



# Business weekly

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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל  
by his son, R' Shlomo Werdiger

## STORYLINE

### the pizza predicament

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

The Pfeifer family had finally finished putting away their Pesach dishes. "Thanks for all the help," Mrs. Pfeifer said to her family.

"How about ordering pizza as a treat?" suggested the children.

"I think you deserve it," said Mrs. Pfeifer. She turned to her husband. "Pinchas, could you please call the pizza store and ask them to deliver two pizzas?"

Mr. Pfeifer dialed the pizza store. "I'd like to order two pies with olive topping," he said. "When would you like it?" asked the man in the pizza store.

"In fifteen minutes," said Mr. Pfeifer.

"You'll come pick it up?" asked the man.

"No, I'd like it delivered," said Mr. Pfeifer. "I don't have a car available."

"Give me your address and phone number," said the man.

Mr. Pfeifer gave his information.

"We are extremely busy now," said the man, "so I can't promise delivery. I'll send it if a delivery boy becomes available."

"How will I know?" Mr. Pfeifer began to say, but the man had already hung up.

"Abba, will they bring the pizza?" asked the children.

"I'm not sure," replied Mr. Pfeifer. "They couldn't promise delivery; they'll send it if someone becomes available."

Fifteen minutes later, Mrs. Pfeifer turned to her husband. "Pinchas, the kids need to eat. We can't wait half an hour to find out that they can't deliver, and then order from elsewhere," she said.

Mr. Pfeifer tried calling the store, but the line was busy. After a few more unsuccessful tries, he exclaimed, "It's a wonder I got through the first time. All I get now is busy, busy, busy..."

After half an hour, Mrs. Pfeifer said, "This is ridiculous. We still don't know if they will be able to deliver the pizza. Try one more time, and if they don't answer, we'll have to order from the other store."

Mr. Pfeifer tried again, but the phone was still busy. "That's it," Mrs. Pfeifer declared. "We can't wait any longer. Please call the other store."

Mr. Pfeifer called the other pizza shop. "I'd like pizza delivered," he said. "Can you bring it in ten minutes?"

"Sure," said the man. "What would you like to order?"

"Two pizzas with olive topping," Mr. Pfeifer said. He gave his address.

Ten minutes later, one of the kids called out excitedly, "The pizza scooter's here!"

The doorbell rang. Mr. Pfeifer went to the door and saw the delivery boy from the first

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## FROM THE BHI HOTLINE

Submitted by  
M. M. N.

### check point

I am a general contractor. I recently bought \$5,000 of supplies from a plumbing supplier and paid with a certified check. This week, he called to tell me that after he'd endorsed the check, he had misplaced it. He asked me to issue him another check. I told him my concern: someone might find that first check and cash it. He said that he would sign a document that states that if the lost check is ever deposited, he will repay me, so I will not have to suffer a

loss as a result of his loss of my original check. Despite his assurance, I'm nervous.

**Q: Am I obligated to write another check?**

**A:** Shulchan Aruch (C. M. 54:2) teaches that if a lender loses his loan document, the borrower may not refuse to repay the loan out of concern that the lender may later find the loan document and demand to collect a sec-

ond time. Instead, the lender must write a receipt that the loan was repaid and the borrower must keep the receipt (shovar).

Later authorities disagree about the application of that case to one that is similar to ours. Their argument discusses a document called a "mamrani". A mamrani was essentially a document that a borrower would provide to a lender at the time of the loan for security and could be redeemed by any bearer of

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## STORYLINE CONTINUED

pizza store! "Sorry for the delay," said the delivery boy. "We've been extremely busy."

Mr. Pfeifer stood there dumbfounded, deliberating what to do. Meanwhile a second scooter arrived. "Here's your pizza order," said the second delivery boy, eyeing the first scooter with suspicion.

"Hold on a second," said Mr. Pfeifer. "I'm going to get money." He entered the house, whipped out his cell phone, and called Rabbi Tzedek. He quickly explained what had happened and asked, "Do I buy the first pizzas, the second pizzas, or do I have to take all?"

Rabbi Tzedek ruled: "You are not required to accept the pizza from the first store, even if it was a special order."

After Mr. Pfeifer dealt with the delivery boys, Rabbi Tzedek explained, "If a person places an order to make pizza and then buys from elsewhere, he is obligated to cover the store's loss if they cannot sell the pizza to another customer. If they can sell it to another customer, he is not legally obligated (Choshen

Mishpat 333:8). Nonetheless, there is a moral obligation not to cancel an order unnecessarily (C. M. 204:7).

"However, all this applies when the order is concluded. A person is under no moral obligation to honor an agreement to purchase if the price hasn't been settled yet (C.M. 204:6). Presumably, this applies also if other terms of the sale haven't been finalized (Pischei Choshen, Kinyanim 1:2).

"In this case, you explicitly stated that you could not pick up the pizza; you placed the order on condition that it would be delivered. Since the pizza store could not commit to delivering it, the order is not considered to be concluded. The store should have called to notify you that they could deliver the pizza and to confirm the order.

"Furthermore, even had the store committed to deliver the pizza from the beginning, if the delivery was delayed significantly, you are entitled to order from elsewhere and cancel the first order [see Pischei Choshen, Sechirus 10(5)]."

## FROM THE BHI HOTLINE CONTINUED

the document. If the mamrani became lost and could not be traced, the Poskim disagree whether a written assurance from the lender to the borrower that he will indemnify the borrower from any losses obligates the borrower to pay the money that he owes. Teshuvos Tzemach Tzedek (10) equates this written assurance with the receipt mentioned in Shulchan Aruch and rules that the borrower must repay the loan. Nesivos HaMishpat (50:5), however, contends that an assurance is not comparable to a receipt, and the borrower may argue that the lender lacks credibility. Furthermore, he asserts (54:1) that by delivering a loan document payable to the bearer, the borrower obligated himself to repay the loan to the bearer only. As such, unless the lender produces the mamrani document, the borrower is not obligated to repay the loan. However, others (see Pischei

Teshuva 54:1) disagree with Nesivos HaMishpat and assert that the concern of the borrower - that someone else may produce the mamrani and demand payment - does not exempt him of his obligation to repay his debt. Although Bais Yitzchok (C. M. 14) disagrees with Nesivos HaMishpat, he notes that the borrower, who is presently in possession of the disputed money, can assert that halacha follows Nesivos HaMishpat's position, and he cannot be forced to pay if he is concerned that it would expose him to financial risk.

In summary, since there is the possibility that you would suffer a financial loss by issuing a new check, you are not obligated to replace the lost check. If, however, enough time passes to ensure that the lost check could no longer be cashed, you are obligated to pay the supplier, since you would no longer be at risk of potential loss at that point.

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## MONEY MATTERS

### payment of wages week #11

**Q: We returned home at 11:00 pm and owe the babysitter \$30. If we don't have enough cash, may we pay her later in the week?**

**A:** Since the job finished during the night, payment is due then. Thus, there is a mitzvah to pay the babysitter that night and a prohibition to withhold payment to the next day against her will (C. M. 339:4). However, one only violates the prohibition if the employee asks for

her wages. Therefore, if the babysitter is fully willing to receive payment afterwards, there is no violation. (Nonetheless, if you do pay that night you fulfill a mitzvah.) You should be careful, though, not to delay payment unnecessarily the following days, but to pay as soon as possible (C.M. 339:8-10).

If she wants payment that night, but is embarrassed or unable to ask, the Chofetz Chaim maintains that you may not delay payment

(Ahavas Chesed, ch. 9 nt. 29,32).

Although a person does not violate if he does not have money available, if the babysitter wants payment that night and you are able to get money from an ATM, you are required to do so, even if inconvenient. If you have a \$50 bill, you are required to give it to her and let her give you change when she can. Alternatively, you can write her a check, and, if she wants, let her return it when you have cash.

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