



Vignettes

- (1) Janet is eating dinner with her family when the Manitoba Magnolia Cloggers, a registered charity devoted to teaching the “clogging” form of dance, calls to solicit funds to support their work. Janet instructs the caller to desist from calling her in the future. May the Cloggers call Janet in three years?
- (2) Anthony volunteers as an accountant for the Metemprion Association, a registered charity dedicated to developing people’s telepathic skills. May the organization provide a tax receipt for the time Anthony has devoted to assisting their work, based on their cost savings in receiving pro bono financial services?
- (3) The Red Nose Association, a registered charity which sends clown noses to troops overseas to lighten their mood, successfully solicits a donor in a campaign to fund their 2021 shipments of noses. However, a tree falls on their storage warehouse, damaging the roof. May the Association reroute the funds to repair the roof, without consulting the donor?

Telemarketing: The Ethics of the Ask

1. Evelyn Brody, *Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption*, 23 J. Corp. L. 585 (1998), http://scholarship.kentlaw.iit.edu/fac_schol/127

Why are charities tax exempt? This question has been discussed in general theoretical terms of whether the exemption is, on the one hand, a “subsidy” or, on the other, an acknowledgment that charitable activity falls outside the “right” tax base.

Footnote: Yet a third theory, one of administrative convenience, best explains such tax rules as those granting a charitable contribution deduction only for donations to *organizations* recognized as exempt...

2. Talmud, Bava Batra 9a

"א"ר אלעזר גדול המעשה יותר מן העושה שנאמר "והיה מעשה הצדקה שלום ועבודת הצדקה השקט ובטח עד עולם."

Rabbi Elazar said: It is greater to cause others to act than to act personally [regarding tzedakah], as it says, etc.

3. Rabbi Menachem Meiri (13th century France), Commentary to Bava Batra 9a

לא סוף דבר שאדם חייב ליתן צדקה אלא שאף הוא חייב לעשות אחרים עליה.

The mitzvah of tzedakah applies beyond having a personal obligation to give tzedakah; one is even obligated to cause others to give.

4. Rabbi Yechiel Michel Epstein (19th-20th century Lithuania), Aruch haShulchan Yoreh Deah 249:12

ואין לך עבודה קשה שבמקדש יותר מלאסוף צדקה מאחרים ולפיכך שכרה מרובה.

There is no harder labour “in the Sanctuary” than gathering tzedakah from others; therefore, its reward is great.

5. Talmud, Ketuvot 68a

"בואו ונהזיק טובה לרמאין שאלמלא הן היינו חוטאין בכל יום שנאמר 'וקרא עליך אל ד' והיה בך חטא.'"

“Let us be grateful to the tricksters, for if not for them, we would sin daily, as it says, ‘And he will call to Gd regarding you, and you will be liable.’”

6. Talmud, Yoma 87a

כל המזכה את הרבים אין חטא בא על ידו...

If one provides merit for the community, sin will never come about due to his deeds...

7. Crowne & Provato, *Canada’s Anti-Spam Legislation: A Constitutional Analysis*, 31 J. Marshall J. Info. Tech. & Privacy L. 1 (2014) <http://repository.jmls.edu/jitpl/vol31/iss1/1>

Possessing and managing spam creates a number of burdens on individuals and businesses. For businesses that use electronic communications or utilize the Internet to provide corporate and commercial services, the prevalence and growth of spam is recognized as a cost of doing business. Businesses, including Internet network service providers, are

forced to invest ever-increasing resources to prevent spam from entering their networks and negatively affecting their operations and credibility. This cost is paid for by the organizations and businesses themselves, and also through service charges paid by personal Internet users. For individuals, the costs associated with purchasing and installing additional programs to manage, filter, and protect against such electronic threats is a cost of online participation. In addition to imposing cost burdens, the negative effects of spam can lead to reduced confidence levels in the eyes of end users, regarding the safety and security of the Internet.

8. CPA of Ontario, *CPA Code of Professional Conduct* Section 217: Advertising, Solicitation and Endorsements 217.2 Notwithstanding Rule 217.1, a member or firm shall not, either directly or indirectly solicit, in a manner that is persistent, coercive or harassing, any professional engagement. Guidance 217.2(2) - Communication with a prospective client should cease when the prospect so requests either directly to the member or firm or through CPA Ontario. Any continued contact will be regarded as harassment, which is contrary to the Rule.

9. Talmud, Bava Metzia 58b

"[ו]לא תונו איש את עמיתו" (ויקרא כה:יז) באונאת דברים. הא כיצד? אם היה בעל תשובה אל יאמר לו "זכור מעשיך הראשונים", אם היה בן גרים אל יאמר לו "זכור מעשה אבותיך", אם היה גר ובא ללמוד תורה אל יאמר לו "פה שאכל נבילות וטריפות, שקצים ורמשים בא ללמוד תורה שנאמרה מפי הגבורה." אם היו יסורין באין עליו, אם היו חלאים באין עליו, או שהיה מקבר את בניו, אל יאמר לו כדרך שאמרו לו חביריו לאיוב, "הלא יראתך כסלתך, תקותך ותם דרכיך זכר נא מי הוא נקי אבד."

"And you shall not abuse each other (Vayikra 25:17)" – This is verbal abuse. How? If he had repented, he should not say to him, "Remember your first deeds." If he was descended from people who had converted, he should not say to him, "Remember your parents' deeds." If he had converted, and he had now come to learn Torah, he should not say to him, "The mouth that ate non-kosher will now learn the Torah spoken by the mouth of Gd!" If he is suffering, if he is ill, or he buries his children, one should not say to him as his friends said to Job, "Your reverence is your confidence [or: foolishness], your hope and the end of your path. Remember: Who is innocent and is destroyed?"

10. Rabbi Joseph Karo (16th century Israel), Code of Jewish Law Choshen Mishpat 359:10

כל החומד עבדו או אמתו או ביתו או כליו של חבירו או כל דבר שאיפשר שיקנהו ממנו, והכביד עליו רעים והפציר בו עד שלקחו ממנו, הרי זה עובר בלא תחמוד (שמות כ, יד).

One who desires another's servant, maid, home or implement, or anything he can purchase from him, and who weighs him down with third parties and badgers him until he can buy it, violates "You shall not desire."

11. Rabbi Yaakov Yeshayah Blau (21st century Israel), Pitchei Choshen V 1 footnote 26

ראיתי מי שכתב שהוא הדין הכופה את חבירו לקנות ממנו, יש בזה משום איסור חמס, ונראין דבריו...

I have seen one who wrote that the same applies for one who pushes another person to buy from him; this involves the prohibition against *chamas*. His words appear to be correct...

12. Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules

<https://crtc.gc.ca/eng/trules-reglest.htm>

Part III: Telemarketing Rules

8 - A telemarketer initiating a telemarketing telecommunication on its own behalf shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and fourteen (14) days from the date of the consumer's do not call request.

9 - A client of a telemarketer shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and fourteen (14) days from the date of the consumer's do not call request.

10 - A telemarketer initiating a voice telemarketing telecommunication shall process a do not call request from a consumer at the time of the telemarketing telecommunication.

11 - A telemarketer initiating a telemarketing telecommunication on its own behalf shall add a consumer's name and telecommunications number to its do not call list within fourteen (14) days of the consumer's do not call request.

12 - A telemarketer initiating a telemarketing telecommunication on behalf of a client shall make all reasonable efforts

to ensure that the client adds a consumer's name and telecommunications number to the client's do not call list within fourteen (14) days of the consumer's do not call request.

13 - A client of a telemarketer shall add a consumer's name and telecommunications number to the client's do not call list within fourteen (14) days of the consumer's do not call request.

14 - A telemarketer shall not initiate a telemarketing telecommunication on its own behalf to a consumer who is or should be on its do not call list.

15 - A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication on behalf of the client to a consumer who is or should be on the client's do not call list.

13. Talmud, Taanit 24a

אלעזר איש בירתא כד הוה חזו ליה גבאי צדקה הוו טשו מיניה דכל מאי דהוה גביה יהיב להו...
Elazar of Birata, when the tzedakah collectors saw him they would hide, for he gave them whatever he had with him...

14. Talmud, Bava Batra 8b

אמר רב נחמן אמר רבה בר אבובא לפי שממשכנין על הצדקה ואפילו בע"ש איני והא כתיב "ופקדתי על כל לוחציו" ואמר ר' יצחק בר שמואל בר מרתא משמיה דרב ואפי' על גבאי צדקה! לא קשיא הא דאמיד הא דלא אמיד

Rav Nachman cited Rabbah bar Avuha: This is because we take security for tzedakah, even on Friday. But Yirmiyahu 30:20 says, "I will punish all of his oppressors," and Rabbi Yitzchak bar Shemuel bar Marta cited Rav to say, "Even tzedakah collectors!" This is not a problem; one is where he has means, one is where he lacks means.

15. Rambam (12th century Egypt), Mishneh Torah, Hilchot Matnot Aniyim 7:10-11

מי שאינו רוצה ליתן צדקה או שיתן מעט ממה שראוי לו, ב"ד כופין אותו... אדם שוע שהוא נותן צדקה יותר מן הראוי לו, או שמיצר לעצמו ונותן לגבאים כדי שלא יתבייש, אסור לתובעו ולגבות ממנו צדקה, וגבאי שמכלימו ושואל ממנו עתיד להפרע ממנו שנאמר "ופקדתי על כל לוחציו."

One who does not wish to give tzedakah, or who gives less than is appropriate for him, the court compels him... An overly giving person, who gives more tzedakah than is appropriate for him, or who pains himself and gives to the collectors to avoid shame – one may not claim from him and collect tzedakah from him, and a collector who shames him and asks from him will be punished, as Yirmiyahu 30:20 says, "I will punish all of his oppressors,"

Receipts for Services Provided: A Tithe of Your Time?

16. Government of Canada, Gifts of Services <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/gifts-services.html>

A charity cannot issue a receipt for a gift of service. At law, a gift is a voluntary transfer of property without consideration. Contributions of services (for example, time, skills, effort) are not property. Therefore, they do not qualify as gifts for the purpose of issuing official donation receipts.

17. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Even haEzer 4:26:4

מסתבר לי שהוא ג"כ שיעור מעשר עשירית הזמן שיש לו ללמוד תורה ואולי יכול להוסיף עד חומש וצ"ע לענין השיעור.

To me, it seems logical to say it is the same threshold as for *maaser* - 10% of the time he has available to learn Torah. Perhaps he could add up to 20%; the threshold requires thought.

18. Rabbi Dr. Cyril Domb, Maaser Kesafim, pg. 130

If a professionally qualified person furnishes his services gratuitously to a Torah institution or for a poor person, can he deduct his fee from maaser? Rabbi S. Z. Auerbach says that this is legitimate provided he remembers to include the fee in his maaser accounting. If he has no overhead expenses he may deduct 9/10 of his professional fee.

Direction of Funds: Use as Directed

19. Terrence Carter, *Donor-Restricted Charitable Gifts: A Practical Overview Revisited II* (2003)

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In this regard, while unrestricted charitable gifts are beneficially owned by a charity for its general charitable purposes, gifts that are contributed to a special purpose charitable trust are held by the charity in trust for the stated special purpose

and are not owned beneficially by the charity. The charity is, in effect, managing a separate and specific charitable purpose trust within the confines of its own general charitable purpose, i.e., a charity within a charity, except that a special purpose charitable trust is not required to be registered by Canada Revenue Agency (CRA) as a separate charitable organization or charitable foundation.

To the extent that a gift constitutes a separate charitable purpose trust, the charity can only use the gift to accomplish the specific charitable purpose established by the donor and for no other purpose.

20. Terrence Carter, *Donor-Restricted Charitable Gifts: A Practical Overview Revisited II* (2003)

[www.carters.ca > pub > article > charity > tsc0421](http://www.carters.ca/pub/article/charity/tsc0421)

In determining what is required to establish the intention of a donor to create a special purpose charitable trust, Blair J. in *Christian Brothers Gen. Div.* distinguished between what he considered to be a “true” [whatever that means] charitable purpose trust and gifts or bequests that are simply “earmarked” for some specific charitable purpose and are not, in fact, trusts at all. He stated that before there can be a “true” charitable purpose trust, the trust must first be established in accordance with the general formal requirements of trust law:

For a “trust” to come into existence, there must be a settlor, a trustee, trust property and trust objects (i.e., person beneficiaries or charitable purposes). The arrangement must be characterized by the “three certainties” – which are considered essential to the creation of a trust – namely certainty of intention, certainty of subject matter, and certainty of objects...

If this position were to prevail, it would be open for a charity to argue that a gift that a donor had thought was a restricted gift in the form of a binding special purpose charitable trust was really only a precatory trust that amounted at most to a moral obligation upon the charity but was not the imposition of a legal requirement. This would create a great deal of uncertainty for charities in general and for donors in particular.

However, the approach taken by Levine J. in *Christian Brothers B.C.S.C.* ignores the formalities required by Blair J., and instead adopts a more traditional approach concerning what is required to create a special purpose charitable trust. After citing Waters concerning the need for “certainty of intention” as one of the three requirements for a special purpose charitable trust, Levine J. states that the required intention to create a charitable purpose trust is not dependent upon the utilization of technical words such as “in trust,” or otherwise, but rather requires that the court look at all of the relevant circumstances to determine the real intention of the donor...

21. Terrence Carter, *Donor-Restricted Charitable Gifts: A Practical Overview Revisited II* (2003)

[www.carters.ca > pub > article > charity > tsc0421](http://www.carters.ca/pub/article/charity/tsc0421)

What Is the Nature Of Implied Special Purpose Charitable Trust Funds?

The word “implied” in an implied special purpose charitable trust fund refers to what is required at law as evidence that the donor in fact intended to create a charitable trust. If the document accompanying a charitable gift clearly states that the gift is to be held in trust and the basic three certainties of a trust are met, the donor will clearly have created an express special purpose charitable trust fund. On the other hand, if the circumstances surrounding the gift or the general language in the document accompanying the gift are sufficient to establish that the donor intended the gift to be held in accordance with a special purpose charitable trust, then the donor would be considered to have established a trust by implied intent...

What Are Examples Of Implied Special Purpose Charitable Trust Funds?

Instances where an implied special purpose charitable trust fund might be found, presuming that the reasoning of Levine J. in *Christian Brothers B.C.S.C.* prevails over that of Blair J. in *Christian Brothers Gen. Div.*, would include the following:

- A public fundraising campaign for a specific purpose, whether it be a capital endowment fund or a building project.

22. Charities Accounting Act, R.S.O. 1990, c. C.10, s.4 <https://www.ontario.ca/laws/statute/90c10>

If any such executor or trustee...

(d) is not applying any property, fund or money in the manner directed by the will or instrument, a judge of the Superior Court of Justice upon the application of the Public Guardian and Trustee, may make an order,

(e) directing the executor or trustee to do forthwith...

(f) requiring the executor or trustee to pay into court any funds...

(g) removing such executor or trustee...

(h) directing the issue of an attachment against the executor or trustee...

23. Talmud, Bava Metzia 78b

הא רבי מאיר דמגבת פורים, דתניא: "מגבת פורים לפורים... ואין העני רשאי ליקח מהן רצועה לסנדלו אלא אם כן התנה במעמד אנשי העיר, דברי רבי יעקב שאמר משום רבי מאיר..."

דלמא התם נמי דאדעתא דפורים הוא דיהיב ליה, אדעתא דמידי אחרינא לא יהיב ליה!
אלא הא רבי מאיר, דתניא: "רבי שמעון בן אלעזר אומר משום רבי מאיר הנותן דינר לעני ליקח לו חלוק לא יקח בו חלוק, מפני שמעביר על דעתו של בעל הבית..." וכל המעביר על דעת של בעל הבית נקרא גזולן.

This demonstrates that the mishnah's author is Rabbi Meir, regarding Purim collections, as we have learned, "Purim collections must be used for Purim... And a pauper may not use them to purchase a strap for his sandal unless he stipulated this use before the town council, according to Rabbi Yaakov citing Rabbi Meir..."

But perhaps there, too, the donor gives it only for Purim, and not for any other purpose [and even the Sages would agree with Rabbi Meir]!

Rather, this demonstrates that the mishnah's author is Rabbi Meir, as we have learned, "Rabbi Shimon ben Elazar cited Rabbi Meir: If one gives a pauper a *dinar* to purchase a *chaluk*, he should not use it to purchase a *tallit*. [To purchase] a *tallit*, he should not use it to purchase a *chaluk*. This is because he violates the intent of the donor."... And anyone who deviates from the intent of the donor is called a thief.

24. Rabbi Mordechai ben Hillel (13th century Germany), Commentary to Bava Metzia 497

ורבינו שמחה חייבו [להשתמש בצדקה לשלם חובותיו] שצדקה אינו אלא כמתנה בעלמא, כיון דנכסוהי דאיניש אינון ערבין ביה חייב, אם לא שיתנה הנותן בפירוש "על מנת שלא יהא לפלוני בעל חובך כלום"...

And Rabbeinu Simchah obligated [the recipient to use the tzedakah to pay his debts], for tzedakah is just a gift, and since one's property is his guarantor, he must [use it to pay his debts] – unless the donor stipulates explicitly, "[I give this] on condition that your creditor receives none of it."

25. Rabbi Moshe Sofer (18th-19th century Pressburg), Chatam Sofer Choshen Mishpat 147

מיד שנתן פרוטה לעני למזונות הרי קיים מצותו, אפי' העני משנה מדעת הבעה"ב, איהו דידי' עביד....

Immediately when he gives the pauper a coin for food, he has fulfilled his mitzvah. Even if the pauper deviates from the donor's intent, [the donor] has done what was upon him...

26. Rabbi Yair Bachrach (17th century Germany), Chavot Yair 232

וכן "הנותן דינר לעני ליקח לו טלית וכו'" לא ר"ל דאמר הנותן כן, דאז נראה לענ"ד דהוי קפידה, רק שהעני מבקש סיוע טלית....

And so "one who gives a *dinar* to a pauper to purchase a *tallit* etc." does not refer to where the donor stated [the use], for then, in my humble opinion, this would constitute a stipulation. This is only where the pauper seeks help to purchase a *tallit*...

Review questions

- Why does general society provide tax exemptions for charitable organizations?
- For what additional reason does Judaism reward charitable fundraising?
- Why does general society prohibit commercial harassment of its members?
- For what additional reasons does Judaism prohibit commercial harassment?
- Do Canadian law and Jewish law agree to honour Janet's request not to be called again?
- Do Canadian law and Jewish law agree regarding treating contributed time as charity?
- Does donating to a fundraising campaign constitute implied donor intent in Canadian Law?
- Does donating to a fundraising campaign constitute implied donor intent in Jewish Law?