

# BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



Issue #748 | Vayikrah | April 4, 2025 | 6 Nissan 5785

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute



## BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

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

## VACUUM CLEANER

A week before Pesach, flyers were placed on all the cars on the block: "We clean your car for Pesach," with a phone number below.

"With erev Pesach on Shabbos, we can certainly use some help!" Mrs. Schwalb said to her husband. "Please see who placed the flyers."

Mr. Schwalb called the number. "Dani speaking," came the answer. "We clean your car."

"Who are you?" asked Mr. Schwalb.

"We are two *yeshivah bachurim* who clean cars for Pesach," Dani replied. "We have three years of experience and decided to go big this year..."

"Can you clean our car tomorrow afternoon?" Mr. Schwalb asked. "At 5 p.m."

"Sure," replied Dani. "I'll come with my vacuum and pail. Just give me your address and phone number."

Dani came over at 5 p.m. with his pail and rags. "No vacuum?" Mr. Schwalb asked. "How can you clean the car without a vacuum?! Do you want ours?"

"No, my partner will bring the vacuum shortly," Dani said. "I'll start meanwhile with a general cleaning."

Five minutes later, Dani knocked on the door. "My partner just notified me that he's delayed," he said. "Can I use your vacuum?"

"Sure," said Mr. Schwalb. He gave Dani his vacuum.

Dani vacuumed the seats and floor of the car. He then began washing the floor mats, before vacuuming the trunk.

While Dani was washing the floor mats, a branch fell from a tree and hit the vacuum cleaner, cracking it!

Dani apologetically brought the vacuum to Mr. Schwalb. "A branch fell and cracked the vacuum cleaner," he said. "I'll have to pay for the repair or replacement."

"It's not your fault," Mr. Schwalb soothed him. "It was *onesh*, uncontrollable circumstances, so you're not liable."

"But I borrowed your

### COMING SOON!

## Conduct every transaction in accordance with halacha



Visit our newly built website.

RIBBIS.BUSINESSHALACHA.COM

Autofill Iska templates for a wide range of transactions and scenarios.

Information on banks and lending firms

Answers to most Common Questions on Hilchos Ribbis

**A Ribbis Awareness Project**  
Of the



משרד ומתן כוונה מכון לחושן משפט

אנגלית עברית

**cross river**

Halacha Hotline 718.233.3845 | Email the Rav: ASK@BUSINESSHALACHA.COM | BUSINESSHALACHA.COM

## MOTHERLY LOAN

**Q: When my husband passed away, I was listed as the sole beneficiary of his substantial life insurance policy. Shortly**

**after I received the insurance payment, my only son needed a large sum of money to buy a house. I lent him the money, on condition that he repay me upon request.**

**Several years have passed, and I don't want to pressure him to repay me, because I don't need the money now. But I want my daughters to inherit some of that money when I pass on. Can I instruct, in my will, without my son's knowledge, that he must repay the loan to his sisters, or do I have to broach this subject with him even though it might be uncomfortable, especially if he is opposed to this arrangement?**

**A:** If you own enough assets that even without collecting this loan, you can allocate to your daughters whatever amount you intend to give them, and the amount you intend to leave for your son exceeds the loan amount, then you can simply write into your will that your son inherits such-and-such amount but that the loan amount is to be subtracted from his inheritance.

But if the loan makes up the lion's share of the inheritance, you will have to discuss the matter with him, explaining that if he does not want to repay the loan to you now, then he will have to commit to repaying the loan to his sisters according to the instructions in your will. If you do not secure this commitment from him, then even if you commit, with a proper *kinyan*, to have the money from the loan disbursed to your daughters, your son will still have the following valid halachic ways to evade repaying the loan.

The loan that you gave your son could have been one of two types of loans: (a) *milveh b'shtar* — a loan given with a proper loan contract, signed by witnesses, or (b) *milveh al peh* — a loan given without a contract (even if you received a signed document from your son, without signatures from witnesses).

If someone would like to sell or gift a loan contract, it must be done with "*kesivah umesirah*," which means that the actual contract must be transferred to the buyer, and the seller must also write to the buyer, "Acquire it

THE WERDIGER EDITION - לע"נ הרב"ח ר' נחמיה בן הרב"ח ר' שלמה אלימלך ז"ל - DEDICATED BY HIS SON R' SHLOME WERDIGER



### BEIS HORA'AH

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



### BUSINESS SERVICE DIVISION

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



### AWARENESS & EDUCATION

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



## CASE FILE

vacuum, so I am liable also for *oness*," Dani replied.

Mr. Schwalb furrowed his brow. "I'm not really sure that you borrowed our vacuum," he said. "You were cleaning our car."

Dani and Mr. Schwalb called Rabbi Dayan and asked:

### "Is Dani liable for the vacuum cleaner?"

"The *Gemara* (B.M. 80b) teaches that a craftsman who works on an item is considered a *shomer sachar* on it," replied Rabbi Dayan. "The classic case is that the craftsman works in his own premises (e.g., cleaners or mechanic)."

"When the craftsman works in the owner's premises, e.g., an appliance technician, *Shach* (306:1) considers him also a *shomer sachar* on the appliance, whereas *Sma* (306:1) considers him only a *shomer chinam*. According to the *Bach* and *Machane Ephraim* (*Shomrim* #41), he is not even a *shomer chinam* if the owner is present, since the owner continues to guard his appliance.

"This dispute would apply had damage or theft occurred to the car that Dani was cleaning.

"In our case, though, where Dani used a vacuum belonging to the owner and it was damaged, *Pischei Choshen* (*Pikadon* 1:3[6]) writes that if the initial agreement was that the worker use his own tools but the owner lent him his tools, instead, the worker is considered a borrower.

"However, if the initial agreement was that the worker use the owner's tools, the worker is not considered a borrower. Nonetheless, he is presumably considered a *shomer sachar*, since he works and earns his wages through these tools (see end of *Pischei Teshuvah* 306:1).

"Thus, since Dani initially stipulated to use his own vacuum, he is considered a borrower and liable. However, had Dani stipulated initially to use the Schwalb's vacuum, he would be only a *shomer sachar* and exempt from *oness* but would be liable for theft. Seemingly, even according to the *Machane Ephraim*, Dani would be a *shomer*, since he worked outside and Mr. Schwalb was not readily available to guard the vacuum.

"Had Dani asked Mr. Schwalb to use his vacuum when he first came before he began working, it is questionable whether to consider him a *shoel* or *shomer sachar*," concluded Rabbi Dayan. "Although the initial arrangement on phone was that Dani would use his own vacuum, a worker's verbal commitment is not binding until he begins working, and at that point he already arranged to use the Schwalb's vacuum."

**Verdict: If initially arranged that the worker use his own tools, but he used the owner's tools, instead, he is considered a borrower and liable even for *oness*; if initially agreed that he use the owner's tools, he is a *shomer sachar*.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS Pesach and Chametz

# 4

#### ***Bedikas Chametz — Rental***

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

### **We will be spending Pesach in an Airbnb rental apartment. Must we do *bedikas chametz* on the apartment?**

The primary obligation of *bedikas chametz* is at nightfall the evening (or, this year, nightfall of Thursday) before Pesach (O.C. 431:1, 444:1; *Mishnah Berurah* 431:1).

In a rental, the tenant is obligated if he has ready access to the premises. Thus, if the landlord gave the keys to the renter by the 13th of Nisan (this year, Thursday, 12th Nisan), the tenant is obligated in *bedikas chametz*. However, if the tenant does not take possession of the unit or did not receive the keys until late at night or the day of erev Pesach, the obligation to check the unit is on the landlord (O.C. 437:1; *Mishnah Berurah* 437:2-3).

Nonetheless, if the landlord did not check as required, you are required to do a *bedikah* when you arrive, to ensure that there is no *chametz* in the room (O.C. 435:1).

According to some *poskim*, the same is true regarding a hotel room. If you took the room before erev Pesach, you are obligated to do the *bedikah* at night. However, if you did not take the room until erev Pesach, the hotel is required to check (*Shevet Halevi* 10:68).

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



## BHI HOTLINE

and all the liens associated with it" (*Shulchan Aruch, Choshen Mishpat* 66:1&4).

In your case, even if you take the steps of *kesivah* and *mesirah* when transferring the loan document to your daughters, it would not suffice, because after you pass away, your son will inherit you as the sole heir. Included in his inheritance will be the rights to collect the loan from himself, which he may then forgive — even if that forgiveness will cause damage to the holders of the *shtar* (i.e., his sisters; *ibid.* 66:23).

[The original owner can forgive the debt because either the Torah doesn't validate the sale of a *shtar*, or the *shi'abud haguf* (personal liability on the borrower) remains with the seller and cannot be transferred (*Sma*, *ibid.* 55).]

If the loan was given without a *shtar*, then *Chazal* established that it can be sold only "*b'maamad shlashtan*," with all the relevant parties present. This means that if Reuven has money that belongs to or he owes to Shimon, and Shimon now wants that money to go to Levi, Shimon must tell Reuven, in Levi's presence, "Give the money you owe me to Levi" (*Shulchan Aruch* 126:1).

Now, according to these principles, it would seem that when your son and daughters are all in your presence, you can simply tell your son that he must give the money he owes you to your daughters whenever you tell him to do so.

There are several issues with that approach, however.

First, the *Rishonim* debate whether *maamad shlashtan* works if the borrower (or person safeguarding the money) does not want to transmit the money directly to the person he was told to pay it to (see *ibid.* 121:7 with *Shach* 28).

Second, the *poskim* debate whether someone who has transferred a loan owed to him to another person *b'maamad shlashtan* can still forgive the loan, just as we discussed in regard to the sale of a *shtar* (*ibid.* 66:29 with *Shach* 97 and 126:1 with *Shach* 10-11).

The *poskim* rule that the *muchzak* (possessor of the money) may claim *kim li* (see BHI# 473) that the forgiveness works. In your case, this means that after inheriting your estate, including the loan, your son may forgive the loan and your daughters will not be able to collect.

Therefore, you have no recourse other than to broach the subject and insist that your son commit to repaying the loan to your daughters after your *petirah*, and if he refuses to do so, you must insist he repay you now, and you can then structure your will halachically so that your daughters inherit a portion of that money.



PLACE YOUR LOGO HERE IT WILL BE SEEN BY 30,000 PEOPLE  
NL@BUSINESSHALACHA.COM  
(718) 233-3845 #201

**Neuhaus**  
CERTIFIED PUBLIC ACCOUNTANTS • ADVISORS  
732-886-5430

**Haas & Zaltz, LLP**

WILLS & TRUSTS | ELDER LAW  
SPECIAL NEEDS | PROBATE

845.425.3900

**Sensible**

**Car Rental**

718-633-2500  
reservations@sensiblecarrentalbiklyn.com