

BUSINESS WEEKLY



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

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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

LOST TZEDAKAH

Mr. Jacobs had served as a *gabbai tzedakah* for many years. He had earned a reputation for integrity, and people entrusted him with their charity money to distribute it as he saw fit.

In addition to the general *tzedakah* fund, Mr. Jacobs also collected for a local yeshivah and Hatzalah. Every day he would place in shul three *pushkas*, each one clearly labeled. At the end of each month, he would count the money and deposit it.

One day, after counting the money, Mr. Jacobs headed to the bank. He hadn't brought his attaché case, so he tied the money in a bag and stuffed it in his coat pocket. When he reached the bank, he suddenly realized that the money was gone!

"It must have fallen out along the way," Mr. Jacobs thought. He retraced his steps but could not find the money. He panicked. What would he do? There had been about \$1,000 of general *tzedakah*; old Mr. Katz alone had contributed \$200 in honor of his father's *yahrtzeit*. There was another \$400 for the local yeshivah, and \$300 for Hatzalah.

Mr. Jacobs came home with a glum look on his face. "What's wrong?" his wife asked. "You look terrible!"

Mr. Jacobs related what had happened. "First time this ever occurred," he added.

"I'm sorry it happened," said his wife, "but you know that your coat pocket is not a secure place to keep money."

"I know. I usually put the money in my attaché case," responded Mr. Jacobs, "but I didn't have it today. It's \$1,700 down the drain."

Mrs. Jacobs thought for a moment and then asked, "Are you liable for the money? It's going to be very hard for us to cover such a sum."

"I was wondering the same," answered Mr. Jacobs. "I was careless, but I do this as a volunteer; I don't get anything for being *gabbai*. Furthermore, nobody's keeping track except Mr. Katz. He asks me every day if I distributed the money, but he's the only one."

"But you know that you lost the money," retorted his wife, "and G-d knows!"

Mr. Jacobs called Rabbi Dayan and asked:

"Am I liable for the lost *tzedakah*?"

"You must pay the money that was collected for specific causes, namely the yeshivah and Hatzalah," replied Rabbi Dayan. "On the other hand, nobody can claim the unspecified *tzedakah* from you, not even Mr. Katz. However, you have a moral obligation toward G-d to make good to the poor."

A *gabbai tzedakah* is responsible for negligence like any other person who is entrusted with

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

VEXING VENDING

Q: I heard a story that happened around 55 years ago, and I would like to know what the *halachah* would be.

Back then, upscale residential buildings often had cigarette vending machines in the lobby. A *bachur*, Chaim, would pass a building that had such a vending machine on his way to and from yeshivah in Crown Heights, Brooklyn, each day. Two *bachurim*, Meir and Leibel, asked him to buy them each a pack of cigarettes, which sold for a quarter in those days, and each one gave him a quarter. When Chaim put the first quarter into the machine, the pack of cigarettes shook a little, but not enough to dislodge it and drop it into the slot from which it could be retrieved. Chaim tried to shake the machine and bang on it to shake the pack loose, but to no avail. He put in the other quarter, and the pack came tumbling down.

Chaim was uncertain what to do with this pack of cigarettes – did it belong to Meir or Leibel? Their *Rosh Yeshivah* gave Chaim 10 cents and told him to call Rav Moshe Feinstein to ask him what to do. Rav Moshe replied that he did not want to answer this *she'eilah* over the phone, because *Choshen Mishpat she'eilos* have to be handled patiently and carefully to ensure that all the details are clear, and he did not feel that this could be accomplished over the phone.

What would the *halachah* be in such a case?

A: Before answering the *she'eilah*, we will point out that when this *she'eilah* originally arose, the dangers associated with smoking were not fully known (see *Shu"t Igros Moshe, Yoreh De'ah 2:49* and *Choshen Mishpat 2:76*). A halachic precedent can be found in *Terumas Hadeshen* (314), cited by Rema (*Choshen Mishpat 292:10*). The case discussed there involves someone (a *mafkid*) who gave money to a *shomer* to safeguard, with the understanding that while the money was in transit, the *shomer* would not be responsible for safeguarding it. The *shomer* placed the money in his



CASE FILE

money. If he is paid for his services, he would be accountable also for theft. Nonetheless, the *Shulchan Aruch* (C.M. 301:6) writes that one who was negligent with unspecified *tzedakah* is “exempt,” since nobody can claim the money from him. The donors cannot claim the money, since they never expected the *gabbai* to return it to them. Each individual poor person also has no claim, since the *gabbai* could have chosen not to give the charity to him, but to a different needy person.

If, however, the money was earmarked for specific people or organizations — they have a definite claim to the money, and the *gabbai* is liable to them if he was negligent.

“Later authorities comment that even when the money is not earmarked for anyone specific, the *gabbai* is only ‘exempt’ in the sense that nobody can sue him, neither the donor nor an individual poor person,” concluded Rabbi Dayan. “However, the *gabbai* has a personal obligation to G-d to fulfill his responsibility to the poor. His commitment to handle their money is no less a commitment than one who pledges to them (*Pischei Teshuvah* 301:6). Therefore, he is expected to pay from his own pocket the entire sum that he was negligent about, to the best of his ability.”

Verdict: The *gabbai tzedakah* is liable for the money for specific causes and has a moral obligation regarding the unspecified *tzedakah*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #11 IOU or check

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

Q: Someone borrowed money from me and gave me an IOU note or check for a year later. Sometime during the year, I said that I was mochel the loan. Must I rip up the IOU note or check?

A: We mentioned that there is a dispute whether *mechilah* is valid when the creditor does not return the loan document, because this may indicate insincere *mechilah* or because the loan may be considered as having been collected.

Some write that this dispute applies only to a classic loan document with witnesses, which bears a halachic lien on the debtor's property and can be considered as collected. However, if the lender holds an IOU note, *iska* agreement or other document nowadays, without a lien, the *mechilah* is valid (*Pischei Teshuvah* 241:2; *Maharsham* C.M. 5:22).

Furthermore, if the lender merely holds a check, *mechilah* is certainly valid, since the borrower can now legally cancel it. If so, neither reason to negate the *mechilah* applies, since there is no indication of insincere intent and a check is not considered as collected.



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pocket together with his own money, and he lost some of the total that was in his pocket. As an example, we'll take a case of a *mafkid* giving a *shomer* \$10, who then placed it together with his own \$20, and then \$3 got lost.

The *halachah* is that the loss is apportioned proportionately – the *mafkid* takes a loss of \$1, and the *shomer* loses \$2. Although the *shomer* is the *muchzak* (the one holding the money), which would generally place the burden of proof on the *mafkid*, the *shomer* is not entitled to tell the *mafkid* that perhaps only his money got lost. We also do not go according to the *rov* (majority) and say that all the money that was lost belonged to the person who owned the majority of the money (the *shomer*, in this case), because people don't care which specific currency bills are theirs, so the sum of money is seen as one unit, not as two separate sums, with one being the majority and the other being the minority. Therefore, the loss is divided proportionately (*Sma* 292:30 and *Shach* 24).

[This *halachah* applies only to money – or something similar to money in that it has no identifying characteristics – where those who give their money to the *shaliach* don't care whether their specific bills are used to purchase the item.]

Returning to our story, Meir and Leibel both were *mafkid* their money with Chaim, and one of the two quarters was swallowed by the machine without it delivering the product. Since neither Meir nor Leibel was particular about his quarter being used to purchase his pack of cigarettes, they are considered equal partners in the total of 50 cents that was deposited with Chaim.

Therefore, the loss of the 25 cents should be shared by Meir and Leibel proportionately. The pack of cigarettes bought with the second quarter, or the first quarter if that was the case, belongs to both of them, and Chaim should have given half to Meir and half to Leibel (*Rema* ad. loc. Cf. *Machaneh Efraim, Shomrim* 26).

Similarly, if two people gave money to a *shaliach* to purchase merchandise for them, and he bought merchandise with some of the money, if the money of the two investors was combined by the *shaliach* before he made the purchase, the merchandise was bought from the common purse and therefore belongs to both people (*Choshen Mishpat* 184:1).

This commonly occurs when something is on sale, and two people ask a third person to buy the item for them, but when he gets to the store, there is only one item left. The *halachah* is that the item belongs to both people (see Issue #488 for what the *halachah* would be if the buyer specifically intended to purchase the item for one of the two parties).

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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