

Who is Responsible for a Stolen Check?

Question: I owed money to a local Jewish service provider. When I received the invoice, I sent him a check in the mail and forgot about it. Two months later he called and was upset that I never paid the invoice. I was shocked since I distinctly remember sending him a check in the mail. I looked at my bank records and it turns out that someone stole the check and deposited it into their own account. I am talking with the bank about getting reimbursed, but I wanted to know whether, halachically, I am obligated to pay a second time. I did the responsible thing and sent him a check. The fact that it was stolen should be his loss. Why should I have to pay twice? What does *halachah* say about such a case?

Answer: Shulchan Aruch (C.M. 120:1) rules that a borrower, or any other debtor, is liable for the money he owes until it reaches the lender or his agent. In other words, the obligation to repay the debt remains in force until the lender actually receives the money. If something happens to the money and it does not reach the lender, the borrower's obligation to repay the loan remains in force. Even if the borrower threw the money to the lender and the lender was aware that the borrower was throwing the money to him, if something happens to the money, e.g., the wind blows it away, the borrower remains obligated to repay the loan. Moreover, the borrower is liable even if the lender instructed him to throw the money. The reason, explains the Sema (120:1), is that it is assumed that the lender's intent was that if it is convenient for the borrower he can repay the money by throwing it, but he remains liable until the money actually reaches his possession (זרוק ושמור קאמר ליה). However, if the lender said, "Throw me the money and you will then be exempt from any further responsibility," he is exempt, since he was authorized by the lender to throw him the money.

Elsewhere (C.M. 121:1) Shulchan Aruch states that if a creditor instructed his debtor to send the money he owes via an agent (*shaliach*), and it gets lost from the agent's possession, the debtor is not liable for the loss. The instructions to send the money with an agent do not have to be issued orally. Even if they are issued in writing, if the debtor followed instructions, he is exempt from any liability for the lost money. Furthermore, this agent could even be a gentile, a child or someone insane, if that is what the creditor instructed. Additionally, even if the creditor did not specify an agent but simply instructed, 'send the money with whoever you want,' the debtor is exempt once he hands the money to his chosen agent, provided that the agent is someone responsible.

The reason why the debtor is exempt in these cases is that it is common practice amongst merchants to repay debts in this manner (Levush 121:1). The Sema (121:2) further explains that the exemption is not some sort of custom to exempt the debtor,

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rather his exemption is *halachic* because the debtor followed the creditor's instructions. If, however, the creditor said, "Send me the money," and the debtor decided to send it with an agent, his exemption depends on whether it is common practice to repay debts by sending the money with an agent.

The Sema (120:1) notes that these two rulings in Shulchan Aruch seem contradictory. When discussing the borrower throwing the money to his lender, the borrower is exempt only if the lender specified, "Throw me the money and you will be exempt." If the lender did not express that, it is assumed that the lender's intent was, "you can throw it to me, if it is more convenient for you, however, you are responsible if something happens to the money until it reaches my possession." Accordingly, when sending the money with a gentile or a child, the same principle should apply. The debtor can send the money with the gentile or child but should remain liable until the money actually reaches the creditor. Why didn't Shulchan Aruch mention this stipulation regarding the child and gentile agent?

The Sema answers that in the case of the child or gentile it is illogical to think that the creditor meant, "Send it with a child, but you are liable if something happens to the money before it reaches me." If the debtor remains fully responsible, it is not a convenience to send it with the child or gentile. Therefore, we assume that in this case, that his intent was that once the money is sent with the child or gentile, the debtor will be exempt. The Shach (C.M. 121:4) supports the Sema's position that in the case of the child or gentile, the creditor need not state that the debtor will be exempt, in contrast to the Baal HaTerumah who maintains that the debtor will not be exempt unless the creditor specifies that he will not hold him liable if something happens to the money while it is en route with the child or gentile.

The Aruch HaShulchan (C.M. 121:2) ruled that common practice (דרך התגרים) is to repay money by sending it in the mail and therefore, if a borrower or debtor sends the money he owes by mail, he is not liable if something happens to the money.

Conclusion: Since it is common practice to send checks to repay debts in the mail, unless specified, the borrower is not responsible for a lost check, even though the lender did not specifically instruct the borrower to send the money in the mail.