

# THEFT AND DECEPTION

*by Rabbi Doniel Neustadt*

Question: Some people are under the assumption that the Biblical prohibition "Do not steal" applies only to stealing from a Jew. Is there a basis for such an assumption?

Discussion: No, there is not. Stealing from a non-Jew, either from a private person, corporation or government entity, is strictly forbidden min ha-Torah[1]. In a certain respect, stealing from a non-Jew is even worse than stealing from a Jew, since it causes a greater level of chillul Hashem[2]. In addition, some poskim maintain that although the Biblical prohibition against stealing from a Jew is limited to stealing more than the value of a perutah, stealing from a non-Jew is forbidden min ha-Torah even for an item valued less than a perutah[3].

Question: If a cashier at a non-Jewish owned store mistakenly returns too much change or fails to charge for an item, is one required to make the cashier aware of his mistake?

Discussion: If there is a chance - even a small one - that a chillul Hashem will occur, e.g., the cashier might notice his mistake and realize that the Jew hid something from him; or, the cashier intentionally "made a mistake" in order to test the integrity of an Orthodox Jew, then one is halachically obligated to notify the cashier of what happened[4]. Even if there is no possibility of causing a chillul Hashem, but there is an opportunity for making a kiddush Hashem, e.g., the non-Jew will be impressed by the honesty and integrity of an Orthodox Jew, then one is strongly urged to take the opportunity to make a kiddush Hashem[5]. If there is no possibility of a chillul Hashem, and there is no opportunity for a kiddush Hashem, then one is not obligated to notify the cashier of his mistake.

Question: If there is no possibility of chillul Hashem and there is no opportunity for kiddush Hashem, is it permitted to deceive or trick a non-Jewish cashier, e.g., to intentionally hide an item so that you are not charged or falsely claim that an item was defective?

Discussion: It is strictly forbidden to deceive or trick any merchant, Jewish or not. Doing so is considered "stealing" min ha-Torah which is forbidden without any exception, as stated earlier[6]. [The poskim disagree whether or not one who was unaware of this halachah and deceived a non-Jew is halachically required to return the item[7]. Obviously, if a chillul Hashem may result, then one is obligated to return the stolen items to the non-Jew.]

Question: Is it permitted to purchase an item at a store with the intent of using it for a short period of time and then returning it for full credit?

Discussion: The answer to this question will depend on the policy of the individual store or chain of stores. Most stores would never allow such a thing. It would be forbidden, therefore, to buy an item from such a store with the intent of using it and returning it, since doing so is *geneivas da'as*, misleading while engaging in deceptive behavior. Behaving with *Geneivas da'as* applies equally against Jews and non-Jews[8]. Quite possibly, purchasing an item with the intention of using it briefly and then returning it may be considered theft as well, since the store incurs an actual loss when it is forced to repackage and restock the returned item. But there are some mega-stores and chains which may permit their associates to sell an item to a customer even if they are clearly aware that the customer intends to return the item after trying it out for a short period of time. Their market research shows that invariably, some customers change their minds and decide to keep the purchase even though initially they had no intention to do so. Other customers are forgetful or lazy and fail to return the item within the time period allotted, thereby forfeiting a refund and remaining with only a credit to be used in the store. More often than not, the store makes money on these customers as well, and even if the store is "outsmarted" occasionally, in the long run it is profitable to allow this practice. The only way to find out what the store policy is, is to ask. Until that information is obtained, it would be forbidden to purchase an item with the intent of using it briefly and then returning it. According to many poskim, *geneivas da'as* is forbidden *min ha-Torah*[9], and needless to say, one must be particularly stringent with a Torah prohibition[10].

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1. *Shach*, C.M. 348:2, followed by all of the *poskim*.
  2. *Tosefta*, Bava Kama 10:8, and *Minchas Bikkurim*.
  3. *Aruch ha-Shluchan*, C.M. 348:1.
  4. *Rama*, C.M. 348:2; *Shach* 3; *Shulchan Aruch ha-Rav*, *Gezeilah* 4.
  5. See *Mordechai*, Bava Kama 10:158, quoting *Yerushalmi* and *Knesses ha-Gedolah*, C.M. 183:54.
  6. *Shulchan Aruch ha-Rav*, *Gezeilah* 4; *Aruch ha-Shulchan* 348:2.
  7. See *Sha'ar Mishpat* 348:2, *Machneh Ephaim*, *Gezeila* 4, *Aruch ha-Shulchan* 348:2. *Rav Y.S. Elyashiv* is quoted (*Sefer Mamon Yisrael*, pg. 45) as ruling leniently on this question.
  8. C.M. 228:6.
  9. See *Ritva*, *Chullin* 94b; *Sefer Koveitz on Rambam Hilchos De'os* 2:6. See also *Seforno*, *Vayikra* 25:14, who writes that *geneivas da'as* is included in the prohibition against *ona'as devarim*.
  10. In addition, the *chillul Hashem* factor must also be taken into account. If the sales person recognizes the true intent of the buyer and that will cause him to look negatively at an Orthodox Jew, it must be avoided.

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