



FROM THE VIRTUAL DESK OF THE OU VEBBE REBBE RAV DANIEL MANN



Backing Out of a Pledge to a Jewish School

Question: May one decide not to go through with his donation pledge to a Jewish school? If so, must he take steps such as *hatarat nedarim*?

Answer: Your question is general, as will be the focus of our answer. Realize that details can make a big difference.

Pledges of a gift can obligate on various tracks. One follows rules of monetary laws: Only after a *kinyan* (act of finalization) to obligate himself or transfer an item can the gift be enforced. However, if one asserts that he will give his friend a modest present, he has a halachically recognized moral obligation to do so (Bava Metzia 49a). When the intended recipient is poor, the moral obligation exists even for a significant present (Rama, Choshen Mishpat 243:2). In that case, the basis of the moral obligation is “religious,” under the laws of oaths (*nedarim*) (Yerushalmi, Bava Metzia 4:2; Shut Harama 47). Indeed the idea of *nidrei tzedaka* is derived (Nedarim

7a) from a *pasuk* on oaths (Devarim 23:24). Jewish schools that promote Torah values and observance are considered a proper recipient of *tzedaka* funds (see our article of Va’eira 80).

Each element has rules as to when it applies and why a pledge might not be binding. When one becomes obligated based on *neder*, he can often (see one of the exceptions in Shulchan Aruch, Yoreh Deah 228:21) remove the *neder* with *hatarat nedarim* – he professes regret about having made the oath, and the assembled “court” can uproot it. The *neder* part of a pledge to *tzedaka* can similarly be undone (Shulchan Aruch, Yoreh Deah 258:6); the process is called *sh’eila*. However, the fact that this *neder* is for the direct benefit of the worthy recipient, and thus backing out erases his rights, impacts in a few ways. For one, once the donation reaches the *gabbai*, the pledge cannot be undone (ibid. see Arachin 6a). This largely parallels the rules of *kinyan*, as the *gabbai* is considered “the hands of the poor” (see Tosafot ad loc.; Bava Kama 36b). Also, while *she’ila* can work if done, *poskim* warn not to agree to nullify the pledge (Shut Haradbaz IV:134; Pitchei Teshuva, YD 258:8). However, this idea does not totally shut the door to undoing the vow. In the parallel discussion of *nidrei hekdesch*, the Shulchan Aruch and Rama (YD 203:4) say that one should do

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hatarat nedarim only in the case of *dochak* (roughly, pressure or difficulty). Therefore, for example, if a rich person pledged a large donation and before giving it, he lost his wealth to the point that it is not feasible to follow through, there are grounds for *sh'eila*.

Another scenario in which a pledge does not have to be fulfilled is when it was based on a mistake (*ta'ut* or *shegaga*). The concept that *ta'ut* nullifies obligations/agreements applies both to monetary matters and to *nedarim* (see Shulchan Aruch, YD 232:6). In such cases, *hatara* is not even necessary. It is not always clear when the mistake is definite or significant enough to void the obligations. One of the cases in the Rama (ibid.) is a slip of the tongue regarding currency (e.g., stated \$1,000 when he meant 1,000 NIS). The Chatam Sofer (Shut YD 237) talks about a more subtle case – the donor thought the recipient's needs were well beyond their true level. The Shvut Yaakov (I:72) discusses one who promised to support a group of ostensibly righteous Torah learners, and it turned out that many of them were far from righteous. He demonstrates that in principle this is a *ta'ut*, but in practice one should be cautious before renegeing. The two latter sources both suggested being on the safe side by doing *hatara* even in cases in which they should not need it. Tzedaka

U'mishpat 4:76 discusses at length cases of ongoing commitments in which over time things changed for the recipient (e.g., became rich, died) that changed the rationale for the donation.

In summary, a pledge to a Jewish school is generally binding, but practically there may be reasons why it is not. In an actual case, one should carefully discuss the specific details with a rabbi who can help put the facts and the halacha in proper perspective. ■

Having a dispute?



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