



BUSINESS WEEKLY

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

DOUBLE CREDIT David wanted to buy a new cellphone. He found an ad announcing a great deal at Moishie's Mobile. He ordered a phone and a silicone shield — delivery in 5-7 business days.

Two weeks passed and David did not receive the phone. He contacted the store. "I ordered a phone two weeks ago and still haven't received it," he said.

"Let me check," replied the customer-service representative. "One moment... Indeed, there was an error in processing your order. I will resubmit it. In addition, as compensation for your trouble, we are crediting you the value of the silicone shield."

"Thanks," said David. "Please make sure that the order is sent ASAP."

A week later, David received the phone, but not the silicone shield. David contacted customer service once again.

"We're terribly sorry," the representative said, "but the silicone shields for that particular model have been discontinued; they are not available."

"Then please refund my money for the shield," requested David.

"Our records show that we already credited the money for the shield," replied the representative.

"That was compensation for the trouble," argued David. "Once you agreed to that, you still owe me the shield or its value!"

"You want an additional refund for money that was already credited?" responded the representative. "I will have to consult the store owner on this and contact you tomorrow."

"Very interesting case," Moishie mused, when he heard the story. "I wonder what Rabbi Dayan has to say about this!"

Moishie called Rabbi Dayan and explained the situation. "I'll decide how I want to handle customer relations, but would first like to know the halachah," he said. "If the money for the silicone shield was already credited as compensation, must I give an additional refund if the shield is not available?"

"Halachah differentiates between giving a gift or granting permission to take something, and forgoing a debt (mechilah)," answered Rabbi Dayan. "Giving a gift requires a kinyan (act of transaction) to be halachically binding. An upstanding person should honor his verbal commitments, but a person is not viewed disparagingly if he retracts from a verbal commitment to give a large gift, since the recipient is not fully reliant on such a gift panning out. Retracting from a small gift without due cause, though, is considered mechusar

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LOST MEZUZAH. PART I I found in a beis medrash what appears to be a kosher mezuzah. I posted signs in

the beis medrash and in the lost-and-found sections of the local newspapers, but the owner has not contacted me.

Q: What should I do with the mezuzah?

A: When one finds a lost object with an identifying mark (siman) and it is possible that the owner is not aware that it was lost, the finder must return it to the owner. Even if a long time passes so that it is clear that the owner realizes his object was lost and despaired of recovering that object, nevertheless, the finder may not keep that object for himself. Since it is possible that it was found before the owner despaired (yei'ush), the finder became a custodian of the object for the owner. The owner's subsequent despair does not relieve the finder of his responsibility to return the object to the owner (C.M. 262:3). The halachah that applies in such a case is that the finder must keep it until Eliyahu Hanavi comes and identifies the owner (C.M. 267:15), and during that time the finder is the custodian.

In your circumstance there are two options:

1) Halachah permits you to acquire the lost object for yourself. When one finds a pair of tefillin, he may appraise their value and use them immediately (C.M. 267:21). The



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amanah, lacking trustworthiness" (C.M. 204:8; 241:1).

"What did you mean, 'granting permission to take something?'" asked Moishie.

"When you grant someone permission to take something of yours, it is similar to giving a gift," explained Rabbi Dayan. "It is possible to retract until the person takes the item. Until then, it is just words; once he takes the item, he acquires it" (C.M. 241:3; see Shach 241:5).

"How is forgoing a debt different?" asked Moishie.

"Mechilah of a debt, or even of returning an entrusted item, is valid with words alone," replied Rabbi Dayan. "It does not require any official confirmation, receipt or kinyan. This is because the money or item is already in the hands of the recipient; the owner has only a claim to have it returned. The minute he relinquishes this claim, his statement takes effect and the recipient can retain possession. However, the term mechilah does not apply to granting items still in the giver's hands" (C.M. 241:2).

"Thus, had you committed to give free merchandise as compensation, you could retract," concluded Rabbi Dayan. "Conversely, had the customer owed you money for a silicone shield that was already sent, and you stated that there is no need to pay, that would be classic mechilah. This case is debatable. It seems to me that when you credited the customer the value of the silicone shield without canceling the order, it is like you gave him the money as a gift, which he possessed. Thus, I think you still owe him the shield or a refund of its cost."



MONEY MATTERS

PURIM QUESTION & ANSWER

Q: Can I use maaser kesafim for zecher l'machatzis hashekel and matanos la'evyonim?

A: The Mishnah Berurah (694:3) writes that the basic fulfillment of matanos la'evyonim must be with one's own money and not with that of maaser kesafim. This is because matanos la'evyonim is a separate obligation of Purim, beyond the regular mitzvos of tzedakah and maaser.

Each family member must give to two needy people. There is a dispute regarding the minimum amount given to each. The Mishnah Berurah (694:2) cites the Ritva that a minimal perutah suffices. However, many authorities require a significant gift, enough to buy a basic meal (see Shaarei Teshuvah 694:1).

Nonetheless, it is meritorious to give additional matanos la'evyonim. These additional gifts can be from maaser kesafim.

The same rule applies to machatzis hashekel. However, if a person stipulated "bli neder" when he began giving maaser and is experiencing financial hardship, he can use maaser money even for the basic matanos la'evyonim and zecher l'machatzis hashekel (Yechaveh Daas 1:87).



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rationale is that tefillin are readily available and the owner will not mind if someone takes his lost tefillin and repays him with money since he can easily purchase another pair and is happy that someone will use his possession to fulfill a mitzvah (see Sema 30; and Shach 16 and 72:8).

2) In your circumstance it is permitted to use the mezuzah even as the custodian. Generally a custodian is not permitted to use the object in his care and one who does so is a thief (sho'el shelo midaas, gazlan), and possibly a sholei'ach yad (the term for a custodian who uses the object placed in his care for personal use [C. M. 292:1]). However, in this circumstance what is the difference between storing it in a cabinet or drawer or placing it in a case and affixing it to a doorway? Therefore, since it is not necessary to own the mezuzah to fulfill the mitzvah, the custodian would fulfill his obligation (Har Tzvi, Y.D. 238; Minchas Chinuch 423; cf. Daas Kedoshim 289:5). Furthermore, there is a general allowance to use another person's object to fulfill a mitzvah when there is no concern that it will become damaged since we assume that people are happy for their objects to be used for a mitzvah (O.C. 14:4).

However, if you do not acquire the mezuzah for yourself it is prohibited to use it in a manner in which it could become damaged or stolen — for example, by using it on an outside doorway.

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