

VOLUME II: NUMBER 1: INVESTING WISELY

by Rabbi Aron Tendler

Question:

Reuven organized a charity drive to raise funds for a widow and her six orphaned children in his town. The campaign was successful, and over \$100,000 was raised. A very prominent and successful businessman with a sterling reputation as being honest and G-d fearing approached Reuven and offered to provide a guaranteed 20% return on the funds if Reuven would invest them with him on behalf of the widow and her children. Reuven agreed, and a Hetter Iska (a contract confirming that this transaction was an investment and not a loan, and thus not subject to the Torah's restriction on interest) was drawn up.

For six months, the businessman paid the dividends in a timely manner, but unfortunately went bankrupt after that, and the entire sum was lost.

Reuven is now asking the Bais Din to determine whether or not he was negligent with the funds that had been entrusted to him, and if he is obligated to reimburse the widow from his own private funds.

Answer:

1. Lending or investing funds earmarked for charity without securing the transaction with collateral that can be used to collect from in case the transaction is defaulted is not merely considered negligence, it is considered as if the trustee personally damaged the people that it was intended for! (As we note in our sources section, the practical ramification of this is that even if Reuven had accepted responsibility to be guardian on these funds on condition that he may do as he sees fit with them, he is still responsible for their loss.) Therefore, Reuven must reimburse the full amount that he had collected and then lost from his private funds, unless the widow and orphans (upon becoming adults) explicitly forgive his obligation to them. However, Reuven is permitted to deduct the dividends paid during the six months that the widow had received from the total amount owed.
2. Any person who invests in the manner described in our question, is going against the dictums of our Chazal, and must realize that he is recklessly risking his money. It is important to note

that in various types of investments there are different problems that may arise with a Hetter Iska, which can cause all involved to transgress the Torah prohibition of Ribbis (interest and usury).

Sources:

The Shulchan Oruch (Choshen Mishpat 290:8) states that a guardian appointed to take care of the finances of orphans is permitted to invest them with an honest businessman, on condition that the entire investment be secured in a manner that there be no risk to the capital investment. The only risk permitted may be regarding how much interest or dividends may be earned.

Based on this, the Teshuvos Nodeh BiYehuda (Tinyona, Choshen Mishpat 34) writes in a case similar to ours, where the guardian invested money and lost it, that this must be considered more than mere negligence, he must be held responsible for taking their money from a "protected place" (Mokom HaMeshumar) and placing it in a situation where it was no longer protected. He is not only a Shomer (watchman) who has not fulfilled his duties, he is a Mazik, a person who actively damages others. This can also be found in the Nesivos Mishpat (291:7 and 14), and in the Ketzos HaChoshen (319:3).

Therefore, the Nodeh BiYehuda rules that even if the Bais Din told the guardian at the time that he was appointed that he may take whatever action that he deems fit on the behalf of the orphans, this does not give him license to invest the money in a manner where there is risk to the capital. The guardian must reimburse the orphans from his own funds, but may deduct any interest already paid to the orphans from the original amount.

The Gemara in Bava Metzia (42a) states "Rav Yitzchok says, a person should divide his money into thirds, and invest 1/3 in real estate (which is the most secure investment), 1/3 in inventory (to turn a business profit), and 1/3 should remain liquid so that it will be available in case merchandise is suddenly available to him at a bargain price". Every person should make use of this advice, and avoid taking risks with their money, especially since there are many Halachic complications that one runs into when lending money to others for interest, even if a Hetter Iska is executed. It is no wonder that our Rabbis tell us that one who lends his money to earn interest will ultimately lose his possessions (Shulchan Oruch Yoreh De'ah 160:2).

Feedback is appreciated! It can be sent to toatendler@torah.org.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bais Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His Column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!