

Rabbi Dovid Grossman

Case: Many businesses are struggling due to Covid-19 and do not possess as large a cash flow as they did in the past. One of the avenues sometimes used by these businesses to increase their income is to pursue their receivables, which are past debts that have not yet been paid.

Question: The problem is that many of those who owe money to the business are also struggling financially themselves. To what extent are these businesses permitted halachically to demand payment for past receivables?

Answer: When dealing with receivables and collections, one has to address the *issur* of *lo sihiyeh lo k'nosheh* (Shemos 22:24), a creditor not pressing a debtor to pay a debt after it is due. But in order to arrive at an answer, we must analyze when this *issur* applies. The first consideration is that if the borrower has funds available, the halacha is that Bais Din forces the borrower to pay (*kofin*). Some hold this is because there is a mitzvah for a debtor to return the loan, so the Bais Din is simply forcing the borrower to pay the lender and fulfill this mitzvah. (There are other reasons given as well). In such a case, there is no halachic problem with pursuing receivables.

However, the question is how to define the parameters of the borrower "having funds available?" They may have money, but perhaps they need it on critical expenses such as groceries, rent, and the like. The answer is that if one is uncertain as to the person's financial situation, it is permitted to collect the funds, as the prohibition applies only if one **knows** with certainty that the borrower does not have sufficient funds.

An additional limitation on the *issur* of *lo sihiyeh lo k'nosheh* is that it applies only to an actual loan of money. In contrast, it does not apply to a service, or goods delivered (similar to the mitzvah to lend money, which also only applies to a loan of money, as discussed in the previous segments), as there is no actual loan involved in the case.

Question: Are there any limits when going after a business's receivables?

Answer: Some have raised questions in this context as to whether it is permitted to employ a collection agency or take the person to secular court (which is usually *assur*) in order to retrieve one's debt. The *Kesef Kodashim* and *Maharsham* suggest that the prohibition of going to secular court does not apply in the case of a *chov barur*, a debt that is 100% clear to all parties that the person owes the money. If that is the case here, then according to these authorities, it would be permitted to go to secular court and engage a collection agency.

But one possible exception to that rule may be with regard to what types of items would be seized by a collection agency or secular court. According to

the halacha, it is not permitted to collect certain work utensils or beds (known as *mesadrin l'ba'al chov*, as discussed in previous segments). If secular law has different rules concerning what may be seized, then it would not be permitted to submit a claim in secular court, even if it is a *chov barur*.