

TORAH MUSINGS DIGEST

Thinking About Jewish Texts and Tradition | Edited by: Rabbi Gil Student © 2020

Yeshiva Tuition and Coronavirus

Jun 8, 2020

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To our great sadness, the societal shutdown due to Coronavirus also closed *yeshivos*. The government rightly insisted that all schools cease in-class teaching. Schools transitioned to remote learning for abbreviated hours, with parents taking a greater role in watching their children and ensuring they join the class. With shorter hours and a greater parental role, many parents wonder whether they deserve a refund on at least part of the tuition money they paid expecting to drop kids off in the morning and pick them up in the late afternoon or evening.

In this space, I would like to briefly explore some of the halakhic issues of this question, albeit without reaching a final conclusion. First we need to set aside questions of fees for dorms that could not be used due to the pandemic and food that was not provided. The former is a question of rentals and the latter is a question of purchasing goods, both of which have different issues. ((I heard this point from Rav Ari Marburger in a lecture dated June 7, 2020.)) Here we will only address the payment for education, which includes fees for administration, buildings, etc. As should be obvious, plagues and epidemics are not new and the question has been discussed in the past. The following two Talmudic passages serve as the basis for the discussion.

I. Local Duress and Regional Disaster

The Gemara (*Bava Metzi'a* 76b-77a) discusses cases when an owner hires workers for a job that becomes unnecessary due to events beyond their control (*ones*). For example, he hires people to carry water to a field and then rain falls or a river overflows, making the job unnecessary. Who loses, the owner (who has to pay) or the workers

(who do not get paid)? The Gemara distinguishes between an *ones* that the owner should have anticipated (he loses), the workers should have anticipated (they lose) and neither or both should have anticipated. If neither or both should have anticipated the *ones*, the workers lose because they have no compelling reason that will cause the court to take money away from the owner and give to them (*ha-motzi me-chaveiro alav ha-ra'ayah*).

The Mishnah (*Bava Metzi'a* 105b) discusses someone renting a field that suffers an unexpected loss (*ones*), such as an attack by locusts. If the *ones* is a regional disaster (*makas medinah*), then the owner suffers the loss and the renter may deduct his loss from the rent. However, if it is not sufficiently widespread to be a *makas medinah*, then the renter suffers the loss and must pay his full rent. *Makas medinah* moves the loss from the renter to the owner. (We will discuss why below.)

II. Teachers

Rav Meir (Maharam) of Rothenburg (13th cen., Germany; quoted in *Mordekhai, Bava Metzi'a*, ch. 9 no. 343) discusses various cases in which a tutor fails to complete the school year. If the tutor cannot teach because the local government forbids teaching Torah, this is considered a *makas medinah*, which places the loss on the owner, the parent.

Rav Meir Katzenellenbogen (Maharam Padua, 16th cen., Italy; Responsa, no. 86) addresses a tutor in Venice whose student fled the city during an epidemic. Must the student (or his father) pay the tutor for the days when the student was away. Maharam Padua says that neither teacher nor student could have anticipated the epidemic, therefore he cannot force the student to pay unless the epidemic qualifies as a *makas medinah*. He says that a *makas medinah* must affect everyone equally. Since most people did not flee the epidemic, this case was not a *makas medinah* and therefore the tutor loses his pay.

III. Returning the Merchandise or Reducing the Rent?

In another responsum (no. 39), Maharam Padua discusses a business that was rented to another person after which the government imposed harsh restrictions that rendered the business almost impossible to earn a profit. In the course of his discussion, Maharam Padua says that this government decree constitutes a *makas medinah* and the renter can only ask about the rent he already paid. Maharam Padua says that the rule of *makas medinah* nullifies the agreement going forward, effectively returning the field or merchandise to the owner. If this approach is applied to a tutor, then he can only ask for his wages until the time he approaches the court, not for the full school year (if it has not already concluded).

Rav Moshe Isserles (Rema, 16th cen., Poland; *Shulchan Arukh, Choshen Mishpat* 321:1) follows the Maharam of Rothenburg mentioned above that in a *makas medinah*, the loss falls on the owner and the teacher receives his full salary. Rema adds that Maharam Padua considers this a case of returning the merchandise but he disagrees. Rema rules that the tutor is similar to a renter who reduces the rent to recoup his loss. Similarly, the teacher should receive his full lost wages.

However, Rav Yehoshua Falk (17th cen., Poland; *Sema* 365:6) disagrees with Rema that the teacher should receive his full salary. If neither the owner/student nor the teacher could anticipate the epidemic, why should the student have to pay the full wages? Rather, Sema reads Maharam of Rothenburg's words differently. When Maharam of Rothenburg says that the loss is on the owner, he doesn't say that the whole loss is on the owner. Rather, he bears part of the loss by paying half wages. In this way, they share the burden of this unforeseen development. Rav Shabsai Cohen (17th cen., Poland; *Shakh, Choshen Mishpat* 321:1) dismisses Sema's reading as implausible but Rav Ya'akov Lorberbaum (18th cen., Poland; *Nesivos Ha-Mishpat* 334:1) upholds the Sema's conclusion that the teacher receives only half his wages in a *makas medinah*.

It seems to me that most authorities agree with Rema that the owner must pay the full wages,

and not like Sema that he only pays half. But if so, we have to ask why. Sema's logic seems compelling — neither party could anticipate the loss so they should share in the loss. Rav Yechiel Michel Epstein (19th cen., Lithuania; *Arukh Ha-Shulchan, Choshen Mishpat* 334:10) argues that a worker or teacher is hired to perform a specific job. He is required to be available and ready to do that job. If he is, then despite any external duress such as a *makas medinah* he has fulfilled his responsibilities. However, if the teacher flees due to an epidemic then the teacher forfeits his wages for that time (Maharam of Rothenburg only discusses when the student flees).

IV. Tuition Refunds

Because there are different opinions, it is difficult to force anyone to forfeit money they already hold. If someone prepays tuition, he could face a school that insists they follow a view that allows them to keep the money. If a teacher already received his salary, he can say that he follows a view that awards him full pay. This directly affects our conclusion.

Rav Ovadiah Yosef Toledano (a grandson of Rav Ovadiah Yosef, in his [*Meshiv Mishpat, no. 47*](#)) discusses events booked in a hall that were cancelled due to Operation Cast Lead in 2008-9. In general, I benefited from his encyclopedic presentation of the sources, in his grandfather's style. In his conclusion, he discusses the salaries of teachers whose school was cancelled by government order during this wartime. He says that if a teacher knows that he would not have taught during the war due to fear, he cannot ask for his salary in good faith (as per Rav Epstein above). However, if he believes he would have taught if school was in session, then if he was already paid he can keep his full salary (as per Rema). If he was not yet paid, then the school can say they follow the Sema that the teacher only receives half salary. This all assumes that there is no overriding custom or local law on the subject.

Rav Toledano was discussing schools paying teachers, not parents paying tuition to schools. If we assume that the halakhic calculation is the same, then if the school would have closed during the pandemic regardless of government closure, the parents do not need to pay tuition for that time period (as per Rav Epstein). If the

school would have remained open if not for government closure, then if the parents prepaid tuition they cannot ask for a refund (as per Rema). But if they did not prepay tuition, they can follow Sema and pay only half of tuition for that time period.

However, a further complication arises from schools that continued teaching remotely during the pandemic. An argument can be made that parents must pay for the cost of a remote education and treat only the difference between remote education and in-person education as above (either none, half or full). On the other hand, an argument can be made that for the schools in question, the cost of remote learning is full tuition because they still had other overhead that they needed to cover. (Rav Shlomo Aviner suggested this argument to me in private correspondence and the Vaad HaRabbonim of Queens, [in a ruling](#) dated June 1, 2020 ([section 1, par. 4](#)), seems to adopt this approach as well.) According to this second view, regardless of all the above, parents must pay full tuition for the education received during the pandemic.

V. Institutions and Refunds

Significantly, we must raise [Rav Hershel Schachter's point](#) that tuition refunds would collapse the entire communal education system. The schools simply lack the money. It is irresponsible to demand tuition refunds and ultimately more expensive, as new schools will

require startup funding. The only question is how much of the tuition counts as charity, for *ma'aser* purposes, which can be calculated based on the above considerations and, according to Rav Aviner, none qualifies but other authorities might disagree.

Many people have raised the issue of schools receiving PPP loans from the government to cover primarily salary expenses. We should look at a forgivable PPP loan as a donation. When a school receives a large donation, parents still have to pay tuition because the donation does not affect the parents' contract with the school. However, it would affect the school's finances and, depending on each institution's stability, might remove the communal need for charity. If a school is able to maintain stable finances, it should think about providing tuition refunds because many parents in the community have suffered catastrophic financial losses. I know of one school that sent 5% tuition refund checks to all parents. Additionally, a PPP loan might remove the penalty on teachers who would not have taught due to fear. They cannot ask for their salary from parents but they can ask for it from government funds specifically designated for that purpose.

Of course, all this represents one person's tentative thoughts and must be set aside by the decisions of a responsible *beis din* that is tasked with answering this question.