THE WERDIGER EDITION

BUSINESS WEEKLY

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

Issue #710 | Shavous | June 11, 2024 | 5 Sivan 5784

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

SELLING TO A THIRD PARTY

Mr. Jacobs passed away. In his will, drafted also in accordance with *Halachah*, he divided most of his assets evenly between his two children, Reuven and Shimon. His primary asset was an apartment, which he had been renting out for the past twenty years.

A year later, Reuven and Shimon discussed what to do with the apartment, now listed jointly under their names.

"I'm happy to leave the apartment joint-owned and share the rental income," said Reuven.

"I would like to sell it," said Shimon. "I need a large sum of money now, rather than the small monthly income. Do you want to buy my half?"

"No, I'm not in a financial position to do that," answered Reuven.

"Then I would like to put the apartment on the market to sell to a third party," said Shimon.

"I'm not out to sell my share," replied Reuven. "We're getting a very profitable rent. Also, real estate prices are now low, but I suspect they will climb again in a few years."

"But I need the cash now, whether or not real estate prices will rise," insisted Shimon. "You can't force me to remain in a partnership with you, when I would like to dissolve it!"

"On the other hand, you can't force me to give up my share in the apartment," argued Reuven. "If you want to buy me out, that would be one thing. But why should you be able to force me to sell to a third party?"

The two decided to approach Rabbi Dayan, and asked:

"Can Shimon require selling the apartment to a third party?"

"An apartment nowadays, certainly a small one, is considered not fit for division," replied Rabbi Dayan. "Although the minimum living space of 4X6 *amos* (about 7X10 feet) for each partner exists, a single kitchen or bathroom renders the apartment unfit for division in keeping its functionality" (*C.M.* 171:3,5; *Sma* 171:5).

"Regarding something unfit for division, *Halachah* advocates renting out and sharing the income,

BHI HOTLINE

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

HEATED ABOUT AIR-CONDITIONING

Q. My tenant insisted that I was required to install new air-conditioning in the office building he is leasing, but I told him I hadn't agreed to provide air-conditioning, and he had to install it on his own dime. He kept arguing with me, however, so I finally agreed to cover a third of the cost, which he would deduct from his rent payments for the next few months.

I'm a little pressed for money now, though, so I told him that if he doesn't deduct my portion of the costs immediately, but waits until next year to deduct it, I would pay half the cost instead of a third.

I later realized that this might be a *ribbis* problem.

Is it?

A. When a person is in debt to another person — whether because he took a loan from him, or bought something that he hasn't yet paid for, or owes rent — he is not allowed to pay more so that the debtor should extend the payment deadline. Such an addition is called *agar neter* (payment for delayed compensation), a form of *ribbis*.

This does not apply, however, to every case in which one person owes another money. We will now discuss scenarios.

1. If there is no actual debt: In your case, for instance, in your opinion, you never owed your tenant money; you just didn't want to get into further argument

Helping You Navigate Monetary Halacha In Daily Life

Ask the Rav, Email correspondence / Arbitration and Mediation / Small Claims / Wills and Estate Planning / Halacha Hotline

Business Weekly / Hebrew Masa Umatan / Shiurim and Chaburis / Kollel l'Dayanis Choshen Mishpat Curriculum / Seforim & Publications / Self-learning Program / Halacha on the Daf

Rabbinical Consultation / Banking and Iska / Contract Drafting / Shabbos Initiative / Industry-specific Seminars

RABBONIM AND STAFF

BHI Brooklyn
Harav Chaim Kohn
Rosh Av Beis Din
Rav Yonason Katz
Rav Shaul Neuman
Rav Yisroel Rubinfeld
Rav Bentzion Meisels
Rav Moshe Y Bochner
Rav Yitzchak M Pesach
Rav Leibish Lemel
Rav Moshe Y Friedlander
Rav Mier Orlian
Rav Eluzer Gips
Rav Naftuli Lerner

BHI Chicago
Rav Zev Cohen
Av Beis Din
Rav Yosef Wainkrantz
Rav Yerachmiel Pickholtz
Rav Gershon Schaffel
Rav Shmuel Cohen

BHI Florida:
Rav Dovid Schoen
Av Beis Din
Rav Yaacov Wincelberg
Rav Yisroel Moshe Janowski
Rav Yisrael Weberman
Rav Zecharia Zweig

profit with purpose
June 17-18 2024

Follow our campaign at
causematch.com/bhi

or alternating use of the property. Moreover, even if the property was initially intended for renting out, either partner can demand to dissolve the partnership through *gode o agod*, i.e., he offers the other partner the option to either buy (gode) or sell (agod) the respective half of the property (*C.M.* 171:8).

"Rambam (*Hil. Shecheinim* 1:2), followed by Shulchan Aruch, allows the partner to invoke *gode o agod* even through selling to others who will buy the property (*C.M.* 171:6).

"However, Rosh (*Responsum* 98:3), cited by the Tur and Rema, limits the ability to invoke *gode o agod* to sell to a third party for financial gain.

"Beis Yosef and Bach suggest that perhaps the Rosh agrees, in principle, with the Rambam in a regular case of *gode o agod*, but he dealt with a specific case in which there were simpler selling options, but the partner preferred to sell the entire property to a third party for a profit. However, Rema, followed by several *Acharonim*, seemingly understands that the Rosh disagrees, in principle, with the Rambam, and does not allow invoking *gode o agod* through selling to others (*Sma* 171:15; *Shach* 171:7; *Nesivos* 171:9; *Ketzos* 103:1).

"Thus, Sephardim should follow the Rambam and Shulchan Aruch, but seemingly Ashkenazim could refuse to sell to a third party, unless the initiating partner himself is able to buy (*Shuras Hadin*, vol. 13, p. 109).

"Nonetheless, even the Rosh presumably would allow the initiating partner to buy for himself and immediately sell to others, without mentioning this in his initial offer (Pis'chei Choshen, *Shutafim* 6:27[67])

"Furthermore," concluded Rabbi Dayan, "regarding a couple that unfortunately gets divorced, either one can require selling joint property to a third party if neither wants to buy the other's half, since here the partnership reaches its end (see *C.M.* 176:14-15)."

Verdict: Rambam and Shulchan Aruch allow a partner to invoke *gode o agode* to dissolve a partnership through sale to a third party. Rema, followed by several *Acharonim*, seemingly understands that the Rosh disagrees.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #23
Coatroom Loss

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

Q. I checked in my coat at the beginning of a wedding. When I came to collect it at the end of the wedding, two different people were now manning the coatroom. It seems that one of them had mistakenly gave my coat to someone else. Can I sue the hall for my lost coat?

A: A person who entrusts an item to another, but knows that he will not guard the item himself, but rather his family members or workers will guard it, relies on them, as well (*C.M.* 291:21-22).

If one of the family members or workers was negligent, the claim, in principle, is to him, when he can be made to pay. In this case, though, where it is not known which worker made the error, you cannot claim from either. However, if the common practice is that the hall is responsible for the coat check, we follow the *minhag hamedinah* (*Beis David C.M.* #1; *Erech Shai* 291:26; *Pis'chei Choshen, Pikadon* 4:3[16]).

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

with him, so you agreed to pay for some of the cost of the air-conditioning. It is therefore not a *ribbis* issue to agree to pay a higher percentage later.

This *halachah* is based on the ruling of the *poskim* that if a person plans to give his friend a gift, and he promises that if he does not give that gift by a certain date, he will add more money for each week or month of delay, it is not *ribbis*. Since there was no debt, and the giver does not really have to give the other person any money, the added amount is also a gift and is not *ribbis*.

The *poskim* deduced from this *halachah* that if someone promised to give a certain amount as a dowry to his son-in-law, he may stipulate that if he doesn't give it by a certain date, he will add on to the amount (*Shulchan Aruch, Yoreh Dei'ah* 177:15; *Rema* ibid. 176:6, with *Taz* 9).

But this applies only if the stipulation was made before the wedding (or the *tena'im*), because at that point, the father-in-law did not owe the money yet. After the wedding, however, since he now owes the dowry to his son-in-law (as stipulated in the *tena'im*), he may no longer "pay" for the delay in giving him the dowry (*Shulchan Aruch* ibid 176).

In your case, since you are not obligated to pay for a percentage of the air-conditioning, any amount you add because your tenant delays deducting from the rent is part of your original agreement to invest in the air-conditioning, and is considered a gift, not payment of a debt.

This is true only if you didn't make a *kinyan* (act to formalize a transaction) on your agreement to pay for part of the air-conditioning. If you did make a *kinyan*, or the tenant already advanced payment for the air-conditioning, then your share becomes a debt, and you may not add to it in order to delay when it is deducted from the rent.

2. If someone owes a large sum of money — $20,000, for instance — and can't or is unwilling to pay the full amount, so the creditor agrees to make a two-tier agreement, in which he will accept a lower amount if he is paid immediately and a larger amount if paid later – up to the sum owed. That, too, is not *ribbis*.

To illustrate: If, theoretically, you were obligated to install new air-conditioning, and your tenant agreed to cover two-thirds of the cost because he wanted to settle the matter immediately, he would also be entitled to set a second percentage he is willing to cover (half, in your case) if he has to wait to deduct your share from the rent.

In summation, your arrangement is not *ribbis* either way. If you were truly obligated to pay for air-conditioning, then your arrangement is not *ribbis* because your tenant is simply willing to drop more of his demand if you give your share (in the form of a rent deduction) immediately, and less if you give your share later. And if you were not obligated to pay for the air-conditioning, then whatever you give is a gift, and your agreement to allow him to deduct a higher amount from the rent later just makes that gift larger.

If, however, it is clear that you owe a set amount — five thousand dollars, for instance – an additional payment for delaying remittance is considered *ribbis* (*Bris Yehudah* 2, fn. 29).

Kvation™ Kosher Rentals
Instantly Book at kvation.com
Have a rental? Free for hosts

לזכר נשמת ר' שמואל בן ר' ראובן ז"ל וואלף

PLACE YOUR LOGO HERE IT WILL BE SEEN BY 30,000 PEOPLE
NL@BUSINESSHALACHA.COM
(877) 845-8455 #201

CAPITALx10
WWW.CAPITALX10.COM
LOW RISK HIGH REWARD

לזכר נשמת ר' שמואל בן ר' דוד הכהן ז"ל

DISTRIBUTION IN LAKEWOOD IS
לעילוי נשמת ר' מאיר בן ר' ישראל ז"ל