

BUSINESS WEEKLY



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

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה



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

DIVIDED COOKIES

A gentile student named Thomas worked part-time in Mr. Metzger's office. He once told Mr. Metzger that he shared an apartment with a non-observant Jewish student.

After Pesach, Thomas brought some cookies into work, and offered one to Mr. Metzger. "Don't worry, they're kosher," he said.

Mr. Metzger politely asked if he could see the box. "I don't rely on every *kashrus* symbol," he explained.

"I don't have the box," Thomas replied. "My roommate and I bought them two weeks ago. This morning, I took half the cookies, and he took the remainder in the box."

"Your Jewish roommate?" asked Mr. Metzger

"Yes," said Thomas.

Mr. Metzger realized that they had owned the cookies together on Pesach. "Thanks for offering," he said to Thomas, "but I'll let you enjoy your cookies."

That evening Mr. Metzger shared what happened with his *chavrusa*. "I have a riddle," he said. "A non-Jewish colleague offered me a cookie, but I didn't eat it because of *chametz she'avar alav haPesach*. How could that be?"

"He bought it from a Jewish-owned store?" suggested the *chavrusa*.

"That's too simple!" said Mr. Metzger.

"A non-observant Jew gave it to him?" offered the *chavrusa*.

"Close, but not quite," replied Mr. Metzger.

"I give up," said the *chavrusa*.

"He has a non-observant Jewish roommate and they bought it before Pesach," said Mr. Metzger.

"That's interesting," said the *chavrusa*. "Are you sure it's not allowed?"

"I assume so," answered Mr. Metzger. "A Jew cannot be a partner in *chametz* over Pesach."

"But the non-Jew offered you *his* share," said the *chavrusa*. "I'm not convinced that *his* share is prohibited."

"Who's to say those cookies were *his* share?" said Mr. Metzger. "They owned all the cookies jointly on Pesach!"

Mr. Metzger decided to ask Rabbi Dayan:

"Could I have eaten the cookies that Thomas brought to work?"

"Chazal prohibited *chametz she'avar alav haPesach* as a penalty," replied Rabbi Dayan. "*Chametz* owned during Pesach by a non-Jew is permitted."

"When a Jew and non-Jew own *chametz*, the Jew's share is prohibited, whereas the non-Jew's share is permitted. While the partnership is intact, the *chametz* is prohibited because of the Jew's share

DID YOU KNOW?

Allowing your employees to buy non-kosher lunch on your company's credit card can entail business (benefit) from Ma'achalos Asuros.

Ask your Rav or email
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for guidance and solutions.

RAFFLE REGRET

Q: After our mother passed away, our father gave her considerable stash of jewelry to his five daughters to split between ourselves.

We hired an adjuster to estimate the value of each piece and make five packages of approximately equal value, and once we had them parceled, we drew lots (a *goral*) to determine which daughter would get which package.

Shortly after the *goral*, the price of gold shot up, while the price of diamonds and other precious gems remained steady. One of the sisters received a package with little gold and many gems, and she now feels cheated because her package is worth considerably less than the others. She declared that she is reneging on her commitment to split the jewelry based on the raffle.

Is she entitled to renege?

A: Eretz Yisrael was divided among the *Shevatim* by a combination of a *goral* and *ruach hakodesh*. Elazar Hakohen asked the *Urim VTumim* which parcel of land should go to the which *shevet*, and lots were drawn at the same time (*Bamidbar* 26:55; *B.B.* 122a), and based on the results – which were the same through both methods – each *Shevet* was granted its portion in Eretz Yisrael.

The *Gemara* (ibid. 106b) determines from this precedent that if siblings (or partners; see *Rashbam*, s.v. *Haachin*) split an inheritance or business into equal portions and drew lots to determine which party receives which portion, the result is binding.

The *Rishonim* debate, however, whether a *goral* is a form of *kinyan* (acquisition) or only a *birur* (determination).

Some infer from the *Gemara's* deduction from the lots drawn when Eretz Yisrael was apportioned that a *goral* is binding and the results are considered a final *kinyan*. The only issue with that *goral* was that the participants hadn't *chosen* to split the land this way, and the *kinyan* therefore had to be reinforced



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mixed in.

“Shaagas Aryeh (#89) addresses the question of whether the *chametz* is permitted after the partners divide. Can we associate half the *chametz*, after it is divided, to what was the non-Jew's share during Pesach? A similar question applies to two Jewish partners, one who sold his *chametz* and one who did not.

“He pins this on the halachic concept of *breirah*, retroactive designation. Can he designate retroactively that those cookies which the non-Jew took after Pesach were his share on Pesach, so that they were never prohibited?

“The *Gemara* (*Beitzah* 38a) concludes that we cannot utilize the concept of *breirah* for *d'Oraysa* issues, but can utilize it for Rabbinic issues. Since the prohibition of *chametz she'avar alav haPesach* is Rabbinic, we can rely on *breirah* and retroactively designate the non-Jew's share of *chametz* during Pesach to the cookies that he ultimately took.

“Oneg Yom Tov (#34) writes, however, that since the Jew's share is prohibited and valueless, the half that he took cannot be considered a ‘division’ of the partnership” (see *Pischei Choshen, Shutafim* 10:14[35]).

“Some further suggest that even if we allow benefiting from the *chametz*, we should be stringent regarding eating it; others don't distinguish” (*Mekor Chaim* 448:1).

“Since *chametz she'avar alav haPesach* is Rabbinic, we can rely on the lenient opinion of the Shaagas Aryeh, after the partners divide.”

“Mekor Chaim and Magen Ha'elef (448:1) note, though,” concluded Rabbi Dayan, “that if the Jew housed the *chametz* over Pesach and was thus required to burn it all, since he was responsible as a guardian or because his share was mixed in, the penalty should apply to all the *chametz*” (*C.M.* 176:8; *O.C.* 440:1; *Mishnah Berurah* 440:5).

Verdict: We can rely on the lenient opinion that the cookies are permitted to eat, because of *breirah* (retroactive designation), provided that they were not housed by the Jew over Pesach.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**BAR METZRA #13
(Bordering Property)
Property Adjacent to
Renter**

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

Q: I am renting an apartment. The adjacent apartment is up for sale. Do I have priority rights to buy it as a *bar-metzra*?

A: We previously mentioned that the Rambam, cited by *Shulchan Aruch*, rules that *bar-metzra* rights do not apply to rentals. Maggid Mishnah interprets this as referring to our case, since you do not have ownership rights in the house that you rent.

Therefore, you are not entitled to the adjacent property as a *bar-metzra*. Moreover, if you bought it, an adjacent owner who is a *bar-metzra* can remove you (*C.M.* 175:60).

However, Rama cites the Rosh's opinion that *bar-metzra* rights apply also to renters, since rental is like ownership for the day (*Gra* 175:50).

Shevus Yaakov concludes that you have priority over an *outsider*, but if the property was sold to another, you cannot remove him. Conversely, an adjacent *bar-metzra* has priority over you, but if the property was sold to you, he cannot remove you (*Pischei Teshuvah* 175:27).



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by the decision of the *Urim VTumim*. But if people *choose* to split assets based on the results of a *goral*, say these *Rishonim*, the drawing does serve as a *kinyan* for the participants. No further *kinyan* is necessary because in exchange for the benefit of knowing that all other parties are committed to the deal, each individual agrees to be *makneh* (transfer ownership of) each portion to whoever receives it according to the *goral* (*Rashbam, Rambam, and Shulchan Aruch* 173:2).

Some say that this sort of agreement works by the same mechanism as a *kinyan kesef* (money-based purchase), which is effective only for real estate, not for objects (*Ritva B.B.* 106b). But others maintain that this system can be used to acquire objects as well (*Rashbam and Nimukei Yosef*, cited in *Darkei Moshe*).

Other *Rishonim* argue that the *Gemara* does not ultimately stick to the proof from the division of Eretz Yisrael, and when we perform a *goral* nowadays, it serves only to determine which party is entitled to which assets, but the *goral* alone is not binding without an additional *kinyan* (*Shu"t HaRosh* 98:2, and *Rema* 173:2). Once the *goral* is complete, each party is entitled to make a *kinyan* on his portion without any further agreement from the other parties, because we consider the *goral* akin to each party declaring to the others that they can make a *kinyan* (akin to the declaration of *leich chazeik ukni* codified in *Shulchan Aruch* 192:2, *Lechem Mishneh, Hilchos Shecheinim* 2:11). Therefore, according to this view, as long as one of the parties hasn't made an additional *kinyan*, a participant who is dissatisfied with the results may renege from his earlier commitment to follow the results of the *goral*.

The *poskim* are divided over whether we rule according to the *Rishonim* who consider the *goral* a *kinyan* (*Maharsham* 3:186), or whether we are uncertain if this is the final *halachah* (*Shu"t Beis Shlomo, C.M.* 49). Therefore, if one of the parcels was damaged or lost before *kinyanim* were made, according to the latter opinion, all the parties bear the loss equally (*Shu"t Imrei Yosher* 1:56), unless there is a clear local custom to follow the results of a *goral*, in which case it is binding according to the principle of *situmta* (*Kesef Hakodashim* 173:2).

In your case, if all the sisters already lifted their packages of jewelry (*kinyan hagbahah*) or otherwise had them brought to their property, that *kinyan* is final, and the sister who is dissatisfied cannot renege. But if *kinyanim* were not made after the lots were drawn, the *halachah* depends on the dispute between the *Rishonim*, and there does not seem to be a prevailing *minhag* upon which we can say that they acquired the jewelry according to *situmta*. Therefore, as long as *kinyanim* have not been made, the inheritance is still owned jointly by the sisters, but if one or more of the sisters made a *kinyan*, the one who is dissatisfied may not insist that those portions be part of a new division of the jewelry.

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

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