



Business weekly

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Harav Chaim Kohn, shlita

Dedicated in loving memory of
Meyer H. & Joy Ruth (Taxon) Graff and Chaim & Ronia (Grinfogel) Rand
by their children, Jacob M. M. and Pnina (Rand) Graff and family

STORYLINE

unpaid debt

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Lev Feingold was known for his generosity. He was not wealthy, but always donated to the extent of his ability. At the end of each month, he would meticulously apportion one-tenth of his income for ma'aser kesafim and distribute it to various tzedakah causes. Mr. Feingold was also approached occasionally for loans. Sometimes he would use ma'aser kesafim money for the loans, but more often he would grant them from his own money. "As long as I'm privileged to be on the lending end, I'm in good shape," he would quip.

"Lev, I need a short-term loan of \$10,000 to keep my business afloat," one of Mr. Feingold's cousins pleaded with him.

Mr. Feingold consented and withdrew money from his savings to help his cousin. As the months passed, though, the financial state of his cousin's business worsened

and the possibility of repayment dwindled. With the banks now refusing him credit, the cousin shamefacedly asked for another loan. "You need to be aware, though, that there is a real possibility that I might not be able to repay you," he added with a sigh.

Mr. Feingold was not in a position to absorb the loss, but realized that demanding repayment or denying the new loan would push his cousin to the brink of bankruptcy.

He shared his dilemma with his local gabbai tzedakah, Artie Hoffman.

Artie suggested to him: "Why don't you retain for yourself the coming two year's worth of ma'aser kesafim to cover the unpaid loan to your cousin and the amount he wants to borrow now?"

"I can't do that," gasped Mr. Feingold. "The ma'aser kesafim money is for tzedakah, not to put back into my own pocket!"

"But it's not really into your pocket," argued Mr. Hoffman. "Consider it as if you gave the money as tzedakah to your cousin, and he gave it back to you to repay his debts!"

"There is logic to that," Mr. Feingold responded thoughtfully, "but it still seems that the money should actually be given to the poor. I certainly don't see how I can take the money to cover the old debt."

"It was nice of you to have helped your cousin," protested Mr. Hoffman, "but you don't have to suffer an unnecessary loss!" Mr. Feingold decided to seek guidance from Rabbi Tzedek.

He shared the story with Rabbi Tzedek, who said to him, "It is possible to retain ma'aser kesafim money to cover unpaid loans to a poor person, with some limitations."

Rabbi Tzedek then explained: "The Mishna (Gittin 30a) allows lending money to a poor

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FROM OUR HOTLINE

Submitted by
L. G.

fallen food

Two brothers, ages ten and eleven, came into my grocery store with an order for their mother. I asked if they wanted the order delivered, but they told me that their mother allows them to carry the groceries home. I filled the order, took their money, and sent them home. Shortly afterward, their irate mother called me, demanding that I refill the entire order. The boys had dropped the groceries on the way home, and she

says that I should not have entrusted them with the bags. I like to keep my customers happy and I refilled her order, but her claim seems unreasonable to me.

Q: Was I liable for her loss?

A: A Mishnah in Bava Basra (87b) discusses a case of one who sends his minor son to the store with a pundyon (a coin) to pur-

chase oil. The storekeeper measures some oil into the container brought by the child and gives him change. On the way home, the child breaks the container of oil and loses the change. Rabanan and R' Yehudah disagree whether the storekeeper is liable for the loss. Rabanan hold that the storekeeper is liable because the assumption is that the parent sent the child only to inform the storekeeper that he needed oil.

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STORYLINE CONTINUED

person and stipulating with him that the loan will be paid off by retaining future ma'aser ani produce - tithes that would normally be distributed to the poor. We consider it as if the lender gave the ma'aser ani to that poor person, who then returned it in repayment of the loan.

"Similarly, Rama (Y.D. 257:5) permits lending to a poor person and stipulating that the loan will be paid off by retaining future ma'aser kesafim. This can only be done, however, so long as the borrower is still poor and entitled to receive the ma'aser money.

"Alternatively, you can lend the money to the poor person with the intention that if he will not repay - it should be considered tzedakah retroactively. It is then permissible for you to deduct the unpaid amount from ma'aser kesafim (Teshuvos V'Hanhagos I:560[11])."

"This helps regarding the new loan my cousin is asking for," said Mr. Feingold. "What about the old loan that I granted him and he is unable to pay?"

"Noda B'Yehuda cites a dispute in the Talmud Yerushalmi whether it is permissible to deduct the ma'aser after the loan was already granted," answered Rabbi Tzedek. "He rules that it is allowed, but the lender needs permission from the poor person to deduct the ma'aser in payment of the loan. He further recommends that the lender should deduct only an amount he might have given to this poor person, so as not to cause a loss to all the other needy people (Pischei Teshuva Y.D. 257:5)."

"It might embarrass my cousin if I notify him that I want to deduct the loan from my ma'aser kesafim," Mr. Feingold said.

"Well, some poskim explain that it is only necessary to get permission if the borrower went bankrupt or is very destitute, so that you could not demand payment from him," said Rabbi Tzedek. "Otherwise, cancelling his loan is simply considered as giving him tzedakah and does not need his permission (Teshuvos V'Hanhagos II:471; see, however, Igros Moshe Y.D. I:153)."

FROM OUR HOTLINE CONTINUED

The expectation was that the storekeeper would send the oil and the change back to the house with a responsible person. According to Nesivos HaMishpat (235:1), this ruling applies even for children who have reached the age at which they understand how business works. R' Yehudah disagrees and holds that the expectation was that the oil and change would be sent home with the child.

Shulchan Aruch (188:2) rules in accordance with Rabanan that the storekeeper is liable. This ruling indicates that you, as the storekeeper, should not have sent the groceries with the children; therefore, you would be liable.

Teshuvos Imrei Yosher (vol. 2 siman 112), however, adds an essential qualification to this ruling. He asserts that in times in which it is common

for parents to trust children to carry money or merchandise, the halacha as recorded in Shulchan Aruch no longer applies. Shulchan Aruch's ruling is limited to those circumstances in which children are not trusted to carry purchases or money.

Aruch HaShulchan (188:3) takes this principle a step further. He rules that in circumstances when it is common to send children to the store to make purchases and the child tells the storekeeper that he was sent to the store and - it appears that the child is telling the truth - the storekeeper is exempt.

Accordingly, since you asked and the children told you that they were authorized to take the groceries home, it seemed reasonable that they were telling the truth. You were exempt from repaying their mother.

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MONEY MATTERS

unfair pricing week #4

Q: I rented a house for \$6,000/month. I later realized that I was swindled and comparable rentals in the area are worth about \$4,000/month. Can I claim ona'ah and demand a refund or annul the rental?

A: The rules of ona'ah apply not only to sales, but also to rentals, since rentals are considered a "sale" for that day or month. However, the Gemara (B.M. 56a,b) derives

from verses that the rules of ona'ah apply only to movable items that have intrinsic value. This excludes real estate, which is not movable; slaves, which are juxtaposed to real estate; and loan documents, which serve as proof but do not have intrinsic value. Therefore, since the house is real estate, you cannot claim ona'ah on the house rental (227:29).

If the price differential reaches double the

actual worth (i.e. if comparable houses go for \$3,000/month), the Rama rules that there is an ona'ah claim (See SM"A 227:49). Although the Gemara excludes real estate, slaves, and loan documents from claiming ona'ah, many Rishonim maintain that there still exists a prohibition against knowingly swindling the other party who is unaware of the going rate (see SM"A 227:51 and Pischei Teshuva 227:21).

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