



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

**FORCED SALE** Camp Athletics was known for its fine sports program, but unfortunately not always for great *middos*.

The highlight of the camp was an all-star baseball game the last week of camp. Bernie was one of the best athletes in the camp, perhaps the best, but also a bully. He was chosen to play in the all-star game.

It was the ninth inning and Bernie's team was down by three runs. Bases were loaded, and Bernie was up at bat. His team hoped for the ultimate dream, a home run by Bernie that would win the game. Sure enough, Bernie drove the ball into deep center field. With tremendous speed, he raced around the bases and crossed home plate, greeted by his team with wild cheers!

Bernie decided that he wanted to hang the bat that won the game in his room. "I'd like to buy the bat from you," he told Hillel, who owned the bat. "I'll pay you whatever it costs to buy a new one."

"I'm not interested in selling," said Hillel. "I received it as a birthday present and I'm comfortable with its swing." Bernie tried to convince him, but Hillel refused.

During the remaining days, Bernie began to pick on Hillel. It started with undoing his bed and messing up his cubby, and continued with roughing up and punching him. The last day of camp Bernie threw Hillel on the floor and made his position clear: "Either you sell me the bat, or you'll find it broken in the morning."

Hillel felt that the counselors and camp administration did not have sufficient authority to deal with Bernie. Reluctantly, he agreed to sell the bat to Bernie for \$200.

When Hillel returned home, he related to his parents what happened with Bernie. "Speak to Rabbi Dayan," they suggested. "Ask how you can void the sale and get your bat back!"

"Bernie forced me to sell my bat by hurting me and threatening to break it," Hillel said to Rabbi Dayan. "Can I void the sale?"

"Bernie violated *'lo sachmod* — do not covet' in forcing the sale," replied Rabbi Dayan. "Nonetheless, the *Gemara* (B.B. 48a) teaches that if someone was forced to sell an item and he agreed to the sale, the sale is valid. *Halachah* differs in this from most civil law, which considers a sale made under duress voidable" (C.M. 359:1; 205:1).

"What is the logic of this *halachah*?" asked Hillel.

"The *Gemara* and commentaries

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## BHI HOTLINE

**SHARED ASSETS: HOTEL BEDS & ICE CREAM** I spent Shabbos with a friend in a hotel and we discussed a

number of monetary questions. Although the issues were resolved, we would like to know what *Halachah* says about these matters:

**Q:** We reserved a hotel room with two beds and noticed that one bed was in better condition than the other. How does *Halachah* decide who gets the better bed? We were there for only one night so dividing the nights was not an option. Would we make a lottery to decide?

**Q:** A similar incident occurred when a friend and I purchased ice cream. When they were delivered, we realized that one of the cones was crumbled. Who takes the better cone?

**A:** Although these questions appear similar, they differ. This highlights the difficulty in applying a ruling from one case to another (*medameh milsa l'milisa*) because small changes in the situation can dramatically change the ruling.

When the two of you rented the hotel room you became partners in that rental. The question is how partners should share the two beds when one is better than the other. *Shulchan Aruch* (C.M. 171) discusses the topic of partners dividing shared assets. The *halachah* relevant for our discussion is that if assets can be divided into two equal parts or if partners own many units of the same object, the preferred manner of division is for each to take an equal percentage of the assets.

If, despite the similarity of the two equal portions, they disagree about how to divide it, e.g., who should receive the right side and who should receive the left side, they should make a lottery to resolve



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explain that since the owner receives full payment and wants to relieve himself of the duress, he has the required intent (*gemirus daas*) for the sale," explained Rabbi Dayan. "Agreement, albeit through force, is agreement."

"What if the owner did not receive full value?" asked Hillel. "And what if I were forced to give the bat for free?"

"Only if the owner received proper compensation is a transaction under duress valid," replied Rabbi Dayan. "Therefore, a gift given under duress can be voided by bringing proof of the duress. Similarly, if the owner was forced to sell the item for a price less than its value, he can void the sale" (C.M. 205:4).

"Is there any halachic recourse for one who is being forced?" asked Hillel.

"There is," answered Rabbi Dayan. "If the owner provided notice to witnesses before executing the transaction that he is doing so under duress and the duress is verified, he can void the transaction later. In this way he demonstrates that he did not come to terms with the sale" (C.M. 205:5-7).

"What if the owner was forced to sell because of financial need, for example?" asked Hillel.

"Only duress by others can possibly void the sale," replied Rabbi Dayan. "However, where the duress was from the seller himself, he cannot void the sale, even if he provided notice" (C.M. 205:12).



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the disagreement. The basis of utilizing a lottery to resolve such a disagreement is found in the *Gemara* (B.B. 106b) regarding the division of real estate inherited by two brothers. When there are two similar objects but one is more expensive than the other, the way to divide them is similar to an auction. The one who bids the higher amount takes the object and must pay the other partner half of the difference between their costs. For example, if one diamond is worth \$1,000 and a second is worth \$800, the one who takes the \$1,000-diamond must pay the other partner \$100 so that they each receive \$900 value and the split is even (C.M. 171:13).

A lottery is not used to decide which partner takes which object since there is no precedent for a lottery to be used when it means that one of the parties will lose. In the event that each party is willing to pay the same amount for the more expensive item, a lottery is used to determine who will actually take the more expensive item (*Erech Shai* 145:3; *Chazon Ish*, B.B. 12:3).

Consequently, if both partners want the better bed, each one can bid and the winner will pay the other party so that the division is equal. If neither wants to pay or both are willing to pay the same amount, a lottery should be used to decide who gets the better bed.

Regarding the ice cream question, the two of you never became partners. You both ordered ice cream and one of the cones was broken. Since you never formed a partnership, whoever received the unbroken cone may keep it and the other person has no claim to it. If, however, they bought a box of cones together and some were broken, they would have to use the parameters presented above regarding partners to determine how to divide the cones (C.M. 292:10).

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



## MONEY MATTERS

### RENTALS #17

#### Right to Rent

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

**Q: I am in the process of building a house. Can I make a binding rental agreement now for when the house is completed?**

**A:** Although a person cannot sell something that does not yet exist (*davar shelo ba la'olam*), some maintain that one can rent something that does not yet exist. It is also possible to word the contract as a personal obligation on the landlord (*hischayvus*) to rent the house when it is built, which is certainly binding, rather than a rental contract for the house itself (C.M. 315:2, 60:6; *Nesivos* 315:1; *Aruch Hashulchan* 315:3-5). Similarly, there is a dispute whether one can rent in a binding manner, through a lease or cash payment, a property that is currently rented out to another. Most authorities maintain that one can, since the landlord still owns the property and it will return to his full possession at the conclusion of the current rental. This is the common practice (*Shach* 312:3; *Pischei Teshuvah* 315:2; *Avnei Nezer*, C.M. #11; *Chochmas Shlomo* 312:1).

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