



Business weekly

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under the auspices of
Harav Chaim Kohn, shlita

Dedicated in loving memory of
Meyer H. & Joy Ruth (Taxon) Graff and Chaim & Ronia (Grinfogel) Rand
by their children, Jacob M. M. and Pnina (Rand) Graff and family

STORYLINE

cancelled cab

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Tuvia answered his cellphone, "Hello! Tuvia's Taxi Service."

"Good morning Tuvia," said Mr. Gluck. "Can you pick up my brother from the airport tomorrow at 7 AM?"

Tuvia checked his schedule. "I have something at 9, but am available at 7," he said, "It costs \$40. Should I put you down?"

"Yes, please," said Mr. Gluck.

No sooner had Mr. Gluck hung up, when another person called. "Are you available to take me to the city tomorrow morning at 7?" "Sorry," said Tuvia, "but I just booked someone else then."

At 8:30 PM, Mr. Gluck called again. "Good evening, Tuvia," he said. "I'm sorry for disturbing you."

"That's OK," said Tuvia. "We're set for tomorrow at 7. Right?"

"Actually," said Mr. Gluck, "My neighbor has

to pick up his son anyway from the same flight as my brother. Is it OK if I cancel?"

"It's actually a problem," said Tuvia. "After you booked, another person asked me to drive him at 7, and I had to turn him down."

"Maybe he still needs a ride?" suggested Mr. Gluck hopefully.

"I'll check," said Tuvia, "but at this point it's not likely."

Tuvia tried the other person, but he had made alternate arrangements. He called Mr. Gluck back: "He made other arrangements, and at 8:30 in the evening, it's not likely that anyone else will call."

"Well, there's no point in your going to the airport," said Mr. Gluck. "It's just a waste of time and gas."

"That's true," said Tuvia. "But what do you expect me to do? I gave up a potential job for this. You're causing me to lose \$40!"

"I'm not sure what to do about the money," said Mr. Gluck. "But don't waste your time going." He hung up.

Tuvia turned to his wife. "People think they can just book and cancel at whim! I'd like to hear what Rabbi Dayan has to say about this."

Tuvia asked Mr. Gluck to meet with Rabbi Dayan and discuss the issue.

"Does Mr. Gluck have to pay me the \$40?" Tuvia asked.

"In general, if a person hires a worker with a verbal agreement and retracts before the worker begins the job, the worker does not have a monetary claim," replied Rabbi Dayan. "However, he can have tar'umos (gripes) against the person for having caused him extra effort to find alternate work. Therefore, it is not ethical to retract without good cause. If alternate work is readily available,

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FROM OUR HOTLINE

Submitted by
H. K.

melting in the morning

In camp last summer, there was a rule that air conditioners were not allowed to be on in the bunks before noon. I was in my bunk one morning and turned on the A/C. It turns out that the unit already required repair, and I caused further damage by turning it on.

Q: Am I responsible to pay for the damage I caused, even though there was no indication that the unit was broken?

A: This is a very interesting question. Had you turned on the air conditioner during a time that it was allowed to be on, you would be exempt from liability. The main rationale for exemption is the fact that you would be a mazik b'reshus – meaning, the damage occurred when you had permission to use the object, as opposed to damages in general where the mazik (damager) had no right to be handling the object. Since you were not

allowed to turn on the air conditioner at that time, you are considered a standard mazik who is liable for damages, regardless of any mitigating factors.

A possible exception is based on the Gemara in Bava Kama (62a) that discusses the case of one who throws a box into the river, unaware that it contained precious jewels. The Gemara exempts the mazik from liability for the jewels despite his intent to cause

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STORYLINE CONTINUED

though, the worker does not even have gripes (Choshen Mishpat, SM"A, Shach, and Aruch Hashulchan 333:1).

"But it's not fair here," protested Tuvia. "I was not able to find an alternate job for that time."

"I was getting to that," said Rabbi Dayan. "The person is only exempt if the worker can find an alternate job, albeit with some effort, or if the worker had no other potential job. However, if the worker could have taken another job earlier and now he cannot find one, it is considered a *davar ha'aved* (loss) for the worker, and the person has to pay him for having caused that loss (C.M. 333:2)."

"It's not fair that I should have to pay \$40, though," argued Mr. Gluck. "Although Tuvia lost the job and the \$40, he did not have to pay for gas; he did not have to get up early, spend time driving there and back, or sit in traffic. He had the morning off."

"That's true," acknowledged Tuvia, "but still, I lost out."

"Mr. Gluck obviously does not have to pay for gas," Rabbi Day-

an said. "Furthermore, a worker will often be willing to accept partial salary and have free time. Therefore, he does not have to pay Tuvia the full price for his labor, but rather as a *poel batel* (idle worker), which means the amount a worker would be willing to accept to have the time free. This is typically evaluated at half the wages, although it depends on the difficulty and pay scale of the work (Taz C.M. 333:1; Pischei Choshen, Sechirus 10(10)).

"Therefore," Rabbi Dayan concluded, "if Tuvia's usual fare to the airport is \$40, which includes \$10 for gas, Mr. Gluck has to pay \$15."

"What would be in a different case?" asked Mr. Gluck, "Let's say that that the plane was significantly delayed or diverted."

"If you had to cancel for reasons beyond your control and were responsible about notifying the worker promptly," replied Rabbi Dayan, "you do not have to pay, even if the worker lost out on alternate work or went already (C.M. 333:2)."

FROM OUR HOTLINE CONTINUED

damage because, as Tosafos (d.h. Mi) explains, there was no reason to assume that the box contained jewels. However, many opinions reject the alleviating argument of Tosafos and, in fact, Shach (388:6) maintains that their opinion is the decisive position. Accordingly, although you could not have anticipated that turning on the unit would damage it, you would be required to compensate for the additional damage that you caused.

However, even in your case there might be a mitigating factor. In contrast to the person who threw the box in the river with intent to damage property, you didn't intend to cause any damage. You may therefore be exempt from liability even though you had no right to turn on the air conditioner at that time. According to Tosafos (Bava Kama 27b),

the damager is not liable if he did not intend to cause damage with his action (*mazik b'ones gomur*). Rambam (Hilchos Chovel 6:1, but see Kesef Mishna) disagrees with Tosafos and maintains that someone who damages another's property, even if he had no intent to damage or reason to suspect that his action would cause damage, is liable. Shulchan Aruch (C. M. 378:1) follows the stringent opinion of Rambam whereas Rema (*ibid.*) follows the lenient opinion of Tosafos. Aruch Hashulchan (378:8) contends that most opinions agree that the *mazik* is not liable in such a case.

Consequently, although you were not allowed to use the unit at that time, there was no reason to suspect that turning it on would damage the unit. As such, you shouldn't have to pay for the damages.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

unfair pricing week #2

Q: How is the "fair market price" determined?

A: One way is through the imposition of a set price through government regulation. This exists sometimes with food staples, such as bread, or with various utility or transportation tariffs. The other way is through the free market forces of supply and demand.

When there is a single, set price, there is

ona'ah (unfair value) when deviating from this price. The generally accepted opinion is that for a set price there is ona'ah even for a minimal price deviation, because there is no room there for price differences (Aruch Hashulchan 227:2, but see Machaneh Ephraim, Ona'ah #7). Therefore, if the government raised or lowered prices, and one party was unaware and bought or sold at the old price, the hurt party can claim

ona'ah to receive the difference or revoke the sale, depending on the degree of deviation.

In a few free markets, the market forces also lead to a single fixed market price, such as for precious metals. The above rules apply there, too. Usually, though, there is a range of prices within the market and a different set of rules applies and is the subject of next week's column.

USING OTHERS' THINGS

*My raincoat was taken and a very similar one was left in its place.
May I use it until mine is returned?*

Rosh Chabura: Rav Nachum Sauer

Beth Jacob Synagogue 9030 W. Olympic Blvd. **Sunday Mornings**
Chavrusa Preparation: 9:15 - 10:45 am Shiur: 10:45 - 11:30 am

For more information, please call 310-278-1911

MAZAL TOV

Mazal tov and best wishes to

Jacob M. M. and Pnina Graff

upon the engagement of their son

Meir to Itta Remer

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