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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

SECURITY DOORMAN

The Greens bought an apartment in a condominium complex. Some time after they moved in there were a number of break-ins. One morning Mr. Green met his neighbor, Mr. Fuchs. "Another break-in!" he exclaimed. "Has it always been like this?"

"Not at all," replied Mr. Fuchs. "Until this year break-ins were few and far apart."

"We need to do something," said Mr. Green. "We can't go on like this."

"What do you suggest?" asked Mr. Fuchs.

"We should hire a doorman," he replied.

"That's a big expense," responded Fuchs. "I've been here a while and know that some people, including me, will object to any additional expenditure. A number of break-ins do not mean it's become the norm."

Mr. Green told him he would suggest it to the managing agent, and that evening he met with the manager and suggested hiring a doorman. "Other people also mentioned this, but we'll require an additional \$400 per family each month," said the manager. "I'm not sure everyone will agree."

The manager circulated a questionnaire asking about hiring a doorman. Most of the tenants were in favor. He sent out a memo to the tenants: "In light of the recent burglaries, we've decided to implement additional security measures, including hiring a doorman."

When Mr. Fuchs got the memo, he replied: "This is an extreme expense; I refuse to pay."

The manager told him, "Most tenants were in favor. You're part of the building, so you have to pay."

"I don't think it's fair," replied Mr. Fuchs. "I have a burglar alarm on my apartment, so I don't need a doorman."

"Unfortunately, the thieves also broke into apartments with burglar alarms," said the manager. "Anyway, the majority wants it; the minority has to follow."

"That's not always true," objected Mr. Fuchs. "Let's discuss the issue with Rabbi Dayan."

Mr. Fuchs and the manager went to Rabbi Dayan. "We've had a rash of burglaries and most tenants want to hire a doorman," said the manager. "Mr. Fuchs does not agree with the expense. Does he have to pay?"

"The answer to this question depends mostly on the common practice," replied Rabbi Dayan. "It varies from case to case."

"What are some of the considerations?" asked Mr. Fuchs.

"The Mishnah (B.B. 7b) teaches that tenants of a joint courtyard can require



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REPLACING DRINKS IN A HOTEL REFRIGERATOR

Many hotels have drinks available for purchase in the refrigerator in each

room. However, they charge more than double what the same drinks cost when purchased from a store.

Q 1: Is there a violation of onaah (exploiting the ignorance of the other party in the context of a sale) when they charge double the going price for the drinks?

Q 2: If someone wants a bottle of water but does not want to pay such an inflated amount, is it permitted to take a bottle of water and replace it with another bottle of water that he will purchase for the regular price?

A: Regarding the question of onaah, Halachah recognizes that there are different markets and the same item may be sold for different prices in different markets. Different types of stores are considered different markets and may charge different amounts. The same sweater will be sold for one amount in a clothing store and for a different amount in a department store (see Sefer Hilchos Mishpat, Intro. ch. 4). Similarly, a hotel is a different market from a convenience store and the seemingly inflated price that they charge is within range for that market and thus there is no violation of onaah.

The second question is whether you may take a bottle of water and replace it with one that was purchased for less money. It is

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each other to build a door and entranceway for the courtyard," explained Rabbi Dayan. "The Shulchan Aruch, citing the Rambam, expands this to include anything that the courtyard has a great need for or that is commonly done in that locale" (C.M. 161:1).

"What does 'commonly done' mean?" asked the manager. "Most buildings don't have doormen, but many upscale buildings do."

"We would look at comparable buildings," replied Rabbi Dayan.

"What if it is not clear whether there is 'a great need'?" asked Mr. Fuchs. "Some people think it's absolutely necessary; others don't."

"In that case, there should be a general assembly of the tenants," replied Rabbi Dayan.

"Each person should present his opinion honestly for the joint benefit of the building. The opinion of the majority becomes binding. If the majority agrees that it is not a great need but nonetheless would like to do it, they cannot require the minority to participate, unless there is a clear common practice or a contract that the majority opinion or management decision is binding on all issues" (see Rema, C.M. 163:1; Emek Hamishpat, Shecheinim 48:9-12).

"And how should the cost be split?" asked the manager.

"In principle, partners should share costs proportional to the benefit that they receive," replied Rabbi Dayan. "Therefore, security costs should be split based on each tenants' wealth, since a wealthy person has a greater need for the doorman than a poor person. However, nowadays it is very difficult to evaluate this way. It seems that the practice is to share equally, and we already mentioned that the common practice is most significant" (see C.M. 161:3; Pischei Choshen, Nezikin 15:[81]).



MONEY MATTERS

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Q: Does Halachah recognize the sale of intellectual property (IP)?

A: Even according to the opinion that Halachah recognizes ownership of intellectual property, it remains, nonetheless, intangible. Generally, it is not possible to sell something that is intangible (davar she'ein bo mamash) or that does not yet exist (davar shelo ba la'olam [C.M. 209:4; 212:1]).

Nonetheless, Poskim have validated the sale of IP on the basis of dina d'malchusa and minhag hamedinah, since the common commercial practice for the past few hundred years has been to sell such rights and franchise licenses. This is true also according to the opinion that there is no actual ownership of IP, only a right to profit from one's efforts.

Furthermore, if the IP has been affixed to something tangible, such as a book or prototype model, the owner can sell the IP along with the tangible book or model.

However, when selling a future design, it is questionable whether minhag hamedinah applies to something shelo ba la'olam (Pischei Teshuvah, C.M. 201:1-2).

When selling intellectual property, it is possible to stipulate terms and conditions, like any other sale (see Emek Hamishpat, Zechuyos Yotzrim, intro. 16:1-5; ch. 14:119).



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prohibited to steal with the intent to repay the owner (C.M. 348:1). Accordingly, since the hotel intends to make money by selling beverages and has determined that guests will be willing to pay the inflated amount due to the convenience of having cold drinks available in their rooms, it is clear that they would not permit you to take a bottle to drink and replace it with another one, since that prevents them from making their intended profit.

However, if one did not know this halachah and took a bottle of water and replaced it, he has fulfilled his obligation to repay the owner for what he stole (C.M. 354:5). Although one who damages property is not obligated to provide the owner with a new utensil to replace the one he broke, a thief is obligated to either replace the utensil that he stole or pay the owner the value of the stolen object (Shach 354:7, as opposed to Ramah, who requires a thief to pay his victim with money rather than replace the stolen object).

Consequently, although the one who drank the water benefited from the drink, as long as he can provide the victim with a replacement of the stolen object, he has fulfilled his obligation. Even though the hotel charges more for the bottle of water than the thief spent on replacing the stolen bottle, he fulfills his obligation as long as he gives them a replacement bottle of water, even though it costs him less.

For questions on monetary matters,
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