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

CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

FALLING ASLEEP AT THE WHEEL

"We got permission to go to David's wedding!" Ari exclaimed to his fellow counselors. "We just have to be back in camp by 1:30 AM. I have room for four more in my car."

After lunch, Ari and his friends started out to the city. He managed an hour's nap at home before arriving at the wedding.

At 11:00 PM sharp, Ari and his friends wished David "*Mazal Tov*!" and began the two-and-a-half-hour trip back to camp.

"Everybody buckled?" Ari asked.

A chorus of clicks answered him.

For two hours, the trip was uneventful. Ari chatted with his friends about the wedding, but one by one the friends dozed off. By 1 AM, only Ari remained awake, grinding on mile after mile in the dark.

He turned on the music and shifted in his seat, struggling to ward off his tiredness. "Only 20 minutes left," Ari said to himself. Then, his eyes closed shut.

The car drifted onto the shoulder, veered off the road, and slid down an embankment to a jolting stop!

"Is everyone okay?" Ari shouted, shaken.

Baruch Hashem, everyone was buckled and no lives were lost. Still, two counselors suffered broken bones and other injuries that required hospitalization for several days and further recuperation for the remainder of the summer.

Insurance covered most of the medical expenses, but not everything. The injured counselors also were unable to return to camp.

Ari visited them after camp.

"Thank G-d we're all alive," one of his friends said. "I had to pay a co-pay for my medical follow ups, though, and lost a month's salary. I think you should compensate us."

"I feel awful about what happened," Ari apologized, "but I was doing everyone a favor by driving."

"But you were the driver," replied his friend. "You were responsible to get us back safely!"

"I didn't directly injure anyone; at most it was indirect *grama*," Ari replied. "Furthermore, I rested beforehand; sleep simply overtook me. It was an *oness*."

Yet, Ari was unsettled. He came before Rabbi Dayan and asked:

"Is a driver who is overcome by sleep halachically liable?"

"Rabbi C.Y.D. Weiss *shlita* addressed this issue in detail (*Vaya'an David* 2:256-260)," replied Rabbi Dayan. "Yabia Omer (9:5) also addresses it in short."

"The consensus of poskim is that a person who damages or injures through driving is considered as directly inflicting the damage (*adam hamazik*), since he controls the movements of the car.

A person who injures another willfully or through carelessness is liable in five payments: *nezek* (disability, permanent injury), *tza'ar* (pain), *ripui* (medical expenses), *sheves* (lost wages) and *boshes* (embarrassment). If there was some degree of *oness* he is liable only for *nezek* (C.M. 421:1-3; Aruch Hashulchan 421:1).

Nowadays, though, the ability of *beis din* to enforce these payments is limited. Shulchan Aruch rules that *Beis Din* can adjudicate nowadays only *ripui and sheves*, but not the other payments. Rema curtails even adjudication of *ripui* and *sheves*, yet the inherent obligation exists on the perpetrator, and he is

BHI HOTLINE

Submitted by the Beis Hora'ah

DELAYED RETURN

Q. I bought a *sefer*, and when I was learning from it on Shabbos morning, I realized that it was damaged and that I would have to return it. Was I allowed to learn from it for the rest of Shabbos if I planned to return it afterward?

A. There are two distinct halachic issues to consider in this case.

First, we must determine whether by learning from the *sefer*, you would be considered a *sho'el shelo midaas* — someone who borrows without permission — and, by extension, a *gazlan* (see *Choshen Mishpat* 359:5). It would seem that when you decided to return the *sefer*, thereby voiding the sale, the *sefer* is no longer yours, in which case you would not have been allowed to use it without the owner's — in this case, the seller's — permission (*Sma* 232:33).

Furthermore, the halachah is that if a buyer continues to use a defective item after realizing that it is damaged, it indicates that he accepted the defect and waived his right to return the item, because we presume tjat he would not want to be considered a *gazlan* (*Choshen Mishpat* 232:3; see BHI #711).

Based on these factors, it would seem that if you used the *sefer* after deciding to return it, you would no longer have a right to return it.

In this case, however, since the storekeeper will not be able to resell the defective *sefer* to someone else, he likely does not care if you use it, so the principle of *zeh neheneh v'zeh lo chaseir* would apply.

Even after using the *sefer* all Shabbos, then, you would be able to return it on the grounds that the purchase was a *mekach ta'us*; your learning from the *sefer* even once you discovered the defect does not prove that you are willing to accept it as is (see *Pis'chei Teshuvah* ibid. 232:1).

The second factor to consider is whether the prohibition of *ribbis* (forbidden interest) applies.

When you decided that you would return the *sefer*, the sale was voided automatically, and the money the storekeeper received from you retroactively turned into a loan.

obligated to compensate the victim (C.M. 1:2,5).

Moreover, when signing an arbitration agreement, *beis din* can usually address all five payments within the authorization it is granted (C.M. 22:1; Pischei Teshuvah 1:3; *Mishpat K'halachah* 420:44, p. 482).

Halacha discusses in several places whether being overcome with sleep is considered *oness* (see Ketzos 303:1). Although some poskim apply this discussion also here, a driver is absolutely required to remain awake! Furthermore, almost always a person has preceding symptoms of drowsiness. If the driver feels tired, he should pull over to rest, stretch his feet, or switch with someone else; he should not continue to the point that he finally succumbs to sleep. If he does, this constitutes at least *techilaso b'pshia v'sofo b'oness* (C.M. 291:20), if not full negligence. Instances in which sleep suddenly overcomes the driver without warning are extremely rare, usually due to some illness (*Vaya'an David* 2:257).

Although sometimes people risk their own lives and drive even when they are tired, this is not reason to exempt them vis-à-vis others whom they injure.

"Thus," concluded Rabbi Dayan, "you are liable for the injuries to the passengers, and cannot exempt yourself on the basis of indirect damage or *oness*. A person must drive responsibly, and not endanger himself or others!"

Verdict: A person who falls asleep at the wheel and injures others is considered *adam hamazik*, and liable to the extent that *beis din* can adjudicate. A person must drive safely and responsibly!

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Onaas Devarim, Falsehood and Geneivas Daas #12

Falsehood to Spare Unwarranted Loss

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

Q: My neighbor asked if I could lend him a sum of money, but I don't trust him sufficiently. Can I falsely say that I don't have enough, so that he will not be upset at me?

A: We learned that it is permissible to state falsehood to promote peace. Yet, Magen Avraham (156:2) cites from Sefer Chasidim (#426) that this refers only to events of the past, not to those with current or future practical ramifications. Therefore, he does not allow saying that you do not have money.

However, other poskim indicate that it is permissible to state falsehood to spare yourself unwarranted potential loss, as in this case (see Nesivos 12:3).

Additionally, several poskim compare needs of mitzvah to financial loss. Similarly, it is permissible to mislead a *yavam* with false financial incentives to encourage him to perform a *chalitzah* that he is required to do (E.H. 169:50).

Even so, you should try to avoid responding to the neighbor falsely. Chasam Sofer (6:59) emphasizes that truthful statements endure.

Thus, you should simply say, to the extent possible, that you are unable to lend your neighbor (which is true, due to your concerns about him), rather than say that you do not have money.

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

Indeed, due to this halachah, any time a sale is voided — for example, if someone sold an item with a stipulation, and the stipulation was not met — the seller *must* deduct from the refund the monetary equivalent of the benefit the buyer derived from using the product in the interim. Otherwise the buyer will have derived that benefit in exchange for the loan he extended to the seller, which is a form of *ribbis* (*Yoreh Dei'ah* 174:7; *Choshen Mishpat* 232:15).

In your case, if the seller were to refund the full amount you paid, and not deduct the amount that reflects the benefit you derived from the *sefer*, there should, theoretically, be a *ribbis* issue, since he is not only repaying the loan (i.e., the amount you paid that retroactively became a loan), but also granting you the benefit of using the *sefer*.

We must emphasize that if this were to constitute *ribbis*, you would not be able to accept a full refund and then pay the storekeeper for the temporary use of the *sefer*, because accepting *ribbis* on condition that you will later return it is also forbidden (*Yoreh Dei'ah* 174:5).

In reality, however, in your case there is likely not a *ribbis* issue, for a few reasons.

First, there is no market for renting *sefarim*, so we cannot consider the benefit you derived to be an additional form of compensation received from the seller in exchange for the loan. The reason the seller does not deduct the value of the use is that it is not considered valuable.

In addition, the prohibition of *ribbis* applies only if the benefit you receive is in exchange for the loan you extended. If the reason the store allows customers to return a defective item even if it was used is to compensate them for their frustration and the effort expended in returning it — not for the "loan" of the customer's money — using the item is likely not *ribbis* (based on *Nesivos Shalom, Yoreh Dei'ah* 174:7[5]).

In addition, your situation would not be considered a case of *ribbis* that goes from the borrower to the lender, because the storekeeper will presumably not absorb the loss on this *sefer*; most likely, he will return it to the publisher, voiding his purchase from them, so the customer derives the benefit of using the *sefer* from the publisher, not the store that sold it to him and was holding his money (*Chut Shani, Ribbis* 8).

Considering all this, you may use the *sefer* until you return it; doing so does not constitute *gezel* or *ribbis*.