

BUSINESS WEEKLY



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

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לז"נ ר' יהודה נטע בן ר' צבי ע"ה, נלב"ע ביום י"ז אלול תשע"ו



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

RECKLESS DRIVER

The Fines were driving home after spending Rosh Hashanah with their children.

The road was relatively empty, and they cruised along at the speed of traffic. Suddenly, a truck swung into their lane without signaling and cut in front of them! Mr. Fine braked and narrowly missed hitting the truck.

"You'd better keep back and watch out for that driver," Mrs. Fine said to her husband. "He seems reckless!"

The road curved sharply, and traffic slowed to accommodate. The truck, however, took the turn much faster than it should have, and veered way out of the lane.

"You're right!" Mr. Fine acknowledged.

The road began to climb a hill, and the Fine's car easily passed the truck. "Look, there's a sticker on the truck: 'How's my driving? 1-800-...'" Mrs. Fine noted. "Do you think we should call?"

"I always wonder about this," said Mr. Fine. "What if it adversely affects the driver's job? Maybe it's just a one-time thing."

"Even so, people can't be allowed to drive like this," insisted Mrs. Fine. "If that person drives recklessly, he doesn't deserve to be a truck driver!"

While the Fines were talking, they reached the top of the hill. As they rode down, the truck came thundering along in the adjacent lane, overtaking them by 15 mph. "Wow! How does that driver think he could stop if he needed to!" exclaimed Mr. Fine.

"That does it!" said Mrs. Fine emphatically. "I'm calling!"

As the rode leveled, they caught up with the truck. Mrs. Fine had her phone ready. She jotted down the license plate number and dialed the phone number listed on the sticker.

"I'm following a truck, who's driving recklessly," she reported. "In the span of fifteen minutes, he cut in front of us without signaling, veered out of his lane on a sharp turn, and sped down a hill way above the speed limit."

On Shabbos, Mr. Fine met Rabbi Dayan. He related what happened and asked:

"Were we right to report the driver?"

"Certainly!" replied Rabbi Dayan. "Rama writes that despite the severity of being a *moser* (informer), if someone engages in illegal practices that endanger the community and does not heed warnings to cease his activities, it is permissible to disclose him to the authorities. Gra explains that he is considered a *rodef* (dangerous pursuer), even though he does not intend to endanger others" (C.M. 368:12; 25:1).

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

CRASH CONFUSION

Q: My neighbor and I had a car accident, in which both cars sustained considerable damage. We got into a big argument over whose fault it was, with each of us claiming that he had the right of way, and that the other is therefore liable for all the damage to the second car.

Finally, I realized that we had a way to settle the dispute: A neighbor across the street has surveillance cameras outside his house, and the video would prove whose fault it was. My counterpart wasn't convinced that I would be able to obtain a copy of the video and wanted to simply negotiate a settlement. I insisted that I could obtain the copy and told him that if I could not get it by the next Monday, I would be *mochel* (forgive) him for the damage he caused to my vehicle even if I was correct.

He agreed to this deal.

Ultimately, it took until that Thursday to secure a copy of that surveillance video, which proved conclusively that the accident was my neighbor's fault.

My neighbor is now claiming, however, that I was *mochel* him, because I did not secure the evidence by the deadline. I countered that I hadn't really meant to pin myself to that deadline, and I had only given that deadline to convince him to agree to settle the dispute through the surveillance tape.

Who is correct?

A: The answer to your question is based on the halachic principles governing an *asmachta*. An *asmachta* is an agreement a person makes under an assumption that things will work out a certain way. For example, if a person obligated himself to pay if he would not meet some specific criterion, and he was ultimately unable to meet it, he is not required to pay – even if he made a *kinyan* (act to obligate himself) at the time he entered the agreement. Since he was certain that he could meet the specific criterion, he



CASE FILE

"Thus, Minchas Yitzchak (8:148) writes that if someone drives recklessly – speeding, running a red light or not stopping at a pedestrian crosswalk, passing dangerously, driving in the opposing lane or without a license – it is permitted to report him to the authorities. Moreover, even illegal parking that causes potential danger to passersby is like a *bor (pit)* or dangerous obstacle" (C.M. 410:1; 427:8).

"The violator should be warned first. However, if this is not possible, it is permissible to report even without warning" (*Pischei Choshen, Nezikin* 4:[22]).

"Similarly, Rav Eliezer Waldenberg (*Tzitz Eliezer* 13:81) and Rav Ovadia Yosef (*Yechaveh Daas* 4:60) rule that a doctor who knows that an epileptic patient does not disclose his illness to the DMV is required to notify them, since the patient endangers society.

"Although this might seem like *lashon hara*, it is not only permissible, but even required. Chofetz Chaim (*Hilchos Rechilus* 9:1) writes that just as it is prohibited to speak *lashon hara* when not warranted, it is a *mitzvah* to warn others when warranted to spare them loss or danger. Gedalia ben Ahikam, whose tragic assassination we commemorate yearly, is faulted by *Chazal* for refusing to heed warnings of the assassination plot because he considered it accepting *lashon hara*" (*Niddah* 61a).

"As we enter the new year," concluded Rabbi Dayan, "we should accept upon ourselves to drive in a legal and safe manner, not to be included among those who endanger society."

Verdict: It is permitted to report someone who drives recklessly, but he should be warned first when possible.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #34
(Bordering Property)
Priority

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

Q: In the absence of a *bar-metzra*, are there priorities to whom to sell?

A: *Chazal* established priorities, which are also included in doing what is "fair and good."

A *talmid chacham* has priority over a neighbor and a relative (*Taz* 175:50).

A close neighbor has priority over a relative who lives elsewhere. A relative has priority over outsiders (*Pischei Choshen, Shutfim* 11:[6]).

A neighbor has priority over those from another city, even if the outsiders are closer to the owner of the property being sold. Some require that he be a neighbor with close contact; others disagree. Some maintain that any townspeople has priority (C.M. 175:50; *Sma* 175:90; *Shach* 175:48; *Nesivos* 175:54).

These priorities are only a matter of *chassidus* (ideal preference). However, if someone else bought the property, one who has priority but is not a *bar-metzra* cannot take it from him (C.M. 175:50; *Be'er Hagolah* 175:90; *Pischei Teshuvah* 175:2).

Some suggest that these priorities apply also if both potential buyers are *bar-metzra* (*Mishpat Shalom* 175:12; P.C., *Shutfim* 11:[7]).



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did not think he would have to pay and never truly set his mind on obligating himself to the deal (*Shulchan Aruch, C.M.* 207:13). This rule is called *asmachta lo kanya*.

The *poskim* debate, however, whether a *mechilah* with an *asmachta* is binding. An example would be if a buyer agrees to purchase merchandise at a later date, and gives the seller an object as collateral, pledging that if he does not follow through on the deal, the seller may keep his collateral, and the seller also agrees to pay a penalty if he reneges on the deal. The *Shulchan Aruch* (207:11) rules that if the buyer reneges on the deal the seller is allowed to keep the collateral, because the buyer is considered to have been *mochel* the collateral and the *asmachta* does not negate a *mechilah*. Others (see *Rema* there) disagree and rule that here, too, since the agreement was dependent on an *asmachta*, the seller is not entitled to keep the collateral.

According to both approaches, if the seller reneges, since he never handed over an object, he is not obligated to pay the penalty he agreed to.

The *halachah* in your case would seemingly be subject to this dispute. Your agreement was a *mechilah b'asmachta* – you agreed to forgo your claim against your neighbor under the assumption that you could get the surveillance tape by the deadline. Your neighbor can now claim *kim li* (i.e., a person may claim that he is following the opinion that rules in his favor) – which, in this case, means that the *asmachta* does not negate your *mechilah*, and he therefore does not have to pay for the damage (see *Pischei Teshuvah* *ibid.* 13 and 14).

The *poskim* (based on *Shulchan Aruch* 21:1) write, however, that you have not lost your rights to a claim. Although a *mechilah* generally does not require a *kinyan* to solidify it (*ibid.* 12:8), and, as we explained, *asmachta* is also not a reason to invalidate a *mechilah*, since the *mechilah* was predicated on an uncertainty, a *kinyan* would have been necessary to solidify the *mechilah*, because otherwise it would be like a mistaken *mechilah*, which is not valid (*Shu"t Nodeh B'Yehudah, C.M.* 31, cited in *Pischei Teshuvah* 21:2 according to *Sma* 6, and *Aruch Hashulchan* 21:2).

This is not comparable to the case we cited earlier in which a buyer gave the seller collateral to guarantee that he would follow through on the deal. The reason no additional *kinyan* was necessary in that case is because handing over collateral was, in itself, a transaction of a *kinyan*, so if he would have reneged on the deal, the collateral would have belonged to the seller (*Shu"t Imrei Yosher* 2:9; *Chazon Ish, C.M., Likutim* 16:11).

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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