

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #204 / PARSHAS ACHAREI  
FRIDAY, APRIL 11, 2014  
11 NISAN 5774

THIS EDITION OF THE BUSINESS WEEKLY IS DEDICATED  
BY R' SHLOME WERDIGER IN MEMORY  
OF HIS FATHER  
הרה"ח ר' נחמיה  
ב"ר שלמה אלימלך ז"ל

## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Use with Care

Mr. and Mrs. Horowitz were celebrating the Shabbos sheva brachos of their daughter Avital. On Friday, with all the hustle and bustle, they were in and out of the house making the final arrangements. Their neighbor Mrs. Kasner came by holding a cake in an expensive glass serving dish.

Ten-year-old Netanel answered the door.

"Are your parents home?" Mrs. Kasner asked.

"No, they're out," replied Netanel. "They'll be back in an hour."

"Well, I brought over a cake for the simchah," Mrs. Kasner said. She came in and put the cake down on the counter. "Please tell your mother I'd like the serving dish back after Shabbos."

When Mrs. Horowitz returned, she saw the cake. "Who brought this?" she asked.

"It's from Mrs. Kasner," said Netanel. "She wants the dish back after Shabbos."

On Shabbos afternoon, Mrs. Horowitz was preparing the seudah shelishis. She carried the cake, in its serving plate, from the kitchen to the dining room. On the way, a young nephew accidentally ran into her and knocked the plate from her hand. The glass dish fell and smashed. Some people shouted, "Mazel tov!" but Mrs. Horowitz burst into tears. "It was Mrs. Kasner's dish," she said. "What will I tell her?"

"We'll have to try to get another one," said her husband. "Don't let it ruin the simchah." After Shabbos, Mrs. Horowitz notified Mrs. Kasner about the dish and asked where they might be able to find a similar one.

Meanwhile, Mr. Horowitz was wondering whether they were just being neighborly or were legally liable for the dish. "After all," he

reasoned, "we never asked to borrow the dish! Mrs. Kasner left it of her own accord. We never accepted responsibility for it, and it wasn't my wife's fault that it broke."

Mr. Horowitz called Rabbi Dayan. "Our neighbor Mrs. Kasner left us a cake in a glass serving dish without our asking, and the dish broke. Are we legally liable for it as a borrower?" Mr. Horowitz asked.

"In general, a guardian has to accept responsibility for the entrusted item in order to be held liable," replied Rabbi Dayan. "Many authorities also require that he make an appropriate kinyan (act of acquisition) — such as picking up the entrusted item" (C.M. 291:2, 5).

"Does this apply also to a sho'el (borrower)?" asked Mr. Horowitz.

"According to some authorities, the rule of a sho'el is more stringent," answered

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## Chametz Found on Pesach

**Q: Last year someone discovered chametz in his house on Pesach. He asked whether he should put it away with the rest of the chametz that he sold to the gentile so the gentile would acquire it, or must he destroy it?**

**A:** The method of acquisition that you describe is called kinyan chatzer and involves one's property acquiring possessions on his behalf. There is a debate regarding the efficacy of a kinyan chatzer for a gentile.

The mechanism of this proprietary act is that one's property works as his agent and the halachic principle of agency does not exist for a gentile (see Ketzos 194:3 and Nesivos, introduction to 200). In this circumstance, when one discovers chametz after it is prohibited, it is not possible to sell it, and declaring it ownerless or throwing it in the trash would not be effective. The chametz must be destroyed (O.C. 446:1), and preferably it should be burned (M.B. 445:6).

The truth is, however, that nowadays, even though the chametz was not placed where the chametz that was sold to the gentile is stored, it was, nevertheless, sold, and belongs to the gentile. The reason is that the contract that one signs to sell his chametz to the gentile includes even chametz that is not stored in the designated area. Therefore, the chametz that is found should be placed where the rest of the sold chametz is stored (since it is prohibited to leave the chametz

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Rabbi Dayan. "The Nesivos (340:8) maintains that a sho'el who asked to borrow an item becomes liable through usage alone — even without a kinyan, and even in the presence of the owner — such as if he borrowed a bench to sit on in the owner's property."

"What about a case in which the person never accepted responsibility for the item?" asked Mr. Horowitz. "Mrs. Kasner simply left the glass dish in our house; we didn't ask to borrow it."

"A person who knowingly uses something, even without explicit acceptance of responsibility, is considered a sho'el," answered Rabbi Dayan. "A similar case is addressed by Harav Moshe ben Yosef Trani. There was a bride who lacked sufficient jewelry. A neighbor, at her own initiative, fastened around the bride's neck an expensive gold necklace,

which was later lost. The Mabit was asked whether the bride was liable for the necklace as a borrower. He ruled that she is considered a sho'el. Since she knowingly used the necklace, she accepted responsibility for it" (see Responsa Mabit 1:241; Machaneh Ephraim, Hil. Sho'el #5; Rema 346:17).

"Does this mean that even a guest in someone's house is considered a sho'el of the host's items?" asked Mr. Horowitz.

"Some do suggest that a guest may be considered a sho'el of the chair that he sits on, dishes that he eats from, etc.," replied Rabbi Dayan. "Others reject this idea. They maintain that permission to use an item with no expectation to be responsible for it does not generate liability" (see Pischei Choshen, Pikadon 9:[69]; Pituchei Mishpat, 11d, p. 178).

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in an area not rented to the gentile out of concern that one will inadvertently eat it — O.C. 440:2). On Yom Tov, when chametz is muktzeh, it should be pushed into that area in an unusual manner.

Moreover there are authorities (Mikra'ei Kodesh, Pesach 1:74) who write that nowadays when people sell all of their chametz it is prohibited to take the forgotten chametz to burn it. The reason is that if one were to physically take the chametz to burn it he would actively violate the prohibition against owning chametz, because he thus becomes a thief and is responsible to return the chametz to the gentile who purchased it (see Magen Avraham 586:5, which states that one who steals chametz from a gentile is responsible for it and it is considered his chametz by virtue of that responsibility). Although his intent is not to steal in order to assume ownership, nevertheless, even taking another's possession

with the intent to destroy it is categorized as theft (B.K. 98a). Others contend that although it would seem that one may not destroy the chametz, since it belongs to the gentile, he is permitted to burn it. Although the sale of the chametz is certainly valid and binding and one may not cancel that sale, nevertheless the gentile's intent when purchasing the chametz is to assist the Jews who plan to repurchase it. Whatever money the gentile spent to purchase the chametz will be refunded after Pesach when he resells it to the Jews; if a piece of chametz is burned, it will not affect that sale. Since the gentile is not particular whether a piece is burned or not, it is not considered theft for a Jew who finds it to take it to burn. Therefore, according to this opinion, someone who does not want to rely on the sale of chametz for actual chametz may burn chametz that he finds on Pesach (Shevet Halevi 9:116; Kisei Mishpat 187).

## Lost and Found Conclusion

This article concludes the Hashavas Aveidah series. We would like to dedicate it to a brief summary of the essential halachos discussed.

When a person finds an aveidah with a siman in a mostly Jewish area, there is a mitzvah to return it (C.M. 259:1-2).

The siman can be an identifying feature, precise location or quantity (C.M. 262:3).

The aveidah should be publicized in public

locations, such as a shul, bulletin board, and community e-mail (C.M. 267:3).

If no one claims the aveidah, after a reasonable time the finder can record details of the item and its approximate value and then use or sell the item, provided that the item is a standard, replaceable one (Igros Moshe, C.M. 2:45d).

It is recommended that public places (shuls, yeshivos, stores, etc.) post a sign

stating that items left beyond a certain time will become hefker and disposed of as seen fit (Igros Moshe, C.M. 2:45b).

Items found in a secure (or even semi-secure) area that may have been left there intentionally are best left there (C.M. 260:9-10).

The mitzvah of hashavas aveidah includes concern to protect the property of another from loss (C.M. 259:9).

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