



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### MAASER FOR ALIYAH

Congregation Kol Tefillah was packed for Simchas Torah. In order to raise money for the shul, the honorary roles of the days were being auctioned off. The heaviest bidding was for Chassan Torah. It started at \$100 and quickly escalated to \$1,000, then \$1,800, followed by \$2,000, and even \$2,500.

"Chassan Torah going once, Chassan Torah going twice..." announced the gabbai.

"\$3,000!" someone shouted out.

The gabbai began counting again: "Chassan Torah going once, Chassan Torah going twice..."

"\$3,600!" someone shouted.

Once more, the gabbai began: "Chassan Torah going once, Chassan Torah going twice..."

"Five thousand dollars!" Mr. Fisher called out.

The gabbai looked toward Mr. Fisher with a pleased look. "Five thousand for Chassan Torah," he announced. "Chassan Torah going once ... Chassan Torah going twice ... Chassan ... Torah ... going ... three ... times ... Chassan Torah sold to Mr. Fisher for five thousand dollars!"

When Mr. Fisher returned home, his wife greeted him. "I'm honored that you received Chassan Torah," she said. "But where are we getting five thousand dollars to pay for it?"

"I looked over the tzedakah records from this past year and saw that we were falling behind," Mr. Fisher said. "We have been building up money from maaser kesafim that we owe to tzedakah, so I thought I'd use it to cover Chassan Torah."

"Is that fair?" asked Mrs. Fisher. "You used tzedakah money to buy yourself an aliyah? Shouldn't that come out of your pocket?"

"Why not?" asked Mr. Fisher. "It's a donation to the shul!"

"It's not quite a donation," said his wife. "You bought yourself an aliyah with that money. If the money is set aside as tzedakah, it should have been given to the poor, not used for your own gain."

"I really don't see the problem," said Mr. Fisher. "But I'll double-check with Rabbi Dayan."

Mr. Fisher contacted Rabbi Dayan. "Am I allowed to use money of maaser kesafim to pay the shul for an aliyah that I bought?" he asked.

"There are two parts to this question," answered Rabbi Dayan. "One, can maaser kesafim be used to support shul expenditures? Two, can it be used to buy an aliyah?"

"What's the question about donating to support the shul?" asked Mr. Fisher. "Isn't that also tzedakah?"

"The primary purpose of maaser kesafim



## BHI HOTLINE

### SHARED EXPENSE

I had a tree trimmer trim back a tall tree overhanging my yard so that I could

expand the size of my sukkah. While he was in the tree he asked if I wanted him to cut additional branches that were overhanging my neighbor's yard and, knowing that my neighbor was also interested in expanding his sukkah, I instructed the trimmer to do so.

**Q: Can I obligate my neighbor to share in the expense of the tree trimming since he also benefited from the job?**

**A:** The question of whether one must pay when he receives material benefit as a result of a friend's efforts depends on whether the benefactor intended to generate that benefit for his friend. If the benefactor's intent was for his own benefit and afterwards realized that he generated benefit for his friend, the friend is not obligated to pay since the benefactor did not have that intent. Such a scenario would be considered zeh neheneh v'zeh lo chaser — this one benefits and that one does not lose (see Noda BiYehudah, C.M. 2:24, cited in Pischei Teshuvah, C.M. 170:1).

On the other hand, when the benefactor intended to generate material benefit for his friend the halachah depends on whether he intended to charge his friend or not.

If the benefactor intended to charge him he may demand payment from

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## STORY LINE

is to provide for the needy," explained Rabbi Dayan. "In fact the Rema (Y.D. 249:1) writes that it should not be used for other mitzvah purposes, e.g., candles for the shul. However, other authorities allow using it also for other mitzvos that the person is not obligated in and would not do otherwise. The generally prevalent practice nowadays is to use maaser money also for other mitzvah purposes, but it is preferable that a person stipulate so explicitly when designating the maaser. Therefore it is permissible to use maaser money for the shul, although the bulk should still be dedicated to the needy" (Shach, Y.D. 249:3; Pischei Teshuvah, Y.D. 249:2).

"What about buying the aliyah?" asked Mr. Fisher. "Is that OK?"

"The Taz (Y.D. 249:1) writes that it is permissible to purchase aliyos with maaser money, since the money is going to tzedakah anyway," answered Rabbi Dayan. "One is allowed to get the incidental benefit of the aliyah, just as he always has the incidental benefit (tovas hanaah) from distributing the tzedakah to whomever he wants.

"Some maintain, however, that one can only use maaser money if the aliyah would not have been bought otherwise, or only for the amount added over the previous bidder," continued Rabbi Dayan. "However, others reject these distinctions, especially if the previous bidder would also likely pay from his maaser kesafim" (see Hilchos Maaser Kesafim 14:29-32).

"The Taz stipulates, though, that the person must have intended to use the maaser money when he purchased the aliyah," concluded Rabbi Dayan. "However, if the person did not consider using maaser money at the time of the aliyah, he may not later use maaser money. In this case, the pledge becomes an obligatory debt, and a person may certainly not pay his outstanding debts with maaser money."



## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 16

**Q: Someone published a photo of Rabbanim sitting at a rabbinical convention. May I copy this photo?**

**A:** Harav Yosef Chaim Sonnenfeld, zt"l, allowed taking a photo of another person without his permission (provided, of course, that the person will not be embarrassed). He does not consider copying the image of someone as benefitting from that person. Similarly, the mere appearance (mar'eh) of something, which does not involve a mental creation, is not considered "property." Hence, a plain photo is not considered the intellectual property of the photographer to prohibit copying for personal use.

However, if the photograph required the photographer's creativity to achieve, then it could be considered his "intellectual property" and copying it would be prohibited. Similarly, if the photographer enhanced the photo significantly, copying it would be prohibited, since it would then be a product of his creativity.

Regardless, since the photographer invested effort in taking the picture, it is prohibited to copy it for commercial purposes that might impinge upon the photographer's earnings. This would be a violation of hasagas gevul, professional practices, dina d'malchusa, and benefitting financially from another's toil (Emek Hamishpat, Zechuyos Yotzrim, intro. 7:1-5; ch. 36:7, 19, 25).



## BHI HOTLINE

his friend, but if that was not his intent he may not charge him for the benefit that he provided (Nesivos 12:5). The rationale is that when the benefactor intended to provide a free service, the friend never became obligated to pay him for that service, and thus the benefactor cannot come along later and impose a financial obligation. In contrast, when he intended to charge his friend, that friend is obligated since Halachah assumes that when a benefactor provides a service for a friend, he intends to be reimbursed for providing that service (C.M. 246:17).

Similarly, if the trimmer removed the additional branches over your neighbor's yard without even consulting with you, you would not be able to charge him for that benefit since you were not responsible for that task. In this regard, the trimmer is an outsider who provided a service for your neighbor for which you cannot expect reimbursement.

In your case, since you were consulted, the matter hinges on whether you intended to have your neighbor pay for the benefit. Furthermore, your neighbor may not assert that he is not obligated to pay for the material benefit that he received since it did not involve an additional expense. The halachah is that his obligation to pay pivots on whether you intended to charge him for that benefit and does not relate to whether the benefit that you provided him increased your costs (C.M. 264:4).

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