

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #552 | Tzav - Erev Pesach | Friday, March 26, 2021 | 13 Nissan 5781

Sponsored by Anonymous In Appreciation of the BHI



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

**AFTERNOON SALE** Ezra owned a grocery store, which serviced mostly Jewish clientele. He prepared his store for Pesach, covering the shelves where *chametz* was stocked and designating certain check-out counters for kosher for

Passover products.

On Friday afternoon Noach came into the store. Among his groceries, he took a cake out from behind the covering.

When Noach came to the check-out counter, the cashier gave him a puzzled look. "Pesach is Motzoei Shabbos," she said. "We can't sell you the cake!"

"We can still eat *chametz* tonight," replied Noach. "After the meal, we want to sit on the porch and have tea and cake."

"We covered the aisles already," said the cashier. "We were told not to process any more *chametz* products. I will have to refer you to the owner."

Noach approached Ezra. "I'd like to buy this cake to eat tonight," he said.

"Sorry, but we already sold our *chametz*," said Ezra. "Here's our certificate, signed by Rabbi Dayan."

"But it's not Erev Pesach yet," argued Noach. "We're all going to eat challah or pita tonight, so what's wrong with buying a cake?"

"Had you bought it this morning, there would be no problem," said Ezra. "However, the Rabbi already sold our *chametz*, so how can we sell you the cake?"

"You also sold your own *chametz*," pointed out Noach. "How are you going to eat your challah tonight?"

"The challah was set aside and we intended to eat it," countered Ezra, "but the *chametz* in the store was intended for *mechiras chametz*. We can't violate the *mechirah* and sell you cake that was already sold to the non-Jew."

"Do you mind checking with Rabbi Dayan?" asked Noach. "I'd like to hear from him whether there is a problem."

Ezra called Rabbi Dayan and asked:

**"Can I sell *chametz* products this afternoon?"**

"In principle, *chametz* is permitted all Friday this year," replied Rabbi Dayan. "However *Shulchan Aruch* recommends that *bi'ur chametz* be done Friday morning, as usual, to avoid confusion with other years, leaving over just what is needed to eat" (O.C. 444:2).

"Selling *chametz* also has to be done on Friday, since *Chazal* prohibited making transactions on Shabbos. Moreover, there is a dispute whether

**HALACHAH**  
Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos.

Ask your Rav or email  
ask@businesshalacha.com  
for guidance and solutions.



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## DIRECT GUARANTEE?

**Q:** A nonobservant Jew asked Reuven to lend him a sizable sum of money. Reuven was concerned that he would not repay the loan and would not submit himself to *beis din*, so the borrower's religious employee, Shimon, agreed to sign as a guarantor on the loan.

When the time came to repay the loan, the borrower would not answer Reuven's phone calls, so Reuven contacted Shimon and demanded payment from him.

"First sue my boss," answered Shimon, "and if he doesn't pay, then I'll pay."

Reuven wants to avoid litigation by demanding that Shimon pay him and deal with his boss himself. Who is correct?

**A:** There are two types of *arevim* (guarantors):

1. An ordinary *areiv*, who guarantees the loan only if the borrower defaults. A lender may not demand payment from this type of *areiv* unless he has first attempted to sue the borrower in *beis din* and has failed to recoup his money through that route (*Shulchan Aruch, C.M. 129:8*).
2. An *areiv kablán*, who declares either verbally or in the loan contract, "Lend money to him (i.e., the borrower), and I'll repay." Some say that even if he says, "Lend money to him and I'll be a *kablán*," that would have the same effect (ibid. 129:16-17).
3. In this case, it is considered as though the *kablán* is the borrower, and the lender may demand payment directly from him without approaching the borrower first (ibid. 129:15).

If there is no clear indication that the guarantor is an *areiv kablán*, then he is an ordinary *areiv*.

If the borrower is a violent person who won't obey *beis din*, the lender may demand payment directly from the *areiv* even if he is an ordinary *areiv*, not an *areiv kablán* (ibid. 129:10). Since the lender has no way of extracting his money from the borrower, the situation is akin to one in which the borrower has no assets, and it was with such an eventuality in mind that the lender demanded an *areiv* to begin with.

Before approaching the *areiv*, the lender does have to initiate the process of summoning the borrower



## CASE FILE

it is permissible to sell on Friday and stipulate that the sale take effect on Shabbos" (C.M. 195:11; M.B. 306:33; Responsa R. Akiva Eiger 1:159; Ohr Sameach, Hil. Shabbos 23:12).

"There is a further dispute whether *mechiras chametz* should similarly be done in the morning, as usual, or can be done later in the day. Some *Acharonim* advocate that the Rabbi do *mechiras chametz* in the afternoon, to allow businesses to continue selling *chametz* on Friday afternoon" (*Daas Torah* 444:2; *Imrei Yosher* 1:146).

"However many rule that the *mechirah* should preferably be in the morning, like other years. Hence, some maintain that stores should not sell *chametz* in the afternoon" (Maharam Shick O.C. #205).

"In practice almost all Rabbanim sell *chametz* in the morning, but have provisions to allow the *chametz* that will be eaten on Friday and Shabbos morning. Similarly, some have a provision to allow what will be sold on Friday.

"This can be done in a number of ways. One is by excluding from the beginning whatever will be sold on Friday, and including in *mechiras chametz* only what remains before Shabbos. Another option is to include in *mechiras chametz* all the *chametz* existent at that time, but arranging with the non-Jew that he allow the store to sell on Friday from the *chametz* of the *mechirah*, and reduce accordingly the balance that the non-Jew owes for the *chametz*" (see *Nezer HaTorah*, 5768, vol. 17, pp. 210-236).

"Thus it is not advisable to sell *chametz* after the *mechirah*," concluded Rabbi Dayan, "but the contract may enable it."

**Verdict: Most Rabbanim sell *chametz* on Friday morning, as usual, but some have provisions allowing the stores to sell *chametz* on Friday afternoon. A store owner should consult his Rav regarding his particular contract.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #12  
(Bordering Property)  
Rental Property

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

**Q: My next-door neighbor is renting out his house for Pesach. Do I have priority rights to rent it as a *bar-metzra*?**

A: Rambam, cited by *Shulchan Aruch*, rules that *bar-metzra* rights do not apply to rental properties. Therefore if the neighbor rented his house to someone else, you cannot take the house from the renter (C.M. 175:59).

*Gra* (175:148) explains that this is because rental payment is typically not paid up front, or because the *bar-metzra* may have more family members than the other potential renter, or similar reasons, in which case the rights of *bar-metzra* do not apply.

However, Rama cites the Rosh's opinion that *bar-metzra* rights apply also to rental properties, since rental is like ownership for the day. Certainly if the tenant's contract is expiring and he wants to renew it, he has priority over a new tenant, unless the owner has a valid reason to prefer the other tenant (C.M. 175:60; *Sma* 175:12; *Taz* 175:59; *Ketzos* 175:3).



## BHI HOTLINE

to *beis din* (*Shu"t Toras Chaim* 1:84), but if he refuses to come, he may demand payment from the *areiv*, without attempting to collect through the secular court system (*Pischei Choshen, Halva'ah* 14, fn. 3).

The *poskim* deliberate what the *halachah* would be if the lender knew, at the time of the loan, that the borrower was violent and would not obey *beis din*. Some say that in this case, the lender definitely relied on the guarantor as a *kablan* so that he wouldn't have to deal with the violent borrower (*Beis Yosef* 129:11, quoting *Rashba*, and *Tumim* *ibid.* 11).

Furthermore, some *poskim* maintain that if it is obvious that the lender would not want to antagonize the borrower, for fear of retaliation, then the *areiv* is automatically considered an *areiv kablan*. This is certainly true if the lender made it clear that he was worried about demanding payment from the borrower.

There's a fascinating proof cited by *Maharsham* (2:158) of this principle from a *gemara* that is appropriate for this time of year. The *gemara* (*Pesachim* 118b) relates that at *Krias Yam Suf*, when Hashem told the Saro shel Yam (ministering angel of the sea) to regurgitate the Egyptians onto the shore, He promised that He would eventually return it with an additional 50%.

"Can a servant demand payment from his Master?" replied the Saro shel Yam.

"Nachal Kishon will serve as an *areiv*," Hashem answered.

Indeed, when Sisera waged war with Bnei Yisrael and his soldiers went to dip in Nachal Kishon, Hashem instructed Nachal Kishon to return the "loan" by spitting the soldiers back into the sea.

The *Maharsha* wonders how this solved the problem. The sea still could not demand payment from Hashem, and since Nachal Kishon was not an *areiv kablan*, how was the sea able to demand payment directly from Nachal Kishon?

The *Maharsha* answers that although, in the case of an ordinary *areiv*, the lender must approach the borrower first, in this case, considering that the servant could not demand payment from his master, the guarantor automatically became an *areiv kablan*. We see from the *Maharsha* that if circumstances make it obvious that the purpose of the guarantee is to provide a way for the lender to receive payment from a borrower whom he cannot approach for one reason or another, the guarantor automatically becomes an *areiv kablan*.

Other *poskim* maintain, however, that if the borrower was known to be violent, then the *areiv* remains an ordinary guarantor, not an *areiv kablan*. Since the lender knew that the borrower is aggressive, he was apparently willing to take the risk that the borrower would refuse to pay, and if he had planned on relying on the guarantor, he should have specified that he expected him to serve as an *areiv kablan* (*Rabbeinu Yerucham* and *Sma* 129:31, *Shu"t Kinyan Torah* 7:115 cf. *Maharasham* *ad. loc.*).

Even according to this approach, if *beis din* attempted to force the borrower to pay and he refused, the lender may demand payment from the guarantor (*Shach* 26). Certainly, if *beis din* does not have the power to enforce their ruling, the lender may demand payment from the guarantor (*Aruch Hashulchan* 16).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

To subscribe send an email to [subscribe@businesshalacha.com](mailto:subscribe@businesshalacha.com) or visit us on the web at [www.businesshalacha.com](http://www.businesshalacha.com)

WOULD YOU LIKE THE ZCHUS OF SENDING THIS NEWSLETTER TO YIDDEN WORLDWIDE?

CALL 718-233-3845 X 201. OR EMAIL : OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS

לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל