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STORYLINE

responsibility to return

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Moish was walking along the Yeshiva campus when he saw an MP3 player lying on the ground.

"Looks like one of the guys lost this," he thought. "Must have fallen out of his pocket." He picked up the MP3 and examined it to see if contained any identification. The MP3 was full of recorded shiurim and Jewish music, but nothing that provided a name or telephone number. There was a small decal on it, however, that served as an identifying feature.

Moish took the MP3 back to his room and placed it on his desk. He then wrote a sign and posted it on the bulletin boards around the Yeshiva. "Found MP3 player. Please contact Moish at..." providing his cell phone number.

Two days passed, but no one called to claim

the item.

"You know, we need to do a major straightening of the room," Moish's roommate said to him. "Can you help me move the stuff out to the hall?"

"I think you're right," Moish said, surveying the mess around the room. The two boys moved the desk and the other belongings out to the hall.

When they finished cleaning the room and went to get the desk, Moish noticed that the MP3 was missing from the desk. "Oh no," he exclaimed. "It seems that someone took it!"

Later that day, Moish received a call. "Hi, it's Shalom. I saw a sign that you found an MP3."

"Yes," said Moish.

"I lost mine a few days ago," Shalom said.

"It had a decal on the side with a miniature picture of the Chafetz Chaim," Shalom said.

"I did find an MP3 like that..." said Moish.

"Oh, great!" said Shalom. "I was really worried about it. I use it to review shiur and listen to the Daf."

"The problem," Moish said slowly, "is that we left it outside my room and it's gone."

"You're kidding me," said Shalom. "Why did you leave it outside the room?"

"I was trying to straighten the room and moved the desk outside to the hall," said Moish. "I didn't expect it to be taken."

"I really appreciate your trying to help," said Shalom, "but you ruined things now."

"It's no worse than when it was lying around the campus," said Moish.

"Still, once you took it, I would expect you to be responsible for the MP3," said Shalom.

"I never accepted responsibility for it!" said Moish.

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FROM THE BHI HOTLINE

Submitted by
U. B.

thoughts on tzedakah

I had made up my mind to give two hundred dollars to a particular poor person after Sukkos.

However, as I see it now, while he is still in need, he may manage fine without my donation.

Q: I never verbally expressed my pledge to give tzedakah (charity). Now that this person's circumstances seem to have improved, am I permitted to retract my

decision?

A: As explained in previous editions of *Business Weekly*, according to many Poskim, a person's thoughts do not carry halachic weight – devarim she'b'leiv ainam devarim – and as such, you should be allowed to retract your initial decision.

Your case, however, is different, since it encroaches on the issue of making a vow to give tzedakah. Rema (Y.D. 258:13) rules,

despite contrary opinions, that one who decides to give money to tzedakah is obligated to follow through with that decision whether he articulated the pledge or not. According to this opinion, a vow to tzedakah is similar to hekdesch, where a mental commitment to sanctify an object as sacred is binding (see Imrei Yosher 2:162). Accordingly, since your commitment involves a vow to tzedakah, it seems that you should fulfill your vow.

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STORYLINE CONTINUED

"When you picked it up, you did," said Shalom.

"I don't see how that makes me responsible," said Moish, "but it would be best to discuss the issue with Rabbi Tzedek."

Moish and Shalom met with Rabbi Tzedek. "Am I responsible for an MP3 that I found and was lost or stolen from me?"

Rabbi Tzedek ruled: "If Moish left the MP3 outside his room carelessly, then he is responsible. Had he put the MP3 away safely in the room and it would have been stolen, there is a dispute whether he is responsible." Rabbi Tzedek then explained, "A person who finds a lost item is responsible to take it and safeguard it until the owner claims it. During this time, he is considered a shomer, a guardian over the object, and is responsible for it as any other item entrusted to him."

"There is a dispute in the Gemara (B.K. 56b) regarding how to consider a person who holds a lost item. Raba considers him a shomer chinam, unpaid guardian, since he has no monetary benefit from holding the lost

item. Rav Yosef, on the other hand, considers him a shomer sachar, a paid guardian, since his involvement in the mitzvah of hashavas aveidah when picking up the item exempts him from the mitzvah of giving tzedakah at that time. Furthermore, since the Torah imposes the responsibility to guard the item on the finder, he is considered a shomer sachar."

"How do we rule?" asked Moish. "The Shulchan Aruch (C.M. 267:16) rules that the finder is treated as a shomer sachar, a paid guardian, and therefore is also responsible for theft and avoidable loss. The Rama, however, cites an opposing opinion that he is treated as a shomer chinam, unpaid guardian, and therefore responsible only for negligence. Later authorities rule that the issue remains as an unresolved dispute (SM"A 267:17; Shach 267:14).

"Therefore, if the MP3 was lost through negligence, such as by leaving it outside, the finder is responsible for it. However, if he put it away and it was stolen, he cannot be made to pay."

FROM THE BHI HOTLINE CONTINUED

However, according to the interpretation of some Poskim, all authorities agree that even a pledge to tzedakah has to be verbally spoken. In their opinion, the dispute relates only to a verbal pledge that did not specifically include the intended amount or object to be donated. It is regarding this interpretation of his verbal vow that Poskim argue whether one must follow his mental intention (see Pischei Teshuvah Y.D. 258:15 and Maharsham 1:201, but see Imrei Yosher, who disagrees with this interpretation).

In a case of conflicting opinions regarding a vow, it is advisable to either follow through with the original com-

mitment or at least petition a talmid chacham for instructions for a release from the vow (matir neder). This would be the correct conduct in your case.

Although a vow to perform a mitzvah should not generally be released unless it is a pressing circumstance, when there are additional lenient factors involved, one may be lenient and release someone from such a vow (see Maharsham ibid, based on Avodas HaGershuni #10).

Obviously, one must consult with his rav to make sure that it is acceptable to retract his tzedaka pledge in his particular circumstance.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

laws of interest week #19

Q: A relative lent me money to publish a sefer. I repaid the loan. May I now give him a complimentary copy of the sefer as a token of appreciation?

A: The Torah prohibits only ribbis that was stipulated (ribbis ketzutta). However, the Sages prohibited - during the course of the loan or when repaying the loan - even ribbis that was not stipulated (ribbis she'aina

ketzuza). Most poskim maintain that this is prohibited even if the additional payment is called a "gift" (Y.D. 160:4; Bris Yehuda 5:2). Moreover, the Sages prohibited even ribbis given beforehand to secure the loan (ribbis mukdemes) or afterwards as compensation for the loan (ribbis me'ucheres).

Therefore, even after the loan is repaid, it is prohibited to give the lender a gift that is explicitly linked to the loan. However, it

is permitted to give a modest gift after the loan is repaid, if not explicitly linked to the loan. A large gift should not be given until a significant time elapses (160:6; The Laws of Ribbis 2:23).

If you would have given the relative a complimentary copy even had he not loaned you, then it is permitted to give him a copy even before repaying the loan, provided that you do not link the gift to the loan (160:7).

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