

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

HOME EQUITY

Yaakov had just purchased a home. He maxed out his available home equity for the mortgage, but wanted to do additional renovations, which amounted to \$50,000. The bank, however, refused to lend him more, despite his good credit standing.

Yaakov turned to his relative, Shlomo. "Are you willing to let me use your available home equity line?" he asked. "I'll pay you each month whatever comes off for the loan, including your interest to the bank. You know that I'm good for the money!"

"In principle, I'm willing to do this," replied Shimon. "But there may be an issue of *ribbis* involved."

"What *ribbis* is there?" asked Yaakov. "You're not gaining anything on this deal!"

"You're not the first person to ask about this," said Shlomo. "Occasionally people ask me about using the credit line on my credit card and offer to pay the interest until the credit is paid off.

"I asked a Rav," continued Shlomo, "and was told that although I can charge immediate fees to the other person, I need to make a *heter iska* for the subsequent interest payments that he covers."

"But why should we need a *heter iska*?" asked Yaakov. "I'm just covering what you pay to the bank."

"Still, I'm giving you \$50,000," replied Shlomo. "Over the years, you'll pay back over \$60,000, so you are returning more than I gave you."

"But the extra I'm paying is not for you," argued Yaakov. "You're taking the loan for me, so that, effectively, I'm borrowing the money from the bank."

"That may be," replied Shlomo. "Remember, though, that I'm signed as the borrower in the loan documents of the bank."

"Let's check with Rabbi Dayan," Yaakov said. The two met with Rabbi Dayan. Yaakov asked:

"Can Shlomo take out a loan for me?"

"There is a difference between banks worldwide, which are mostly non-Jewish owned, and banks in Israel, which are Jewish-owned and operate with a *heter iska*," replied Rabbi Dayan.

"The *Gemara* (B.M. 71b) teaches that a Jew who borrowed money from a non-Jew and wants to lend it to another Jew, cannot charge him the interest that he pays the non-Jew. Even if the non-Jew said to give



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

DEFECTIVE KITCHEN

Q: I ordered an expensive kitchen from a salesman, and I paid a carpenter a few thousand dollars to install it. After a few months, the exterior of the cabinets

started to peel. I called the salesman, and he told me that the manufacturer just informed him that they knew that they had sold a faulty batch of kitchens, and they would send a new one as a replacement. The problem is that I will now have to pay the installer to rip out the old one and install the new one. Am I entitled to demand that the seller compensate me for the money I wasted on the first installation?

A: The *Gemara* (*Bava Basra* 93b) records a dispute between *Tanna'im* regarding a person who sold garden vegetable seeds, and when the buyer planted them, they didn't grow. The *Chachamim* (majority of *Tanna'im*) say that he is required to refund only the price of the seeds, but according to Rabban Shimon ben Gamliel, he must also repay the buyer whatever it cost him to plant the seeds, because he caused that financial loss. The *Shulchan Aruch* (C. M.232:20) rules according to the *Chachamim*.

The *Rishonim* dispute whether this applies to all cases, however. The *Ramah* (*Yad Ramah*, *Bava Basra* 6:62) rules that the *Chachamim* absolved the seller of paying for the planting costs only if he did not know that they were faulty, but if he knew that he was selling damaged goods, he is required to pay for those costs, because he damaged through *garmi* (direct causation). *Tosafos* (ibid. 92a, s.v. *Hamocheh*) maintain that even if the seller knew that the seeds were defective, he is still absolved of paying the planting costs, because it is considered *grama* (indirect causation).

The *Shulchan Aruch* (loc. cit. 21) rules according to the *Ramah*. Therefore, if someone buys an object, and after transporting it to a distant location, he finds it to be defective and has to void the sale, the *halachah* is that if the seller didn't know that the item was defective, he is absolved of paying the costs the buyer incurred transporting it. But if he knew it was defective — and the buyer made it clear to him that he was transporting

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over the money, the second loan is viewed as between the two Jews, because there is no concept of agency regarding a non-Jew, unless initially arranged that the non-Jew collect only from the other Jew (Y.D. 168/9:1,2,17; Taz Y.D. 170:3).

"Similarly, in our case, if Shlomo takes a loan from the bank, he is considered their borrower; he is liable to them. When he gives the money to you, he is considered your lender. Therefore, a *heter iska* is needed between you two (Bris Yehuda 6:20-23; Toras Ribbis 21:22).

"The same is true if a person took a loan from a bank in Israel and *afterwards* decided to give the money to another Jew and have him cover the monthly payments, which total more than the current principal (The Laws of Ribbis 13:36-37, 17:17-21).

"However, if the loan was *initially* intended for the second person, and the bank has a *heter iska*, some *Poskim* rule that the *heter iska* may extend to the second loan. Because the bank and the two borrowers are Jewish, the borrower is like an agent of the second person; just as he received the money with an *iska* arrangement, he handed it to him.

"It is still preferable to draft a separate *heter iska* between the two people, or at least state explicitly that their arrangement follows the *heter iska* of the bank," concluded Rabbi Dayan. "However, *Poskim* are lenient even if they did not address the issue explicitly, and even if the second borrower did not know of the *heter iska* (Maharsham 1:20, 7:63; Toras Ribbis 17:14)."

Verdict: A person who takes a loan from a non-Jew to give to another Jew must draft a *heter iska*. However, if he initially took the loan for him with a *heter iska*, some *Poskim* allow him to give it to another Jew without another *heter iska*.



MONEY MATTERS

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Chazak Chazak

Based on writings of Harav Chaim Kohn, shlita

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

Q: The shul auctioned off the chazak aliya, ending Sefer Bereishis. I bought the aliya, but felt sick during leining, and had to leave shul, so that someone else got the aliya. Must I pay?

A: The *poskim* dispute whether selling *aliyos* is considered a valid sale/ rental or merely a pledge (see Mishneh Halachos 5:304; Hayashar V'Hatov vol. 14 p. 86, vol. 21 p. 143).

If it is a sale/rental, your personal *oness* would not exempt you from your obligation. However, if it is a pledge, you clearly pledged with the expectation that you be able to benefit from the aliya.

Nonetheless, it is common in many places to buy an aliya and honor someone else, such as the Rov of the shul or a relative. Although you had to leave, you could have instructed the gabbai to honor someone else, and thereby benefit from the aliya. Therefore, you are liable to the shul for your pledge.

Nonetheless, if the person who got the aliya donated a certain sum, and certainly if he bought the aliya, you can deduct that amount from your pledge (Magen Avraham 154:23).



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it — he must pay the costs incurred during transportation. (Some *Poskim* rule that even if the buyer didn't tell the seller that he was transporting it, but the seller knew anyway, then he is also liable for those costs [Nesivos ibid. 10; cf. *Mishpat Shalom* 204:1.]

But some *Poskim* (*Imrei Binah*, *Dayanim* 21; *Mishpat Shalom* and *Ulam Hamishpat* 232) rule according to *Tosafos*, and hold that regardless of the circumstances, the seller is not liable for the shipping costs. Nevertheless, if he knew the goods were faulty and that the buyer was planning on transporting them, he would still be obligated to reimburse the buyer for the shipping costs because one who damages through *grama* must pay *latzeis yedei Shamayim* (to avoid Heavenly judgment; see *Mishpat Hamazik* 18:20).

Some *Poskim* write that if the seller told the buyer specifically that the seeds he was selling were good for planting, then all *Rishonim* agree that he is required to pay the planting costs, as this is considered *garmi*, because the buyer planted the seeds only on the seller's recommendation (*Minchas Pittim* 209:4, according to *Shu"t Rabbi Akiva Eiger* 134).

Applying the above to your *she'eilah*, because the seller did not know that the kitchen was defective, and the company he ordered it from is a reputable firm, there is no absolute obligation for him to compensate you for the amount you paid the installer, unless you stipulated with him that he would cover such costs in such a situation, or the local business practice is for him to cover those costs. (If the seller knew that the merchandise was defective, then the above dispute between the *Ramah* and *Tosafos* applies, and he is certainly obligated to compensate you *latzeis yedei Shomayim*.)

But even if the seller isn't liable for the installation costs, if he might be able to convince the manufacturer to cover those costs, he should certainly try. Some *Poskim* write that if someone has financial benefit from a transaction with another person, he must try his best to make sure that that person doesn't incur a financial loss. (See *Rema* 294:6 and *Pis'chei Teshuvah* 3; cf. *Shach* 9, who rules that this *halachah* applies only to a *shomer* [guardian]; but the *Shoel Umeishiv*, *Mahadurah* 3, 3:160, writes that if the merchandise was defective to begin with, then the person who derived financial benefit — in his case, an agent, and in our case, the seller — is obligated to try to help his counterpart retrieve his money, especially when the buyer relies on the seller to begin with. Moreover, in your case, because you have no way of reaching out to the manufacturer himself, all *Poskim* agree that the seller is obligated to try to intercede on your behalf.)

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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