



BUSINESS WEEKLY

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WERDIGER EDITION

Issue #282 | Chayei Sarah | Friday, November 6, 2015 | 24 Cheshvan 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

ACCIDENT David was visiting his friend Moshe. "I need to run over to the pharmacy to pick up something," he said. "I wish I had my car here!"

"You can take my car," said Moshe. "I'd drive you, but I have to watch the kids."

"Are you sure?" asked David.

"Yes," replied Moshe. "Just please be careful." He handed David the keys.

David drove carefully to the pharmacy. As he parked, though, he neglected to see a small pole fixed in the ground and severely cracked the front fender.

When David returned, he apologized to Moshe and offered to pay for the replacement of the fender.

"I'll have to take the car to the body shop for an estimate but don't have time to take care of it this week," said David. "Meanwhile, I can still drive with it." He taped the fender and put some screws in to strengthen it.

A few days later, Moshe was involved in a much more serious accident, which affected the whole front of the car. Baruch Hashem no one was injured, but the front fender, headlights and hood all had to be replaced.

While at the body shop, Moshe checked what it would have cost to replace the cracked fender. He asked David for that sum. "I wonder whether I still have to pay," David said hesitantly. "What's the point of paying to replace the cracked fender when it was completely ruined anyway in the second accident?"

"The second accident is irrelevant," countered Moshe. "You damaged my car and owe me for the damage. What happened later is of no consequence!"

The two came to Rabbi Dayan to clarify the issue.

"A first glance, this might depend on the nature of damage payments," replied Rabbi Dayan. "The Shach (C.M. 387:1; 95:18) maintains that the primary obligation is to repair the item and restore it to its former status. One could argue that, in this case, there is no longer any need to replace the fender. The Chazon Ish (B.K. 6:3), however, maintains that the damage immediately becomes a monetary obligation. Thus, he writes that whether the owner chooses not to repair the damaged item, or the repair becomes pointless, or the cost of

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BHI HOTLINE

STOLEN PARTS I was informed about a

mechanic whose prices are very cheap. I am concerned that his charges are low because he uses stolen parts to make the repairs.

Q: Do I have to refrain from hiring him to repair my car?

A: It is forbidden to purchase stolen merchandise from a thief. This transgression is very severe since it encourages the thief to steal, and one who does so violates the prohibition of placing a stumbling block before the blind — lifnei iver (C.M. 356:1, 369:1). Although the thief could always travel to a place where they do not recognize him as a thief, the reasoning is that if he does not have local customers he will not continue to steal.

The maxim used by the Gemara (Kiddushin 56b) is that it is not the mouse that steals, it is the hole in which he hides the stolen food that is at fault (Rashi explains that were it not for the available hole to hide the stolen food, the mouse would not steal the food in the first place; Sma 369:1).

If one realizes that he has purchased stolen property, he is forbidden to benefit from it, even after the owner despaired of recovering it (C.M. 369:2). There are even authorities who maintain that one who purchases stolen property from the thief is himself a thief, since his purchase removes the stolen property permanently from the owner's domain (shinuy reshut), and the owner's only recourse is to be reimbursed rather than demand the return of his stolen property (Nesivos 34:5, cf. Ketzos).

It also does not matter if the thief is a gentile who stole from gentiles. The prohibition of theft is one of the Sheva Mitzvos Bnei Noach, and thus purchasing from a gentile thief also



STORY LINE

repair changes, the monetary obligation remains, based on what it was at the time of the damage.

"However, according to the Shach as well, David has to pay here," said Rabbi Dayan. "The Shach agrees that where there is a loss in monetary value and it is not possible to repair the damage, there is a monetary obligation. Thus, since the cracked fender is already replaced, the Shach would agree that a monetary obligation exists."

"Are there any examples of this?" asked David.

"Ulam Hamishpat (C.M. 387) writes that if a person damaged another's property by digging holes in it and the owner relinquished ownership of the courtyard (hefker)," answered Rabbi Dayan, "the one who damaged cannot discharge his obligation by filling the holes, even according to the Shach, but would have to pay the former owner the value of the damage."

"A somewhat similar halachah exists regarding a person who injured another," continued Rabbi Dayan. "The halachah is that the medical expenses, ripuy, are evaluated and the one who was injured is paid that amount. If the injured person subsequently died, that amount is paid to the inheritors, even though it is now no longer needed for medical care" (Tosefta B.K. 9:2, Rashi, Sanhedrin 78b s.v. nosein).

"Thus, even though Moshe had another accident and the damaged fender was replaced," concluded Rabbi Dayan, "David is not exempt from paying for the damage he did."



MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

PARTNERSHIP # 4

Gentile Partner

Q: Is there a problem forming a partnership with a gentile?

A: The Gemara (Sanhedrin 63b) states that one may not form a partnership with a gentile lest the gentile be required to take an oath and will swear in the name of his god; and it is prohibited to cause invoking the name of idolatry. Nonetheless, if one did form a partnership and the gentile was required to swear, it is permissible to accept the oath from him; it is not necessary to forfeit the claim (C.M. 176:51; O.C. 156:1).

Some authorities permit forming a partnership with gentiles nowadays, since they no longer swear in the name of idols, but rather their primary intention is to the Creator, even though they include others with Him (Rema, O.C. 156:1).



BHI HOTLINE

violates the prohibition of lifnei iver (Shulchan Aruch Harav, Geneivah 23; see Imrei Yaakov 9, 23. Kesef Hakodashim 358 adopts a lenient position; see also Shitah Mikubetzes, B.K. 113a, d.h. "v'lo").

It is also forbidden to purchase objects that are presumed stolen; therefore one may not purchase wool or milk from a shepherd unless it is evident that the shepherd is authorized to sell these items (C.M. 358:1). A shepherd who does not own any animals of his own may thus be suspected of stealing the owner's wool or milk. However, it is permitted to purchase objects from thieves who, in addition to stolen property, have possessions that were legally acquired; one need not be concerned that one is purchasing stolen objects (Sema 358:2). Others contend that when most of a thief's possessions were acquired by means of theft, one is prohibited from purchasing from him potentially stolen objects (Taz 369:3). If the thief physically altered the stolen object, even if the alteration could be reversed — which some authorities maintain does not constitute a kinyan for the thief — nevertheless, if one is not certain that the object was stolen, it is permitted to purchase it. Thus, for example, it is permitted to purchase a pillow filled with wool bought from a shepherd (ibid. 358:12).

Concerning your case, if you do not know that this repair part was stolen, and the mechanic has car parts that he acquired legally, you are permitted to purchase it, especially since it is unlikely that one would run a garage with only stolen parts. On the other hand, it is prohibited to purchase a bike from someone who sells used bikes at a significant discount when it is very likely the bike or its parts was stolen, even if it was stolen from gentiles.

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