

BUSINESS WEEKLY



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

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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

BRING A CAKE!

Mr. Metzger's salary from his regular job did not suffice for the family's needs. To help make ends meet, he also served his neighbors as a car service.

On Chol Hamoed he used vacation days for his full-time job, but drove for a few hours each day to defray the heavy Pesach expenses (see *O.C.* 542:2). In the middle of Chol Hamoed he received a call from Mrs. Rodriguez, an elderly Hispanic woman who lived down the block.

"My son and daughter-in-law are celebrating their 35th anniversary," Mrs. Rodriguez said.

"Oh, that's very nice!" exclaimed Mr. Metzger.

"They're having a party at their house tonight," said Mrs. Rodriguez. "Should be very happy!"

"I guess that you want me to drive you there?" asked Mr. Metzger.

"I wish I could go," answered Mrs. Rodriguez wistfully. "However, I'm not feeling well, so I can't go."

"I'm sorry to hear that," replied Mr. Metzger. "I wish you good health, and happiness to your children!"

"I made a special surprise for them, though," added Mrs. Rodriguez. "If I can't be there in person, at least I want to send them something!"

"That's very nice of you!" exclaimed Mr. Metzger. "Would you like me to bring it to them?"

"Exactly!" said Mrs. Rodriguez. "If you could pick it up this afternoon and take it to them, I would greatly appreciate it. Obviously, I'll pay you for the trip."

"That should be fine," said Mr. Metzger. "Can I ask what you're sending?"

"I made a fancy cake," said Mrs. Rodriguez. "Should be delicious!"

"Oh... one minute....," said Mr. Metzger. "I have to check whether I can bring your cake. You know, it's our Passover."

Mr. Metzger called Rabbi Dayan and asked:

"Am I allowed to drive Mrs. Rodriguez's cake for pay?"

"There are two halachic elements to consider here," replied Rabbi Dayan.

"First, there are prohibitions of *bal yera'eh* and *bal yimatzei* to maintain *chametz* in your possession on Pesach, beyond the prohibition of eating *chametz*.

"Nonetheless, if a non-Jew brings his *chametz* into a Jew's premises and continues to be solely responsible for it, the Jew does not violate *bal yera'eh*. For this reason, a non-Jewish worker may bring *chametz* for his own lunch into a

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

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



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

STOLEN SPEECH?

Someone organized a speech at a local event, and he sold tickets to participants. I didn't buy a ticket, but I was sitting in the yard of a friend who lives next-door to the hall, and I was able to hear the entire speech, which I really enjoyed. Am I required to pay the organizers the price of a ticket?

A: There are two areas of *Halachah* that govern people deriving benefit from someone else:

One is *dar b'chatzeir chaveiro*, someone who derives benefit from someone else's possessions, such as a person who squats in someone else's property.

The second area is *yoreid lisdei chaveiro*, someone who decides, of his own accord, to do something that will benefit another person — e.g., he plants someone else's field that was lying fallow, and the owner now has a crop he would not have had otherwise.

The *halachah* in both cases is that the beneficiary is required to pay for the benefit he derived.

Given this background, we will first examine whether you are obligated to pay under the rubric of *yoreid lisdei chaveiro*.

The *Gemara* (*Pesachim* 26a, codified by the Rambam in *Hilchos Me'ilah* 5:14) teaches that if a person derives pleasure from music played in the Beis HaMikdash or takes pleasure in seeing the beauty of the Beis HaMikdash, he does not transgress the prohibition of *me'ilah* (using consecrated items for personal benefit), because sound and sight are intangible (*ein bahem mamash*).

Similarly, the Rambam (*Hilchos Shofar* 1:3) rules that if a person heard *tekias shofar* from a stolen *shofar*, he fulfills his obligation, and it is not considered a *mitzvah habaah b'aveirah* (a *mitzvah* done through transgressing a prohibition), because the sounds of the *shofar*, which are intangible, cannot be "stolen."

Accordingly, a person playing an instrument cannot stop others from listening (*Ohr Samei'ach, Shabbos* 1:8; see *Nesivos* 333:16).

Theoretically, then, if someone listened to music or a *shiu*r, or watched a presentation, he is not obligated to



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Jewish-owned house or firm, if he eats separately" (O.C. 440:2-3).

"However, if the Jew accepts responsibility for the *chametz* – that of *shomer sachar* or, according to some, even that of a *shomer chinam* – he violates *bal yimatzei*" (O.C. 440:1).

"Normally, the courier of a package is responsible for it, so that you cannot accept the cake, certainly as a paid courier" (C.M. 303:2; see *Mishnah Berurah* 440:2).

"What if I stipulate with Mrs. Rodriguez that I accept no responsibility for her cake?" asked Mr. Metzger.

"This brings us to the second issue," replied Rabbi Dayan. "Can you derive incidental benefit from *chametz*, e.g., a fee for driving it?"

"*Shulchan Aruch* allows renting a donkey to a non-Jew to transport *chametz* on it, even though the Jewish owner receives a rental fee for the donkey" (O.C. 450:7).

"However, *Mishnah Berurah* (450:9, 12, 25) writes that in previous *halachos* the *Shulchan Aruch* and *Rema* ruled that we do not allow deriving even incidental benefit from *chametz*, since it is *assur b'hanaah* – prohibited to benefit from. Thus, you are not allowed to accept payment for bringing the cake.

"Were you to drive Mrs. Rodriguez, it would be permissible to take the cake as well, since then you are paid to drive her, regardless," concluded Rabbi Dayan. "Similarly, if Mrs. Rodriguez were to send other significant non-*chametz* items, so that you would have to drive them anyway, it would be permitted if you stipulate that you have no liability for the cake."

Verdict: A non-Jew may bring his *chametz* into a Jew's premises, if he retains full liability and keeps the *chametz* separate. A Jew should not derive even incidental benefit from *chametz*, which is *assur b'hanaah*, such as payment for driving it.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #40

New Evidence

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

Q: Can a litigant bring new evidence or present a new argument after the ruling to undo it?

A: In *Halachah*, the correctness of the ruling is a greater value than finality of judgment. Therefore, if the litigant produces new evidence after the ruling, and even after he paid, the *Dayanim* can undo the ruling (C.M. 20:1).

Even if the *Dayanim* set a time, e.g., 30 days, for the litigants to bring evidence, they can undo the ruling if new evidence was brought afterward.

However, if a litigant said that he does not have additional evidence, he cannot bring it after the ruling, unless the new evidence was not available to him beforehand, in which case he can claim that he meant that he does not have additional evidence available (C.M. 20:2).

Moreover, if the litigant stated that he has no additional evidence at all, neither in his hands nor elsewhere, he can no longer bring additional evidence.

These criteria apply also to new arguments, provided that they do not contradict prior claims (*Sma* 20:5).



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pay the person who provided that pleasure.

The issue is more complex, however, if a person must enter a certain venue in order to hear the speech or watch the presentation. In such a case, he is akin to a *dar b'chatzeir chaveiro*, and he must pay the going price for a participant to be in that venue during the presentation or speech (*Shulchan Aruch*, C.M. 363:6). Otherwise, entering the premises is considered theft.

If, however, the person does not actually enter the hall, but rather views or listens to the presentation from outside, he is not required to pay as a *dar b'chatzeir chaveiro*, because he is not using the hall, and the benefit he derives from the sound or the sight alone is intangible.

Let us move on to whether you are obligated to pay under the rubric of *yoreid lisdei chaveiro*. The musician, speaker, or presenter created this event in order to provide others with pleasure. In cases of *yoreid lisdei chaveiro*, the recipient must pay for the benefit derived even if it is intangible.

Nevertheless, if the person who arranged the event intended to provide benefit only for those inside the hall, and someone derived benefit from outside, the organizer is not considered a *yoreid lisdei chaveiro* vis-à-vis that listener, so he would not be obligated to pay.

But if the event organizer knew that some people would be outside the hall and he intended to provide benefit to those people as well, he would be considered a *yoreid lisdei chaveiro*, and those outside are also required to pay (ibid. 364:4).

In your case, if the organizer of the speech did not see you, and it didn't dawn on him that people who had not paid to sit in the hall were listening from outside, then according to the letter of the law, you are not required to pay. But if he did consider the possibility that others would try to listen from outside, and he intended to provide benefit for those people as well, then you are obligated to pay.

[Although we explained that if the organizer of the speech didn't see you, you are not required to pay, it seems from *Zayis Raanan* (written by the author of *Magen Avraham*, on *Yalkut Shimoni*, *Mishpatim* 343) that this is only true in the case of *divrei Torah*, which a person is obligated to teach without pay and the payment rendered is compensation for not engaging in other work during the time he taught (*Yoreh De'ah* 246:5). But if the speech is about a non-Torah topic, since a person may charge money to teach such subjects, it would be prohibited to participate without paying. It is possible that the reason to refrain from doing so is based on *v'ahavta l'rei'acha kamocho*. If you were delivering a lecture for which you charge money, you would be upset if people participated without paying through some halachic loophole, so you should not do that to others, either (see *Mishpat Haneheneh* ch. 30).]

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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