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STORYLINE

megillah mistake

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

The shul was packed with people in costumes for megillah reading. Mordy proudly held his new megillah. For years he had wanted his own megillah; this year he'd finally bought one from the local sofer, Mr. Schreiber.

Mordy followed along quietly with the reader: "L'havi es sefer hazichronos divrei haya-mim..." He jolted! The word hazichronos was not written in his megillah! The sofer had omitted the word.

After the megillah reading, Mordy went over to Rabbi Tzedek and asked, "I bought a new megillah, but a word is missing. Can I fulfill the mitzvah of megillah reading from it?"

"Yes," replied Rabbi Tzedek. "Even if some words are missing in the middle, or if some of the letters are cracked, the megillah is kosher b'dieved. However, l'chatchila one should read from a megillah that is complete, so it is

preferable to have it fixed (O.C. 690:3)."

After Purim, Mordy returned to Mr. Schreiber. "The word 'hazichronos' was missing in the megillah," he said. "Rabbi Tzedek said I fulfilled the mitzvah, but it should be fixed."

"Let me see," said Mr. Schreiber.

Mordy showed him the megillah. "That's a long word and the line is already tightly written," said Mr. Schreiber, "To insert the missing word, I will have to erase two or three whole lines and rewrite them, which may leave a slight stain, or I can insert the missing word between the lines (Y.D. 276:1)."

Mordy thought for a minute. "I'm not happy with either suggestion," he said to Mr. Schreiber. "Neither way will look nice. I paid good money for the megillah and should get a perfect one."

"So what do you want?" said Mr. Schreiber.

"I'd like you to rewrite the entire page properly," said Mordy.

"That seems excessive," said Mr. Schreiber. "Erasing the lines is perfectly acceptable, and the erasure is barely noticeable. There's no reason to rewrite the whole page, unless you want to pay for it."

"Why should I have to pay, if you messed up?" said Mordy irately. "If you don't want to replace the page, I will return the defective megillah to you and ask for a refund."

"I don't think you can call it a defective megillah," said Mr. Schreiber. "It's kosher as is, as Rabbi Tzedek told you, and while the megillah should be fixed l'chatchila, it's easy enough to rewrite the lines."

"But I don't want a patched-up megillah," Mordy argued. "I want a perfect-looking one!"

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FROM THE BHI HOTLINE

Submitted by
E. H.

extra cash

I was in need of a loan of \$5,000. Shimon agreed to lend me \$3,000; Levi agreed to lend me \$2,000. I put all of the money in my wallet. When I later counted the money, I had \$5,100. I have no way of knowing who gave me the extra \$100. When I contacted Shimon and Levi, neither of them knew whether they had given me the extra cash.

Q: Am I obligated to return the money, and if so, to whom?

A: At first glance, it seems that this answer is resolved based on a clear precedent in halacha. Shulchan Aruch (76:1, 300:1) discusses the case of two people who separately deposit money by Reuven, one person \$100 and the other \$200. Later, Reuven does not recall who deposited the \$200, and each depositor claims that he is the one. The halacha is that each claimant must take an oath that he deposited \$200, and Reuven is then obligated to pay each of them \$200. Since

Reuven was not careful to keep track of the money, he ends up losing \$100. In the event that the depositors themselves do not recall how much they deposited, although it is clear that neither is lying, Reuven is not responsible to pay each of them the full amount since neither has a definite claim against him (Nesivos 76:9). Therefore, Reuven should split the money in question and give half to each of them (Shach 76:7, 13, see also Ketzos 365:1, 138:1). If he wants to be sure that he fulfilled

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STORYLINE CONTINUED

"We can go back to Rabbi Tzedek," said Mr. Schreiber. "Let's ask him what I must do."

Mordy and Mr. Schreiber came before Rabbi Tzedek, who ruled: "Nowadays, adding a missing word between the lines would still be considered defective merchandise. However, erasing and rewriting the lines suffices if the erasure is barely noticeable." Rabbi Tzedek then explained, "A person who buys something is entitled to intact merchandise, free of any defect. If the item is defective, the sale can be invalidated. The definition of 'defect' is variable and depends on what people in that locale are particular about and consider defective (C.M. 232:3,6-7)."

"A megillah certainly seems defective with a missing word," said Mordy.

"Yes," responded Rabbi Tzedek. "Although the megillah is kosher b'dieved even with words missing, the average person who buys a megillah expects it to be kosher l'chatchila. Therefore, it is considered defective as is (see Shevet Halevi 1:7[2])."

"So then why can't I just return the megillah?" asked Mordy.

"Even though a partial, irreparable defect suffices to invalidate the entire sale," answered Rabbi Tzedek, "a transient blemish does not. Therefore, if the item is usable and can easily be repaired properly, the sale remains valid when the seller repairs the item or refunds the repair cost (232:4-5; Pischei Choshen, Ona'ah 13:4)."

"What's the difference between adding the word and rewriting the lines?" asked Mr. Schreiber.

"While adding a word between the lines is acceptable halachically and many old megillahs have words added, it is not common in new megillahs. The average person would consider it defective and avoid buying the megillah nowadays. Therefore, it is considered a defect that could invalidate the sale.

"On the other hand," concluded Rabbi Tzedek, "it is perfectly normal for a sofer to erase and rewrite a few lines. If done properly, the erasure is hardly noticeable. Therefore, if the lines can be rewritten with the missing word, the defect would be considered a transient one that does not invalidate the sale."

FROM THE BHI HOTLINE CONTINUED

his obligations latzes yedei shamayim (a non-enforceable halachic obligation), he should give each depositor \$200. The reason that he is responsible latzes yedei shamayim is because of his negligence. He should have been concerned that such an issue could arise and kept an exact record when he received the money.

However, since a mistake such as yours is uncommon, you were not expected to examine the amount. As such, not counting the money upon receipt was not negligent, so you are not liable latzes yedei shamayim. This is similar to the halacha (C.M. 300:1) that rules that if two parties deposited monies with one guardian, he is not responsible to pay the full amount to both. But, as previously mentioned, he would split the extra money between the two.

Upon further consideration, the above analysis is not the correct address to resolve your inquiry. Your situation is

not a case of a custodian or borrower who did not properly care for the money that was given to him. Your situation involves lost money that ended up in your possession. When one of the two lenders mistakenly gave you an extra \$100, he essentially lost that money. Since it entered your possession before the owner realized that it was lost (before yei'ush [despair]) you are responsible to return it to the owner in the same way as when finding any other lost object.

Since there is no way for you to know which of the two lenders "lost" the money, you are obligated to keep possession of it until there is clarification to whom the money should be returned. If they come to an agreement as to what to do with the money, you are required to return it accordingly (see C.M. 267:8). [However, up to that point you may use the money (see Hashovas Aveida KeHalacha 6:3)].

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MONEY MATTERS

borrowing and lending week #16

Q: Do inheritors have a responsibility to pay their parents' loans with assets from the estate or with their own assets?

A: Inheritors are obligated to pay their parents' debts from the estate (B.B. 157a). In the time of the Gemara, there was a legal lien only on inherited real estate [although there was a mitzvah of kibbud av v'em to

pay even from moveable items]. However, the Shulchan Aruch writes that nowadays there is a legal obligation to pay also from moveable items and cash (C.M. 107:1).

Furthermore, the inheritors have to pay from debts owed to their father that were collected after his death, including bank accounts. However, the creditor does not collect from assets that came to the father only after his

death, e.g., subsequent inheritance from another, a raffle ticket, etc. (Rama 104:16; Pischei Choshen Halva'ah 9:ftnt. 10).

Regardless, the children are not responsible to pay parents' debts from their own assets. If the father was negligent in not having repaid, though, it is meritorious for the children to settle with the creditor (Aruch Hashulchan 107:2).

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