

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #650 | Vayakheil Pikudei | Friday, Mar 17, 2023 | 24 Adar 5783

לע"נ הרב שלמה אלימלך בן ישראל יצחק



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

## NEW MOONS AND MONEY

Rabbi Dayan was learning *Parashas Hashavua* with his *talmidim*.

"*Parashas Hachodesh* opens with the first *mitzvah* that *Am Yisrael* was instructed to perform as a nation, that of *Kiddush Hachodesh*," he said. "*Beis Din* would declare Rosh Chodesh when the new crescent was sighted."

"We have a set calendar, though," said Reuven. "I don't always see the new crescent on Rosh Chodesh!"

"In the past, there wasn't a set calendar," explained Rabbi Dayan "Witnesses would testify about the new crescent before *Beis Din Hagadol*, who would declare Rosh Chodesh based on their testimony. This continued for almost 300 years after the destruction of the Second *Beis Hamikdash*, until a set calendar was instituted by Hillel II, about 359 C.E."

"Why would people bother to go and testify?" asked Aharon. "Some would have to travel far by foot or animal. It's not like they could hop into a car..."

"It was a great privilege to testify about the new moon!" replied Rabbi Dayan. "The whole Jewish nation set their calendars and holidays based on the witnesses' words. It was even permissible to come on Shabbos from afar to testify. To encourage people to come and testify, *Beis Din* would provide lavish meals while the witnesses waited" (*R.H.* 23b).

"Sounds like fun!" Simcha commented.

"Testimony is a serious matter," replied Rabbi Dayan. "The testimony of the witnesses established the Jewish calendar, could even lead to lashes or capital punishment in the past, and still determines monetary liability!"

"Then testifying must be scary," said Yehuda.

"Obviously, I haven't observed testimony about the new moon," said Rabbi Dayan, "but I have accepted witnesses in monetary cases. It requires responsibility, but is not scary. Furthermore, in monetary cases," Rabbi Dayan added, "a valid witness who knows testimony and is requested by the litigant to testify is obligated to do so" (*C.M.* 28:1).

"Tell us," said Yehoshua: "**How is testimony accepted in *beis din*? Is it similar to accepting testimony about the new moon?**"

"The *Mishnah* (*R.H.* 23b) describes the procedure for accepting testimony about the new moon. A parallel *Mishnah* (*Sanhedrin* 29a) describes the procedure for accepting monetary testimony. The basic procedure in both is similar.

"However, the *Mishnah* in *Sanhedrin* requires that the witness be warned beforehand about the

## DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email  
[ask@businesshalacha.com](mailto:ask@businesshalacha.com)  
for guidance and solutions.



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## BUYING STOLEN GOODS

**Q:** Am I allowed to buy something that I know is stolen? And what if I don't know for a fact that it's stolen, but I suspect that it is because the price is too low for it not to be? For instance, may I use a mechanic if there are rumors that he uses parts from stolen vehicles?

**A:** A person is not allowed to buy stolen goods from a thief (*Shulchan Aruch, C.M.* 356:1). Doing so is in direct violation of *lifnei iveir lo sitein michshol* (*ibid.* 369:1), because he is enabling the thief to do an *aveirah*.

Furthermore, buying stolen goods is considered a severe prohibition, because it is aiding and abetting a thief, who'd be tempted to steal more when he sees that he has a market for the loot. The *Gemara* (*Kiddushin* 56b) illustrates this by stating that the mouse doesn't steal, the hole does. In other words, if the mouse wouldn't have a place to store the food he steals, he wouldn't have motivation to steal (*Sma* 356:1). Even if the thief could theoretically take his merchandise elsewhere, where nobody knows him or realizes that it is stolen — which means that the buyer may not be enabling him to steal, since transporting merchandise is not commonplace — it is still forbidden to buy it from him (*C.M.* 356:1, with *Sma* 2).

The *Acharonim* add that one may not even buy from someone who bought merchandise from a thief, because the person who bought from the thief is the "mouse" in the *Gemara's* parable, and the person who buys from him is the "hole" in which he hides his loot. If the first buyer didn't have that "hole" to sell the stolen goods, he wouldn't have bought them, so the second buyer is aiding and abetting his transgression (*Shu"t Tzemach Tzedek* 36, cited in *Pischei Teshuvah, C.M.* 356:1).

Whether the thief is Jewish or not is inconsequential, because a non-Jew is also not allowed to steal, even from another non-Jew, as this is one of the *sheva mitzvos bnei Noach* (*Shulchan Aruch Harav, Gezeilah* 23; *Kitzur Shulchan Aruch* 182:8; cf. *Shitah Mekubetzes, B.K.* 112a, s.v. *Velo meikis*; see *Imrei Yaakov* p. 113).

The prohibition to buy stolen goods applies even if the owner was *meyda'eish* (despaired) of retrieving the stolen



## CASE FILE

significance of testimony and severity of perjury (C.M. 28:7). This is not mentioned in *Rosh Hashanah*, perhaps so as not to discourage people, and because sometimes there were calendric considerations" (R.H. 20a; Rambam, *Kiddush Hachodesh* 3:15, 18).

"Each witness is then called in separately to testify, after which he is examined to verify the details of his testimony, what exactly he saw or heard. Of the two witnesses, the greater one is called in first, out of respect" (C.M. 28:8).

"The second witness is then called in alone, and similarly examined (C.M. 28:9). If the two testimonies are found to be similar and corroborate each other, *beis din* deliberates the case and issues the ruling.

"Regarding the testimony of the new moon, *beis din* would also make use of their scientific knowledge and disqualify testimony that they knew not scientifically possible, e.g., that the inside of the crescent faced the sun (R.H. 23b). Furthermore, slight discrepancies in estimated measurements, e.g., the perceived height of the new moon, within reasonable range of human error, did not constitute contradiction" (R.H. 24a).

"Conversely, Tur (C.M. 28) cites from the Yerushalmi that if the witnesses testify with the same wording, their testimony is suspect and needs to be examined carefully," concluded Rabbi Dayan. "The shared wording raises concern that they planned and/or rehearsed their testimony, and it may be false. For this reason, *Chazal* also required that each witness state his own testimony and he cannot say, 'I saw the same as he'" (C.M. 29:10; *Sma* 28:41).

**Verdict: The basic procedure for accepting testimony is: warning about the severity of perjury; hearing testimony of each witness separately; and examination of the details of his testimony.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

*Dayanim* (Judges) #38

Reasons for Judgment

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

### Q: Is *beis din* required to provide the reasons for their ruling?

A: The ruling is valid even if rendered without providing the reasons to the litigants.

However, if the *Dayanim* sense that the litigant sincerely suspects them of ruling unfairly, they should inform him, at least verbally, of the reasons, even if the litigant didn't explicitly ask (C.M. 14:4; *Sma* 14:22-23).

Moreover, if the litigant suspects that the *Dayanim* erred in their ruling, he can demand that they provide him the reasons for their ruling. However, some maintain that this is only if they judged him against his will, but if he adjudicated willingly he cannot demand this (*Rema*, C.M. 14:1, 4).

When there was a hierarchy of *batei din*, if the litigant suspected an error and wanted to show the ruling to a greater *beis din*, some maintain that it sufficed to write just the claims and the ruling, since the greater *beis din* would be able to understand the reasons on their own. Others maintain that the *Dayanim* were to write the reasons, as well (*Pischei Teshuvah* 14:8, 10).



## BHI HOTLINE

item, because the issue of aiding a transgressor is still relevant (*Yam Shel Shlomo*, B.K., ch. 10:58; *Shu"t Chavos Ya'ir* 209).

Some *poskim* try to justify buying stolen goods, claiming that the issue of buying the goods applies only if the thief stole in order to profit from the theft, and if this particular buyer won't purchase the merchandise, he'll stop stealing. If the thief is certain to find a buyer, and he is not afraid of getting caught, it is prohibited to buy the stolen goods only if the thief is Jewish, because we are required to try to prevent a Jew from wrongdoing (*Chavos Ya'ir*, loc. cit.). This leniency certainly applies if the non-Jewish thief will easily find a different buyer (see *Sma* 356:2 and *Kesef Hakodashim* 358).

Up to this point, we have discussed cases in which the merchandise was certainly stolen. The same is true if it seems most likely that it is stolen. In the example you gave, where the price is so low that it seems obvious that the item is stolen, one is not allowed to buy it. For the same reason, *Chazal* prohibited buying wool or milk from a shepherd, because the animals he is caring for are not his, and it is most likely that he stole those products. The only way it is permissible to buy from a shepherd is if the owner gives him express permission to sell the items (C.M. 358:1).

Some *poskim* rule that if some of the merchandise the thief is selling is generally his (e.g., if the shepherd has some animals of his own), one is allowed to buy from him under the assumption that the items he is buying belong to the shepherd (*Sma*, loc. cit. 2). Other *poskim* rule more stringently, allowing a person to buy from a thief only if it is certain that in this specific circumstance, some of his merchandise belongs to him (*Taz* 369:3).

If the thief altered the stolen item in a way that he acquired it through that change (a *kinyan of shinui maaseh*), some *poskim* rule that it is permissible to buy that item from him (*Shulchan Aruch Harav, Gezeilah* 23). We are not concerned that this will cause the thief to continue stealing, because if he can sell the stolen items only after working hard to make significant changes, it is not worthwhile for him to risk stealing (*Imrei Yaakov*, p. 113). Other *poskim* rule, however, that even in such cases, if it is clearly stolen, one may not buy it because that enables the transgression (*Yam Shel Shlomo*, loc. cit.). They therefore permit buying it only if it is uncertain that it was stolen (see C.M. 358:12).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

To subscribe send an email to [subscribe@businesshalacha.com](mailto:subscribe@businesshalacha.com) or visit us on the web at [www.businesshalacha.com](http://www.businesshalacha.com)



Sponsored by

**READ**  
PROPERTY GROUP

REAL ESTATE & DEVELOPMENT

WOULD YOU LIKE THE ZCHUS OF SENDING  
THIS NEWSLETTER TO YIDDEN WORLDWIDE?  
CALL 718-233-3845 X 201. OR EMAIL :  
OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS  
לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל