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## FRENCH DIP: MUST A LOTTERY-WINNING CARD THIEF SHARE WITH HIS VICTIM?

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

Thieves used a stolen card to buy a winning French lottery ticket worth 500,000 euros (\$523,000). But they vanished before cashing in—and now they're among France's most famous fugitives.

The man whose card was stolen, identified in police documents as Jean-David E., is offering to split the cash with the lucky winners. He wants his wallet back, too.

The thieves, meanwhile, face the risk of arrest. As of Saturday, the state lottery operator La Française des Jeux, or FDJ, said that no one had submitted the ticket to cash out.

"It's an incredible story, but it's all true," Jean-David's lawyer, Pierre Debuissan, told The Associated Press on Saturday. Jean-David discovered earlier this month that his backpack had been stolen from his car in the southern city of Toulouse, including bank cards and other documents, the lawyer said. Jean-David asked his bank to block

the card and learned it had already been used in a local shop. At the shop, a vendor told him two apparently homeless men had used one of his cards to buy the winning scratch-off lottery ticket. "They were so totally happy that they forgot their cigarettes and their belongings and walked out like crazy people," Debuissan said.

Jean-David filed a police complaint about the theft, but he is ready to withdraw it if the thieves come forward so that they can share the money, Debuissan said. "Without them, no one would have won," Jean-David said on public broadcaster France-2. Prosecutors may try to seize the winnings, considering them illegally obtained gains, the lawyer said. The lawyer launched a national appeal Thursday asking the perpetrators to contact his office to make a deal. "You risk nothing... we will share with you," he said. "And you would be able to change your lives." The ticket will eventually expire, he warned. "Time

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### PARSHAS TRUMAH COPY PROTECTED

Excerpted and adapted from a shiur  
by HaRav Yechiel Biberfeld

And you shall make a menorah of pure gold...

Shmos 25:31

The Gemara in Avodah Zarah says it is forbidden *mideOreisa* to build a replica of the seven-branched menorah of the *Bais Hamikdash*. Though the original was made of gold, a replica may not be made using any metal, because any metal is kosher *bedieved* for the menorah.

The Pis'chei Teshuvah cites the view that a round candelabra of seven branches would be permissible, because the menorah in the *Bais Hamikdash* was straight. But other *shitos* forbid this.

*Most poskim* forbid owning or using a seven-branched menorah even if it was made by and purchased from a non-Jew.

The Sheivet Halevi says the prohibition would not apply to hanging lamps, as they do not resemble the menorah. But R' Akiva Eiger's nephew R' Shmuel Halevi Birnbaum writes in a letter that his uncle was extremely strict regarding this prohibition, to the extent that when he found a seven-branched hanging lamp in his home in the shape of a star, he had it removed, even though it did not resemble the menorah of the *Bais Hamikdash* at all.

R' Ovadiah Yosef writes that a seven-branched

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Q&A from the  
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### Taking Part

**Q** I have an electric cooking device that is used for dairy. One of its parts became treif through contact with beef soup. Do I need to kasher the other parts, some of which are hard to access?

**A** The Shulchan Aruch (O.C. 451:12) says that chametz vessels must be kashered along with their handles. The Mishnah Brurah (ibid. 68) explains that this is because heat disperses the *bliss* (absorbed tastes) throughout the vessel.

This rule applies primarily to metal utensils, which conduct heat well. Other materials may actually

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is working against us," he said.<sup>1</sup>

This basic scenario was analyzed seven years ago by R' Moshe Meir Aviner, with the important difference that the theft was of cash rather than bank cards. He ruled as follows:

A thief who purchases an item with stolen money: If there was *yeiush* (despair by the victim of recovering what was stolen) before he purchased it, the thief is entitled to the purchased item. If there was no *yeiush*, then according to the Sha'ar Mishpat, the sale is effective if the seller did not know the money was stolen, and according to the Chazon Ish, the sale is void. The victim of the theft is certainly not entitled to a share of the profit.<sup>2</sup>

Rav Aviner's statement that something bought with stolen money after *yeiush* belongs to the thief is based on the principle that a thief who transfers stolen property to another acquires it thereby, via the combination of *yeiush* and *shinui reshut* (change of possession). As the Rambam and Shulchan Aruch rule:

If the owner despairs of the stolen item's return, whether he despaired and afterward the thief sold the item or he despaired after the thief sold it,<sup>3</sup> the purchaser acquires the item via despair and change of possession, so he need not return to the owner the stolen item itself but its value—provided he bought it from a well-known thief. If the seller was not a well-known thief, the purchaser needn't return either the item or its value, in order to remedy the marketplace (i.e., to protect innocent purchasers).<sup>4</sup>

If the thief acquires the stolen cash by transferring it to someone else, anything he buys with that cash is his as well, as the Rambam and Shulchan Aruch indeed rule in the context of marriage (*kidushin*):

One who marries a woman with an item he robbed, stole, or forced the owner to sell: If the owner despaired of the item's return, and it is known that the thief acquired the item via that despair, she is married; if not, she is not married.<sup>5</sup>

The French case, however, is very different from Rav Aviner's: In it, the thieves stole the physical bank card from the victim, but they did not purchase the lottery ticket by *exchanging* the card for the ticket, but by the larcenous misuse of its function as a *payment* card. The proper understanding of such a theft—was the money

stolen from the cardholder, his bank, the store's bank, or the store?—and the application thereto of the rules of *yeiush*, are complex and subtle questions and beyond the scope of this article.

Rav Aviner noted that a purchase made with stolen money in the absence of *yeiush* is effective according to the Sha'ar Mishpat but void according to the Chazon Ish. This is based on their differing understandings of the logic behind a halacha (accepted by many, if not necessarily all, *poskim*): A *shliach* (agent) who steals money entrusted to him and uses it to purchase something for himself does indeed own the item, at least if he bought something other than what he was sent to buy.<sup>6</sup> While the *shliach's* transfer of the money to the seller constitutes *shinui reshut*, there is no *yeiush* in this case, and as we saw earlier, a thief only becomes the owner of what he stole with a combination of *both*. So how does the *shliach* own the item he bought with money he stole?

The Sha'ar Mishpat offers two explanations:

- Even if the *shliach* does not gain ownership of the principal's money, he does own personal property (*metaltelin*) he buys with it by taking physical possession of the item (*kinyan meshichah*).
- Even with respect to real property (*karka*)—for which the buyer must transfer his money to the seller (*kinyan kesef*) in order to acquire title—since a seller who had no reason to think the buyer was using stolen money need not return it to the victim due to *takanas hashuk*, that money can be used to perform a *kinyan kesef*.<sup>7</sup>

These approaches apply equally to a non-*shliach* thief who purchases an item with stolen money. So even where the thief doesn't own the money he stole because there was no *yeiush*, he will still own what he buys with that money.

As cited above, Rav Aviner rules that "If there was no *yeiush*, then according to the Sha'ar Mishpat, the sale is effective if the seller did not know the money was stolen." The Sha'ar Mishpat's second approach is indeed predicated on the seller not knowing the money was stolen. But his first approach involves no such condition, so the Sha'ar Mishpat would presumably maintain that a thief who purchases *metaltelin* with stolen money owns them even if the seller knew the money was stolen. The question of whether lottery tickets are considered *metaltelin* or *shtaros* (financial instruments), with its implications regarding whether a thief who

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require only partial kashering, but in practice, the entire *kli* must be kashered in case the nonkosher food contacted other areas. If you are absolutely certain that it didn't, you may be lenient.



RAV ARYEH  
FINKEL

Ideally, when kashering, the entire vessel should be submerged in boiling water (Mishnah Brurah 452:23). But if this isn't practical, segments may be kashered one at a time (O.C. 451:11). If only part of the *kli* is treif, you may pour boiling water (*irui*) over the non-treif part instead of submerging it (Rama ibid.).

If the kosher segment was used after only the treif segment was kashered, the food is permitted *bedieved* (Rama O.C. 451:12). For vessels without metal, the food is permitted *bedieved* even if no kashering was done on the treif part (Sefer Hag'alas Keilim 11:2).

If the segments are attached with screws, the Maharsham (3:112) and others say that they are all considered one unit, and the entire vessel needs kashering due to the transfer of *blies*. But others argue that the segments are treated as separate *keilim*, and *blies* do not transfer from one to another (R' Akiva Eiger on Magen Avraham 451:24). If the other components are difficult to access, you may rely on the latter view.

buys a lottery ticket with stolen money owns it according to the Sha'ar Mishpat, is beyond the scope of this article.<sup>8</sup>

In any event, the halacha that a *shliach* sent to buy something who steals the money and buys something else for himself owns it is explained by the Chazon Ish in other ways that would not apply to a non-*shliach* thief who buys something with stolen money, so according to the Chazon Ish, such a thief would apparently not own it.<sup>9</sup>

<sup>1</sup>Thieves used a stolen card to buy a \$523,000 lottery ticket. The victim wants to share the winnings. AP News. <https://apnews.com/article/france-lottery-ticket-stolen-card-thieves-50af5a3fb22baac08899e510dc1d1a>.

<sup>2</sup>R' Moshe Meir Aviner, *Ganav Kesef Vezachah Behagralah*, Asar Yeshiva—She'el Es Harav.

<sup>3</sup>Some disagree and maintain that the *yeiush* must precede the *shinui reshut*—see Tur, Bais Yosef, Shulchan Aruch, and Hagahos HaRama C.M. 353:3.

<sup>4</sup>Hilchos Geneivah 5:3 and Shulchan Aruch ibid.

<sup>5</sup>Hilchos Ishus 5:7 and Shulchan Aruch E.H. 281.

<sup>6</sup>See Hagahos HaRama C.M. 183:3, Sma ibid. s.k. 6; Shach ibid. s.k. 5; Nesivos Hamishpat *Blurim* s.k. 4. Cf.

Taz ibid.; Minchas Pitim ibid.

<sup>7</sup>Sha'ar Mishpat siman 190 s.k. 1.

<sup>8</sup>See She'elias Ya'avetz cheilek 1 end of siman 85 s.v. Mikol makom zachinu ledin.

<sup>9</sup>Chazon Ish C.M. Bava Kama siman 21 os 2.

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electric candelabra is permitted, because it does not resemble the menorah. Some sources even permit a candelabra made for candles rather than oil.

There is a famous replica of

the menorah in the Old City of Yerushalayim built by a group called the Temple Institute. They claim this is permitted because it was built to be used in the Third *Bais Hamikdash*, and the prohibition is only to have a replica for personal use. But it was discovered that this

golden menorah is really only gold-plated iron. As noted, a menorah not of pure gold may only be used *bedieved* in the *Bais Hamikdash*, so it is highly questionable why this institution would build a *bedieved* menorah for the *Bais Hamikdash*.

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