

BUSINESS WEEKLY



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

Issue #601 | Tzav | Friday, March 18, 2022 | 15 Adar II 5782

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



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

INTENDED MATANOS LA'EVYONIM

In the Freilich home, Purim preparations were well underway; hustle and bustle were noticeable throughout the house. The aroma of freshly baked hamentashen permeated the kitchen. On the dining room table, bags were neatly arranged to be filled with *mishloach manos*.

Each family member was fitted with an appropriate costume; Mr. Freilich planned to dress up as Chassidishe Rebbe.

"Do you have money prepared for *matanos la'evyonim*?" Mrs. Freilich asked her husband. "Every year, about twenty people knock on the door collecting *tzedakah*. We often don't have small bills to give them and have to ask for change."

"I'll take care of it," Mr. Freilich replied.

On Taanis Esther, Mr. Freilich went to the bank and withdrew \$100 in \$5 bills. "These will be for *matanos la'evyonim*," he thought to himself.

When he came home, Mr. Freilich put the \$5 bills in an envelope. He placed the envelope on the small table in the antechamber, so that the money would be readily available when needy people came knocking on the door.

Throughout Purim, needy people came and went. By late afternoon most of the \$5 bills were gone, but three remained.

At 5 p.m. Mr. Freilich saw the delivery truck from the local butcher stop outside his house. He wanted to prepare a tip for the delivery man and looked in his wallet, but had no small bills.

"The delivery from the butcher is here," Mr. Freilich called to his wife. "Do you have any small bills in your pocketbook for the delivery man?"

"No, I'm out of small bills," Mrs. Freilich replied.

"I have only \$20 bills."

Mr. Freilich eyed the envelope on the table.

"Can I give the delivery man \$5 from there?" he wondered.

He called Rabbi Dayan and asked:

"Can I give the delivery man \$5 from money that I intended for *matanos la'evyonim*?"

"Hagahos Oshri (Megillah 1:7) writes that money which a person intended to distribute on Purim he may not exchange but rather must distribute that money itself," replied Rabbi Dayan. "Beis Yosef posits that Hagahos Oshri follows the opinion of some authorities that *tzedakah* is binding through firm intent, even though the person did not verbalize his pledge" (*Mishnah Berurah* 694:6).

DID YOU KNOW?

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

GARBAGE SURPRISE!

Q. A yeshivah bochur was in the staff room of his yeshivah making copies, when he noticed a wedding invitation, sealed in its envelope, in the garbage. Curious to see whose *chasunah* it was and where it would be held, he opened the envelope, and was shocked to find three hundred-dollar bills inside. It seems that the *chassan* wanted to cover his *rebbe's* travel costs (or perhaps absolve himself for some trouble had made!). Is the *bachur* who opened the envelope required to give the money to the *rebbe*, or may he keep it, since he had retrieved it from the garbage (which is *hefker*)?

A. The halachic issue that arises from your question is whether there is an obligation, under the mitzvah of *hashavas aveidah*, to return the money, or whether this mitzvah does not apply and he may keep it.

Presumably, when the *rebbe* lifted the envelope containing the invitation, he was *koneh* (acquired) the money. Although a person usually cannot be *koneh* something without intending to do so (*Shulchan Aruch Choshen Mishpat* 275:25), in this case, since the sender (the *makneh*) intended to transfer it to him, he did acquire it by lifting it (*Ketzos HaChoshen* 275:4 and *Nesivos* 200:14). Although the recipient had no idea what was in the envelope, he was still *koneh* it, since the *makneh* did know (see *Levush* 333).

Is the finder entitled to keep the money because he retrieved it from *hefker*? It would seem that he may not. Since the intended recipient doesn't know that the money is lost, the situation is one of *yiush shelo midaas* (unwitting despair), which is not considered *yiush* (*Choshen Mishpat* 262:3), so there is still an obligation to return the money.

But there is another factor to consider: whether a sealed envelope thrown into a garbage, where it will likely never be found – especially because the custodian empties the trash at the end of the day, and it will be crushed and carted to the city dump – it is possible that it falls under the category of *zuto shel yam* (lit. the depths of the sea). If a person saves



CASE FILE

"The issue of intent for *tzedakah* stems from the *Gemara* (*Shavuos* 26b), which states that oaths must be uttered verbally. Although firm intent in the mind alone is binding regarding consecration to the Temple, as it says: 'All generous-hearted...,' we cannot derive mundane issues (*chullin*) from sacred ones.

"Rosh (*Responsa* 13:1) rules that since all charity pledges nowadays are 'mundane,' they are not binding with intent alone. When uttered verbally, though, they are binding (even without a *kinyan*), as the *Gemara* (*Rosh Hashanah* 6a) derives from the verse: "as you vowed ... with your lips" (*Devarim* 23:24).

"However, Mordechai (*B.B.* #491) rules that one who firmly intends to give *tzedakah* is obligated like one who utters verbally, since *tzedakah* is juxtaposed in the verse above to other sacred vows for the Temple" (*Aruch Hashulchan*, *Y.D.* 258:39).

"Shulchan Aruch cites both opinions, but seemingly leans toward the Rosh. However, Rama sides with the Mordechai, that firm intent is binding, so that Ashkenzim should be stringent" (*Y.D.* 258:13; *C.M.* 212:8).

"Some *Acharonim* suggest that the person must verbalize that he will give *tzedakah*, and then the specific amount is binding with intent alone. Others distinguish that pledges for a shul building are similar to Temple consecrations and are binding with intent, but not charity to poor people. Some indicate that even if charity intent toward a needy person is binding unless verbalized, the donor can give it to a different needy person, instead" (*Pischei Teshuvah*, *Y.D.* 258:15; *R. Akiva Eiger*, *Y.D.* 258:12; *Beis Yitzchak*, *Y.D.* 2:82; *Tzedakah Umishpat* 4:4).

"In any case," concluded Rabbi Dayan, "you should not give the delivery man money that you intended for *matanos la'veyonim*."

Verdict: There is a dispute whether *tzedakah* pledges are binding with firm intent alone; Rama rules to be stringent.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #17 Undefined Amount

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

Q: A person bought an item, and agreed to forgo any claim should the item prove damaged. Is such *mechilah* valid?

A: Rambam rules that obligations to an undefined amount are not binding. Almost all other *Rishonim* disagree (*C.M.* 60:2; 207:21).

Rambam (*Hil. Mechirah* 15:6) similarly writes that a person who forgoes must know the amount and specify it, or provide a defined maximum for his *mechilah*, like *onaah*, where the person must know the price differential he is forgoing to void a claim of *onaah* (*C.M.* 227:21).

Tur (*C.M.* 232) writes that the Rambam follows his general opinion, but according to the *Rishonim* that undefined obligations are valid, so, too, is *mechilah* of an undefined amount.

However, Shulchan Aruch (*C.M.* 232:7) cites the Rambam regarding *mechilah*, even though he rules like the other *Rishonim* regarding obligations. *Acharonim* explain that this is due to the analogy to *onaah*, since the person can claim that he was not sincere in forgoing when the amount is undefined (*Sma* 232:16; *Shach* 232:4; *Pischei Hachoshen, Halvah*). *ah* 12:13).



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something from the depths of the sea, from a raging river, or from a lion or bear, he may take it even if the owner was not *meya'eish*. This halachah is derived from a *pasuk* that states, "Vechein taaseh lechol aveidas achicha asher tovad mimenu – you shall do the same for all of your friend's items that are lost **to him**" (*Devarim* 22:3). We derive from the word *mimenu* that the obligation of *hashavas aveidah* applies only to items lost to their owner, but not lost to others – meaning that others have access to it. If circumstances make the item irretrievable, such as in the cases listed above, then there is no obligation to return it (*Choshen Mishpat* 259:7 with *Sma* 16). Therefore, even if the owner doesn't know that the item is lost, the finder can be *koneh* it.

We must examine, however, what is excluded from the mitzvah of *hashavas aveidah* under the category of *zuto shel yam*. Some *poskim* maintain that only something that cannot be retrieved by anyone, but the finder somehow managed to salvage it, enters this category. According to this approach, an envelope found in a trash can is not considered *zuto shel yam*, because anyone could have retrieved it, and the reason no one else did is because they didn't see it (*Meishiv Behalachah* 200 and *Birur Halachah* 8:260).

Other *poskim* argue that since it was left in a place where it is unexpected that anyone would retrieve it, and this *bachur* just happened to do so, it is considered lost to everyone, not just the owner, and the finder is entitled to keep it (see *Rambam Hilchos Gezeilah* 16:8, *Nesivos* 332:8, *Shu"t Beis Ephraim* 44, and *Pis'chei Choshen, Aveidah* 4, fn. 27. A garbage in our days is different from the one discussed in *Choshen Mishpat* 260:11).

It is possible, however, that since it is possible that the *chassan* would call his *rebbe* and tell him about the money, or if the *rebbe* regrets throwing it out, he could easily have found it and taken it out of the trash, it cannot be considered irretrievably lost. Only if it was buried inside the trash, in a manner that it would be unlikely for it to be found even if someone searches for it, would it be considered lost to everyone except for the *bachur* who dug it out of the trash.

Even if we do consider this a case of *zuto shel yam*, however, the Rema writes that it would be considered proper — "*hatov veyahashar*" — to go beyond the letter of the law and return the lost item, unless the finder is poor and the loser is rich (see *Shu"t Tzemach Tzedek* 89), in which case there is no obligation to go beyond the letter of the law. In your case, though, it is improbable that the *rebbe* is rich (cf. *Terumas Hakri* 259:7 and *Shu"t Beis Halevi* 3:48). Another reason to give the money to the *rebbe* is to prevent discomfort or hurt that will be caused if he has no idea that he should thank the *chassan* for sending him the money.

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