


HALOCHOSCOPE



This week's question:

Someone 'borrowed' money from one of his *tzedakah* pushkas. He does not remember from which pushka he borrowed. How should he go about replacing the *tzedakah* money?

The issues:

A) The status of the money in the pushka

B) Borrowing or taking from *tzedakah*

A) The pushka

The term pushka comes from a Slavic word meaning a cylindrical box that was used to collect money in a church. From there it crept into the Yiddish, for a similar use in a *shul*, *lehavdil*. In general, it was used to refer to the type of box use by one collecting coins from donors. In the times of the *Bais Hamikdash*, people would save small coins toward a sum needed for an offering. They used a box or jar, with a letter or word on the outside to indicate the purpose of the money being saved. Other monies that had specific designations, such as money used to redeem the sanctity of *maaser sheini*, the second tithe taken to *Yerushalayim*, might also be placed in a specially labeled jar or box. Inside the *Bais Hamikdash* there were conical boxes to collect donations toward the different needs or obligations. These were called *shofaros*, due to their conical appearance. One put money into the small opening at the top, but could not get into the *shofar* to remove it. The treasurers of the *Bais Hamikdash* could access the money from the bottom. In time, Rabbinic literature used *shofar* to refer to what was called a pushka in Yiddish.

In addition, when money was collected for *tzedakah*, it was placed in a *kupah*, box or hamper. A *kupah* was also used for the *terumas halishka*. This was money taken from the *lishka*, chamber in the *Bais Hamikdash* where the *shekel* obligation was kept, to be used for communal offerings. In later times, the term *kupah* came to be used to refer to the fund for the poor. This term shows that it has entered a new domain. It is thus considered property of the 'fund'. The poor are then supported with funds from the *kupah*.

Once money is put into a pushka, the question is: who does this money belong to now? Has it left the domain of the donor? To effect a transfer to *hekdes*, the consecrated domain of the *Bais Hamikdash*, one need not make a *kinyan*, formal transaction. Stating that one donates it transfers ownership to "Hashem's treasury", which is anywhere the item happens to be. One can also donate it to *hekdes*, as the Israelites did when donating to the *Mishkan*. It was given to those charged with handling it. What if one designates a coin for something, but does not state his intent, nor does he hand it over?

Tzedakah is treated like *hekdes* in some ways, though it is forbidden to declare something real *hekdes* nowadays. [If this was done, one must consult a *rav* to decide how to deal with it. A distinction must be made between *tzedakah* for the poor and the public property of a *shul*. *Shul* items have *kedusha*, sanctity, that forbids their mundane

use. The sanctity carries over to the money raised by their sale.] The *gabai*, treasurer of the funds, can have the status of being an agent of the poor. Because he represents them, money given to him is as though it has been given to the poor. That money cannot be taken back by the donor. If the money was already given to the poor, the donor has no say in how it is used. Once money has been separated to be used for *tzedakah*, it can also have this status. The owner might retain the discretion on which needy person receives it, as though he is a *gabai*. This is known as *tovas hana'ah*. However, this only applies to money that he has the discretion to distribute. Grain that must be left for the poor may not be taken by the farmer and given to the needy of his choice. The Talmud debates what he must do if he did take it. In one view he must give it to the first poor man he meets, and the other view allows him to decide. Nonetheless, in general, it is also possible that a donor who has only separated the money but has not handed it to the *gabai*, has not consecrated it. He may use it as explained in section B.

If a person saves money for a designated sacred use, the question arises what to do with the surplus. Depending on the exact language used when it was placed in the jar or box, it might be presumed holy or mundane. This depends on an estimation of his mentality when designating the coins, and on the known possible uses of the surplus. When placing coins in a pushka, the presumption is that every coin is being designated for the *tzedakah*. In some cases, the *tzedakah* is very happy to empty the pushka and take the exact coins. In other instances, the assumption is that the donor will count the coins and redeem them with a check. In the former case, it could be argued that the pushka actually belongs to the *tzedakah*. It could then be argued that the pushka makes a *kinyan* on behalf of the *tzedakah*, even in the domain of the donor. The concept of using a vessel to effect a *kinyan*, and especially in the domain of the giver or seller, is subject to Talmudic and Rabbinic debate. If the *tzedakah* expects the donor to redeem his coins with a check, it could be argued that they do not wish to take possession of the coins at all. The pushka is a tool to help people set aside money that will eventually be transferred to the *tzedakah* in the form of a check. Currently, it belongs to the donor.

By designating the funds, the donor made a type of vow, binding himself to give this money. He may not unduly delay giving it. The poskim debate the status of the money if it were stolen. If the *tzedakah* owns the funds, the homeowner is a *shomer chinam*, unpaid watchman. He is not liable. However, this depends on the manner in which he obligated himself to donate the money. If he undertook to donate money, he is still liable to replace it, regardless of whether the *tzedakah* owned it. Since it had not yet reached its desired destination when it was lost, he owes it. If he undertook to donate this specific coin, he is not liable for its loss.

Many poskim assume that the *shofar* belongs to the *tzedakah*. The discussion revolves around two issues. The standard *kinyan* with a vessel is a form of *kinyan chatzer*, *kinyan* made by a person's property. This could be viewed as an extension of himself, or as an agent. The Talmud debates this, and the poskim debate the final conclusion. If the *shofar* is placed in a *shul* area, it cannot be considered a privately owned *chatzer*. If it is placed in a home, it is assumed to belong to the *tzedakah* organization. The issue is then whether the vessels of the recipient can effect a *kinyan* on the property of the donor. This depends on how one views this issue. Some say, if the donor gives the recipient permis-

sion to put his vessel down, the recipient can make a *kinyan* through it. Others maintain that the donor must specifically tell the recipient to use it for a *kinyan*. The poskim debate whether the stringent view would consider the *tzedakah* as having been given specific instructions by the homeowner to use their *shofar* to acquire the coins.

The second issue is whether the coins are acquired immediately on behalf of the poor, or whether the *tzedakah* acquires them, then holds them until they are distributed to the poor. If the *tzedakah* is an independent collector, it is possible to consider the funds still the property of the donor. The *tzedakah* could be viewed as an agent of the donor. Even if the *tzedakah* is independent, since the money does not yet belong to the poor, the *tzedakah* has a lot of discretion. One difference could be seen when a few pushkas spill. The poskim discuss whether one may put money back into any pushka without knowing where it came from. This depends on the assumed discretion and waived rights of the *gabaim*. Another example of where this makes a difference is when the *tzedakah* is defunct. If the money already belonged to the poor for whom they collected it, it may not be transferred to another *tzedakah* at the discretion of the donor. It might need to be 'left until Eliyahu comes'. [Eliyahu will reveal who owns it.] On the other hand, an owner may change the designation of the *tzedakah* before he gives up ownership. If the *tzedakah* is considered a *gabai* with discretion, there might be certain changes permissible as well, even though the '*gabai*' has now abandoned his position. [See Peah 4:9 8:7 Shekalim 2:3-5 3:2 7:1 8:5 Rosh Hashanah 6a Megilah 25b-29a Baba Kama 36b Baba Metzia 78b Baba Basra 8b-9a 85a-86a Erchin 6a-b, Poskim. Tur Sh. Ar. OC 153-154 YD 256:1-4 257:1-6 258 259, commentaries. Tzedakah Umishpat 8:5 8 9 note 25.]

B) Borrowing or taking from tzedakah

The Talmud discusses various situations in which *tzedakah* money can be borrowed or otherwise used for non-*tzedakah* purposes. The first principle is that *tzedakah* has no inherent sanctity. However, it is somewhat owned by an entity. This entity could be viewed as the poor. Accordingly, misappropriating it for other uses would be considered stealing their money. Furthermore, who is authorized to use it? Is it the original donors, or the *gabai*? What if there are no current needy recipients? It would seem that the money does not belong to anyone! The Talmud debates whether to permit investing the money. Some say that this will be advantageous to the future poor recipients, while others maintain that it might not be readily available when the need arises.

Stipulations may be made for a communal *kupah*. The community may permit the *gabaim* to use their discretion. They might also reserve the right to transfer the *kupah* money to other communal needs. They do not necessarily need to stipulate this.

Therefore, when designating money to *tzedakah*, one may stipulate that until it is actually handed over, the donor retains the right to use it, if necessary. If no stipulation was made, the donor should hand it over as soon as possible. However, if there are no poor ready to receive it, as long as it is still in his hands, the donor has the right to use it. In these cases, it is considered as though he is borrowing the *tzedakah* money.

However, a private donor has no discretion after it reaches the hands of the *gabai*. Therefore, once money is placed in a pushka, supplied by the *tzedakah*, the donor may not borrow it. As we mentioned, many poskim maintain that the pushka effects a *kinyan* on behalf of the *tzedakah*. The fact that the *tzedakah* prefers to receive a large bill or

check, rather than coins does not imply that they have not yet gained ownership. Rather, they have the discretion to change the coins for convenience. They have basically delegated this to the donor. If the donor made his own pushka, he has not yet handed the money to the *tzedakah*. The pushka does not belong to them, and they have not made a *kinyan*. Assuming that the donor knows that the *tzedakah* is not ready to receive and distribute the money, he may borrow it in the meantime. This would be the equivalent of knowing that there were no needy poor ready to receive.

In our case, the questioner borrowed a specific amount of money from one pushka. He forgot from which pushka he borrowed. Usually, when one is in doubt whether he owes money, he need not pay until the claimant can prove his debt. If there is a doubt as to whether money is due to the poor, the Talmud debates whether the donor is obliged to give it anyhow. In our case, the donor knows that he owes the money, but does not know to whom. If one stole from one of five people, all of whom claim he owes them, the Talmud debates whether he may leave the money in the middle, leaving them to argue, or whether he must pay all five pending their swearing to it. In our case, no single *tzedakah* is actually claiming it. However, there is an automatic advocate on behalf of the poor.

To remedy the situation, he must donate the same sum to each pushka. He should stipulate that if he owes the money to that *tzedakah*, this is repayment. If he does not owe it, it is a new donation. If this is too difficult to do at one time, he may choose the pushkas of the *tzedakos* that have urgent needs first. If he does not have enough to do that either, he should donate in his usual small increments. Each time he donates, he should make the same stipulation, and he should keep an account of how much he gives to each. Alternatively, he may empty all the pushkas and count the amount. Then he could donate his usual amounts, with the stipulation, and recount it later to see whether he has made up the difference. [See References to section A. Peah 4:11 7:3-5 Yevamos 118b Baba Kama 103b Baba Metzia 37a-b Chulin 134a, Poskim. Tur Sh Ar YD 159:5 CM 365, commentaries. Tzedakah Umishpat 10:16.]

In conclusion, the sum must be donated to each pushka, stipulating that it is either repayment or a new donation.

On the Parsha and the[daughters of Tzela'fchad's] heritage will be subtracted from our fathers' heritage, and it will be added to the heritage of the tribe to whom they marry, and it will be subtracted from our allotted heritage. And when the Yovel happens .. their heritage will be added to the heritage of the tribe whom they marry, and from the heritage of our fathers' tribe, their heritage will be subtracted. [36:3-4] In the first *passuk*, the concept of subtraction is repeated! Why? Why were they worried about whether another tribe would be given extra? Their main concern was that their own tribe would lose out! [See *Haamek Davar*] Why bring in *Yovel*? [See *Rashi*] What were they suggesting should be done? Perhaps they accepted unequal division. Their complaint was how the heritage would be redistributed later on. If the other tribe got it at the outset, fine. However, once it had come into their fathers tribe's hands, it should not be redistributed to others. This would be like *gabaim* taking from one poor recipient to give to another. They wanted to stipulate before it reached the '*gabai's* hands.'

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