

# 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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## BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

Submitted by the Beis Hora'ah

## AM K'LAVI – A NATION LIKE A LION

with his coworker, Dovid.

"You're right to *daven* before you travel," Dovid said. "I also used to do that, but I was constantly late to work. Now I leave early and *daven Shacharis* at the new *minyan* we started near the office. We have a *sefer Torah*, and it starts at 8:10 sharp — 8:00 when there's *leining*."

Eliyahu hesitated. "But isn't it a problem to travel or eat before *davening*?"

"It's not ideal, but I'm not going on a pleasure trip," Dovid replied. "I'm just commuting to work; I don't eat anything until after *davening*."

The next morning, Eliyahu tried Dovid's approach. He left the house at 7:10 and arrived at work with time to spare — and a calm mind. The new *minyan* had about 20 men, most of them employees from nearby offices.

Still, Eliyahu felt a nagging doubt.

That evening, he saw Rabbi Dayan in the *beis midrash* where he learned. Eliyahu approached him.

"I understand that *halachah* frowns on engaging in personal needs before *Shacharis*, including travel," Eliyahu said. "But I have a choice between *davening* at home and then fighting traffic, often getting late to work, or joining a *minyan* near work and avoiding traffic."

Rabbi Dayan listened attentively. Eliyahu asked:

**"Can I drive to work and *daven Shacharis* there?"**

"Upon waking, a person should first turn his attention to service of Hashem," replied Rabbi Dayan.

"Bilaam blessed *Am Yisrael* and compared them to a lion: '*Am k'lavi yakum* — A nation that will rise like a lion' (*Bamidbar* 23:24). The simple meaning of the verse refers to Israel's Divinely guided military success, like a lion that rises with mighty grandeur to vanquish its enemies, particularly in the conquest of the Land of Israel (*Onkelos, Ramban*).

*Rashi*, following the *Midrash*, applies this verse to the Jewish people's daily way of life. They rise from their bed with alacrity to snatch *mitzvos* — *tzitzis*, *tefillin* and *krias Shema*—and then go on to their business endeavors.

*Shulchan Aruch* (O.C. 1:1) also opens with the directive: "One should be mighty like a lion to get up in the morning for the service of his Creator..."

The *Gemara* (*Brachos* 14a) teaches that a person may not tend to his personal matters — other than for purposes of a *mitzvah*, or small household tasks, such as making the bed, dumping the garbage, etc. — before *davening*. This includes travel, even if the person will be able to daven with a *minyan* when he reaches his destination (O.C. 89:3; *Mishnah Berurah* 89:20 *Piskei Teshuvos* 89:15).

*Rema* (*ad. loc.*) cites from *Terumas Hadeshen* (#18) that some are lenient after reciting *Birchos Hashachar* but concludes that one should avoid this leniency (see *Aruch Hashulchan* 89:21).

Nonetheless, the *poskim* write that *bishe'as hadchak*, such as if a person cannot delay his trip and

**FIRST RIGHTS** Q. I bought a property, and the seller agreed to accept payment in installments. Now a neighbor came and said that as a "bar metzra," he has a right to buy the house before me, and he wants to take my place in making the installment payments. My question is: Does he qualify as a bar metzra at this point, now that the purchase was already made? And if he does, am I entitled to demand that he pay me in one lump sum? I would benefit from that arrangement, because I can then use that money until I make each payment to the seller.

A. *Chazal* established that when someone sells a property, his neighbors have the first rights to buy the property. This falls under the rubric of "*vasisa hayashar v'hatov* — you shall do what is just and good," which obligates a person to act *lifnim mishuras hadin* (beyond the letter of the law), because an outsider can buy a field elsewhere just as well, but a neighbor benefits from being able to conjoin the two properties. *Chazal* established that even if someone else already bought the field, the neighbor may seize it, as long as he reimburses the buyer for his purchase price. *Chazal* viewed the buyer as an agent of the neighbor, so that the purchase he made was actually on behalf of the neighbor to begin with. Even if the seller did not want to sell his property to his neighbor, the neighbor may still demand that the buyer sell it to him (*Shulchan Aruch, Choshen Mishpat* 175:5-6).

The full *halachos* of *bar metzra*, which include many instances in which a neighbor does not have the right to seize the property, are beyond the scope of this column; we will focus only on whether it applies when a buyer is paying in installments.

The *halachah* of *bar metzra* does not apply if the seller stands to lose money, or even have his profits diminished, by selling to his neighbor. Therefore, if the seller prefers the buyer's payment terms over those of the neighbor — for instance, if the buyer already has approval for a mortgage, and the neighbor will have to wait for approval — then the neighbor is not entitled to seize the property (*ibid.* 23).

Therefore, if the seller agreed to wait for the buyer to pay in installments, the *halachah* of *bar metzra* might

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## CASE FILE

needs to catch a certain train, bus, or plane — he may set out before *davening*, even if the sun already rose (*M.B.* 89:3).

Moreover, *Shevet Halevi* (8:18) writes — regarding a person who had to travel from Gush Katif to Yerushalayim — that if a person encounters significant traffic delays when he leaves after davening with a *minyan*, in cases of need he may recite *brachos* and travel to his workplace, and *daven* there with a *minyan*.

Perhaps we can add the rationale offered by *Aruch Hashulchan* (O.C. 90:20), that earning a livelihood to sustain one's family is also considered a purpose of *mitzvah*.

"Thus, if you can daven at an earlier *minyan* (ideally, after daybreak) or if the traffic delay is not significant, you should *daven* before traveling," concluded Rabbi Dayan. "However, if it is not realistic to daven earlier and the discrepancy is great — you can travel after reciting *brachos* and *daven* near work."

**Verdict: A person should rise mightily like a lion to serve Hashem and should not tend to his personal matters, including travel, before davening. In cases of need, a person may travel or tend to other matters after reciting *Birchos Hashachar*.**



## MONEY MATTERS

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Shabbos and Yom Tov

#10

*Washing Dishes*

Based on writings of Harav Chaim Kohn, shlita

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

#### Q. May a non-Jewish maid wash dishes on Shabbos with hot water? With a dishwasher?

**A.** Although household help may not do prohibited *melachah*, work that does not inherently entail *melachah* but the non-Jew chooses to do it with *melachah* for her convenience — is permissible. Therefore, you may tell the maid to wash the dishes, because they can be washed with cold water and soap. Even if she uses hot water for her own comfort and convenience it is permissible (*Teshuvos v'Hanhagos* 2:191; see, however, *Shemiras Shabbos K'hilchasah* 31:[32]).

Furthermore, even though cold water will flow into the hot water tank and be heated — since the maid does not intend to heat the incoming water, *psik reishai* (an inevitable outcome) is permitted regarding a non-Jew (*Mishnah Berurah* 253:99-100; *Shemiras Shabbos Kehilchasah* 31:1[1]).

Nonetheless, *Shemiras Shabbos K'hilchasah* (31:10) prohibits her use of a dishwasher that causes noticeable noise, because this detracts from the Shabbos environment (*avsha milsa*) (*Rema* 252:5). Many modern dishwashers are quiet, though, and would not be prohibited for this reason.

Even if the dishwasher is quiet, you may not instruct the maid to use it. If she does so of her own initiative it is questionable. In case of need or loss there is room to be lenient (see *Mishnah Berurah* 244:30; R' Akiva Eiger on *Magen Avraham* 307:20).

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not apply. In such cases, the seller may claim that he trusts the buyer, but not his neighbor, to pay him according to the agreed-upon schedule. If the neighbor is willing to pay upfront, however, then he may seize the property (*ibid.* 8, with *Sma* 13).

Even if the neighbor is willing to put down enough collateral to enforce his timely payment, the seller may still claim that he trusts the outside buyer, even without collateral, over his neighbor, because collecting on collateral takes time and effort, and the seller must also safeguard the collateral (*Shu"t Chavos Ya'ir* 87, cited in *Pis'chei Teshuvah* 175:4; *Paamonei Zahav* deliberates whether a reliable guarantor is considered better than collateral [because it is easier to collect from him]; cf. *Kesef Hakodashim*).

If the seller does not care who buys the property, then the neighbor has the right to seize it (see *Kesef Hakodashim*; *Mishpat Shalom*, *Mishmeres Shalom* 8; *Erech Shai* 175:36 at what point the seller revealed his intent).

Some *poskim* say that if the neighbor is known to be financially established, reliable and easier to deal with than the buyer, then he is definitely entitled to take over the installments (*Bach* *ibid.* 13), but others say that he isn't (*Shu"t Maharam Ziskind* 2, cited in *Mishpat Shalom* 8, who compares it to the case of a *shomer* [guardian], who may not give an object deposited with him for safekeeping to another *shomer*, even if the second one is more reliable).

Now, in cases in which the neighbor is entitled to seize the property and must pay the buyer for it, if the seller wouldn't sell to other buyers in installments and it is only this buyer that he wanted to benefit, then the buyer can demand that the neighbor pay him the full purchase price upfront, even as the buyer continues to pay in installments. The buyer will retain the benefit of having the money for an extended period of time, even though the actual property goes to the neighbor. But what if the seller is willing to accept payment directly from the neighbor in the same installment plan he offered the buyer? Because *Chazal* deem the buyer an agent of the neighbor to buy the property, the buyer may not claim that he was already given time to pay the remainder of the purchase price, and that the neighbor should therefore pay him the full amount upfront and he will repay the seller (*Shu"t Ra'anach* 125).



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