



BUSINESS WEEKLY

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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

VIRTUAL ACQUISITION

A new year is under way. Rabbi Dayan wishes all his readers a happy and healthy year, one of spiritual growth and material success.

Unnoticed to many is the transition from the second to third year of the *Shemittah* cycle. Of what consequence is that?

"Many people will be in Eretz Yisrael during the year," Rabbi Dayan told his congregation. "In years 1-2 and 4-5 of the *Shemittah* cycle, we designate *maaser sheini*, which is redeemed on a coin. However, in years 3 and 6, in place of *maaser sheini* we designate *maaser ani*, which is given to a poor person or a *tzedakah* organization that distributes to poor people.

"Fruits and vegetables are different in this regard," Rabbi Dayan pointed out. "Vegetables picked during 5778 are obligated in *maaser ani*. However, only fruits that begin growing after Tu B'Shvat 5778 are liable in *maaser ani*, even if picked after next Rosh Hashanah" (Y.D. 331:125-126).

"If I buy in a store in Eretz Yisrael, do I need to give *maaser ani*?" asked Yisrael.

"If the store has *hashgachah* (rabbinic supervision), *terumos* and *maasros* were already taken," replied Rabbi Dayan. "The issue is for produce straight from the field."

"I can see giving *maaser ani* on a commercial level," said Yisrael. "However, how does this work on a small, home-garden level? If I pick five tomatoes, I don't see myself knocking on my poor neighbor's door and saying, 'I heard that you're struggling financially. Here's half a tomato of *maaser ani* to help you along!'"

"I agree!" laughed Rabbi Dayan. "That would not be an appropriate thing to do."

"Then how can I give the *maaser ani*?" asked Yisrael. "Must I give the produce itself, or can I just give equivalent money to *tzedakah* instead?"

"There are three basic options to allow giving the equivalent to *tzedakah*," replied Rabbi Dayan. "But you must still declare the *maaser ani*, as printed in the text for separation of *terumah* and *maaser*." (See *Mishpetei Eretz, Terumos Umaasros* 17:5 ff.; *Halichos Sadeh*, vol. 185, pp. 5-15.)

"After the declaration, some permit simply giving the value of the *maaser ani* to *tzedakah*," continued Rabbi Dayan. "Although the produce of *maaser ani* is never given in this



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PAYING SOMEONE ELSE'S RIBBIS

My son needed a credit card, and

due to his poor credit rating, I arranged that a friend of mine should lend him his credit card. My son recently discovered that this violates the prohibition of *ribbis*. The credit-card company loaned money to my friend (credit-card holder), who in turn loaned the money to my son. When my son committed to make interest payments to the credit-card company, he was committing to pay more than he borrowed (*ribbis*). I feel terrible that my friend will now be stuck with making interest payments for my son's purchases.

Q: Is there anything that we can do to prevent my friend from suffering a financial loss for the favor he did?

A: If you, the borrower's father, wish to make the interest payments at your expense to the credit-card company, you may do so.

The Torah's *ribbis* prohibition is violated when *ribbis* is paid to the lender by the borrower. Therefore one is permitted to approach a potential lender and commit to make interest payments if he extends an interest-free loan to the borrower (Y.D. 160:13) and provided that he doesn't obligate himself to make accruing payments for the duration of the loan (*Taz* 160:6).

It is prohibited for the borrower to furnish or commit to reimburse the third party. The reason is that it makes it appear that the third party is the borrower's agent.

According to some authorities, it is prohibited for the borrower to convince a third party to make his interest payment since it makes it appear as though the third party is acting as an agent of the borrower. Many others disagree and permit a borrower to ask a third party to pay *ribbis* to his lender

DID YOU KNOW?

Buying and/or serving non-kosher food in business settings can present *shailos* of benefiting from *basar b'chalav* and *shailos* of doing commerce with *neveilos*?

If your business purchases and/or serves non-kosher food, please speak to your Rav or contact the Business Halacha Institute for guidance.



STORY LINE

manner, since the average poor person would certainly prefer money to a small quantity of produce, consent to exchange the produce for money is implicit" (*Radbaz* 1:340).

"A preferred option is through *zochin l'adam shelo b'fanav* — acquisition on behalf of another person," continued Rabbi Dayan. "Someone who is not a member of the household should pick up the produce of *maaser ani* and acquire it on behalf of the *gabbai tzedakah* or administrator of the *tzedakah* organization. In this way the *gabbai* acquires the *maaser ani* and you fulfill the *mitzvah* of giving the *maaser ani* itself. Then you can give the *maaser* equivalent to that *tzedakah*, as if buying the *maaser* produce back from them with their explicit or implicit consent" (C.M. 243:1; 359:2; *Shach* 359:4; *Machaneh Ephraim*, Gezeilah #5).

"The third option, especially useful for someone who tithes often, utilizes the concept of '*makirei kehunah*,'" concluded Rabbi Dayan. "The *Gemara* (*Gittin* 30a) teaches that if a person always gives his tithes to a certain *Kohen* or *Levi*, *Chazal* awarded it to him automatically, even without a formal act of *kinyan*! Many apply this also to a poor person or *gabbai tzedakah*. Thus, some organizations offer an arrangement whereby you give a small sum of money ahead of time as a loan, to be repaid from the *maaser ani*, and you commit to give all your *maaser ani* to that organization throughout the year. Each time you tithe, they virtually acquire the *maaser ani* automatically. You can then retain it as repayment of the loan and deduct its estimated value from the remaining balance" (Rambam, *Hil. Maaser* 7:6; *Rema*, Y.D. 257:5; *Shach*, Y.D. 257:13).



MONEY MATTERS

INHERITANCE #15

Additional Examples of Ra'ui

From the writings of Harav Chaim Kohn *shlita*

Q: Are common forms of investment, e.g., bank accounts and stocks, considered *ra'ui*?

A: Money deposited in the bank is considered *ra'ui*, since the bank uses it and returns other money; it is like a loan. This is true even of a Jewish bank that has a *heter iska*, in which half of the money is formally defined as a *pikadon* (*Pischei Teshuvah*, C.M. 278:6; *Pischei Choshen*, *Yerushah* 2:36[74]).

Similarly, most stocks are considered *ra'ui*, since their value is determined primarily by market trends or intangible assets of the company, not by its tangible assets (See *Pischei Choshen*, *Yerushah* 2:72; *Responsa Etz Chaim* (Kohn), C.M. #11).

If a tangible asset owned by the father increased in value after his death, before the estate was divided, if it increased through natural growth or appreciated due to external market forces, the *bechor* receives a double share in the increase. However, if the heirs invested effort to develop the asset, he does not receive double in the increase (C.M. 278:6; *Shach* 115:32).



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so that he will be willing to lend him money. Asking a third party to make this payment is irrelevant provided that the third party uses his own money, since the interest did not go from the borrower to the lender (*Shach*, Y.D. 160:18; S.A. *Harav*, *Ribbis* 60).

Some contend that all opinions concur that the borrower may not inform the lender that a third party will give him money to ensure that the lender will issue a loan, since doing so makes it appear as though the third party is acting as an agent (Y.D. 160:13; S.A. *Harav* *ibid.*). Others maintain that according to the lenient opinion, even this is permitted (see *Chavas Daas* 6; *Pischei Teshuvah* 9).

The above applies when the original loan was not an interest-bearing loan. There is a debate whether it applies when the original loan was an interest-bearing loan, as in your situation. Some authorities permit a third party to make interest payments provided that the borrower does not reimburse the third party nor ask someone to make the interest payments on his behalf (*Bris Yehudah*, *Ikrei Dinim* 6:1; *Kuntres Acharon* to *Kitzur Dinei Ribbis* 12:7, citing Rav Elyashiv and Rav Sternbuch).

Others contend that it is prohibited when the original loan was an interest-bearing loan (see *Nesivos Shalom* 160:13:[13-15]). In order to comply with all opinions, you should inform your friend that you are not paying the interest your son committed to pay him; rather, you are giving him a gift so that he will forgo the money that your son owes him (*Chelkas Binyamin* 160:13, d.h. "v'gam." He also considers that in a situation where the original loan was interest-bearing, the borrower may be permitted to reimburse the third party at a later time, after the loan is repaid).

Please note that the likely breach of contract with the credit company is a separate issue not dealt with in this article.

For questions on monetary matters,
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