller did not realize she was selling the wrong wig, she would not be liable to reimburse the customer for the expense of cutting it.

An additional factor must be considered. Shulchan Aruch (232:14) rules that if someone purchased merchandise and improved it – thereby increasing its value – before the defect was discovered, the customer must be reimbursed for increasing the value of the merchandise (see Sema 32 for how this is calculated). Accordingly, if the customer increased the value of the sheitel by having it cut, she receives reimbursement for increasing the value of the sheitel.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businessshalacha.com

MONEY MATTERS

business competition week #5

Q: Am I expected to patronize the local Jewish grocery store if the Pathmark Superstore is cheaper or more convenient?

A: Dayan Y. Y. Weiss zt"l addresses this question in Minchas Yitzchak (III:129), discussing the opposing opinions of the Rama and other Acharonim mentioned last week. He leans towards differentiating between a small price difference, in which case you

should patronize the Jewish store, and a large price difference, in which case you are not required to suffer a loss. [This is also the understanding of the Chofetz Chaim (Ahavas Chesed 5:6-7) in the opinion of the Rama.]

However, Minchas Yitzchak concludes that if the small Jewish storeowner will be driven out of business and lose his livelihood, there is a greater need to support him if the

customer can afford it, even if there is a significant price difference.

Thus, according to the Maharsham and other Acharonim mentioned last week, there is no requirement to patronize the Jewish business if it's more expensive.

However, it is meritorious to follow this middle position and patronize the Jewish business if it costs only slightly more, and certainly if it is only an issue of convenience.

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