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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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Writer for the Business Halacha Institute



Ribbis Awareness Project

לע"נ הרב אהרן בן הרב גדליהו ע"ה

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DEFECTIVE DRESS

Mrs. Steiner had purchased a new dress for Yom Tov. "How about accessories to wear with the dress?" suggested the saleswoman. "The dress has a matching belt that is priced separately, and we have a large selection of hats or kerchiefs that you can choose from."

"I would be happy to get matching items," said Mrs. Steiner, "rather than trying to find something at home that can match."

She opted for the matching belt and chose a hat and shoes that complemented the dress nicely. When Mrs. Steiner returned home, she removed all the labels. On Yom Tov she wore the dress, with the matching items, but it did not seem to fit properly. She examined the dress after Yom Tov and saw that there was an imperfection in the fabric — clearly a defect in the manufacture.

Mrs. Steiner returned to the store. "I bought this dress before Yom Tov," she said, "but I noticed over Yom Tov that it is defective and there is an imperfection in the fabric."

The saleswoman looked at the dress. "You are right; the dress is defective," she said. "We don't have another dress of this kind, so we will grant you a refund."

"It's not just the dress," said Mrs. Steiner. "I purchased also a matching belt, a hat and shoes!"

"Was there a problem with them?" asked the saleswoman.

"No," replied Mrs. Steiner, "but I bought them to wear with the dress."

"You can always wear them with other dresses," said the saleswoman. "They were worn and cannot be returned unless defective."

"But I don't need them for other dresses," argued Mrs. Steiner.

"I'm willing to check with Rabbi Dayan," said the saleswoman. She called Rabbi Dayan and asked:

"Is Mrs. Steiner entitled to a refund also for the accessories?"

"Shulchan Aruch (C.M. 232:4)

RIBBIS IN HOME PURCHASES

We are excited to introduce our new ribbis awareness initiative, addressing various transactions that raise ribbis concerns. Over the next few weeks, we will

publish a series of articles that highlight ribbis issues that people might not be aware of, which could pose problems during the home purchasing process.

PART II

Submitted by the Bais Hora'ah

In the previous issue, we explained that before borrowing money, customers must investigate whether the lender is Jewish, and if he is, whether he has a proper **heter iska**.

If someone takes a mortgage from a bank and only afterward finds out that it has at least one Jewish owner, and there is no **heter iska**, there is no way to remedy the situation retroactively. He will likely have to refinance the loan by taking a loan from a non-Jewish lender to repay the first loan, which will usually cost a lot of money. It is therefore vital that borrowers find out long before the final stages of taking a mortgage whether the lender is Jewish, and whether there is a proper **heter iska** in place. Do not wait until the last minute, because that, too, can cause unnecessary financial loss, such as missing the closing deadline and potentially losing your down payment. Additionally, due to time pressure, you might be forced to use a less reliable **heter iska**.

We advise potential borrowers to review the information compiled by KFI Kosher, which has invested great effort into investigating this matter and has arranged with many large banks enhanced **heter iska** documents, with arbitration clauses.

What determines whether a bank is Jewish-owned?

The answer to this question is very complicated and depends on many factors, and each individual case may need to be posed to a Rav who is well-versed in the relevant **halachos**.

Before asking a Rav, a customer should try to gather the following information:

Is the company privately owned, or publicly owned?

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CASE FILE

rules that when merchandise is defective, the sale can be voided entirely,” replied Rabbi Dayan. “Even if the depreciation is small and the seller is willing to refund the differential, the buyer can return the item and claim that he wants an intact item.

“Based on this, *Shevus Yaakov* (3:169) rules that if a person bought a bundle of 50 cloths and two proved defective, the seller can insist that he return the entire bundle, since it was purchased as a single sale (*Pischei Teshuva* C.M. 232:2).

“The *Poskim*, however, point to the case of a person who sold land with palm trees, and it turned out that he did not have trees (B.B. 69b). *Rambam* seemingly rules that it is one sale, so the buyer can retract also from the land, whereas *Rashbam* seemingly rules that the two items are separate, so the sale of the land remains valid (C.M. and *Rema* 216:5; *Sma* 216:14; *Taz* 216:8).

“*Nesivos* (182:8/15) addresses at length when a sale of several items together can be upheld partially. Among other distinctions, he writes that if each item was priced separately, they are considered two separate sales and one does not affect the other.

“*Mishpat Shalom* (182:8) also addresses this and concludes that whether the sale can be upheld partially depends on whether the items are independent or inherently connected, and certainly if one is primary vis-à-vis the other. [Even he seemingly agrees that if the items are priced separately, they are two sales, unless evident that a person would not buy one item without the other.]

“*Aruch Hashulchan* (232:9) also rules that if a person bought several items and one is defective, if the items do not require each other, nor does the customer need them all, or he can readily replace the defective one — the sale of the other items remains valid. [He does not explicitly differentiate between a single price and separate pricing.]

“Nonetheless, *Pischei Choshen* (*Ona'ah* 13:10[14]) concludes that if items are from a set, such as a set of *sefarim* and one piece is damaged, the buyer can void the entire sale, unless the seller can replace that particular piece.

“Thus,” concluded Rabbi Dayan, “whether the accessories that are priced separately can also be returned depends on how much they are specific to the dress.”

Verdict: When several item are purchased together and one proves defective, if they are priced separately, each item is generally considered a separate sale, unless evident that the items would not be bought without each other.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Shabbos and Yom Tov

#1

Source of Prohibition

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

Q: I work doing home visiting and counseling for the elderly for Medicaid. Because there is no actual *melachah* involved, may I work as usual on Shabbos and Yom Tov? Why?

A: *Rambam* (Hil. Shabbos 23:12-13) writes that *Chazal* prohibited business transactions on Shabbos, even if they do not entail *melachah* — such as a verbal hiring agreement — lest the parties come to write on Shabbos. The prohibition is on both the seller and buyer so that even if one party is gentile, it is still prohibited (O.C. 306:3; *Mishnah Berurah* 306:33, 323:1).

Moreover, Yom Tov is referred to in the Torah as “*Shabbaton*,” a day of rest. *Sifra* derives from this to prohibit even what are generally Rabbinically forbidden activities. *Ramban* (*Vayikra* 23:24) and other commentators understand from this that to conduct “business as usual,” even without performing *melachah*, is prohibited *mid'Oraysa* as violating this requirement that Shabbos and Yom Tov be days of rest (*Chasam Sofer* C.M. #195).

Thus, *Ha'amek She'eilah* (42:10) suggests that hiring workers on Shabbos itself could entail a Biblical violation, but the opinion of Rav Akiva Eiger that it is prohibited only *mid'Rabbanan*.

Therefore, although your work does not entail actual *melachah*, it is prohibited to work on Shabbos and Yom Tov, certainly in a regular manner.

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

If there are Jewish partners in the lending institution, do the Jewish partners have enough of a stake to influence management decisions?

The answers to these questions will provide the Rav with the background information he needs in order to rule whether there is a need for a *heter iska* (see *Shu"t Igros Moshe*, *Even Ha'ezer* 1:7; *Bris Yehuda* 30 note 43; *Mishnas Ribbis* 2, note 10).

What is the status of a credit union in *hilchos ribbis*?

A credit union differs from a traditional bank in that it is owned by all the members of the union, who are considered equal partners regardless of how much they invest; those who place a million dollars in the credit union are on par with those who invest \$10. Some *poskim* rule, therefore, that if even one member of the union is Jewish, he is considered enough of a partner to create a *ribbis* issue that must be addressed.

In the past, the European banking system was similar to the system of credit unions, and the *poskim* struggled to find leniencies to permit borrowing from such a lending institution, based on the combination of several *sevaros* (logical arguments).

Many *poskim* rule, however, that because nowadays loans can be taken from financial institutions owned by non-Jews or from those with a *heter iska*, one should not rely on those leniencies. If there is a great need for a loan from a credit union, one should consult a Rav.

Co-borrowers

Often, a person who wants to take out a mortgage does not have enough credit history or income, and the bank is willing to lend them money only if someone cosigns the loan, with the cosigner listed as a borrower. Some *poskim* view this as though the cosigner is taking a loan from the bank and then lending it to the (actual) borrower with *ribbis* (*Mishnas Ribbis* 18:14), which is categorically forbidden.

It is likely, however, that the cosigner's status is not that of a borrower but of an *areiv kablán* (guarantor who agrees that the lender may demand payment from him without going to the borrower first). The only reason the bank categorizes him as a borrower is so they will be able to force him to pay as an *areiv kablán* and not a regular *areiv* (guarantor who may be approached for payment only if the borrower defaults).

But even if the cosigner is an *areiv kablán*, there could still be a *ribbis* issue, because many *poskim* rule that although a Jew may serve as a regular *areiv* for a loan taken from a non-Jew, he may not serve as an *areiv kablán* on a loan (*Shulchan Aruch*, *Yoreh Dei'ah* 170:1, *Chavas Daas* ibid. 1; *Shulchan Aruch Ha'Rav*, *Hilchos Ribbis* 64).

It is possible to remedy this issue by setting up a proper *heter iska*.



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