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STORYLINE

filled up and forgotten

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"We are pleased to announce that we have been donated a car for communal use," read the sign in the local kollel. "The car gemach (loan service) will be run by Dani." "I have an appointment next Tuesday," Yossi said to Dani. "Is the car available then?" "Yes," said Dani. "The charge is fifty cents per mile to cover gasoline and wear and tear, due immediately upon returning the car. If you fill up with gas, the gemach refunds that amount."

Yossi picked up the keys on Tuesday afternoon. "I should be back in about five hours," he said.

"There's not much gas in the car," said Dani. "You'll probably have to add gas on the way home."

Yossi drove to his appointment 30 miles away. On the way home, he pulled into the

gas station.

"How much gas should I put in?" Yossi thought to himself. He checked his wallet. "I've only got \$40 cash. Should I put in \$10, \$20, or \$30?" After some deliberation, he paid the attendant and proceeded to the pump. Yossi returned just before Mincha. He gave the keys to Dani, and said, "I've got to run to mincha now! We'll settle later."

A month later, Dani called Yossi. "I was reviewing the car log," he said. "You drove 60 miles, which is \$30, but no payment is listed." "You're right," Yossi apologized, "I forgot to take care of it, but I purchased gas."

"That's fine," said Dani. "How much did you put in?"

"It's funny, but I don't remember anymore," said Yossi. "I remember debating, though, whether to put in 10, 20, or 30 dollars." He

tried unsuccessfully to jar his memory.

"It's a pity you didn't pay on time, like you were supposed to," said Dani. "Then we wouldn't have had this problem. Ask Rabbi Dayan how to deal with this!"

Yossi called Rabbi Dayan. "I owe the car gemach \$30, but purchased gas on the way home," he said. "I don't remember, though whether I added \$10, \$20 or \$30. Should I assume the least, most, or middle amount?" "This issue seems to be an intricate dispute between the Ketzos Hachoshen and the Nesivos Hamishpat," said Rabbi Dayan, "although there is an additional factor here."

"Oh?" said Yossi. "I didn't think it would be so complicated."

"In general, when neither the lender nor the borrower remembers whether the loan was repaid," explained Rabbi Dayan, "the person

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FROM THE BHI HOTLINE

Submitted by
L. K.

mispriced mezuzos

When I left my rented apartment, I wanted to take my mehudar mezuzos with me and replace them with simpler ones, but the new tenant asked me to leave them for him. I charged him \$120 for each one.

Two months later, he took them to a sofer who told him that while they are nice, they are worth a maximum of \$100 each. He then verified this with several sofrim. He now claims I cheated him and he wants a refund of the amount he was overcharged.

Q: Do I have to repay him?

A: Overcharging is called ona'ah (lit. exploitation). The halacha is that a buyer who overcharges a customer one-sixth of the item's market value must refund the overcharge. An exception to the laws of ona'ah is the sale of land; one who overcharges in a sale of land is not obligated to a refund the overcharge (C.M. 227:29). The issue related to your question is whether something attached to

the ground, the mezuzah on the doorpost, is categorized as land or retains its character as a movable item. If it remains a movable item, the laws of ona'ah apply, but if it is categorized as land once it is attached to a structure, the laws of ona'ah would not apply (C.M. 95:1). The matter is subject to debate; as such, the seller has the right to maintain that halacha follows the opinion that items attached to the ground are not subject to the halachos of ona'ah (also see 227:34).

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STORYLINE CONTINUED

cannot be made to pay in beis din, and there is even a dispute whether he has a moral obligation to pay, latzeis yedei shamayim (see Taz 75:10; Shach 75:65-67; Pischei Teshuva 75:21)."

"This seems to be our case," said Yossi. "Neither of us knows whether I repaid the loan by purchasing the gasoline."

"It seems so at first," said Rabbi Dayan, "but our case is somewhat different. You have a definite obligation of \$30 for using the car, which you did not repay, and there is a possible counter obligation of \$10-30 for the gas you bought," said Rabbi Dayan. "The Ketzos Hachoshen (75:5) differentiates between a possible repayment and a counter obligation. When there are two counterclaims, the Ketzos reasons that we treat each obligation independently. The obligation of \$30 is clear, whereas the counter obligation for the gasoline is questionable, so that we have to assume the minimal amount of \$10. As such, you remain obligated to pay \$20."

"You mentioned that the Nesivos argues?" said Yossi.

"Yes. The Nesivos Hamishpat (75:5) reasons that the counter obligation is considered a form of repayment," said Rabbi Dayan. "As such, this case is also considered one of possible repayment where neither party knows, so that there remains, at most, a moral obligation."

"Nonetheless, in this particular case, there is an additional reason to obligate you," concluded Rabbi Dayan. "This is because the uncertainty arose because of your negligence. In a normal situation where neither the borrower nor the lender remembers whether the loan was repaid, both parties are equally at fault. It is understandable that people sometimes forget. Here, however, had you paid in a timely manner according to the rules, you would have known how much you spent on gas. Only because you delayed so much did the doubt arise, so you cannot hide behind the veil of forgetfulness. Therefore, you can assume only the lower amount of \$10, and must repay the remaining \$20 (see Pischei Choshen, Halva'ah, ch. 2, note 78; Nesivos 75:5)."

FROM THE BHI HOTLINE CONTINUED

There is, however, another dimension to this question. What is the halachic definition of "attached to the ground?" In other words, how permanent must the attachment be for it to become a part of the house? Does something attached with pegs become part of the structure, or is it necessary for the object to be more permanently affixed with cement? Some opinions maintain that items that are attached with pegs are included in the sale of a home (C.M. 214:11), but this is only because both the seller and buyer included the attached item with pegs as an integrated part of the sale. Since the issue of a sale relates to the intent of the seller and buyer, the attached item might be considered part of the sale of the house. However, in our case, since the sale relates only to the mezuzah attached with pegs, nails, or

screws, and it is not an integral part of the structure, all opinions agree that it is considered a movable item and subject to the halachos of ona'ah.

Since the halachos of ona'ah apply, you should be required to refund the extra \$20 (one-sixth of the purchase). However, Chazal expect a buyer to have the purchase appraised as quickly as possible to determine whether he was overcharged. In the event that one did not have the merchandise appraised in due time, it is assumed that he has forgiven his right to a refund (C.M. 227:7). In this case as well, although many people don't remove mezuzos unless they are painting, it still would seem that since the buyer had the option to have the mezuzos appraised right away and did not, he has forgiven his right to demand a refund of the overcharged \$20 per mezuzah.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

borrowing and lending week #8

Q: I took out a loan for business expansion, but I have a wedding to make. May I use the money from the business expansion loan to cover the cost of the wedding?

A: The Shulchan Aruch writes that it is prohibited to borrow money and spend it wastefully so that the lender will not be

able to collect (C.M. 97:4). The Taz explains that this is prohibited only if the borrower 1) changes the intended usage and 2) depletes the money.

The implication is that if the person will be able to repay the loan, it is permissible to use the money for a purpose other than the intended one. Therefore, it seems permissible to use the money for the wedding

if this will not delay the repayment of the loan.

However, it is prohibited to falsely state the purpose of the loan when submitting a loan application, especially if the lender would not be willing to grant the loan for the real purpose. In addition to lying, this borders on stealing from the lender (see Pischei Choshen, Halva'ah 2:11).

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