

BUSINESS WEEKLY



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

Issue #716 | Pinchas | July 26, 2024 | 13 Tamuz 5784

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



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute



BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

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

INVESTING TZEDAKAH MONEY

Rabbi Dayan's shul dedicated the *yahrtzeit* appeal on Shavuot to the local *chessed* fund; the community responded very generously.

The money that was pledged came in during the month after Shavuot. As the summer vacation began, a large sum of money sat in the *chessed* fund's bank account, sufficient to cover its expected needs for the year.

The summer was quiet time for the *chessed* fund. Many of the people were away, and the large Yamim Tovim expenses were two months away.

"It's a pity to have all this money just sitting in the bank when we don't need it immediately," the shul treasurer, Mr. Roth, said to the *gabbai*.

"What do you suggest?" asked the *gabbai*.

"We could invest half the money," replied Mr. Roth. "This way we will have half available for immediate needs, and can meanwhile earn additional money with the excess."

"How would you suggest that we invest the money?" asked the *gabbai*.

"There are several options," replied Mr. Roth. "We could invest it in a money market account or a FDIC insured 3 or 6-month CD. The truth is, the stock market is doing well now. My broker told me, with a disclaimer that he may be proven wrong, that he expects the market to continue rising till the end of the year."

"I'm hesitant, though, to move *tzedakah* money out of the bank account," said the *gabbai*. "What if we suddenly had a great need for the funds around the Yamim Tovim, or if the market crashes..."

"You can always play it safe," replied Mr. Roth, "but if things follow their expected course, we can earn a few thousand dollars extra for the *chessed* fund. I think it's worth the risk!"

"We have to check with the Rav whether we can do this," replied the *gabbai*.

The two met with Rabbi Dayan, and asked:

"Can we invest spare money of the *chessed* fund?"

"There is a dispute in the *Mishnah* (*Shekalim* 4:3) whether one can do business with spare money of *hekdesh* (Beis Hamikdash treasury) to earn expected profit," replied Rabbi Dayan. "*Halachah* follows Rabi Akiva, that the treasurer of *hekdesh* or *tzedakah* should not do so."

Yerushalmi (*Shekalim* 4:2) indicates that the concern is potential loss, so that if the treasurer of *hekdesh* or *tzedakah* accepts liability – *Yerushalmi* allows it. *Bavli* (*Kesubos* 106b), however, explains the reason otherwise; it is unbecoming to involve *hekdesh* in regular business, and there may not be sufficient *tzedakah* money available when needed (*Y.D.* 259:1).

The *Acharonim* therefore rule that if the investment is liquid, there are alternate resources to provide for the poor or the money is not needed right away for distribution (such as money being raised for a building fund), it is permissible to invest in a secure investment where there is minimal risk of loss and projected benefit to the poor (see *Erchin* 6a-b and Rashi; *Rema Y.D.* 259:1; *Taz Y.D.* 259:2; *Aruch Hashulchan* 259:4; *Tzitz Eliezer* 14:76).

REWARDING THE FAILURE?

Q. Reuven bought a house from Shimon, stipulating in the contract — which was written in a manner that is binding in *Halachah* — that Shimon must secure a certificate of occupancy

within six months of the sale.

When the six months passed and the certificate of occupancy had not been arranged, Reuven came to our *beis din* to ask that Shimon be prevailed upon to take care of the matter immediately. When Shimon heard about this, he agreed that since he hadn't met the stipulation, the sale is void. But Reuven claims that the stipulation was meant to protect *himself*, the buyer, not to enable the seller to renege on the sale if he didn't fulfill his commitment. Shimon acknowledges that the stipulation was truly made to protect Reuven, but says that the bottom line is that it wasn't met, and the sale is therefore void.

Who is correct?

A. The Shulchan Aruch (*Even Ha'ezer* 38:36) rules that if a man is *mekadesh* (betroths) a woman on condition that he will give her a certain amount of money, and he then declares that he does not plan to fulfill that commitment, *beis din* does not force him to fulfill it, and the *kiddushin* is void. But if the woman says that she is *mochel* (forgoes) the money, then the *kiddushin* is finalized.

There are several opinions in the *Rishonim* on how to view a contractual stipulation that was overlooked or forgiven (see *Shu"t HaRosh*, 35:9 and *Chazon Ish*, *Even Ha'ezer* 53). The Rashba (*Gittin* 74b) writes that in most cases, for the agreement to be valid, these stipulations must actually be fulfilled, and the party receiving the benefit of the stipulation cannot be *mochel* it. Only if someone stood to derive a financial benefit from the fulfillment of such a stipulation is he entitled to forgo it, because he may say, "I consider it as though I received that benefit and returned it."

The Ran (*Kesubos* 33b in the *Rif* folios; see also *Tosafos*, *ibid.* 73a) writes that if a stipulation is to a certain party's benefit, we do not automatically assume that that person is going to be *makpid* (insist) that it be fulfilled and void the transaction if it is not; we must wait to see whether he is *makpid*. (If the stipulation was made in order to cause pain to the other party — such as a stipulation regarding a *get* — then *mechilah* does not take effect, because it is obvious that the stipulation was made deliberately).

According to the latter approach, even if the stipulation had nothing to do with money, the party that stands to gain from its fulfillment may be *mochel* it.

Nevertheless, the Beis Shmuel (38:57; cf. *Beis Meir* *ibid.*) writes that there is a difference between money-related stipulations and all others: In regard to other stipulations, if the beneficiary of the stipulation is *makpid*, at first, that it be fulfilled, then even if he later changes his mind and is willing to be *mochel*, the action was already nullified. But if the stipulation relates to money, then even if, at first, he is *makpid*, he may later change his mind and decide to be *mochel*, because he can still consider it as though



CASE FILE

When the money is being held in a bank, a CD is no less secure than a checking/savings account. However, the shul needs to ensure that it has sufficient funds to meet the *tzedakah* needs; it should not seek to earn profit if it could come at the expense of the primary purpose of the *chessed* fund. A money market would also seem sufficiently secure, and it provides liquidity.

However, the money should not be invested in stocks, etc., even if greater profit is expected, since there is accompanying greater concern of loss, especially short-term (C.M. 290:8; 290:10, citing *Rashba* 1:1094; see, however, *Shevet Halevi* 8:213).

“When the money is invested on behalf of the *chessed* fund,” concluded Rabbi Dayan, “the profit belongs to it, since the profit is earned from its money” (see *Tzedakah u'Mishpat* 8:11).

Verdict: Tzedakah money should not be invested, either because of concern of potential loss or so that the money should be available when needed. Acharonim allow a secure investment when it is liquid or there are alternate resources to cover the tzedakah needs.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial
Practice #29
Tax Included?

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

Q. I ordered a custom-made item and agreed with the seller on the price; we did not explicitly discuss the associated tax. When the item was delivered, the seller added tax to the price we agreed on, but I claim that the price we agreed on should include the tax. What is the halachah?

A: On this issue, we follow the *minhag hamedinah* of that locale. Therefore, in the United States, the price quote typically does not include the sales tax, which should be added to the agreed price.

On the other hand, in Israel, the price quote generally includes the VAT (*ma'am*). Therefore, in regular purchases, the agreed price includes the VAT, unless stipulated otherwise beforehand, or in professions where it is common to quote the price of labor before the addition of VAT (*Pis'chei Choshen, Kinyanim* 3:[39]).

Similarly, we follow the *minhag hamedinah* regarding various taxes associated with real estate purchases, whether they are incumbent on the seller or the buyer (*ibid.*).

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



BHI HOTLINE

he received the money.

The Ketzos (243:2, and in *Avnei Miluim* 38:15) disagrees and writes that even if the stipulation relates to money, once a person said he was *makpid*, the original *kinyan* formalizing the deal is void, since the condition wasn't fulfilled, and the beneficiary cannot change his mind (see *Moadim u'Zmanim* 6:44). Apparently, the Ketzos maintains that the way a stipulation works is that if the party benefiting is *makpid* on its being fulfilled, and it isn't, then the original *kinyan* is void.

The Nesivos (243:4) also disagrees with the Beis Shmuel, maintaining that even if at first a person was *makpid*, as long as he hasn't declared that the *kinyan* will be invalidated if the stipulation is not met, he may still change his mind and consider it as though he had received the benefit. If he did make it clear that he wished to invalidate the *kinyan* if the stipulation was not met, he may not change his mind later on if the other party wants to void the sale. (The Nesivos [241:11] writes, however, that if the deadline for the condition has not yet arrived, and the person said that he doesn't plan to fulfill the condition, but the beneficiary said that he was *makpid*, he may change his mind and say that it is as though he received what he was entitled to, since the deadline has not yet arrived.)

In light of the above, when Reuven insisted that Shimon procure the certificate of occupancy within six months, and Shimon failed to do so, then, according to the Ketzos, his insistence invalidates the original *kinyan* and Shimon may renege. The Nesivos, however, interprets Reuven's insistence as an effort to obtain the certificate of occupancy from Shimon, but he may still say, "It's as though I received it, and no longer insist on getting it," and the sale will remain in effect.

We should add that although the question stressed that the stipulation was made in accordance with *Halachah*, we must nevertheless read the contract carefully, because it may have been phrased not as a stipulation (*tenai*), but as an obligation (*his'chayvus*) that the seller must fulfill, and if he does not fulfill it, then the buyer (and not the seller) may choose to void the contract. If that is the case, then Reuven's insistence on receiving the certificate of occupancy does not give Shimon the right to renege on the sale.



Instantly Book at
kvation.com
Have a rental? Free for hosts

לזכר נשמת ר' שמואל
בן ר' ראובן ז"ל וואלף

לזכר נשמת ר' שמואל בן ר'
דוד הכהן ז"ל

PLACE YOUR LOGO HERE IT WILL BE SEEN BY
30,000 PEOPLE
NL@BUSINESSHALACHA.COM
(877) 845-8455 #201

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



WWW.CAPITALX10.COM
LOW RISK HIGH REWARD