

BUSINESS WEEKLY



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

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Dedicated in honor of the Sheva Brochos of Alisha and Shira Klein



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

SWAPPING BALLS

School was coming to an end; camp was beginning. The park was filled with people who were out running, biking, and playing ball.

Yitzi and Baruch went to the park together. Yitzi brought his basketball and played several games. Baruch preferred tennis, and won a set of tennis matches meanwhile.

The two sat down to have lunch. After eating, they decided to spend another hour in the park.

"I've played enough basketball," Yitzi said. "I wouldn't mind some tennis. Can I borrow your balls and racquet?"

"I was thinking the same," replied Baruch. "I wouldn't mind shooting some hoops. Can I borrow your basketball in return?"

"Sure," answered Yitzi with a grin.

The two boys swapped their balls. Yitzi headed off to the tennis courts, and Baruch to the baskets.

After a half-hour of tennis, Yitzi decided to take a break. He sat down on the sidelines, with the balls next to him.

Suddenly, a ferocious looking dog ran towards him, barking menacingly. Yitzi dodged to avoid the dog, which grabbed one of the balls and ran off!

Yitzi played another game with the remaining balls, and then went back to the basketball court to meet Baruch.

"I'm sorry," he apologized to Baruch, "but a ferocious dog charged me and ran off with one of the balls! There was nothing I could do about it."

"Wow! But that makes no difference," said Baruch. "You borrowed the balls, so you are liable as a *sho'el* - borrower, even for uncontrollable circumstances."

"But I wasn't the only one who borrowed," replied Yitzi. "We swapped balls!"

"So what?!" asked Baruch.

On the way home, the two met Rabbi Dayan and asked:

"Is Yitzi liable for the tennis ball?"

"The *Gemara* (B.M. 81a) teaches that two parties who lend to each other are considered *shomrei sachar* - paid guardians, or, more accurately, *sochrim* - renters," replied Rabbi Dayan. "Although neither party pays, the use of his property that each party grants the other is considered 'payment' for use of the other's property" (C.M. 305:6).

"Similarly, two parties who agree to guard each other's property are considered *shomrei sachar*, since the commitment of each party to guard the other's property is considered 'payment' for having his property guarded.

"Thus, Yitzi is a renter, not a borrower. He is

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 ז"ל מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

EARLY-BIRD RIBBIS

Q: I give a course via Zoom, and I need to know in advance how many people will participate, because if there are more than 100 participants, I must pay for expanded capacity. I advertised, therefore, that those who sign up and pay by a certain date will get a 20% discount.

Several participants took advantage of this offer.

Recently, however, a participant pointed out that there might be an issue of *ribbis* (forbidden interest) with this offer.

Is he correct? If yes, what can I do to rectify what I did, and how can I set up an acceptable sign-up system for the future?

A: In *Halachah*, your role vis-à-vis your course participants is categorized as that of a *po'el* (worker), and the participants are considered to be "renting" you for the time that you give the course (In next week's issue, *iy"H*, we will discuss the *halachos* that pertain to a *kablan*, who is hired to complete a task and is not bound to a specific times).

There are three times when an employer can pay a hired worker: at the time payment is due, before it is due, or when it is past-due.

If an employer pays a worker at the time the payment is due, he is allowed to pay more or less (if the worker agrees to give a discount) than he owes; since he is paying on time, no loan is being extended in either direction, so *ribbis* is not an issue.

If the employer delays payment, it is viewed as though the worker is extending him a loan. If he then pays more than he owes, that additional payment is *ribbis*.

If the employer advances payment to the worker in order to receive a discount, he is essentially lending the money to the worker by paying him in advance. Since he is deriving financial benefit from that loan, in the form of a reduction in price, this is an issue of *ribbis*.

In your case, participants who paid early extended you a loan of sorts in order to derive financial benefit in the form of the discount, which is an issue of *ribbis*.

But *Chazal* permitted a worker to offer a discount if



CASE FILE

liable for theft, even if he guarded the property in the usual manner and was not negligent, but exempt from circumstances beyond control – *oness*, as in this case” (C.M. 303:2-3; 307:1).

“Moreover, the *Gemara* teaches that if both parties began guarding simultaneously, it is considered mutual *shemirah b'baalim* – guarding while the owner of the item is in the service of the *shomer*. The *shomer* is then exempt even if there is an element of negligence. Only when the parties commit to guard at separate times – ‘Guard for me today, and I will guard for you tomorrow’ – are the two parties liable as *shomrei sachar*.” [If one began guarding before the other, but continues when the second begins, the one who began second has the exemption of *shemirah b'baalim*, since the first was already in his service.] (C.M. 291:28; 346:1)

“There is a dispute between the *Rishonim* whether simultaneous lending is also considered *shemirah b'baalim*. Rambam and Ramah, followed by the Shulchan Aruch, maintain that it is, since each party becomes responsible for the other’s property. However, Rashi, followed by the Rema, maintains that it is not, since mutual borrowers are not serving each other, but rather hold each other’s property for their own benefit” (*Rema* 305:6-7; *Nesivos* 305:2; *Pischei Choshen, Pikadon* 6:17[45]).

“Thus,” concluded Rabbi Dayan, “according to the Mechaber, even had there been an element of negligence Yitzi would be exempt based on *shemirah b'baalim*, but not according to the Rema.”

Verdict: People who agree to mutually lend to each other are considered *sochrim* – renters, and exempt from *oness*. If they lend to each other simultaneously, there is a dispute between the Shulchan Aruch and Rema whether to also apply the exemption of *shemirah b'baalim*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Enhancing Another's Property
#3 Fit for Enhancing

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

Q: What are examples of properties fit for enhancing?

A: In the laws of *yored*, there are several distinctions between properties that are presumed to be fit for enhancing and those not fit for enhancing (C.M. 375:1).

Examples of properties inherently fit for enhancing: A field is fit for sowing seeds or planting trees; a vineyard is fit for planting vines; a vacant lot is usually fit for constructing buildings (C.M. 375:1).

A dilapidated building is sometimes fit for reconstruction, but sometimes for demolition (C.M.375:6).

In these situations, when someone enhanced the property in a suitable manner, according to local standards – if the owner did not protest beforehand, he must pay the enhancer the going rate for such capital improvements (C.M. 375:7).

However, if the owner protested beforehand, he is not required to pay. Nonetheless, some write that if the owner wants to retain the enhancement now, he must pay (see *Pischei Teshuvah* 264:3; *Pischei Choshen, Sechirus* 8:[64], *Geneivah* 8:[30]; *Chazon Ish, B.B.* 2:6).



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certain conditions are met.

If the worker begins working immediately upon receiving payment, he is permitted to give a discount (*Shulchan Aruch Yoreh De'ah* 176:7-8). In such an arrangement, although the payment is not due yet, it is viewed as payment and not as a loan.

In your case, since the participants paid long before you actually delivered the course, you were not allowed to offer a lower price for those who paid early.

What you could have done is offer a discount to anyone who prepays *up to the time* that the course began.

Although the *poskim* seem to suggest that the aforementioned arrangement is permissible only if the worker begins the work and continues until he is finished without breaks (see *Shu"t Chelkas Yaakov, Yoreh De'ah* 79-80, and *Chelkas Binyamin* 176:86), since your type of course is typically delivered once a week, it is considered as though you are doing all the work consecutively (*Mishnas Ribbis*, ch. 10 fn. 2).

In regard to what you already did, once you received the payment, you may be *mochel* (forgive) the 20% additional work you did for the participants who did not pay for that work because of their early payment (see *Yoreh De'ah* 160:5), and they are not required to pay you the rest of the money, even *latzeis yedei Shamayim* (*Shulchan Aruch Harav, Dinei Ribbis* 5).

For the future, you should not offer a discount for those who pay early. Even though your primary reason for offering the discount is not to receive their money early, but only to ensure that you are certain about their participation, it is not evident that the discount isn't because of the loan as well.

Obviously, you may offer a discount for early registration, but not to tie that discount to early payment. If you would like to ensure that those who register cannot back out, you may demand a non-refundable deposit upon registration. If this is the offer, then even if the participants decide, of their own accord, to pay in full upon registration, there is no issue of *ribbis* because they could have paid later, and the discount was for early registration, not for early payment.

Another option is for the payment to be due in full upon registration, but on condition that you will not access the money immediately; rather, it will sit in the bank until the course actually begins.

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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