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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

DELIVERY FEE

Mr. Fine was traveling cross-country on business. He mentioned his plans one afternoon to his neighbor, Mr. Neuman.

"That's perfect timing!" exclaimed Mr. Neuman. "My son lives there; I need to get a phone to him. Would you be willing to take it along?"

"Sure," replied Mr. Fine. "I'm flying there anyway."

"My son will pick up the phone from you," said Mr. Neuman, adding: "I'd like to pay you $25, anyway, for your efforts."

He handed Mr. Fine the phone, still bearing its $600 price tag, along with the $25 payment.

The flight went smoothly. After checking into his hotel, Mr. Fine placed the phone on the desk in his room, until Mr. Neuman's son would collect it.

That evening, he went out to dinner with several business associates. When he returned, however, the phone had vanished!

Mr. Fine searched the room, checked his luggage, and even spoke with hotel management. But the phone was gone.

Realizing it had apparently been stolen, he called Mr. Neuman.

"I'm very sorry," Mr. Fine apologized, "but the phone was apparently stolen from my hotel room. I'm liable for it and will reimburse you the full $600 value of the phone.

Mr. Neuman was understandably upset, though. "My son was counting on the phone," he said. "You should return also the $25 I paid you! You didn't complete the delivery."

Mr. Fine disagreed.

"I made the trip, carried the phone, and compensated you for the theft," he replied. "Why should I also forfeit the $25?"

"I paid you to deliver the phone," countered Mr. Neuman. "In the end, the job wasn't done!"

When Mr. Fine returned home, the two came before Rabbi Dayan and asked:

"Must Mr. Fine return also the $25 wages?"

"A *shomer sachar* is paid to guard the entrusted item with heightened responsibility," replied Rabbi Dayan. "Therefore, he is usually responsible for theft, but exempt from *oness*, circumstances beyond control" (C.M. 303:2-3).

The Gemara (B.M. 58a) indicates that when loss occurs through *oness*, he is also entitled to his wages (Shach C.M. 303:5).

However, in cases of theft – regarding items for which the guardian is exempt nonetheless, based on a Scriptural exemption, such as *hekdesh*, real estate and documents – he is not entitled to his wages, since he did not do his job properly and the item was stolen (C.M. 301:1).

Some Acharonim maintain that, all the more so, regarding items for which the guardian is liable, he is not entitled to his wages if the item was stolen, since he did not do his job properly! (Ketzos 227:11; Yehuda Ya'aleh C.M. #211)

Nonetheless, Tumim (66:68) rules that if the guardian did guard properly at first, he is entitled to his wages for the work done or time units up until the theft occurred. Thus, if the wages were set per day or week, the guardian is entitled to his pay for the days or weeks that he guarded properly before the

BHI HOTLINE

Submitted by the Beis Hora'ah

PAROCHES PAYOUT

Q. A donor sponsored a new *paroches* in our shul, as a *zechus* for his parents' *neshamos*. A few months later, a fire broke out in the shul. The *Sifrei Torah* were, *baruch Hashem*, unscathed, but the *paroches* was destroyed. The insurance company covered the damage, and the *gabbaim* bought a new *paroches*. Are they obligated to embroider the donor's name and his parents' names on it, or did he lose the rights to the dedication when the *paroches* he bought was consumed by the fire?

A. The halachah is that *tashmishei kedushah* (items used for sacred purposes) may not be repurposed for a less sanctified use (*Shulchan Aruch, Orach Chaim* 153:2). Some *poskim* maintain that it is prohibited to sell such an item, even if one intends to buy an identical sacred item to replace it, unless the first one is damaged (ibid. 4, with *Mishnah Berurah* 11).

A *paroches*, which hangs in front of the *aron kodesh*, is categorized as a *tashmish* to *tashmishei kedushah* — it serves an item that is used for a sacred purpose — and it is therefore sanctified with the same level of holiness as a shul (ibid. 154:3, 6).

Before answering your question, we must determine whether it would be permissible to buy something of lesser *kedushah* with the money received from the insurance company as compensation for the *paroches*.

To answer this, we must first determine how money received from an insurance company is viewed in halachah.

The *poskim* deliberate: if someone damages someone else's property, and the owner was compensated by his insurance company, is the *mazik* (damager) obligated to pay for the damage, or may he absolve himself on the grounds that the victim did not suffer any financial loss, because the damage was covered by the insurance?

The majority of *poskim* rule that the *mazik* must pay, because the payment received from the insurance company is not direct compensation for the damaged item. Although an insurance payout is calculated based

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item was stolen.

However, other Acharonim maintain that when the guardian pays for the stolen item, it is like he returned the item to its owner, so that he is entitled to his wages (Cheshek Shlomo B.M. 58a).

Chazon Ish (B.K. 7:18) also questions this point, but takes for granted that the guardian cannot be expected to simultaneously forfeit his wages and pay for the stolen item, since this would be like his paying the owner more than the loss. Therefore, he can deduct his due wages from the value of the item that he is liable for. (See also Pischei Choshen, Pikadon 2:18[42] who understands the Meiri (B.M. 83a) in this way, and rules accordingly.)

Perhaps this dispute hinges on whether the *shomer sachar* is paid for his extra efforts in safeguarding the item – in which case theft negates his right to wages – or is paid for accepting heightened liability, so that he is still entitled to wages when he pays for the item (see "*B'inyan Geder Chiyuvei Shomer Sachar*," by Rav Aharon Mittelman, *Beis David (Zichron Tuvia)*, pp. 624-628).

"Thus, in our case," concluded Rabbi Dayan, "due to the dispute Mr. Fine cannot be compelled to pay the full value of the phone and also return his wages."

Verdict: There is a dispute whether a *shomer sachar* who pays for a stolen item is entitled to his wages. Due to the dispute, he cannot be compelled to pay the full value of the item and also return the wages due until the theft occurred.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Onaas Devarim, Falsehood and Geneivas Daas #11

Falsehood to Promote Peace

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

Q: Someone asked me what I think about a dress she recently bought, which I don't think is particularly pretty. How should I respond?

A: Although falsehood is prohibited, Chazal permitted – and even advocated – distorting the truth to promote peace between people. The value of peaceful personal interaction is even greater than that of honesty (Yevamos 65b).

Thus, Beis Hillel rule to compliment a bride as *na'ah vachasuda* – beautiful and graceful, even if she is not so externally, to endear her to her husband (Kesubos 16b-17a; E.H. 65:1).

Similarly, they instruct to compliment someone about a recent purchase, even if you do not value it, so that it will find favor in the owner's eyes. Conversely, stating that the seller misled the person, when there isn't a realistic option to return the item or claim compensation from the seller, could constitute prohibited *rechilus* (Chafetz Chaim, Hil. Rechilus 9:11[34]).

Maharsha (Kesubos 16b) explains that complimenting the bride or purchase is not considered falsehood, since clearly the husband or customer who chose so views it positively, but others indicate that distorting the truth here is allowed based on promoting peace (Ritva 17a).

Thus, unless the woman will consider returning the dress (or, conversely, is considering buying more of the same) based on your evaluation, you should compliment it in some way.

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

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on the value of the damaged item, insurance companies view payouts as reciprocal for the premiums paid by the customer, not as a way to enable him to replace the damaged object. The insurance payout is therefore an unrelated business transaction between the customer and the insurance company, so the *mazik* must still pay for the damage. (See *Ohr Samei'ach, Hilchos Sechirus* 7:1; *Shu"t Maharsham* 4:7; *Pischei Choshen, Hilchos Pikadon* 8, fn. 18.).

By way of analogy, if someone burned someone else's house to the ground, and the victim's friends held an emergency fundraiser to enable him to buy the essential items he would need before he could extract payment from the *mazik*, would that absolve the *mazik* from compensating the victim for the full value of the damage he caused? Certainly not! Insurance payouts are no different.

Now, since the insurance company's payment for the damaged *paroches* is not in exchange for the actual *paroches*, it is not akin to a case of a *paroches* that is sold. In the latter case, since the money received is in exchange for the actual *paroches*, it retains the level of sanctity of the *paroches* and may not be reassigned for a less sanctified use. Insurance money, on the other hand, may be allocated by the *gabbaim* for *any* purpose (see *Shu"t Tzitz Eliezer* 18:67).

Applying this principle to our case, if the payment from the insurance company was considered a replacement for the donor's *paroches*, then he would retain the dedication rights (see *Shulchan Aruch, Yoreh Dei'ah* 259:3 and *Taz* ibid. 149:4. *Shu"t Igros Moshe, Orach Chaim* 3:26 and *Shu"t Shevet HaLevi* 9:205 discuss whether dedication rights are retained when old *tashmishei kedushah* are getting worn out and the shul needs to buy new ones, and especially if they must solicit donations for the new ones). But since the payment from the insurance company was *not* a replacement for the donor's *paroches*, it is considered as though that *paroches* is gone, and the new one is not related to that one. Therefore, according to some *poskim*, the donor does not retain the dedication rights of the new one (see *Tzitz Eliezer* loc. cit.).

It is possible, however, that since nowadays every shul has insurance, every donor of an object assumes that if it sustains damage, the insurance company will pay to replace it and the shul will not have to solicit donations for a new one, so he will retain the rights to the dedication. Certainly if he did not pay for the value of the *paroches* itself, but paid beyond its value for the rights to the dedication, the tacit understanding between the donor and the shul administration is that as long as the *paroches* is in good condition — i.e., the shul does not have to solicit donations to replace it — he retains those rights. The original dedication should therefore be embroidered on the new *paroches* purchased with the insurance payout.