

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Kashrus and the Caterer

A week after celebrating his son's bar mitzvah, Mr. Siegel heard that his caterer's kashrus certification had been revoked. He contacted the local vaad hakashrus and found out, to his great dismay, that nonkosher meat might have been served at his son's affair!

Mr. Siegel immediately called the caterer. "I heard that your kashrus certification was revoked," he said. "I understand that it may relate to nonkosher meat served at our bar mitzvah."

"There were such allegations, which we deny," said the caterer. "We are working toward resolving the issue with the vaad hakashrus and having our certification restored."

However, two weeks later, Mr. Siegel received confirmation that nonkosher meat had been served at his son's bar mitzvah. The caterer's kashrus certification would not be restored.

Mr. Siegel called the caterer back.

"The vaad hakashrus has confirmed that nonkosher meat was served at our bar mitzvah," he said. "We demand a refund of the catering cost and compensation for the anguish you caused us."

"The bar mitzvah is already a past issue," replied the caterer. "You were served the menu that you ordered, and I don't see any reason to refund the money."

"We absolutely did not get the food that we ordered!" responded Mr. Siegel forcefully. "Nonkosher food is worth much less than kosher food. Anyway, that's not the issue; we absolutely will not pay for a nonkosher affair. The whole booking was a mistake, a mekach ta'us (mistaken transaction)."

"Whether it was a mistake or not, you cannot return the food to me," said the caterer. "You ate it all and benefited from it. At most,

we are willing to refund the difference in cost between the kosher and nonkosher meat."

"That will not do," said Mr. Siegel. "If you are not willing to refund the full amount, I will summon you to a din Torah."

A week later, the caterer received a summons to Rabbi Dayan's beis din.

"Nonkosher meat was served at our son's bar mitzvah," Mr. Siegel claimed. "We demand reimbursement for the event."

"The food was eaten and enjoyed," replied the caterer. "Why should I return the money?" "Serving nonkosher food is a grave sin," replied Rabbi Dayan. "Whether the seller must reimburse the customer for food that was already eaten depends on the severity of the prohibition."

"What do you mean by that?" asked the caterer.

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## Payment Partners

*Submitted by A. B. H.*

I share a two-room flat with my upstairs neighbor. We hired a contractor for some renovation, and both of us signed the contract with him.

When the work was completed, the contractor called my neighbor, who paid the entire bill without asking me. My neighbor then contacted me and asked me to reimburse him for half of the bill. I have a rela-

tionship with the contractor and was planning to negotiate a deal with him to lower my portion of the bill.

**Q: Can I refuse to reimburse my neighbor for the full share?**

**A:** Shulchan Aruch (C.M. 77:1) rules that if two people borrow money, purchase something, or hire a worker, each party is obligated to pay half of the cost and is an arev

(guarantor) for the other half of the bill.

There are two categories of guarantors: the standard arev and the arev kaban. One difference between a standard arev and the arev kaban is that a creditor may not collect from a standard arev unless he demonstrates to beis din that he first attempted to collect from the borrower and was unsuccessful.

In contrast, the creditor may seek to collect from an arev kaban without even at-

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"If the food was nonkosher because of a Biblical prohibition - e.g. certain treifos, improper slaughtering, or meat and milk cooked together - then the seller must refund the full amount of the money, even if the food was already eaten," said Rabbi Dayan. "If the prohibition was Rabbinic - e.g. certain other treifos, cooking by non-Jews, or cooking chicken with milk - the seller does not have to reimburse the customer for what he already ate (C.M. 234:3-4). There are, however, kosher fraud laws that allow penalties and legal (civil) remedies for kashrus violation." "What difference does it make if the prohibition is Biblical or Rabbinic?" asked Mr. Siegel. "Either way, it's not kosher!" "There are two reasons for this distinction," answered Rabbi Dayan. "First, on account of the greater severity of a Biblical prohibition we penalize the seller for having caused the buyer to sin. Second, even though the buyer ate the food accidentally, if it entailed a Biblical prohibi-

tion, we don't consider him as having benefited from the food, but rather assume he was repulsed by the realization of what he ate (Sm"a 234:4)."

"What about compensation for the embarrassment the caterer caused us?" asked Mr. Siegel.

"The Gemara (B.B. 93b) mentions a practice in Yerushalayim that a caterer who ruined a meal paid the owner for his embarrassment," replied Rabbi Dayan. "The Tur (O.C. 170) cites this gemara, but it is not recorded by other authorities and is not accepted as the halacha (Pischei Choshen, Nezikin 11: [50])."

"What if the food had not yet been eaten?" asked Mr. Siegel. "Could the customer return it?"

"Nonkosher food that was sold as kosher is considered defective merchandise and can be returned," replied Rabbi Dayan. "This is true regardless of whether the prohibition is Biblical, Rabbinic, or even on account of a widely accepted minhag (practice) or stringency (C.M. 232:11-12)."

tempting to collect from the borrower.

Regarding partners, there are conflicting opinions concerning their status. In other words, can the creditor collect the full amount of money from one of the partners without even contacting the second partner (arev kablan) or not?

Shulchan Aruch (ibid.) rules that partners are standard arevim for one another and the creditor cannot collect the full amount from one partner without first attempting to collect the second half from the second partner.

In addition, if the standard arev pays the debt without being instructed to do so by the borrower or beis din,

there are conflicting opinions whether he will be able to recover his money (C.M. 130:2). Accordingly, it would seem that your neighbor cannot force you to reimburse him (Shach 77:5).

However, Nesivos Hamishpat (77:3) cites authorities who maintain that in a circumstance in which it is common for partners to pay for one another, one is obligated to reimburse the partner who paid the entire bill. This is similar to a borrower who instructed his guarantor to pay his debt. Consequently, since it is common for one neighbor to pay the bill and to be reimbursed by his partner, you are indeed obligated to pay him for your share of the bill.

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## Shomrim: Guardians #10

**Q: What payment is required to render a guardian a shomer sachar (paid guardian)?**

**A:** Any monetary benefit the guardian receives in return for guarding an item renders him a shomer sachar. Therefore, if he received even as little as a prutah (a few cents), he is considered a shomer sachar (Shach 303:1).

Furthermore, even if the guardian received no actual payment but will be repaid in kind - e.g. "You watch for me today and I'll watch for you tomorrow" - he is considered a shomer sachar. Therefore, a group of friends or mothers who take turns watching for each other are all considered shomrei sachar (C.M. 305:6).

Similarly, any favor that is agreed upon in return for watching - even lending the

guardian an item or picking up something for him - is considered payment that renders him a shomer sachar (Aruch Hashulchan 303:3).

If a person was paid to watch for a certain number of days, but the item remained with him afterward, he is considered a shomer sachar for the days for which he was paid and a shomer chinam for the days afterward (304:6).

## MONEY MATTERS

## IMPORTANT NOTICE

Beginning June 30th [Parshas Korach] and continuing for 7 weeks thereafter, we will **not be distributing** *Business Weekly* in Flatbush.

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