

# BUSINESS WEEKLY



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

Issue #535 | Vayeitzei | Friday, November 27, 2020 | 11 Kislev 5781

Sponsored by ML Global LLC.



## CASE FILE

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

**HOTEL MINI-BAR** The Metzgers were spending the weekend in a hotel. They arrived Thursday night, and by the time they unpacked and settled in it was already 10 p.m.

"I'm very thirsty," Mrs. Metzger said. "I could use a cold drink."

"There's a mini-bar in the room," replied Mr. Metzger. "There should be drinks in it."

Mrs. Metzger opened the mini-bar. "The mini-bar is stocked with water, soda and juice!" she said happily.

She then noticed a price list placed inconspicuously nearby. "Wow! A small bottle of water, soda or juice costs \$4!" she exclaimed. "That's double what it costs in a store!"

"It's already late," replied Mr. Metzger. "We're not going out to a store now, and ordering a drink will cost even more! Take what you want; I'll share it with you or drink tap water."

Mrs. Metzger chose a bottle of juice and drank it.

The following day, the Metzgers went for a walk around town. It was a warm day, so they stopped at a store to buy drinks. Mrs. Metzger noticed a bottle of juice identical to the one from the hotel, for \$2.

"We can buy a bottle of juice here and replace the one we took last night," she said to her husband. "That would be much more economical."

"I don't think the hotel would approve of that," replied Mr. Metzger. "I heard that some hotels even have sensors that register when you remove items from the fridge and bill you automatically!"

"What's the difference to the hotel?" said Mrs. Metzger. "We leave the fridge stocked like we found it. They don't lose anything. Anyway, they have no right to charge such high prices. It's probably considered unfair pricing (*onaah*)."

"I would check with Rabbi Dayan, first," replied Mr. Metzger. "I don't want to do anything dishonest." He called Rabbi Dayan and asked:

**"Can I replace the bottle of juice in the mini-bar with one from the store?"**

"Replacing the juice from the mini-bar with a bottle from the store is cheating the hotel," replied Rabbi Dayan. "When you took the bottle of juice, you effectively bought it from the hotel. As such, you are required to pay

**Did You Know?**  
Vendor agreements can have clauses that may be ribbis concerns but can often be corrected with halachic guidance."

Ask your Rav or email  
[ask@businesshalaca.com](mailto:ask@businesshalaca.com)  
for guidance and solutions.



## BHI HOTLINE

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

## QUARANTINE CONFUSION

**Q:** Two *bachurim* from *chutz laAretz* who are learning in Eretz Yisrael rented an apartment together. One of them tested positive for COVID-19. Who is entitled to use the shared room? Can the healthy roommate insist that the infected roommate find different lodgings?

**A:** We must first determine the status of a person who has fallen ill with a contagious disease and does not take precautions to prevent others from getting sick – is he considered a *mazik* if he infects others?

If it is basically certain that the infection will be passed – for instance, if the sick person is standing face-to-face with the healthy person, and he breathes or coughs directly into his mouth, it is akin to someone shooting an arrow at another person (*girei dilei*), and he is considered to have inflicted direct damage.

If he is simply breathing normally from a distance, and the virus particles circulate in the room, or some bodily fluid gets coughed or sneezed onto a surface and the healthy person later becomes infected as a result, the sick person is not considered to have inflicted direct damage, and he is not considered an *adam hamazik*. Some *poskim* deliberate whether we can obligate him to pay damages under the category of *eish* (fire) or *bor* (a pit; see *Shu"t Beis Shlomo, C.M. 126* and *Mishpat Hamazik, ch. 12, fn. 13*).

Nevertheless, one is not permitted to cause damage indirectly (*grama*) or through negligence. The *Sefer Chassidim* (673) writes, for example, that a person who has leprosy should not bathe in a public bathhouse (or a *mikveh*, or pool in today's times) unless he lets the others know about it. *Sefer Chassidim* connects this with three distinct Torah obligations: *Lifnei iver lo sitein michshol* (*Vayikra 19:14*), which means that we are not allowed to



## CASE FILE

them according to their set price.

"Shulchan Aruch writes that one who buys something must pay the seller with money, not commodities" (C.M. 101:6).

"According to many authorities, this applies even if the customer does not have money to pay with. He is required to sell his commodities to raise cash, unlike a borrower, who can repay with an equivalent value of commodities if he does not have money. This is because the clear understanding and implicit condition is that the seller wants money, not value, in return for his goods" (Sma 101:10; Aruch Hashulchan 101:3).

"Some maintain, however, that if the customer does not have money, he can pay with commodities, like a borrower. Even so, if he has money, he must pay with money" (Taz 101:6; Tumim 101:5).

"Furthermore, even if you could pay with commodities, the purchase price is set at \$4, whereas the bottle in the store is worth only \$2, so you would have to pay with two bottles! Replacing a single bottle is insufficient payment (we will not address *hafkaas halvaasam* here).

"Nonetheless, there is no *onaah* on the hotel's part, since the 'fair' price is relative to the context of the sale. In the framework of hotel mini-bars, \$4 for the bottle is reasonable" (Pischei Choshen, Onaah 10:[1]; Hilchos Mishpat, Intro. 4:[42]).

"I should add," concluded Rabbi Dayan, "that taking a bottle initially without intent to buy it, but rather to use and later replace, is tantamount to theft; that is certainly prohibited" (C. M. 348:1, 359:2; Pischei Choshen, Halvaah 4:6[18]; Kinyanim 3:[70]).

**Verdict: A person who takes something from the hotel mini-bar effectively buys it and is required to pay the hotel the set price. He may not replace the item with an equivalent one from the store.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

APOTROPUS #25  
FIDUCIARY GUARDIAN  
Litigation

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

### Q: Can the *apotropus* litigate on behalf of minor orphans?

A: There are cases in which we refuse litigation against minor orphans and wait until they mature (see C.M. 110:1-8). The *apotropus* should not litigate, then, on their behalf, since he cannot obligate the orphans with his claims, and it is unfair to litigate only on condition that he wins the case. If, despite this, he litigated and won, the verdict is valid (C.M. 290:12; Sma 290:33).

When litigation against the orphans is allowed, the *apotropus* should offer whatever claims he can on their behalf. Testimony against them should be given in his presence (C.M. 110:9).

If the *apotropus* knows testimony regarding assets of the orphans, he can testify (when he is not paid), since the assets are theirs, not his, so that he does not have a vested interest (Rama 290:12; Shach 290:15).

It is questionable whether the *apotropus* should sue others on behalf of the orphans (Knesses Hagedolah, Hagahos Tur 290:74; Pischei Choshen, Yerushah 5:[63]).



## BHI HOTLINE

cause others to stumble into any sort of error; *V'ahavta l'rei'acha kamocha* (ibid. 19:18), which requires that we not do to others what we wouldn't want done to ourselves; and *Lo saamod al dam rei'echa* (ibid. 19:16), which forbids us to stand idly by while others are being hurt.

As a rule, however, we follow Rabi Yosi's opinion (*Bava Basra* 25b) that in situations of possible indirect damage the onus is generally on the person who stands to be hurt to prevent the damage from befalling him. On the other hand, if it is clear that the "arrows" of the *mazik* are going to cause damage - i.e., the damage is directly inflicted - even Rabi Yosi agrees that the *mazik* bears responsibility for ensuring that the damage does not occur (*Shulchan Aruch*, C.M. 155:4).

Because coronavirus is so contagious that just being in the same room as someone with the virus is likely to cause a person to become infected, the situation you describe might seem to fall under the category of *girei dilei*, and the infected person would therefore be responsible for preventing his roommate from becoming infected. This would seemingly obligate him to move out of the shared space. (It is debatable whether in a case in which it is not certain that others will become infected the sick person is still considered a *mazik*; see *Shu"t Radvaz* 1:551.)

Ultimately, however, it seems that this is not considered a case of *girei dilei*, which is found in instances in which a person actively does something, such as creating excessive noise, pouring water, etc.; we do not prohibit a person from simply existing in his private space even if that existence causes damage to others. In fact, the Chazon Ish writes (*Bava Basra* 13:11) that when a person does something on his property that is considered ordinary usage by the majority of people, but that activity is bothering a neighbor who is ill, the neighbor has no right to protest even if the ill neighbor was living there before this neighbor creating that typical noise moved in.

Clearly, the Chazon Ish maintains that when a person is behaving in a normal manner, we do not require him to stop in order to prevent damage to another.

Furthermore, the *Rema* (*Shu"t* 20, cited in *Shach* 312:2) addresses the case of a person who rented space to live within the home of his landlord, and the tenant or his wife fell ill with hepatitis, an infectious disease. The *Rema* rules: "If the landlord does not want to live in proximity to the ill person, he can live outside; he may not evict the tenant or renege on the rental agreement for this reason."

The *Rema* obviously didn't even entertain the possibility that in such a case the infected person is considered to be damaging the other person with *girei dilei*.

The same would apply to roommates - since both roommates have equal rights to the apartment, the healthy roommate may not demand that the infected one move out. If he doesn't want to reside in the same *dirah* as his sick friend, he is welcome to move out, and he may not demand that his roommate compensate him for the lost rent.

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

To subscribe send an email to [subscribe@businesshalacha.com](mailto:subscribe@businesshalacha.com) or visit us on the web at [www.businesshalacha.com](http://www.businesshalacha.com)

The digital distribution is sponsored by **DMT Plumbing and Heating Corp.**

**WOULD YOU LIKE THE ZCHUS OF SENDING THIS NEWSLETTER TO YIDDEN WORLDWIDE?**

CALL 718-233-3845 X 201. OR EMAIL : [OFFICE@BUSINESSHALACHA.COM](mailto:OFFICE@BUSINESSHALACHA.COM)

**DISTRIBUTION IN LAKEWOOD IS**

לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל