

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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האה"ח מרת מאטיל לאה (Marta) בת הר"ר יוסף אלימלך הלוי שראן ע"ה



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

KEEP IDOLATRY OUT!

In *Parashas Eikev*, the Torah warns us to obliterate idolatry when entering the Land of Israel. It concludes with the admonition: "Do not bring an abomination (i.e., idols) into your house" (*Devarim* 7:26). Rambam and *Sefer Hachinuch* (#429) explain the simple meaning of this verse as prohibiting to bring idols and associated items into one's possession and benefiting from them, but *Chazal* added a meaning.

* * *

Mr. Kurz owned an apartment building. The rental office was frequented by people of all ethnic backgrounds and religions.

One day, Mr. John Peter walked into his office, requesting to rent a dwelling unit.

"Can you tell me a little about yourself," said Mr. Kurz.

"Sure," replied Mr. Peter. "I'm a musician. In addition to concerts that I participate in, I've served for two decades as the musician in my temple."

"Really?!" asked Mr. Kurz, raising an eyebrow.

"Oh, indeed," replied Mr. Peter. "I'm a devoutly practicing neo-pagan. I keep a large sculpture of our holy god in my house. I believe in it fully and worship it daily, even when our temple is closed."

"What do you plan to do with the sculpture when you move?" asked Mr. Kurz.

"Of course, I'll take it with me!" replied Mr. Peter. "My god moves with me!"

"OK, thanks for sharing with me," said Mr. Kurz. "I'll review your application and financial information and let you know our decision."

After Mr. Peter left, Mr. Kurz picked up the phone. He called Rabbi Dayan and asked:

"Can I rent my apartment to a tenant who will bring his idol in?"

"The *Mishnah* (*Avodah Zarah* 21b) teaches that a Jew may not rent his dwelling to an idolater, since he will bring his idols into the house, and it says, 'Do not bring an abomination into your house,'" replied Rabbi Dayan. "Nonetheless, the *Rishonim* and *Acharonim* struggled to justify the common practice in their time to rent dwelling units to non-Jews, even though they would bring idols in.

"*Tosafos* (s.v. "af") suggests that the prohibition applies only when the non-Jew brings the idols in on a permanent basis, whereas the non-Jews then usually brought the idol in only when they were sick, and even so didn't worship it.

"Did You Know that a non-Jew doing work for you on Shabbos, even unsolicited, can be a Shabbos violation?"

Ask your Rav or email
ask@businesshalacha.com for
guidance.



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לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

HALF THE HAGBAHOS PART II

Q: I bought the rights to *hagbah* and *gelilah* for the entire year, and due to the coronavirus pandemic, my shul was closed for a few months. Is the shul obligated to give me the *hagbahos* and *gelilos* in the months following this coming Simchas Torah as compensation?

A: In the previous issue we established that there are two basic approaches to the purchase of *aliyos*. Some *poskim* consider it a regular *kinyan* (acquisition) even though it is a *davar she'ein bo mamash* (has no physical properties), while others consider it a *neder* to *tzedakah* on condition that the person receive the *aliyah*.

The *poskim* discuss a *she'eilah* that is similar to yours.

Shu"t Rama MiPano (64, cited in *Magen Avraham* 154:23 and *Mishnah Berurah* 59) addressed a case of someone who bought *gelilah* for an entire year, and during that year the king expelled the Jews. He ruled that if the expulsion was looming at the time of the purchase and the buyer didn't stipulate that his bid was contingent on remaining in that locale, he must pay the full price for the year. This is based on the rule that *hekdesh* (a holy cause) always has the upper hand in a transaction with a civilian. Therefore, the buyer is required to pay.

The *Magen Avraham* does not write, however, what the *halachah* would be if *no one* could have foreseen the circumstances arising at the time of the sale.

The *halachah* in such a case might depend on the reason why an employee who couldn't work due to an *oness* (circumstance beyond one's control) bears the loss of the promised wages (*Shulchan Aruch*, C.M. 334:1). When both were aware that the *oness* might occur, the worker takes the loss because he should have stipulated that he would be paid in the case of *oness*. But if neither party



CASE FILE

"*Shulchan Aruch* similarly cites the prohibition of the *Mishnah* and concludes, '...since he brings into it idols on a permanent basis.' Rama adds that the practice nowadays is to rent to non-Jews also for dwelling, since they are not accustomed to bring idols into their houses (*Y.D.* 151:10).

"Shach (*Y.D.* 151:17) asks: We see that non-Jews bring idols in on a permanent basis! He justifies the practice, nonetheless, based on an alternate answer of the Rosh (*A.Z.* 1:22), that nowadays rental is considered in civil law as sold to the tenant for the duration of the rental, so that the house is not considered the Jew's while the non-Jew rents it" (see *Shach*, *C.M.* 313:1).

"Others explain that *Chazal's* prohibition applies only in the Land of Israel, in which one's house is truly considered '*beischa*' – your house; but not outside of Israel," concluded Rabbi Dayan. "*Darchoi Teshuvah* (*Y.D.* 151:27) cites from *Knesses Hagedolah* and *Bach* that in Russia the practice was to rent for this reason, even though the non-Jews were devout to idols. Nonetheless, he recommends avoiding it, and mentions that two landlords rented to non-Jews and did not fare well."

Verdict: The *Mishnah* prohibits renting a dwelling to a non-Jew who will bring in idols, but various reasons are offered to justify the common practice to allow doing so.

We would like to conclude this piece with the homiletic interpretation of the Sefer Hachinuch, who applies this admonition to one's wealth. Beyond the money that Hashem justly allots a person, he should not bring home money acquired through theft, injustice, prohibited interest, etc., as the evil inclination is referred to as idolatry, and assets acquired thereby are like implements of idolatry, which distance Hashem's blessing.



MONEY MATTERS

APOTROPUS #10

FIDUCIARY GUARDIAN

Older Brother

Based on writings of Harav Chaim Kohn, shlita

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

Q: Should an older brother serve as *apotropus* for the minor orphans?

A: If a person has adult and minor children who share the inheritance between them, and the older children are fit and willing to serve as *apotropus* for the younger ones – the father should appoint them before his death. They are preferable to an outside *apotropus* (*C.M.* and *Prishah* 290:1).

Even if the father did not appoint the older children, many say that *beis din* should preferably appoint them if they are able to manage the joint assets. Some apply this also to an uncle who shares the inheritance (i.e., one brother died in his father's lifetime and left young children, who share their grandfather's estate with their uncle) (*Sma* 290:1; *Chacham Zvi* [*chadashos*] #3).

However, some are concerned that the older brother may take advantage of the younger ones, and recommend that an outside person be appointed as *apotropus*, unless the father is certain that the older brothers are trustworthy (*Aruch Hashulchan* 290:3).



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entertained the possibility of the *oness* arising, we obviously can't fault the worker for not making that stipulation. In this case, the worker sustains the loss because we say that his *mazel* caused him not to earn that money (see *Kesef Hakodashim* 310:3; *Mishpetei Hachoshen* pp. 213 and 222). If such a case involves *hekdesch*, *hekdesch* does not have the upper hand and the money remains with the *muchzak* (person who currently has it).

Another case relating to our discussion involves a person who bought a *mitzvah* for the year and died before paying in full. Some say that the heirs must pay the balance from their father's estate (*Shiyarei Knesses Hagedolah, O.C., Hagahos HaTur* 147:3). Others maintain that the heirs are required to pay only for the times that their father actually did the *mitzvah*. They compare this to someone who rents a house and dies before the lease expires, in which case we require his children to pay only for the months he actually lived there; or to someone who hires workers and an *oness* occurs, in which case he pays only for the work that was already done (*Emes L'Yaakov - Algazi, Hilchos Mitzvos Sefer Torah* 6 and *Mekor Chaim*, by the author of *Chavos Ya'ir*, 153; but see *Magen Avraham* cited earlier).

Now, if the sale of *aliyos* is considered a *neder*, it would seem that in the case of an *oness*, he is not required to pay off the *neder*, which was conditioned on him actually being able to perform the *mitzvos* he bid for. (If he dies, we have an additional reason to free him from payment, see *C.M.* 252).

But even if we do consider the sale of *mitzvos* an ordinary *kinyan*, it seemingly still isn't akin to selling an actual physical object, where the buyer sustains the loss in case of an *oness* because it is already his. Purchase of *hagbah* and *gelilah* is more similar to a rental, because the shul must continue to provide him with the *mitzvah* throughout the year, just as the rental of a home involves its ongoing use. Therefore, if the father already paid for the *mitzvos* for the full year, the children cannot demand a refund, but if he didn't pay in advance, it would seem that the shul cannot demand that the heirs pay for the rest of the year, when the father will not have the rights to these *mitzvos* (see *C.M.* 334:1 and Issue #310).

Returning to your *she'eilah*, there is no reason that the shul should compensate you after Simchas Torah for the period it was closed, because you never purchased those rights. The only question is whether they are required to refund your money for the months the shul was closed.

According to the *poskim* who consider the sale of *aliyos* a conditional *neder*, it is clear that the shul should refund the money for the period when they did not fulfill that condition.

Even according to those who maintain that it is a *kinyan*, however, although in most cases of *oness* one may not demand a refund, in the case of a *makkas hamedinah* (community-wide plague) most *poskim* rule that they should refund the money (*C.M.* 312:17; see *Machaneh Ephraim, Sechirus* 7).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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