

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #661 | Behaloscha | June 6, 2023 | 20 Sivan 5783

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

### 'LEAVE THE MONEY IN THE BOX'

Levi had borrowed \$500 from Menachem, a friend from shul who lived a few blocks away.

One evening, Levi came to Menachem's house to return the money, but no one answered the door. He called Menachem.

"No one is home now," Menachem said. "We won't return until late tonight. There's a little box outside the front door; you can leave the money in the box."

"Is that safe?" Levi asked.

"Safe enough," said Menachem.

Levi put the money in an envelope and left it in the box. When Menachem came home that night, he looked in the box, but didn't find the money.

In the morning, Levi called to verify that Menachem received the money. "Actually, the money wasn't in the box when I came home," Menachem said. "Did you leave it there?"

"Certainly!" said Levi. "I left it in an envelope."

"Well, it's not here now," said Menachem. "I trust that you left the money there, but someone must have taken it."

"Then I'll have to pay you again," said Levi.

"Don't be silly," said Menachem. "I told you to leave the money in the box."

"But you lent me the money, and, in the end, it was never returned to you," insisted Levi. "I don't want you to be out the money."

"But it's also not fair to make you pay double," replied Menachem. "I took the risk, so it's my loss."

"I'd like to hear what Rabbi Dayan has to say about this," said Levi.

Levi and Menachem approached Rabbi Dayan and asked:

**"Did Levi fulfill his obligation of repaying the loan by leaving the money in the box?"**

"A person who borrows money remains liable until he hands it back to the lender or his agent," replied Rabbi Dayan. "Placing the money in a secure courtyard or the lender's house is like handing it to him, since a person's property acquires on his behalf even without his awareness" (C.M. 120:1; Aruch Hashulchan 120:2; Pischei Choshen, Halva'ah 5:[2]).

"If the borrower did not place the money in the lender's property, though, the Gemara (Gittin 78b) indicates that even if the lender instructs

## DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email  
ask@businesshalacha.com  
for guidance and solutions.



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מורת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## IS IT TZEDAKAH?

**Q:** Our friend Reuven, drove to a *chasunah* in Monsey and gave a few of us a ride. As a token of our appreciation, we gathered \$50 among us, and at the end of the return trip we handed it to him in an envelope. Reuven refused to accept it, saying that he was planning to drive to the *chasunah* anyway, and when we kept insisting, he told us to give it to *tzedakah*.

Are we actually required to give it to *tzedakah*? We had not planned on giving the money to *tzedakah*, so now that Reuven refused to accept it, may we keep it for ourselves?

**A:** The *Gemara* (B.K. 36b) relates that a person hit his friend on his ear, and they came to Rav Yosef for a *din Torah*. Rav Yosef ruled that the attacker had to pay his victim half a *zuz*. The victim didn't want to accept such a pittance, and said at first that it should be given to the needy. He then regretted his decision and decided he wanted to take the money to buy some food. Rav Yosef told him that he could not renege, because the poor already had the rights to the money. Although there were no paupers present, since Rav Yosef was a *gabbai tzedakah*, he was considered the "hand of the needy," and he immediately acquired it on their behalf.

This method of acquisition works via a mechanism called "*kinyan maamad shlashtan*." If, for instance, Reuven tells Shimon, who owes him money, to give the money to Levi, and Levi is present, since all three (the lender, the borrower — who currently possesses the money — and the recipient) are there, *Chazal* ordained that Levi acquires the money immediately (*Shulchan Aruch*, C.M. 126:1). In the above case in the *Gemara*, since the victim (who was owed the money) told his assailant (who owed and possessed the money) to give it to Rav Yosef, who was the *gabbai tzedakah* and represented the needy, and all three were present, the poor acquired it immediately.

*Tosafos* (B.K., *ibid.*, s.v. *Yad*) cite a *halachah* that when someone pledges money to *tzedakah*, he is obligated to



## CASE FILE

the borrower to throw the money to him in a public area, the borrower remains liable if it gets lost, unless the lender stated or clearly indicated that the borrower would thereby be exempt. This is because the lender presumably meant: 'Throw the money, but continue watching it' until it reaches my hands" (*Sma* 120:1).

"The *Acharonim* dispute a case in which the borrower is clearly not expected to continue watching. *Sma* indicates that he would then be exempt if the money got lost. However, several *Acharonim* write that this is not considered repayment, since the money never returned to the lender's domain. Rather, this relies on *mechilah* of the lender, so that the lender would have to state or indicate clearly that the borrower would thereby be exempt" (see *Sma*, *Nesivos* and *Pischei Teshuvah* 120:1; *Pischei Choshen*, *Halvaah* 5:[7]).

"Thus, for example, if the lender says, 'Leave the money under the doormat' in the hall of an apartment building - this is not considered repayment, since the lender cannot acquire the money in this manner, but rather as *mechilah*, so that the lender would have to clearly indicate that by doing so the borrower is relieved of his debt. However, if the borrower put the money into a box belonging to the lender, so that he can acquire it, it would be considered as repayment if the lender said to leave it there, even if not fully secure" (see *C.M.* 200:1,3).

"Thus, Levi is exempt in this case," concluded Rabbi Dayan, "since he left it in Menachem's box per the latter's instructions."

**Verdict: A person who leaves payment per the directions of the lender in the lender's property is considered as having repaid his loan. If he left it outside of the lender's property, there must be a clear indication of *mechilah* thereby.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

Yored L'sedei Chaveiro  
Enhancing Another's Property  
#1 Introduction

לע"נ ר' יחיאל מיכל ב"ר חיים זווג' ח"י בת ר' שמואל חיים ע"ה

**Q: I enhanced someone's property without his asking. Am I entitled to payment for my efforts?**

A: This *halachah* is known as *yored l'sedei chaveiro shelo midaato* - going down into a fellow's field without his knowledge. The *Gemara* (*B.M.* 101 a-b) teaches that, in principle, a person who enhanced another's property - even without being asked - is entitled to compensation for his efforts on behalf of his fellow (*C.M.* 375:1-9).

The details of this *halachah* - when the person who enhanced is entitled to compensation and how much - depend on several parameters, among them: the nature of the property that was enhanced; the nature of the enhancement; the desire of the property owner; and the response of the property owner.

This *halachah* is extended to other instances in which a person gains from the efforts of others on his behalf, even in cases where there is not necessarily a capital improvement (*C.M.* 185:6; 264:4).

*B'e"H* we will discuss details of this *halachah* in this forthcoming series.



## BHI HOTLINE

fulfill that pledge and is not allowed to renege. Why, then, wonders *Tosafos*, does the *Gemara* imply that the reason the victim was not allowed to renege was that Rav Yosef acquired it for the poor, if he would not have been allowed to renege either way?

*Tosafos* answer that had the victim said, "When the assailant pays me, I will give it to *tzedakah*," then he would not have been allowed to renege even had there not been a situation of *maamad shlashtan*. But because he said immediately that the money should be given to *tzedakah*, and a person cannot consecrate something that is not in his possession (*Yoreh De'ah* 258:7-8), it was only because Rav Yosef acquired it for the poor that he was not allowed to renege. Had that not been the case, then even once the money reached him he would not have been required to give it to *tzedakah* (*C.M.* 212:7, 9; cf. *Ketzos Hachoshen* 4, citing the Rambam).

What emerges from this *Gemara* and *Tosafos* is that if someone is owed money, and he tells the debtor to give it to *tzedakah*, his statement does not effect a *kinyan*. Therefore, the money does not belong to *tzedakah*, and his words are not considered a *neder* that he must fulfill. If, however, he said it *b'maamad shlashtan* - i.e., if either a pauper or a *gabbai tzedakah* is present along with the debtor and the creditor - then he would have to give the money to the needy.

In your case, since Reuven has not yet received the money, he was unable to designate it as *tzedakah*, and it therefore belongs to the group of friends who wanted to give it to him. Furthermore, *maamad shlashtan* applies only for an outstanding debt. In our case, since the money wasn't "owed" to Reuven - rather, you decided to give it to him - he has no halachic right to the money (see *C.M.* 363:10, and BHI issue # 478).

If, however, Reuven took possession of the money and only then declared that it should be distributed to *tzedakah*, then his word is binding, and the intentions of the group of friends who gave it to him are no longer relevant. [This applies only if the money was actually given to Reuven. Otherwise, although it was collected by one member of the group, who would generally be able to acquire it on the Reuven's behalf, in this case it would not be Reuven's, because the group didn't instruct the person collecting it to acquire it for Reuven; see *C.M.* 125:5-6].

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

To subscribe send an email to [subscribe@businesshalacha.com](mailto:subscribe@businesshalacha.com) or visit us on the web at [www.businesshalacha.com](http://www.businesshalacha.com)



Sponsored by

**READ**  
PROPERTY GROUP  
REAL ESTATE & DEVELOPMENT

WOULD YOU LIKE THE ZCHUS OF SENDING  
THIS NEWSLETTER TO YIDDEN WORLDWIDE?  
CALL 718 233-3845 X 201. OR EMAIL :  
OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS  
לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל