

# 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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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### FEE VS. FEE

Mr. Cooper had done some electrical work for Mr. Singer in his office. A monetary dispute arose between them, and *beis din* ruled that Mr. Singer owed Mr. Cooper \$600 for the work.

Mr. Singer said he would pay shortly, but a few weeks passed without payment.

Meanwhile, Mrs. Singer, who worked as a teacher during the day, also played music during the evenings at *simchos*. Mr. Cooper asked her to play at his daughter's *bas mitzvah*.

At the end of the evening, Mrs. Singer asked for her fee, which amounted to \$600.

"I don't need to pay you," replied Mr. Cooper. "*Beis Din* awarded me \$600 that your husband still hasn't paid. Offset the \$600 from the \$600 he owes me."

"Please keep me out of your litigation with my husband," said Mrs. Singer. "I provided music for your daughter's *bas mitzvah*, and expect you to pay me for my services."

"I also expect to be paid for my electrical services..." replied Mr. Cooper dryly. "What's the point of paying you, only to have your husband pay me!"

"I keep a separate business account for the music," said Mrs. Singer, "so the money is different."

"Even so, according to *Halachah* your earnings belong to your husband," insisted Mr. Cooper, "so it seems fair to me to offset your services with his debt to me."

"On what basis do you say that my earnings belong to him?!" objected Mrs. Singer. "I would like to call Rabbi Dayan and ask him!"

Mrs. Singer called Rabbi Dayan on speaker, and asked:

**"Can Mr. Cooper offset my fee with my husband's debt to him?"**

"Answering this question requires an overview of the financial relationship between a husband and wife," replied Rabbi Dayan. "Afterward, we can address this particular question in the context of counterclaims."

"Most couples live, nowadays, with the financial model that both spouses provide for their family's needs and expenses through their joint income.

"The classic halachic model, though, is that the husband is obligated to sustain his wife and family, but is entitled to his wife's earnings in lieu of her sustenance. In a typical case where the husband and wife share an account in which both salaries are deposited, and from which the family's expenses are drawn, there is minimal practical difference between the two models

## 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

### EARLY-BIRD RIBBIS PART II

**Q:** In the previous column, you discussed a potential *ribbis* issue regarding an early-bird special offered by someone giving a course via Zoom. I was wondering if the same applies to my day camp — am I allowed to offer a discount to those who register and pay early, or is it similarly problematic?

**A.** In our previous issue, we explained that the person giving the course via Zoom is categorized as a *po'el* (worker), and as such, offering a discount to those who pay early is permissible only if he begins to provide service immediately upon accepting payment. If payment is required upon registration, then that payment is viewed as a loan up until the course begins, and the discount is seen as an additional financial benefit given for the loan, which makes it *ribbis* (prohibited interest).

There are other financial transactions (other than a *po'el* relationship) that would be similarly problematic:

1. When buying an object, a person is not allowed to pay early in order to receive a discount. That early payment is considered a loan, and the buyer is benefiting from the loan by receiving the discount, which is *ribbis* unless one of the arrangements mentioned last week is in place (*Shulchan Aruch, Yoreh Dea'h 173:7*).
2. When renting real estate, it is generally permissible to pay early in order to receive a discount, because the money advanced is not a loan but a *kinyan* of the rental property (*ibid.* 176:6; additional *halachos* that may apply are beyond the scope of this article).
3. In the *po'el* arrangement, since a *po'el* is allowed to back out due to the principle of *avadai heim* — we are servants only of Hashem, not of other



## CASE FILE

during the course of marriage.

"The *Mishnah* (*Kesubos* 59b) delineates the work responsibilities of a wife, in lieu of her sustenance, which include household chores and a certain amount of income-producing work, such as spinning wool" (*E.H.* 80:1,6).

"Even if she earns more than the required amount, the husband is entitled to the extra earnings in lieu of the money that he provides her for personal expenses, beyond her basic sustenance of food, shelter, and clothing" (*E.H.* 70:3).

"The *Gemara* (*Kesubos* 66a) addresses the case of a woman who exerted herself beyond the normal manner of earning, such as by working extra hours at night or at numerous jobs, whether the husband is entitled even to these earnings. The *poskim* consider this question unresolved, so that if the wife is in possession, she can maintain the earnings; if they already entered the husband's possession, he can maintain them" (*Chelkas Mechokek* and *Beis Shmuel* 80:2).

"Many *poskim* do not differentiate between earnings from the required work inside the house, such as spinning wool, and work outside the house, especially if it is customary for women to work in such jobs, such as teaching, secretarial work, nursing, etc." (*Be'er Heitev* and *Pischei Teshuvah*, *E.H.* 80:1).

"However, some contemporary *poskim* maintain that the husband is not entitled to his wife's earnings outside the house, especially of the kind he cannot halachically expect of his wife to do, more so than work through exertion" (see *Pischei Choshen*, *Ishus* 10:2[3]; *Ezer Mishpat* #19, pp. 232-234).

*Be"H*, we will see that application of these principles next week.

**Verdict: In the classic halachic model, the husband is entitled to his wife's earnings in lieu of her sustenance and personal expenses. There is an unresolved dispute regarding earnings through exertion.**



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humans, and being stuck in such a relationship would make us servile —the money doesn't constitute a *kinyan*, and is therefore considered a loan. Some *poskim* write that if an additional *kinyan* (either written into the contract or a *kinyan sudar*) was made with the service provider, he is then prohibited from backing out of the agreement (*Shu"t HaRitva* 117, cited by *Shach*, *C.M.* 333:14; see *Ketzos Hachoshen* 6 whether *kinyan kesef* is enough to effect this *kinyan*). Accordingly, this arrangement is similar to a real estate rental and the money is a *payment* and not a loan.

But other *poskim* maintain that even with the additional *kinyan*, a *po'el* is always allowed to back out (*Shu"t Rivash* 477, cited in *Shach* *ibid.*). According to this approach, since he may back out, the money remains a loan and there is therefore a *ribbis* issue if a discount is given for early payment.

An arrangement with the administrator of a day camp is not a *po'el* relationship. A *po'el* is required to work at specific times, and is paid for the hours he works. Since he is obligated to work those specific hours, he bears some similarity to a servant, and in order to avoid that similarity, he must be able to walk away from the job.

But there is another work relationship called *kablanus*, in which a contractor is hired to complete a job for a certain amount of money, regardless of how much time it takes to do it. Since he may work whenever he pleases, he is not similar to a servant, and he is therefore not entitled to back out of the job (*C.M.* 333:4).

Therefore, some *poskim* write that a discount for early payment to a *kablan*, is permitted (*Shu"t Chelkas Yaakov* 3:204-205; *Shevet Halevi* 3:110).

Other *poskim* argue that when it comes to renting real estate or hiring a *po'el*, the *kinyan* is effected by acquiring the actual property or hiring the *po'el*, which is why those *kinyanim* eliminate the issue of *ribbis*. But the *kablan* himself is not being acquired by the person hiring him; he is merely obligating himself to do the work for the agreed amount. If the money is paid in advance, it is akin to a loan, and the discount therefore constitutes a *ribbis* issue (see *Mishnas Ribbis* 10, fn. 3).

When it comes to the administrator of a day camp, it is unclear exactly what that person's role is vis-à-vis the campers. We might suggest that the administrator is a *kablan*, because he is responsible for setting up the day camp premises, hiring the staff, etc. If he is a *kablan*, then if a *kinyan* was made, it would be subject to the above dispute (here, too, we would have to determine whether a *kinyan kesef* would work, in which case the payment would serve as such a *kinyan*).

It is possible, however, that since the administrator himself is not an actual service provider like a learning *Rebbi* or a counselor, he is neither a *po'el* nor a *kablan*; rather, the services he's providing are considered akin to selling an object — in which case accepting early payment is a *ribbis* issue.

Regardless, if you demand only a registration fee in exchange for the discount, or if you express clearly that parents are entitled to a discount even if they pay with head checks, it is permissible even if they elect to pay the entire amount up front (see *Mishnas Ribbis* 9:33).

[In all cases, a *heter iska* may be arranged to avert any *ribbis* issues.]

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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