

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



Issue #745

Ki Sisa

Mar 14, 2025

14 Adar 5785

זכות חודש אדר נתנדב ע"י ידידנו ר' יהושע עסטרייכער נ"ו לע"נ אביו ר' חיים משה יוסף בן ר' צבי ז"ל ת.צ.ב.ה.



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

CREDIT CARD FEE

box in shul.

"I have \$300 for the *kollel*," Mr. Freilich told Mordechai. "Do you expect to visit in the coming weeks?" "Unfortunately, I don't see us coming until Pesach," Mordechai said. "You can send the donation to the office."

"Can I donate by credit card or PayPal?" asked Mr. Freilich.

"You can, but if you pay that way, the company takes a fee of about 2%," replied Mordechai. "That's \$6 for the \$300 donation."

"Do you think I have to add the fee?" asked Mr. Freilich.

"I'm not sure," replied Mordechai. "But if you don't, you're not giving the *kollel* what you donated. Even worse, you're not passing on all the money that other people donated and you collected!"

"The *kollel* could refuse to allow donations in this manner but offers them as options," noted Mr. Freilich.

"That's fine when you make a regular donation; you can donate \$100 or \$98," replied Mordechai. "But here you are holding \$300 that was already designated to the *kollel*. If you pay \$300 by credit card, \$6 is going to the company, and you're transferring only \$294 to the *kollel*."

"The truth is," said Mr. Freilich, "even regarding regular donations for our *maaser kesafim* I have this question."

"What do you mean?" asked Mordechai.

"If I donate an average of \$1,000 a month by credit card, that's \$12,000 a year; a 2% fee comes to \$240," explained Mr. Freilich. "Is this included in my *maaser kesafim*, or do I need to deduct this amount from my calculation?"

Mr. Freilich called Rabbi Dayan and asked:

Mr. Freilich's son, Mordechai, learned in Kollel Yoshvei Shaar in another city. Mr. Freilich dedicated his *zecher l'machtzis hashekel* to the *kollel* and put a collection box for the *kollel* in his shul.

At the end of Purim, there was \$50 from his family, and \$250 from the



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

JUSTICE DELAYED?

Q: A person called a beis din's office and said that he had a matter that had to be settled urgently, because each day that it

was not settled he was incurring a serious financial loss. The secretary of that beis din called to inform me that my own din Torah, which was scheduled to be heard that day, was being postponed so the beis din could hear that case. I was disturbed, because I was waiting for the appointment for weeks and had taken a lot of time to prepare for it. Was the beis din allowed to postpone my case and place someone else's before it?

A: The *Gemara* (*Sanhedrin* 8a) rules, based on the *passuk* that states, "*Kakaton kagadol tishma'un* — small and large alike shall you hear" (*Devarim* 1:17), that if litigants arguing over one *prutah* (a minimal amount) come before *beis din*, followed by litigants arguing over a *maneh* (an exponentially larger sum), *beis din* is obligated to deal with the case involving a *prutah* first. Although we might think that there is a bigger *mitzvah* to settle the case that is worth more money, the Torah teaches that *beis din* must nevertheless give precedence to the case that came before them first (*Shulchan Aruch*, *Choshen Mishpat* 15:1).

[An exception to this rule is if a litigant in one of the cases is a *talmid chacham*, in which case the obligation to accord reverence to a *talmid chacham*, which *Chazal* (*Pesachim* 22b) derive from the *passuk* "*Es Hashem Elokecha tira*" (*Devarim* 10:20), supersedes the rule of *kakaton kagadol tishma'un*, and the *talmid chacham's* case is adjudicated first (*Choshen Mishpat* *ibid.*). The *poskim* write that although Torah scholars nowadays do not reach the level of scholarship necessary to be worthy of certain benefits awarded to a *talmid chacham*, anyone who studies Torah diligently is nevertheless entitled to have his case heard first in *beis din* (*Shach* and *Pis'chei Teshuvah* *ibid.* 1).]

It is not clear in the *Gemara*, however, at what point the two cases are considered to be "before *beis din*," such that *beis din* must give precedence to the one that came first. The *Sma* (*ibid.* 1; *Bach* rules similarly) writes that the mere arrival of a set of litigants in *beis din* does not mean that their case must be heard first; only once the litigants are actually standing before the *dayanim*, who are prepared to hear their case, are they entitled to take

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CASE FILE

"Do I need to cover the fee? Is that amount considered *maaser kesafim*?"

"When giving the *machatzis hashekel* to the Beis Hamikdash treasury," replied Rabbi Dayan, "if people did not donate a half-*shekel* coin — but rather a *shekel* and requested change, or if two people jointly donated a *shekel* — they had to pay a small commission (*kalbon*) to cover the money changer's fee (*Shekalim* 1:6).

This way, the Temple treasury received the full value of the *machatzis hashekel*. Although this was a special rule for the Temple treasury, perhaps it can serve as a source that it is meritorious that one should cover the fees of his *tzedakah* donation so that the recipient organization receives the full value of the pledge.

"Nonetheless, when a person donates, he does so according to the common understanding and/or the intention of the *gabbai*.

"Thus, because almost all *tzedakah* organizations allow payment through credit card or PayPal, despite the associated fees, this is considered an expense of the organization, like the secretarial wages, postage-paid envelopes and other associated costs of the organization. By providing this option, people are more likely to contribute, so the organization implicitly agrees to absorb this cost.

"Therefore, you are not required to add the credit card or PayPal fee. Furthermore, it seems that you can consider the full amount you paid toward his *maaser kesafim*.

"This is in accordance with what is considered normal, though. However, if a person pledged a certain amount to an organization and chose to donate through an international wire transfer or send a check by registered mail, it seems that he cannot deduct this cost from the amount of the donation, because this kind of excessive cost is not generally absorbed by the organization. Nonetheless, it seems that the person may count this cost as part of his *maaser kesafim*, because it is also part of the *mitzvah*.

"Similarly, *Tzedakah U'Mishpat* (7:23) rules that a *gabbai tzedakah* may deduct from the collection normal expenses that he entails in handling the *tzedakah*, yet they are considered *tzedakah* for the donor," concluded Rabbi Dayan. "This is like the common practice of many organizations that the fundraisers receive a percentage of the money they raise; nonetheless, this is considered part of the *tzedakah* donation."

Verdict: While it is meritorious to cover the fee of the donation, this is not required and is absorbed by the organization, yet the fee is included in the amount of *tzedakah* toward *maaser kesafim*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Pesach and Chametz

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Bal Yer'ra'eh — Whose Chametz?

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'ל' בת ר' שמואל חיים ע"ה

We have non-Jewish help living with us. Can he keep his chametz in our house on Pesach? Can we leave our chametz in his room?

A Jew is not allowed to maintain *chametz* in his possession, i.e., ownership, on Pesach — *bal yei'ra'eh* — whether it is in his physical premises or not.

If a Jew entrusted *chametz* with another Jew, or even a non-Jew, who accepted responsibility, the owner still violates *bal yei'ra'eh*, because the *chametz* remains in his ownership (O.C. 440:4).

Conversely, there is no prohibition regarding *chametz* that belongs to a non-Jew, even if located on the Jew's premises, unless the Jew accepted responsibility for it as a guardian, in which case he may not maintain the *chametz*. However, the non-Jew's *chametz* should be covered so that you do not come to eat it (C.M. 440:1-3).

Thus, the non-Jewish help may keep his *chametz* in your house, but you may not accept responsibility for it; you may not keep your *chametz* in his room.

Poskim discuss whether a Jew may insure *chametz* of a non-Jew on Pesach. Many maintain that this is allowed, because the insurer does not carry responsibility as a guardian for the *chametz* itself, but only financial liability for its value if lost.

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precedence over litigants who appeared before the *dayanim* after them.

In your case, because you didn't even appear in the *beis din* but merely scheduled an appointment with their secretary, the *dayanim* are not obligated to hear your case first, and the secretary was therefore allowed to postpone your case in favor of the urgent one.

Nevertheless, although the letter of the law does not obligate *beis din* to adjudicate your case first, it is customary to hear cases on a first-come, first-serve basis, because of the concept *tzedek* (fairness; see *Sanhedrin* 32b with *Meiri*, *Choshen Mishpat* 272:14). But this requirement of fairness is incumbent on the litigants, who are expected to act fairly with each other by following the order in which they arrived and not attempt to cut the line; *beis din* has no obligation to see to it that those who came first are heard first (see *Mishkan Shalom* 2:73). Furthermore, when there is a specific reason for the litigants who arrived later to be heard first, fairness dictates that those before them allow them to go first. (An example, discussed by *Meiri*, loc. cit., is that if one litigant in *beis din* is ill, his case should be heard before other cases in which the litigants are healthy; see *Radvaz*, *Hilchas Sanhedrin* 20:10; *Mishpatei HaTorah* 1:84.)

In addition, in your case, even if you were already being heard by the *dayanim*, in which case the principle of *kakaton kagadol tishma'un* would obligate *beis din* to adjudicate your case first, *beis din* is allowed to break to hear that case, considering the significant financial loss being suffered by one of the parties in the other case. The *halachah* is that the owner of a swarm of bees that has escaped and settled on his neighbor's tree may cut off the branch of the tree to retrieve his bees (*Choshen Mishpat* 274:1); likewise, if someone's barrel of honey split, he may pour out someone's else's wine and use that barrel to save his honey, which is worth more (ibid. 264:5), due to the *mitzvah* of *hashavas aveidah* (*Sma* ibid. 17) — provided that the owner of the tree or the barrel is compensated.

Similarly, because allowing the other case to be heard will save a litigant a significant amount of money, that case deserves to take precedence over a case that does not involve such consequences.



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