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## STORYLINE

### mechanical failure

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"Super Summer Sale!" boasted the sign flapping above Tony's used-car dealership. Jacob browsed the cars, finally choosing a five-year-old Buick with relatively low mileage and an attractive price. "What's the story with the engine?" Jacob asked Tony Rodriguez, the dealer. "We check all our cars before offering them for sale," answered Tony, "but you're welcome to take it to your mechanic for inspection." Jacob drove the car over to Mark Hyman, his mechanic. "Good morning," Mark greeted him. "You got a new car?" "Hopefully," Jacob answered. "I just saw this at Tony's. I won't buy it, though, without an inspection." "I'll give the car a thorough check and take it for a spin," said Mark. "We charge \$120 for

a pre-purchase inspection, which includes a printed report. Come back at 4:00 PM." When Jacob returned, Mark told him: "I ran all the tests. There are one or two hoses that needed tightening, but overall, the car is in fine mechanical condition." He handed Jacob the printed report. Jacob returned to Tony's. They finalized the deal, filled out the necessary papers, and Jacob took the car home. During the subsequent week, Jacob noticed that after about thirty minutes of driving, the needle of the temperature gauge would begin climbing. On a long weekend trip to the mountains, the warning light lit up on the way there and back. Jacob took the car back to Mark. "I'm worried about the car," he said. "It's fine for short driving, but whenever it's driven for a long

time, it begins to overheat." "I'll take another look at it," said Mark. Mark called back later that day. "It seems that there is a fissure in the radiator that got overlooked in the inspection," he said. "It has to be replaced, or you risk burning the whole engine. Replacing the radiator costs \$450." "Could this fissure have happened after the inspection?" Jacob asked. "Unlikely," replied Mark. "We checked the radiator, but somehow missed the fissure." "Had I known this, I wouldn't have bought the car," sighed Jacob. "Well, there's nothing to do now," said Mark. "I doubt that Tony will take it back." "Then it doesn't seem fair that I should have to pay you for the repair," said Jacob. "What does one thing have to do with the other?" asked Mark.

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## FROM THE BHI HOTLINE

Submitted by  
T. W.

### paying a pledge

Reuven, one of the respected elders of our community, was honored with an aliyah at his grandson's bar mitzvah. In appreciation of the event, he pledged to give the shul \$100,000. A few days later, to the shock of his family and friends, he suddenly passed away. The board of the shul would like his heirs to follow through on their father's pledge, but his children want to be certain that they are indeed obligated to give the shul \$100,000 from their father's estate.

**Q: Are the heirs obligated to pay their father's pledge?**

**A:** Similar to a proprietary act (kinyan) that hands over ownership in a transaction between ordinary people, a pledge (neder) to the Divine (hekdesh) also affects a transfer to hekdesh. However, Poskim note (Y.D. 258:7) that this principle is limited to pledges to the Bais HaMikdash. Pledges to tzedaka, e.g. monetary donations to charity,

require the regular parameters of kinyanim. Consequently, a pledge to a charity is just like any other vow that obligates the individual to fulfill his vow, but it does not grant ownership of the pledged amount to the charity. Along those lines, Rema (C. M. 212:7) rules that one who pledges money to the poor must honor his pledge, as it is considered a vow. If, however, he dies before paying the money he pledged, his heirs are not obli-

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“You caused this loss,” said Jacob. “I relied on your inspection when I bought the car.”

“I didn’t make you buy the car, nor did I take responsibility for the purchase,” argued Mark. “Let’s ask Rabbi Dayan, though.”

Rabbi Dayan said, “In truth, since the car was defective in a manner atypical for its age, Tony should take the car back (C. M. 332:6,11). However, if this is not possible, Mark bears responsibility for the loss he caused through his erroneous recommendation.” “What is the basis for this?” asked Mark.

“The Gemara (B. K. 99b) addresses the case of someone who was offered a questionable coin as payment, which he showed to a professional banker for approval,” explained Rabbi Dayan. “If the banker approved the coin, but it later turned out invalid, he is responsible for the value of the coin. This is because the person accepted the invalid coin based on the banker’s recommendation, so he is considered as having caused damage (garmi),” explained Rabbi Dayan. “The degree of responsibility depends on whether the professional was paid for his review

and on his expertise.”

“How’s that?” asked Jacob.

“According to most opinions, if the professional was paid for his evaluation, he is responsible for the oversight regardless of his expertise,” said Rabbi Dayan. “There is an opinion, though, that if he is a highly experienced expert, he is exempt even if he was paid for his evaluation (C.M. 306:6; Shach 306:11). If the professional was asked to evaluate without pay, he is only responsible if he is not fully accredited. However, if he is fully accredited, the mistake is considered an oness, for which he is exempt (C.M. 306:6). It is nonetheless meritorious for a pious person to pay, beyond the letter of the law (Pischei Choshen, Sechirus 13:26).”

“This halacha seems to discourage a person from ever offering advice to a friend,” Mark commented.

“The professional is only responsible if it was made very clear that his advice was being relied upon to finalize the decision,” said Rabbi Dayan. “Certainly, if the professional specified that he should not be relied upon, he is exempt (Shach, end of 306:12).”

gated to fulfill that pledge. Furthermore, Rema (C. M. 252:2) rules that in this case, not only are the heirs not obligated to fulfill their father’s pledge, but even the mitzvah to fulfill the wishes of the deceased (mitzvah l’kayem divrei ha’mes) does not apply.

However, other Poskim maintain that although a pledge does not transfer ownership of money, it generates a shibud – a lien – on the father’s property in the same manner as a loan. Therefore, just like children must repay their father’s documented loans, they must also fulfill their father’s pledge (see Chasam Sofer C. M. 114).

Also, according to many Poskim, there is a difference between a promise to donate money and a promise to donate an object. In the event

that the father designated a particular item to be given to tzedaka, rather than a general pledge to donate money, the children would be obligated to give that item to the designated recipient (Nesivos 250:4).

For all practical purposes, the Shul board in our case cannot require the heirs to fulfill their father’s pledge, as they may uphold the position that exempts them from that obligation (kim li).

However, based on Sefer Chassidim (170), it is advisable that they fulfill their father’s pledge. This fulfillment would generate merit and atonement for their father. He writes that if children fulfill the instructions of their father, it is considered as though the father himself performed that act.

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# MONEY MATTERS

## laws of interest week #3

**Q: May I buy bonds issued by Jewish companies or the State of Israel?**

**A:** A company that issues a bond is essentially accepting a loan from the buyer. The interest they pay would thus seem a violation of ribbis. However, R’ Moshe Feinstein zt”l ruled that there is no violation of ribbis when lending to a corporation, even if Jewish-owned, because the Jewish owners do not carry a personal lien

and the liability is limited to the corporate assets (Igros Moshe Y.D. II: 63). Other authorities dispute this, since they view the corporation as a partnership of the various Jewish owners or shareholders, who are considered the borrowers. Many acknowledge, though, that the prohibition of taking interest from a corporation is rabbinic (Minchas Yitzchak 1:3, 4:16). Some are also lenient regarding bonds of the Israeli government, which does not even have

defined owners (Har Zvi Y.D. 126). Therefore, while it is possible to rely on the leniency of R’ Feinstein, it is preferable to subject the bond to a heter iska. The government of the State of Israel subjects its bonds to a heter iska. While some authorities question the widespread usage of heter iska, one can certainly rely on it in conjunction with the other leniencies mentioned (Bris Yehuda 7:n66; The Laws of Ribbis, R. Reisman, 5:26-27 & 12:37).

### 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:*  
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