

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

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

EXTENDED RENTAL

The Kleins planned to spend Pesach in Yerushalayim and rent an apartment for Yom Tov.

"How much is the apartment?" Mr. Klein asked the owner, Mr. Gross.

"For all of Pesach, including Yom Tov Sheini – from Monday Erev Pesach until Wednesday morning – the rate is \$1,400," said Mr. Gross. "If you plan on leaving in the middle of Chol Hamoed, the rate is \$200 a night."

"OK, I'll check," said Mr. Klein.

"My sister invited us to stay with them from Shabbos Chol Hamoed until the end of Yom Tov," Mrs. Klein said to her husband, "so we only need for the four nights from Monday until Friday."

Mr. Klein called Mr. Gross. "Be"H, we will spend the second half of Yom Tov with my wife's family," he said, "so we'll take the apartment at the nightly rate until Friday, for \$800."

During Chol Hamoed, Mrs. Klein's sister called her. "Mazel tov!" she exclaimed. "Our daughter just gave birth, a week early. They asked us to join them for Shabbos and stay through the end of Yom Tov to help with the kids, so we won't be home."

"That's wonderful news," said Mrs. Klein. "I'll check if we can extend our stay in the apartment."

"Someone inquired about the end of Yom Tov, but I never finalized with him," Mr. Gross said. "Either way, I'll give you priority. If you want to stay – you can!"

After Yom Tov, Mr. Klein contacted Mr. Gross. "Since we ended up staying the full Pesach," he said, "I'll fill in the remaining \$600."

"Thank you, but you opted for the nightly rate," replied Mr. Gross. "You need to pay for 5 additional nights, another \$1,000."

"That's a lot," replied Mr. Klein. "Since we stayed the whole Yom Tov, why should we pay the nightly rate?"

"That was your choice," Mr. Gross replied. "Remember, someone else inquired about the apartment; I might have gotten the nightly rate from him."

The two approached Rabbi Dayan. Mr. Gross asked:

"How much must Mr. Klein pay for the remainder of Yom Tov?"

NEWS FROM THE BHI

Last week, the **Business Halacha Institute** collaborated with **Zahav Senior Resources and Support**, a division of **Agudat Yisrael**, to organize a **Halachic Will Event** in Lakewood. The event aimed to assist seniors with estate planning and halachic guidance.

The BHI introduced the new easy-to-use online tool that helped seniors draft their own Halachic Tzavaah. During the event, seniors had the opportunity to consult with Rabbonim and legal professionals in the estate planning field and received their medical directive documents and Halachic Tzavaah.

The response to the event exceeded expectations, and we were delighted to have helped so many people in a meaningful way

If you would like to organize a similar event in your shull, neighborhood, or community, please contact BHI at 18778458455#201



BHI HOTLINE

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

SELLING THE SOLD

Q. The following *she'eilah* was asked during Pesach last year:

I own a summer home in the Catskills that I have wanted to sell

for a long time because I inherited a nicer home there. I have been negotiating with a potential buyer for weeks, and at one point he agreed to buy it, but then withdrew his offer. One day of Chol Hamoed Pesach, he called me up to inform me that he's ready to buy it. I'm afraid that if I wait until after the second days of Yom Tov, he's going to renege again.

May I sell it to him on Chol Hamoed, considering that I sold it to non-Jew before Pesach?

A. We will address only whether you have the right to sell the property at all on Chol Hamoed, since it might not belong to you during Pesach, but you must also ask your Rav whether the *kedushah* of Chol Hamoed prohibits the sale.

Chazal taught that being *mevatel* (nullifying) *chametz* alone does not suffice; a person must still do *bedikas chametz* and eliminate all his *chametz*. Over the generations, it has become an established practice that instead of eliminating all the *chametz*, there is an option to sell it to a non-Jew. Once it doesn't belong to a Jew and he does not take responsibility for it, it does not need to be eliminated (*Shulchan Aruch Orach Chaim* 440:2).

But the *chametz* cannot be sold by itself if it is still on the Jew's property; the space where it is stored must either be sold or leased (as we will explain below) to the non-Jew. There are several reasons offered for this *halachah*. Some *Poskim* write that since the Jew knows that the non-Jew has no plan to actually touch the *chametz*, if the property it is stored in belongs to him, it would seem as though he's keeping *chametz* in his house on Pesach, so *I'chat'chilah* the property in which it is stored should not belong to him (*Pri Chadash* 448:3, cited in *Mishnah Berurah* *ibid.* 12).

Other *Poskim* explain that since the *chametz* once belonged to the Jew, we are concerned that he has not completely mentally distanced himself from the *chametz*, and if it is stored on property that belongs to him, he may mistakenly eat it on Pesach (*Shu"t Radvaz* 240, cited in *Mishnah Berurah* *ibid.*). Others write that the



CASE FILE

"The binding terms of rental are those agreed upon when beginning the rental," replied Rabbi Dayan (C.M. 307:2).

"Therefore, although Mr. Gross offered rental options for all of Pesach and per night, when Mr. Klein opted for the nightly rate and began the rental accordingly, that rate is binding. Thus, he owes \$800 for the stay through Friday.

"Moreover, the letter of the law would seem that that the remainder of Pesach should also be according to the nightly rate, since renting for the entire Pesach is no longer an option from Chol Hamoed on. Seemingly, this is a new rental from Friday through the end of Yom Tov, as if another person had rented then, especially if there was another potential renter for that time period who would pay the nightly rate.

"On the other hand, Mr. Gross benefits from the extended rental. Unlike a new renter, there is no need to clean the apartment, change linen, resupply amenities, etc. Therefore, it would seem fair (as a recommended compromise) to grant Mr. Klein some discount, or perhaps even to prorate the remainder of the Yom Tov according to the full Pesach rate (see C.M. 311:6).

"However, had the parties left the issue open before Yom Tov – i.e., both rates were stated, and Mr. Gross agreed to leave the ending date open – then we would retroactively determine that the rental was for all of Yom Tov, and Mr. Klein would be liable only for the full Pesach rate.

"To avoid misunderstandings," concluded Rabbi Dayan, "when extending the rental, you should have discussed explicitly what the charge would be for the remaining days."

Verdict: Mr. Klein is liable for the nightly rate for the initial days, according to the rental agreement. For the remaining days, the letter of the law calls for charging the nightly rate, but fairness would indicate (as a recommended compromise) granting some discount, taking into consideration the lower, full Pesach rate.



BHI HOTLINE

reason the property must be sold or leased to the non-Jew is because he acquires the *chametz* through *kinyan chatzer* (via the property it is stored in, which he takes possession of first) or *kinyan agav* (as an addendum to the purchase of the property; see *Chok Yaakov* 448:14 and *Ketzos* 194:3).

There is a dispute as to whether the property must be sold to the non-Jew (*Mekor Chaim* 440:3, and 448:8), or whether it's enough to lease it to him (*Piskei Chasam Sofer*, *Mechiras Chometz* 85:1; *Shu"t Divrei Chaim* v.2, *Choshen Mishpat* 40, among other *Poskim*). In fact, some *Poskim* say that's it is better to lease it to the non-Jew, because a sale looks like a *haaramah* (deception) (*Shu"t Avnei Tzedek*, *Orach Chaim* 57; *Shu"t Beis Shlomo*, *Orach Chaim* 91).

Now, people who own an additional property that is far from their regular home, making it difficult to travel there to do *bedikas chametz*, will typically sell the entire property to a non-Jew for Pesach, and since the property does not belong to the Jew, he is not obligated to do *bedikas chametz* there.

Whether you will be able to sell the house on Chol Hamoed depends on how the contract transferring the property to the non-Jew was phrased. If you merely leased him your summer home, and only sold him the actual *chametz* inside it, then you may sell the house, just as a person may sell any property he has leased, and it is not considered selling something that doesn't belong to him (*davar she'eino shelo*) (but the buyer cannot evict the tenant during the rental period) (*Choshen Mishpat* 312:1; see *Nesivos* 211:5).

But if the property was sold to the non-Jew, then it cannot be sold during Pesach (see *Nesivos* 60:11; *Imrei Baruch* *ibid.*; *Imrei Binah*, *Halvaah* 52; *Yeshuos Yisrael* 66:4). You may, however, commit to sell it as soon as it belongs to you again, as long as the contract is phrased correctly (see *ibid.* *Nesivos* 10; *Imrei Binah* *ibid.* 51; *Erech Shai* and *Eimek Hamishpat* 1:9).

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



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #16
Responsibility During Shipping

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

Q. I ordered a container of chametz from a manufacturer overseas. Due to disruptions in international shipping, the ship will be delayed till after Pesach. Is the chametz my responsibility?

A: As with other transactions, *minhag hamedinah* and the terms of contract play a role here. There are two primary contracts for shipping of commerce: c.i.f. (cost, insurance and freight) and f.o.b. (free/ freight on board).

In c.i.f. contracts, the seller assumes responsibility for the shipment and covers the cost of insurance until it reaches the buyer's port of destination. When the goods pass the boat's railing at the port of destination, ownership and liability transfer from the seller to the buyer.

In f.o.b. (origin) contracts, the buyer is responsible for the goods once the shipper loads the goods onto the freight carrier.

Accordingly, in c.i.f. contracts, the *chametz* is still considered in the seller's possession during transit, whereas in f.o.b. (origin) contracts, the *chametz* is already considered yours (*Pischei Choshen*, *Kinyanim* 13:1[2]).



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