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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

PLEDGE CONFUSION

On Simchas Torah, while saying Yizkor, Mr. Feldman had quietly pledged $360 to charity in memory of his parents. However, the weeks after Sukkos were very pressured at work, so that he didn't honor his pledge promptly.

"You mentioned that you pledged $360 at Yizkor," Mrs. Feldman said to her husband a month later. "Whatever happened with that donation? I don't see it in the bank statement."

"I've been very busy," Mr. Feldman acknowledged. "Thank you for reminding me."

Mr. Feldman sat down to make out a check for his yizkor pledge. However, he did not remember to which charity he had pledged!

"I don't remember whether I pledged to the local Kollel or the local Tomchei Shabbos," Mr. Feldman said to his wife. "By any chance do you remember?"

"No, I don't remember," replied Mrs. Feldman. "I don't think that you told me to which cause you pledged. I guess you'll have to give to both."

"Right now we're a bit tight," Mr. Feldman said. "The *yomim tovim* entailed a lot of expenses, and we distributed a lot of *tzedakah* during the *yomim noraim*."

"Then maybe it's enough to choose either cause," said Mrs. Feldman. "After all, you only pledged $360."

"Or maybe, since I don't remember, I don't have to give to either?" suggested Mr. Feldman. "Neither organization can claim the money, and I'm in possession!"

"That sounds strange to me," replied Mrs. Feldman. "But check it out!"

Mr. Feldman called Rabbi Dayan and asked:

"Am I obligated to give to one of the causes? Must I give to both?"

"Chasam Sofer (Y.D. #240)

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

PIPE AND PUMP: WHO PAYS?

Q. Reuven expanded the garden around his house in the Catskills, with permission of the bungalow colony board. The landscaper he hired to do the work hit a pipe while digging, causing water to start gushing in all directions. His neighbor Shimon, realizing how much damage the water could cause to the neighboring properties, ran up the nearby hill where the water pump was located and turned off the water supply to the village. He did not know, however, that if he closed the outflow, he had to shut off the pump as well, and the pump burned out and now needs to be replaced.

Reuven is willing to pay to fix the pipe his worker broke, but he claims that he is not liable for the damage to the water pump that broke because of Shimon's actions.

Shimon claims that he has no liability, because he didn't know that he had to turn off the pump, and he was merely trying to save the neighborhood homes from being flooded.

The bungalow colony board says that because all the damage was caused by Reuven's landscaper, Reuven must pay for all of the repairs.

Who is correct?

A. Before discussing the options you presented in your question, let's discuss the liability of the landscaper, assuming he is Jewish and willing to follow halachah.

Depending on the circumstances, a professional who causes damage while doing a job he was hired for can be liable either as a *mazik* (one who causes damage) or as a *shomer* (guardian), because he was obligated to safeguard the object he was hired to improve or fix to ensure that it does not sustain damage under his watch.

In our case, the landscaper cannot be held liable as a *shomer*, because he was not hired to safeguard the pipe or the pump that were damaged. Shimon, too, would not be liable as a *shomer*, for the very same reason. Furthermore, even had one or both been considered *shomrim*, they still wouldn't be liable, because *shomrim* are exempt from liability for damage done to *karka* (land) and anything connected to it (*Shulchan Aruch, Choshen Mishpat* 301:1; *Shach* 95:8).

In many cases, a professional is not liable as a *mazik* either, unless it was likely that the work he was doing could cause damage and it was reasonable to expect him to take precautions

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addresses this question in his responsa," replied Rabbi Dayan. "He notes that Shulchan Aruch rules in a similar case, regarding a person who is unsure *how much* he pledged, that he must give the higher amount. Similarly, if a person is unsure whether certain money that he holds belongs to *tzedakah,* he is required to give it to *tzedakah"* (Y.D. 258:3; 259:5).

"Chasam Sofer explains that the fundamental question here is whether we view questionable *tzedakah* as other monetary issues, where the rule is to favor the one in possession, so that the person should be exempt, or as a religious issue, where the rule is *safek d'oraysa l'chumra,* to be stringent, so that the person is liable.

The Mishnah (Pe'ah 4:11) teaches that questionable *leket* (fallen grain) belongs to the poor. The Yerushalmi bases this on several verses, some particular to leket, and some – among them "*ani varash hatzdiku* – justify the poor in his dispute" – that can be extended to *tzedakah* in general.

Ramban and most Rishonim rule that *safek d'oraysa l'chumra* in all areas of *tzedakah*, whereas Ran (Nedarim 7a) and Nimukei Yosef (B.B. 148b) maintain that questionable *tzedakah,* other than *leket*, is subject to the general monetary rule preferring the one in possession.

Chasam Sofer rules like most Rishonim that *safek tzedakah l'chumra*. He therefore concludes that in our case the person should give to both causes. Nonetheless, he concludes that although we instruct the person to do so, *Beis Din* cannot enforce payment to both causes.

However, some authorities allow changing the purpose of *tzedakah,* so that even if a person pledged to A, he can give to B. Chasam Sofer writes elsewhere (Y.D. #244) that *tzedakah* can be changed to a higher purpose. Poskim also allow doing *hataras nedarim* to enable giving to another cause, certainly a higher one (Tzedakah U'mishpat 9:11[42-43]; see Aruch Hashulchan Y.D. 258:10).

"Thus, it is preferable to give to both causes out of doubt," concluded Rabbi Dayan. "However, if this is difficult, you can give to the local *kollel,* because support of Torah scholars is considered a higher level of *tzedakah,* especially if you make *hataras nedarim* in case you pledged otherwise."

Verdict: Most Rishonim rule that we are stringent with questionable *tzedakah,* like other *safek d'oraysa l'chumra*, despite the monetary aspect. However, because some authorities allow changing the purpose of *tzedakah,* giving to the higher cause can suffice.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Yei'ush – Abandonment

#11

Seforim

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

Q: I found a sefer in a street that mostly gentiles pass through. May I keep it?

A: Although we usually presume *yei'ush* when an item is lost where mostly gentiles pass, we do not presume *yei'ush* regarding *seforim* or others item distinctly for Jewish use, so that *hashavas aveidah* applies. This is because the owner knows that even if a gentile will find the item, he has no use for it and will sell it to a Jew, so that he hopes to be able to reclaim it (Rema 259:3; 235:8).

Similarly, if a gentile stole a *sefer* and sold it to a Jew, the buyer must return it to the owner, because we do not presume *yei'sush*, so that the buyer cannot fully acquire it. Nonetheless, the owner must reimburse whatever amount the person spent to buy the item from the gentile (Rema 25:8).

However, if the *seforim* were plundered in a war, such as in the Holocaust, we presume *yei'ush*, like other natural catastrophes that the owner has no control over (Pischei Choshen 3:4[8]).

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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to prevent that. Otherwise, because he was authorized to do his work (*mazik b'reshus*), and he was not negligent in the manner in which he carried out his work, he is not liable (see *Shu"t Avnei Nezer, Choshen Mishpat* 19 and *Chazon Ish, Bava Kamma* 11:21).

Shimon, too, cannot be held liable as a *mazik* because the damage he caused to the pump was indirect (*grama*) and unintentional (*b'shogeg*). Even had the damage been direct, not a *grama*, since he wasn't paid for what he did, and is considered to have acted with permission because his intention was to protect the neighbors from damage, and his action was not negligent, he is not liable (see *Choshen Mishpat* 306:4).

As to whether Reuven is liable, the first thing that needs to be checked is whether the bylaws of the colony address such circumstances, and, if not, whether there is a prevailing practice in similar colonies governing such cases.

We will address this *sh'ailah* assuming that no such precedent exists.

Reuven cannot be held liable as a *mazik*, because he didn't actually inflict the damage; his worker was the one who broke the pipe.

But if the worker will not pay — either because he is not liable, as discussed above, or he will refuse to cooperate — the contemporary *poskim* discuss whether the liability reverts to Reuven. Some say that he is not liable for damage caused by his worker (*Pis'chei Choshen, Nezikin* 1:44). Others write that although he isn't actually a *mazik*, since he needed permission from his neighbors to expand his garden because they are partners in the common area he was subsuming for his garden, the presumption is that they granted permission only on condition that if he caused any damage to the common property, he would repair it (*Mishpat Hamazik* p. 432). Reuven obligated himself to this condition under the halachic rubric of *areiv* (guarantor); in exchange for the benefit of expanding his garden, he accepts upon himself liability for any damage caused in the process.

Reuven is certainly liable if he hired a landscaper who is not licensed and was uninsured, so that he now has no legal recourse in civil court (see *Nesivos* 176:51; see *Shach* 176:57). Therefore, since the HOA board had to grant him permission to expand his garden, he is liable for the damages.

However, this is only true for the pipe which was damaged by his worker. But the pump was not damaged due to Reuven's work on his garden, so he cannot be held liable for it. The HOA board will therefore have to absorb the cost of the new pump.