



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### EMPTY ROOM

Aryeh and Chaim shared a two-bedroom apartment; each used one room. Aryeh had gone away on vacation for a month.

Chaim received a call from his cousin, Shlomo. "I have a conference near you in two weeks," Shlomo said. "Can you suggest any reasonable accommodations?" "Aryeh is away for the month," said Chaim. "You can stay in his room. It will be nice for us and will save you the hotel bill."

Shlomo came to the apartment, taking care not to upset any of Aryeh's belongings.

Two days later, Aryeh called the apartment. Shlomo answered the phone.

"Who is this?" asked Aryeh. "I don't recognize your voice."

"I'm Chaim's cousin," Shlomo said. "I'm here for a conference. Chaim invited me to stay in his empty room."

"That's my room!" exclaimed Aryeh angrily. "Chaim had no right to let you use it. I don't want you sleeping there. If you do, you'll have to pay me \$50 a night, like a hotel." He hung up.

When Chaim returned that evening, Shlomo related what happened. "Aryeh tends to get excited," said Chaim. "What's it to him that you're in his room? You have only another two nights."

When Aryeh returned from his vacation, he confronted Chaim. "You had no right to host your cousin in my room," he said. "I assume that he left after we spoke."

"Actually, not," said Chaim. "I didn't see any point."

"Well, then he owes me \$50 a night!" said Aryeh.

"What's it to you?" argued Chaim. "You weren't doing anything with the room anyway; it was empty."

"I don't need to give any explanations," said Aryeh. "I told him to leave, and warned him that otherwise he would have to pay \$50 a night."

"That's ridiculous," said Chaim. "Our rent for the whole month is only \$800! I don't think he owes you a penny."

The two came before Rabbi Dayan. "Does Shlomo have to pay me?" Aryeh asked.

"The *Gemara* (B.K. 20a) teaches that one who benefited from another's property without permission, without causing any loss, is exempt, *post facto*," replied Rabbi Dayan. "The classic example is a person who typically rents, but dwelled without permission in another's property that was not intended for rent. This is called *zeh neheneh v'zeh lo chaser*" (C.M. 363:6).

"However, the Tur writes that if the owner told the dweller to leave and he refused, he is liable henceforth, but not for the past," continued Rabbi Dayan. "We cannot force the owner to grant permission, even



## BHI HOTLINE

### BOTTLES OF SCOTCH

**Q:** A fellow purchased a bottle of scotch for \$200. Upon returning

home, he decided to research more about the bottle he purchased, and was astonished to learn that because the company had discontinued production of this scotch, it was now being sold at \$1,500 per bottle. He rushed back to the store and purchased the rest of the stock of this scotch. Suspicious, the seller immediately looked up this scotch online and learned of its new value.

Does the seller have the right to demand that the buyer return the scotch because he didn't know its true value when he sold it? And is there a difference between the first bottle, which the buyer bought without knowing its inflated value, and the subsequent bottles he bought in an attempt to take advantage of the seller's ignorance?

**A:** The Torah (*Vayikra* 25:14) prohibits exploiting another's ignorance of the market in a business transaction. The prohibition, known as *onaah*, could be violated by a seller who overcharges a customer or by a customer who deceives the seller into selling at a reduced price (*Shulchan Aruch*, C. M. 227:1).

*Chazal* delineate three categories of *onaah*. If the price difference is less than one-sixth of the market value (16.66 percent), there is no recourse, because most people are willing to forgo a nominal difference in price (ibid. 227:3). There is a debate whether one may intentionally manipulate the price for less than one-sixth.

If the difference is exactly one-sixth, the transaction stands, but the difference in price must be returned (ibid. 227:2). If the difference is more than one-sixth, the person whose ignorance was exploited has a choice: he can void the transaction, but if he does not want to void it, he forfeits any right to compensation (ibid. 227:4).

Nowadays, when the same item can be sold at wildly differing prices, how do we calculate the

### DID YOU KNOW?

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## STORY LINE

though he typically does not rent out the property. Nonetheless, *Minchas Pittim* (363:6) writes that if the owner had no possibility whatsoever of renting, the dweller is not liable, even if he was told to leave" (*Pischei Choshen, Geneivah* 7:10[35]).

"What if the dweller would not typically rent?" asked Chaim. "He does not really benefit from dwelling there."

"Many maintain that he is still liable, even though he did not actually benefit, since the owner expressed his refusal, and we cannot force the owner," answered Rabbi Dayan. "Some suggest, though, that this depends on the two opinions cited later in the *Rama* (363:7) whether the liability is for the full value or limited to the benefit" (*Bach* 363:6; *Sma* 363:14; *Avnei Nezer, Y.D.* 184).

"What if the owner said, 'If you don't leave, you'll have to pay me \$50 a day?'" asked Aryeh.

"If the dweller did not indicate agreement to this sum, his silence is not considered agreement," replied Rabbi Dayan. "We view this case as one who dwelled without an agreement, who pays the going rate. The same is true according to many authorities if the owner never told the dweller to leave, but warned him that he would have to pay" (*Erech Shai* 363:6; *Tashbetz* #174; *Pischei Choshen, Geneivah* 7:19).

"Thus," concluded Rabbi Dayan, "Shlomo has to pay the going rate for such a room for two nights."



## BHI HOTLINE

actual market value of an object?

If the seller was wronged, we consider it *onaah* only if he was underpaid below the lowest market price for the item in that particular market. If the customer was cheated, it is considered *onaah* only if he paid one-sixth more than the highest market price in that market (see *Hil. Mishpat, Intro., perek* 3).

It would seem, then, that the buyer must return the bottles of scotch to the seller. There is a caveat, however. *Chazal* limit the time frame of an *onaah* claim to the amount of time it would take to show the item to a salesperson or relative who can determine if the person was cheated. If the buyer waits longer than that, it is assumed that he waives his rights to claim *onaah* (*C.M.* 227:7). Obviously, this time frame applies to the buyer, who has access to the item. The seller would be allowed to claim *onaah* until he finds a similar item to price. If the price can be checked without showing the actual item — e.g., through the model number — *onaah* can be claimed only during the time it takes to make that inquiry (*Ibid.* 227:8).

Nowadays, this time frame would be extremely short, because it takes only a few minutes to check the price of an item (see *Maharsham* 3:307).

Returning to our case, when the buyer returned for the rest of the stock of scotch, the seller checked the price immediately and made the *onaah* claim in time. Clearly, the buyer must return those bottles. The question is, what happens with the first bottle he purchased?

It is clear that the fact that the buyer did not purposely cheat the seller when purchasing the first bottle does not change the *halachah*, because *onaah* applies even to cases of inadvertent price gouging (*Tur, C.M.* 227:1).

As far as the seller is concerned, it is not clear that we would expect him to check the price immediately in this case, since the price change was due to an external circumstance. It would seem that we cannot assume that he waived his right to claim *onaah* if he had no reason to believe that he undercharged for the item (see *Shu"t Imrei Yosher* 2:155). On the other hand, since he missed the time frame for claiming *onaah*, there should be no obligation to return that first bottle.

Either way, the *Poskim* debate whether it is praiseworthy (*middas chassidus*) to refund the *onaah* if there was a delay in stating the claim (*Sema* 227:31, *Prisha* 18, *Maharam Schiff, B.M.* 52b, and *Kad Hakemach* 15; see also *Aruch Hashulchan* 227:18). Even if the buyer is not required to return the bottle, then, it might be *middas chassidus* to return it.

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## MONEY MATTERS

### DINA DIMALCHUSA DINA #13 | Bankruptcy

(Based on writings of Harav Chaim Kohn, shlita)

Q: Are debts that were discharged under a court bankruptcy order exempt also according to *halachah*?

A: *Halachah* provides liquidation arrangements for one who is unable to pay (*sid-dur l'baal chov*), but not discharge of debt (except *shmita* [*C.M.* 97:23-27]).

Nonetheless, a creditor who participated in the bankruptcy proceedings forgoes the remainder even without a *kinyan*, since this is the commercial practice (*Pischei Teshuvah* 12:19).

*Minchas Yitzchak* (3:134) rules that a creditor who did not participate in the bankruptcy proceedings and did not forgo his loan can still claim it.

But *Igros Moshe* (*C.M.* 2:62) writes that *dina d'malchusa* applies to bankruptcy rulings, since bankruptcy settlement is not a private issue between individuals, but a societal one. All the more so bankruptcy of corporations, which presumably includes non-Jews. He writes that one who received more than his legal share from the debtor must return the excess to the trustee. Others add, regarding corporations, that since all their financial matters operate according to law, anyone who deals with them does so with this understanding (*Pischei Choshen, Halvaah* 2:[63]).

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