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STORY LINE

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More Than Enough

Mr. Goodman was the gabbai tzedakah of his shul. He was approached by one of the congregants, Mr. Solomon, who poured out his heart. He had suffered a serious financial setback, and had no remaining money to cover basic expenses and various loans that he had to repay.

"How much money do you need?" Mr. Goodman asked him.

"I need to raise $10,000 to cover basic expenses and repayment of loans," replied Mr. Solomon.

"Please G-d, we will help you," Mr. Goodman said. "I will send out a special appeal to the shul membership."

"I ask that you not mention my name," said Mr. Solomon. "I would not like my circumstances publicized."

"Of course," said Mr. Goodman. "The notice will simply state that we are collecting money for one of our community members who is in financial need."

"I very much appreciate your help," Mr. Solomon thanked him.

The community responded very generously to the special appeal. In two weeks Mr. Goodman was able to raise $15,000 for Mr. Solomon.

Meanwhile, before handing over the money, another person from the community approached Rabbi Goodman for support.

"I'll try to help as much as we can," said Mr. Goodman, "but we just made a special appeal for someone else, as you know. Let me see what other funds we have. I'll be in touch with you in a day or two."

After the person left, Mr. Goodman began wondering. "Mr. Solomon only asked for $10,000," he thought to himself. "I wonder if I can give the excess $5,000 to this other individual? On the other hand, maybe I had no right to accept more than $10,000 for Mr. Solomon in the first place."

Mr. Goodman called Rabbi Dayan and explained the situation. "What should I do with the excess $5,000?" he asked. "Should I give it to Mr. Solomon, use it for the other needy person or return it to the donors?"

"This issue depends on a number of factors," replied Rabbi Dayan. "The Mishnah (Shekalim 2:5) teaches that excess collection for needy people goes to the needy people. Excess collection for a specific, needy individual goes to him. This Mishnah is cited in the Shulchan Aruch (Y.D. 253:6)."

"It's simple, then," said Mr. Goodman. "The extra money goes to Mr. Solomon."

"It might seem simple, but it actually isn't," said Rabbi Dayan. "According to many

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Broken Eyeglasses

FROM THE BHI HOTLINE

Some students were playing ball and one of them threw the ball to his friend and hit and broke his eyeglasses.

Q: Is the one who broke his friend's glasses liable for the damage?

A: It is clear that one who damages a friend's property is liable even if he does not make physical contact with him. Thus one is liable for damage that results from throwing a stone, shooting an arrow or, as in our case, throwing a ball (C.M. 384:1). However we have to consider whether one who throws a ball while playing a game is also liable.

When two people wrestle as a sport and one injures his opponent, Rosh (101:6) rules that the mazik (damager) is not liable (C.M. 421:5), even though a mazik is liable even when he damaged inadvertently (shogeg) or due to circumstances beyond his control (oness). Rosh offers an explanation for the mazik's exemption but there is a debate concerning Rosh's intent. According to one approach, since both agreed to wrestle, it is considered as though they forgive one another for whatever damages the other may cause (Sema 421:10).

Alternatively, the exemption is based on the halachah (C.M. 378:1) that when damage occurs when one was as cautious as possible (oness gamur), he is exempt from liability (Erech Shai 421). According to both explanations the mazik in your case is exempt.

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STORYLINE CONTINUED

authorities, this halachah depends on whether the donors were aware of the identity of the recipient and whether the collector was a regular gabbai tzedakah."

"Why is that?" asked Mr. Goodman.

"When money is donated for a certain individual, the collector accepts it on his behalf," explained Rabbi Dayan. "However, by rights, he should not acquire the excess amount. Nonetheless, the Talmud Yerushalmi states that Chazal granted it to him on account of the embarrassment he suffers through having his name publicized. Thus, when the collection was done anonymously, Mr. Solomon does not necessarily acquire the excess; the money can be used for a similar purpose and given to another needy family (Mishpetei HaTorah, Tzedakah #22).

"What difference does it make whether I am a regular gabbai tzedakah or not?" asked Mr. Goodman.

"When an ordinary person collects, the donor's intent is for the current case," explained Rabbi Dayan. "However when a regular gabbai tzedakah collects, the donor's intent is that any excess money should be distributed at his discretion. Moreover, some authorities maintain that a regular gabbai tzedakah can divert the excess amount when needed, even if the collection was for a specified, named individual, since the money donated is to be used at his discretion" (Shach, Y.D. 256:7; Aruch Hashulchan, Y.D. 253:13; Shevet Halevi 8:212; 9:204).

"Is there a case in which the excess money should be returned to the donors?" asked Mr. Goodman.

"When the money was not needed at all," replied Rabbi Dayan, "such as money collected for a wedding that was cancelled. Ideally, the money should be returned to the donors; if it's difficult to do so, it should be used for a similar purpose of hachnasas kallah" (See Y.D. 253:7; Tzedakah Umishpat 9:4-6).

FROM THE BHI HOTLINE CONTINUED

However, in your question you did not specify whether the damaged party (nizak) is a minor, which is essential to know since it is not clear how the above discussion applies to minors. Certainly, according to the second explanation, even if the nizak is a minor the mazik would be exempt, but according to the approach that the exemption is based on forgiveness (mechilah), it is not clear that minors have the halachic ability to forgive one another.

The halachah is that when one instructs a friend to tear his garment, the mazik is exempt from liability (C.M. 380:1). One explanation (Tosafos, Kesubos 56) is that the owner forgives the damager for the damage that he inflicts. Accordingly, since a child cannot halachically forgive, the mazik would be liable for ripping the child's garment. Others (Ramban, Kesubos 37 cited by Ketzos 246:1) contend that the exemption is that when the owner asks his friend to rip his garment it is not considered damage. Consequently, even when a child instructs someone to rip his garment the "damager" is exempt since it is not considered damage (Gidulei Shmuel, B.K. 92a). In our case, since the matter is subject to debate, the mazik cannot be compelled to pay for the damage (kim li).

Additionally, although the student's glasses belong to his parents, it can be assumed that they forgive damage that may occur because they want their son to be able to play normally with his friends. That the glasses may become damaged is a calculated risk they consciously accept (the concept of aveidah midaas) and thus the mazik is not liable.

[For another reason why the mazik is exempt in your case even when damaging the property of a minor, see C.M. 235:2 and Pischei Teshuvah ibid. 2.]

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Completing the Transaction #2

MONEY MATTERS

Q: What are the kinyanim (acts of acquisition) for real estate?

A: Real-estate transactions are finalized either through cash payment (kesef), document of sale (shtar), or act of possession (chazakah).

Kesef: The buyer gives the seller money — whether full, partial or even token payment — with intent to thereby consummate the sale (C.M. 190:2). A personal check, bank check or authorized check from a third party is considered kesef by many poskim. However, giving the "earnest money" (good-faith deposit) is not a kinyan, because it is only intended to serve as a deposit, not to finalize the sale (ibid. 190:9).

Shtar: The seller gives the buyer a document that states that he hereby sells the property to the buyer (ibid. 191:1).

In principle, each one of these three actions can suffice independently. However in typical situations, both kesef and shtar are required, because the buyer and seller do not intend for the sale to be irrevocably binding until both the payment is made and the documents are given over (ibid. 190:7; 191:2).

DID YOU KNOW?

If you sign an agreement, you are bound by its terms even if you do not fully understand what it says, such as portions written in a different language or in fine print.

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