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STORYLINE

stuck in the seats

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Reuven Lev drove carpool twice on Sundays. In the morning, he drove his older daughter and her friends to a chesed program, and in the afternoon, he picked up the boys from yeshiva.

One afternoon, his son's friend, Avi, had trouble finding the clasp to buckle his seat-belt. As Avi dug between the seats to find the clasp, he found a \$50 bill that had fallen in between the back seats.

"Wow! Look what I found!" he shouted. "A \$50 bill."

"You know, Avi," said Mr. Lev, "you have a chance to do the mitzvah of hashavas aveidah (returning lost objects)."

"How can I know who owns this money?" asked Avi.

"When you find something, you are supposed to announce it to the people who

might have lost it," said Mr. Lev. "Next week, I can ask the girls who were in this morning's carpool."

The following week, Mr. Lev asked the girls, "Did anybody lose money in the car last week?"

"It could have been me," Rivka said. "After the program, I went shopping and realized that I had lost money along the way."

"How much did you lose?" asked Mr. Lev.

"At least \$20, but I'm not exactly sure," said Rivka. "I sat in the back middle seat; if it fell from me, it would probably be there."

"It was found there," said Mr. Lev. "But can you give me a more accurate amount?"

"I never counted the bills," Rivka answered, "but I estimate between \$20 and \$100."

"This is an interesting question," said Mr. Lev. "I don't know whether this serves as

sufficient identification (siman)."

When Mr. Lev picked up the boys from yeshiva that afternoon, he told Avi, "One of the girls who sat in your seat lost money, but couldn't identify the amount properly."

"Can I keep the money then?" asked Avi.

"I'm not sure," said Mr. Lev. "Maybe I should keep it, since it was found in my car. I expect to see Rabbi Tzedek tonight at a wedding, though; I'll speak with him."

After the chupah, Mr. Lev found Rabbi Tzedek. "Mazal Tov!" he said. "A fascinating monetary case came up last week." Mr. Lev related what had happened.

Rabbi Tzedek replied, "Rivka does not have sufficient identification to claim the money. Therefore, you can keep the money found in your car. However, if it seems reasonably clear that the money is Rivka's, it is meritori-

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FROM THE BHI HOTLINE

Submitted by
Y. A. S.

i know that i owe

An invoice I received from my supplier shows a much lower amount than what my records state. When I contacted him, he responded that I must have miscalculated, as he checked his records and is certain that I don't owe any more than what I was billed.

Q: Am I obligated to assume that his computer records are inaccurate and pay him what I think I owe him? What is the halacha if, at some point in the future, he

realizes that I do, in fact, owe him more?

A: The issue here is the meaning of a creditor's declaration that he is not owed money. Is he stating a fact or forgiving his right to collect that debt? If he is merely stating what he believes to be fact and it turns out that he was wrong, he would be able to collect. If, however, his declaration is a forgiveness of the debt, a subsequent claim that he was mistaken is irrelevant, since the debt was

forgiven.

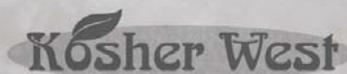
Shulchan Aruch (C.M. 75:11) rules that when a creditor denies the existence of a debt, even mistakenly, the debtor is exempt from paying. Halachically, such a declaration is not an incorrect statement of fact; it is rather considered a conscious act of forgiving the loan. When a debtor states that he owes money, the creditor should research the matter. By deciding to disregard the debtor's admission and declaring that he is

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ous to return it to her.” Rabbi Tzedek then explained, “Identifying the denomination of a bill is not sufficient identification, since anyone could have lost a bill of that denomination. Even a particular mark on a bill is questionable, since money constantly changes hands. Only if Rivka had folded the bill in a special way, or if a number of bills were rolled or clipped together, would it be a siman (C.M. 262:11-13).”

“What about the fact that Rivka sat in that seat?” asked Mr. Lev. “Location serves as an identifying siman when the person knows that he left or dropped his item there,” explained Rabbi Tzedek. “However, if the person was unaware that he lost the item, location is generally not a valid siman, since the owner is not aware of where along the way he lost it. Perhaps Rivka lost her money elsewhere, and someone else’s money fell in between the seats another day (262:3,9).”

“Even if Rivka cannot claim the money, why should I be entitled to it?” asked Mr. Lev. “Shouldn’t

it belong to Avi, who found it?” “If a lost item falls into a person’s property (chatzer), the property acquires it on behalf of the person if the property is secure or if the owner is adjacent,” said Rabbi Tzedek. “Therefore, since the money does not have an identifiable siman, you acquired it when it was lost in your car. However, a chatzer does not acquire a lost item that is not likely to be found. Therefore, if the lost money was buried deeply between the seats and you don’t think that it was yours, Avi could still acquire it when he found it (268:3; see Shach 268:2 and Pischei Choshen, Aveidah 2:ftnt. 12).”

“Nonetheless, it is meritorious to return even an item that was found after the owner abandoned hope of reclaiming it (yei’ush),” concluded Rabbi Tzedek. “The same is true if the owner does not have a valid siman, but circumstances clearly indicate that it belongs to that person, especially if there are multiple indications (259:5; S.A. Harav, Metzia #18; see Beis Shmuel E.H. 17:73).”

not owed, the creditor is forgiving the loan (Tur ibid.). In such a case, the debtor does not have to pay the money that he owes even to fulfill a heavenly obligation - latzeis yidei shamayim - because the loan was forgiven.

If the creditor later claims that he erred, the debtor is not obligated to pay him; the creditor’s original declaration released him from any responsibility to repay. However, if there is reason to think that the creditor’s statement is based on an honest mistake, e.g. the debtor knows that the creditor would not lie and seemingly forgot this debt, he should pay latzeis yidei shamayim. If it is possible that the information was misplaced, the debtor may be obligated to pay. Additionally, if the issue involves an object rather than money, the debtor must return the object he knows belongs to the

creditor (Aruch Hashulchan ibid 15).

In the event that the creditor is merely uncertain whether he is owed money, the debt remains in force. Nevertheless, as long as the creditor does not ask to be repaid, the debtor has the right to assume that the creditor forgave the loan (Tumim 29). The rationale is that since the creditor could claim the money based on the debtor’s admission and he doesn’t, it may be assumed that he has forgiven the debt.

Thus, if the creditor denies that you owe him as much as you say, it is as if he has forgiven the debt. If his claim is based on his records, it is not considered a definitive denial, and if he were to return and claim that his records or the computer were mistaken, you would be obligated to pay that debt.

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MONEY MATTERS

borrowing and lending week #7

Q: When I lend someone money, can I charge him costs associated with the loan, such as cash advance charges, withdrawal fees, wiring costs, bounced check fees (if the repayment check bounces), etc.?

A: This depends on the nature of the cost. Interest charges that you paid to receive the money, such as cash advance charges, may

not be passed on to the borrower. Although you had to pay interest to the credit card company to receive the cash advance, asking the borrower to cover that payment would be taking interest from him on the money you are lending him (Bris Yehuda 9:2). Costs that are not related to interest, however, such as standard bank withdrawal fees, wiring costs, and legal fees for drafting the loan document, can be transferred

to the borrower (C.M. 39:17; 106:1; Pischei Choshen, Halva’ah 2:42). If the repayment check bounces, the borrower is also responsible to reimburse the lender - unless an unforeseen, uncontrollable circumstance made it impossible for him to cover the check. This is because giving a check without coverage is a form of direct damage (garmi) (see Rama 14:5; Pischei Choshen, Halva’ah 2:41).

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