DOWNTOWN DENTURES & ROLEX OR BUICK

PROGRESSIVE ENGLISH EQUITY COURTS DISCOVER AGE OLD TALMUDIC CONCEPT, VERBAL COMMITMENT LIABILITY, & INTERVIEW ETHICS

ROLEX

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Especially Prepared for Machon Shlomo Presentations
**THE SCENARIOS: DOWNTOWN DENTURES**

Esophagogastroduodenoscopy (EGD) is a test to examine the lining of the esophagus, stomach, and first part of the small intestine. It is done with a small camera (flexible endoscope) that is inserted down the throat.

The patient receives a sedative and a painkiller. A local anesthetic may be sprayed into the mouth to prevent coughing or gagging when the endoscope is inserted. Dentures must be removed.

Grandma was sent home after the procedure, and her health slowly began to improve.

- **Who pays the dentist?**

However, the hospital sent her home without her dentures. The hospital verbally agreed to pay for new ones.

The family commissioned their dentist to begin constructing new ones; projecting to complete the job in a week and a half.

In the middle of the week, the hospital called Grandma’s home and told her that her teeth were located in a nursing home, downtown.

"The nurse inadvertently sent them home with another patient. You’ll receive your old teeth in two days, but we refuse to pay for the construction of the new ones."

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**ROLEX OR BUICK!**

Few would imagine that the 1989 graduating class of Harvard Business School would develop into one of the most celebrated graduating classes of the era. As exemplary role models, who positively influenced both business and society; the class of 1989 already boasted numerous Alumni Achievement Awardees.

Today’s leading executives and activists were yesterday’s determined neophytes. Brian Green, a leading executive of Morgan Stanley and an 1989 graduate, remembers his first interview and its aftermath.

"Forever a genuine comrade, my fellow classmate Fred Bernstein, prayed hard that I would get the job. A selfless young man - he would rejoice when his peers succeeded.

Determined but equally nervous, I wished to make a striking impression... Fred looked me over and exclaimed, ‘Brian, your presentation is great, but you will steal the show if you came in wearing a gold watch. Here, take my Rolex for..."
the interview. I will be out of town for the next few days. Give it back to me when I return.

Thank G-d I got the job. The supervisor told me that I made an outstanding impression and would begin my career in but one month's time. I felt sincerely indebted to Bernstein.

Throughout my college tenure, I had been saving up for my first Buick. I was eager to make my purchase in time for my first job. Bernstein returned a week later, but to my misfortune, I could not locate the watch. As much as I searched through my belongings, the Rolex did not appear.

My dream was dashed! Painfully, I dug into my purse, liquidated my savings and issued to Bernstein two checks for $3000.

Fred cashed the checks and purchased a similar model from Tourneau.

As I cycled on my Schwinn each day to work, my mind soared back to my dream Buick.

Four months later, when relocating to a new apartment, the Rolex appeared. "Eureka! My Buick may be a reality soon after all", I thought. Excited to return the watch and reclaim my cash, I contacted Bernstein and told him, I'll be over in ten minutes...’Not so fast replied Fred...’

❖ May Brian appear to an interview wearing Fred's Rolex? ❖ Must Fred accept the watch and return Brian’s cash?

WHAT’S THE HALACHA?

THE SOURCES:

LIABILITY FOR DIRECTLY DAMAGING PROPERTY: IN THE BIBLE
One who bruises an animal must compensate its owner. One who bruises a parent deserves death (see Rashi) [Leviticus 24: 21]
**Damage Property Prohibition: In the Codes**

Insofar as it is forbidden to steal from one’s fellow, it is forbidden to damage one’s fellow’s property even without deriving benefit from it.

**Liability: In the Talmud**

A person is liable for both intentional and unintentional direct damages, which he or she affects. [Sanhedrin 72]

**Prohibition & Liability: In the Codes**

One may not damage his/her fellow’s property. A person is liable for both intentional and unintentional damages that he or she exacts on another’s article whether due to negligence (peshia) or accidental mishap (on’es).

However, one is absolved from paying for unintentional-completely uncontrollable damages (Ones gamur) he or she causes.

**Prohibition But Exemptions: (2 Examples)**

1. **Minor Responsibilities**

the goods no longer exist, the minor is absolved from compensating for the victim’s loss. Nonetheless, it is appropriate to go beyond the letter of the law and compensate the victim for the loss the minor caused. [Mishna Berurah 343: 9]

A minor who damages is absolved from paying. A minor who steals must return the stolen goods. If the goods no longer exist, the minor is absolved from compensating for the victim’s loss. Nonetheless, it is appropriate to go beyond the letter of the law and compensate the victim for the loss the minor caused. [Mishna Berurah 343: 9]
II. Bava Basra 22b *Indirect Damages*

Although by placing the ladder in the vicinity of the bird house you are merely causing an indirect damage to your neighbor for which the Court cannot hold you liable to pay for his losses, nonetheless it is forbidden to cause your neighbor an indirect damage.

Keep your ladder at a four cubit distance from your neighbor’s bird house so that the mongoose should not jump up the ladder and kill your neighbor’s birds.

The Implication of Commitment Reliance (4 Examples)

**Choshen Mishpat 14: 5 Rema Scheduling**

A tells B to meet him in Destination C. B responsibly relies on A’s directive, travels to C and A neglects to show up. A must compensate B for the expenses he/she responsibly incurred.

**Exodus 22: 6-14 The Bailee**

By accepting upon oneself the responsibility of a trustee, one assumes variant gradient levels of liability even for indirect damages suffered by the trust, based upon the degree of responsibility as noted below.

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article’s value by swearing in court that he did not tamper with the property.

2a. Should a man give over to his friend a donkey, ox, sheep, and an animal to safeguard [a shomer sachar] and an accident occurs and it dies, breaks or is captured...he must swear that he did not tamper with the trust and is then absolved from compensating for the article.

3. Should a man borrow an article from his friend and an accident occurs and it breaks or dies...the borrower must pay.

Borrower שואל

1. Should a man give money or moveable objects to his friend [a shomer chinam] to safeguard and it is stolen, the thief pays double the value of the article at the time of its theft. If the thief cannot be found, the shomer can absolve himself from paying for the article.

T.L.C. Trustee Liability Chart

<table>
<thead>
<tr>
<th>Role</th>
<th>Negligence</th>
<th>Theft/Loss not due to negligence</th>
<th>Unforeseen/incontrollable accidents</th>
<th>Damage in course of normal use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unpaid trustee (Shomer Chinam)</td>
<td>Liable</td>
<td>Absolved</td>
<td>Absolved</td>
<td>Liable (may not use it)</td>
</tr>
<tr>
<td>2a. Paid trustee (Shomer Sachar)</td>
<td>Liable</td>
<td>Liable</td>
<td>Absolved</td>
<td>Liable (may not use it)</td>
</tr>
<tr>
<td>2b. Renter (Socher)</td>
<td>Liable</td>
<td>Liable</td>
<td>Absolved</td>
<td>Absolved</td>
</tr>
<tr>
<td>3. Borrower (Sho’el)</td>
<td>Liable</td>
<td>Liable</td>
<td>Liable</td>
<td>Absolved</td>
</tr>
</tbody>
</table>

Bava Metzia 77a Employment Commitment

Rava says “One who hired workers to water his field and it rained, whereby making the employment unnecessary, the loss is on the employees.

If the river overflowed, whereby making the employment unnecessary, the loss is on the employer.

The employee receives the amount he/she would accept to remain idle.

Rava says: If the river overflowed while the employees were watering the field, whereby making the remainder of the employment unnecessary, if the

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could have anticipated the phenomenon, the loss is on the employer.

If B crafted a product under commission from A, A must pay for the product regardless of whether he/she subsequently needs it (unless B can easily sell it to someone else before it loses value.) [Choshen Mishpat 333: 8, Nesivos 333: 15].

employees could have anticipated the phenomenon, the loss is on the employees. If the employer alone

If B crafted a product under commission from A, A must pay for the product regardless of whether he/she subsequently needs it (unless B can easily sell it to someone else before it loses value.) [Choshen Mishpat 333: 8, Nesivos 333: 15].

Bava Metzia 35a

A deposited jewelry by B. B became a gratuitous bailee. A requested the jewelry back. B claimed he misplaced it.

R. Nachman repossessed his villa in lieu of the payment.

R. Nachman said misplacing is negligence and as such B must compensate A for the lost jewelry. B failed to pay A.

Ultimately, B discovered the jewelry.

R. Nachman instructed B to return the jewelry to A and A to return the villa to B.

Chulin 94a,b Rashi: Deceit

One may not fool another human being.
Certain fats found in kosher domestic animals are forbidden by Torah law and others by Jewish custom and must be removed. Various blood arteries, blood veins, glands, membranes and tendons that must be skillfully removed by a trained expert before meat can be kashered i.e. soaked and salted. This removal process is called "traiboring" in Yiddish.

Once the meat is already cut up it is difficult to discern whether many of the forbidden parts were removed. A gentile receiving cut up meat from a Jew may think that the Jew extended the effort to remove the veins etc. and feel indebted to him for the effort extended.

Thus, a Jew may not send cut up meat which has not been traibored lest the gentile display to the Jew unwarranted gratitude.

OK so you're severely limited in the amount of wedding guests you can invite, but you don't want your gift intake to reflect the short guest list, so you conjure up a list of old Yeshiva guys living in Spain, send them an invitation and keep on shooting them emails telling them how it their presence would mean so much to you.

NO! That's assur! You are feigning benevolence whereby garnering unwarranted feelings of gratitude. That’s geneivas da’as! You are stealing man’s most valuable asset – his mind, intelligence!

Allowing One to Fool Himself

Mar Zutra son of R. Nachman was traveling from point A to point B. Rava and Rav Safra were traveling on the same route in the other direction. The three met. The greater Mar Zutra thought to himself that the two sages came out to greet him. He told them, “Rabbis you did not have to trouble yourselves so…”

In all honesty, R. Safra responded, “We were unaware that our Master was approaching from the other direction. Were we to have known, though; we would have even troubled ourselves more.”
Rava turned to R. Safra and asked him why he was so brutally honest and hurt Mar Zutra’s feelings. R. Safra responded that he did not want to falsely feign benevolence.

Rava responded that in this situation it was permissible for R. Safra to remain silent, for it was Mar Zutra who was fooling himself.

**THE HALACHOS: DOWNTOWN DENTURES**

**Downtown Dentures** invokes the following laws:

1) A paid trustee (shomer sachar) is liable for negligence, losses or theft which he/she could have prevented [Choshen Mishpat 303:2].

2) "A depositor delivered jewelry to a trustee (shomer) for safekeeping. Upon the depositor’s return, the shomer fails to locate the jewelry. The court requires the shomer to compensate the depositor for the value of the jewelry. The shomer defaulted and the court mortgaged the shomer’s real-estate to the depositor. Subsequently, the shomer found the jewelry in his possession.

   *We deem the compensation a faux-pas (blunder) and the shomer retains the right to return the jewelry and retrieve his or her real-estate from the depositor*” [Bava Metzia 35a, Choshen Mishpat 103: 11].

3) Generally, once an employee begins the commissioned work, the employer may not cancel the job without compensating the employee. However, as a result of an unforeseeable happenstance, where the work serves no function, an employer may cancel the commissioned work midway. The employer though, is required to pay for the work that was performed [Choshen Mishpat 335: 2].

4) If B crafted a product under commission from A, A must pay for the product regardless of whether he/she subsequently needs it (unless b can easily sell it to someone else) [Nesivos 333: 15].

5) **A verbally committed to meet B in court on a particular day. B paid out money to get there. A was negligent and did not show. A must compensate B for the reasonable and foreseeable expenditures he/she spent as a result of relying on A’s word [Choshen Mishpat §14: 5 Rema].**

**APPLICATION**

The hospital assumed the responsibilities of a paid trustee. They were negligent with the dentures and inadvertently sent them elsewhere. While they would be required to replace the dentures; subsequently returning the actual ones suffices.

Grandma commissioned the dentist to craft new dentures. The fact that she does not need them anymore is inconsequential. She would be required to pay the dentist for his work. (Parenthetically,
having a spare pair of dentures is not uncommon. It is difficult to argue that making a second pair serves no function. 

Nonetheless, Grandma commissioned the dentist after responsibly relying on the hospital’s verbal commitment to pay.

As a result; says Dayan Chaim Kohn, the hospital becomes obligated to pay, even if the family would have decided to commission new ones regardless of the hospital’s promise.

**THE ANSWER: DOWNTOWN DENTURES**

*Grandma must pay the dentist, but the hospital is required to pay Grandma.*

**THE HALACHOS: ROLEX OR BUICK**

*Rolex or Buick!* implicates two distinct issues

- Is Brian entitled to a recourse to reclaim his money?
- Is Brian guilty of "stealing" the heart of his prospective supervisor?

Let us focus on each issue independently.

**1. Is Brian entitled to a recourse to reclaim his money?**

**Introduction:**

Here is a quote from Britannica Encyclopedia (Mortgage Law).

"If the mortgagor failed to repay the debt by the time that was specified in the mortgage, the land became the mortgagee's absolutely....In the 16th and 17th centuries, however, the English equity courts intervened on the side of the mortgagor. Equity first gave the mortgagor a right to redeem the land by paying the amount that was owing, even after he had defaulted on the debt..."
Consider the following albeit different, yet similar Talmudic scenario.

"A depositor delivered jewelry to a shomer (custodian) for safekeeping. Upon the depositor’s return, the shomer fails to locate the jewelry. The court requires the shomer to compensate the depositor for the value of the jewelry. The shomer defaulted and the court mortgaged the shomer ’s real-estate to the depositor. Subsequently, the shomer found the jewelry in his possession. We deem the compensation a faux - pas (blunder) and the shomer retains the right to redeem his or her real estate from the depositor." [Bava Metzia 35a, Choshen Mishpat 103: 11]

So, the progressiveness of sixteenth and seventeenth century English Equity courts, was in fact a rediscovery of sorts of a theory directly reflecting the age-old Talmudic concept.

"Although a debtor compensated the creditor with alternative means, he or she does not necessarily lose the right to reclaim the "alternative compensation" with due payment at a later date."

Now, while generally, Talmudic Law only obligates the creditor/ depositor to comply with such compulsory recourse in an instance of faux - pas, and not in an instance of blatant default of payment, we will allow for history play out its course and see if Anglo-American Law progresses further in the direction it seems to be taking.

APPLICATION

Must Fred accept the watch and return Brian’s cash?

As a shomer, Brian was responsible to return the goods Fred deposited by him. Monetary compensation as a form of alternative compensation is due should Brian not produce the deposit. In our faux - pas situation, where Brian subsequently discovered the deposit amongst his belongings, he may return it to Fred and require Fred to return to him his cash.

The Answer:

Fred must accept the watch and return Brian’s cash. Rolex or Buick? Buick!
1. Deceiving any human being, or Geneivas Da’as, is a form of theft and is a biblical prohibition [Maseches Chulin 93b].

2. Additionally, tricking any human being even without causing him or her a financial loss or damage is a rabbinical prohibition. This includes garnering undeserved praise or feelings of gratitude through feigning a false impression of benevolence and virtue.

Explanation:

Just as one may not steal another’s money one may not manipulate another’s feelings of gratitude and steal his or her heart [Shulchan Aruch HaRav: Hilchos Ona’ah U’Genevah 11, 12].

Exception:

Creating an atmosphere within which the victim is to blame for not thinking responsibly is not included in these prohibitions [Maseches Chulin 93b].

APPLICATION

❖ May Brian appear to an interview wearing Fred’s Rolex?

While "dressing the part" clearly makes a striking impression, which might positively influence the outcome of an interview, it is widely accepted for a prospective candidate to groom himself or herself fashionably for such a meeting. A supervisor’s responsibility is to appreciate that candidates portray themselves in a superior manner within reason of their means and see beyond the outside trimmings.

Consequently, sporting finer wear for an interview does not convey a false impression of the manner in which the candidate appears on a day-to-day basis.

Instead, the supervisor suffers the consequences of his or her failure to consider these factors accordingly.

Hence, as a Rolex was within reason of Brian’s means, although he did not own one, he may appear to his interview sporting Fred’s Rolex.

THE ANSWER

Yes, if wearing it is “within his means”.

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