

BUSINESS WEEKLY



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

Issue #569 | Eikev | Friday, July 30, 2021 | 21 Av 5781

Sponsored by Anonymous In Appreciation of the BHI



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

WRONG DATE

During the spring, Mr. Feder had planned his summer vacation for the middle of August. He contacted his travel agent to book a round-trip flight from Aug. 10 until Aug. 20.

The travel agent booked the flight and sent Mr. Feder an email with the itinerary and booking details.

As August approached, Mrs. Feder said to her husband: "Can you please check that everything is in order for our vacation?"

Mr. Feder looked over the email from his travel agent. He noticed, to his chagrin, that the dates were not as expected! It said Aug. 1 until Aug. 20.

He called the travel agent immediately to correct the date of the ticket. "It seems that you left out the zero in the departure date," Mr. Feder said.

"Changing the ticket will entail a \$200 surcharge," the agent said. "It is unfortunate that you noticed the error only now. Had you checked the dates immediately, I could have corrected the ticket that day with no charge."

"Regardless, the ticket has to be changed," said Mr. Feder. "I cannot fly on the dates listed."

"I will update the booking, and issue a new ticket," said the agent.

Mr. Feder checked his initial communication with the agent. He had written the correct dates, and the error was clearly the agent's.

"Why should we have to pay the surcharge?" Mrs. Feder asked her husband. "It was the agent's error, not ours!"

"I was also wondering about that," replied Mr. Feder. "I expected that he would offer to make good on the mistake. He said, though, that we should have looked over the booking when we got it."

"Admittedly, we should have done so," said Mrs. Feder. "But we relied on him. That's what he gets paid for!"

"I'll have to consult on this," Mr. Feder said to his wife. He called Rabbi Dayan and asked:

Does the travel agent have to cover the surcharge due to his error?

"In many situations, when an agent is at fault and causes loss," replied Rabbi Dayan, "he is liable to compensate his client for the error."

"The *Gemara* (B.K. 102a) teaches that if a person gave an agent money to buy wheat, but he bought barley, instead, if the barley dropped in value the agent must bear the loss. Rashi explains that the

DID YOU KNOW?

Many businesses can restructure their employee contracts to avoid Shabbos concerns without the need for a Heter Mechira."

Ask your Rav or email
ask@businesshalacha.com
for guidance and solutions.



BHI HOTLINE

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

TIME FOR A CAREER CHANGE?

Q: I read last week's issue, regarding one Jew testifying on behalf of another in civil court, with great interest. As a lawyer it made me wonder: Am I allowed to represent a Jewish plaintiff against another Jew in court?

A: We preface our answer with the words of the *Teshuvos v'Hanhagos* (1:795):

It is difficult for me to answer this question, because no one has listened to me in the past and they won't listen to me now. But the truth is that it is a severe sin for a lawyer to represent a Jewish plaintiff in court, as the Rambam writes (Hilchos Sanhedrin 26:7), "Anyone who litigates in their courts is a rasha, and it is as though he has blasphemed and cursed and raised a hand against the Torah of Moshe Rabbeinu." (See there whether one is allowed to sue a mechallel Shabbos in civil court.) The Rema (C.M. 26:1) writes that we excommunicate a person who supports those who litigate in civil court.

There are two possible problems associated with representing a Jewish plaintiff in court: (1) The prohibitions of *lifnei iver lo sitein mich'shol* and *mesaye'a l'ovrei aveirah*, which relate to you aiding the plaintiff in his efforts to sue in civil court; and (2) the problem of you, as a lawyer, litigating in civil court, which might be prohibited in and of itself.

Regarding the first component of your question: As we explained in last week's issue, the prohibition of *lifnei iver* applies only in cases in which the person cannot commit the sin unassisted. If he can commit it regardless of whether someone helps him – which, in this case, would involve him hiring a different lawyer to represent him – then *lifnei iver* is not violated, but the Rabbinic-level prohibition of *mesaye'a l'ovrei aveirah* still applies (*Yoreh De'ah* 151).

Some *poskim* rule that *mesaye'a* does not apply if the sin is being committed intentionally (*Dagul Meirevavah*, *ibid.*), but the majority of *poskim* maintain that the prohibition applies even in such cases (also see *Meishiv B'Halachah* 90).



CASE FILE

even if the sale is upheld, that agent was not sent for the client's detriment. This can be expanded to other cases in which a loss occurred through the negligence of the agent" (C.M. 183:5; *Pischei Choshen, Pikadon* 12:13).

"Furthermore, the *Gemara* (B.K. 99b) teaches that if a seller paid a banker to evaluate whether a coin offered as payment was genuine, but it turned out counterfeit, the banker is liable when it was clear that the seller relied on him, since it is considered *garmit* (directly caused damage)" (C.M. 306:6; *Nesivos* 306:11).

"Moreover, *Nesivos* infers from the *Gemara* (B.M. 73b) that a paid agent or employee who caused even a loss of potential gain through his neglect to act as agreed on something in his power, is liable, even though seemingly *grama*, since the agent or employee undertook this responsibility. Some disagree" (C.M. and *Nesivos* 183:1; *Nachalas Tzvi* 292; *Pischei Choshen, Pikadon* 12:16).

"However, if the agent sent the booking or itinerary to the client to review and confirm before ticketing and placing the charge, he would not be liable, since the client should have seen the error, yet he confirmed the mistaken booking. He cannot claim that he relied blindly on the agent. Merely sending a copy of the booking, though, would not suffice to relieve the agent of responsibility.

"Even in such a case that the agent is not liable for his error," concluded Rabbi Dayan, "he would not be entitled to his fee, if paid by the client, since he did not perform his job as instructed, which caused the client a loss" (see C.M. 66:40; 301:1).

Ruling: The agent is liable for the surcharge, unless he asked the client to confirm the booking; even so, he would lose his fee from the client.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #29
(Bordering Property)
No Home

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

Q: A person who lived with relatives in a very small village bought the only available house. Can the bar-metzra take the property?

A: We learned that *bar-metzra* rights are based on doing what is "good and fair," and don't apply in cases where they will cause injustice.

Terumas Hadeshen (#340) addresses the case where the need of the buyer is much greater than that of the *bar-metzra*. The buyer claimed that this was the only house available to sufficiently meet his family's needs. *Terumas Hadeshen* cites a dispute and concludes that we cannot evaluate "greater" need to negate *bar-metzra* rights, but in unequivocal cases, such as when the buyer does not have a house and cannot find even a smaller house in town, "good and fair" dictates leaving the house in his hands (*Sma* 175:89).

Rama cites the dispute and says that *bar-metzra* rights do not apply, on condition that the buyer is a townsperson and that he cannot find another house (C.M. 175:49).



BHI HOTLINE

Therefore, if the only way for the plaintiff to sue is if you represent him, then you are prohibited to do because of *lifnei iveir*. If he can represent himself, or there are other non-Jewish lawyers who can represent him, then there is no issue of *lifnei iveir* (see *Pischei Teshuvah, Yoreh De'ah* 160:1), but there may be a prohibition of *mesaye'a*, depending on the dispute regarding whether *mesaye'a* applies to the case of an intentional sinner.

Your case involves a much graver question than the case of a witness testifying in civil court, because in that case the plaintiff is the one violating the prohibition, and the witness is only dealing with a possible prohibition of *lifnei iveir* or *mesaye'a*. If a lawyer's role were limited to advising the plaintiff and helping him prepare his claim, and the plaintiff would represent himself in court, then the lawyer would be similar to a witness. But since the lawyer typically presents the case in court on behalf of his client, *you* might be the one violating the prohibition against litigating in civil court.

It does not help to claim that you are only the agent (*shaliach*) of the plaintiff, because there is a rule that *ein shaliach l'dvar aveirah* (one is not considered an agent for prohibited activity and the sin belongs to the agent, not to the person who appointed him; C.M. 182:1). Therefore, you are the one violating the sin of litigating in civil court.

This does not mean that the plaintiff has no obligation to reimburse the defendant if what he received due to the court ruling is unjustified.

Despite it being obvious, then, that the lawyer transgresses a prohibition by litigating the case in court (*Orach Mishpat [Analik]* 26), since nowadays the plaintiff signs on the lawsuit, both of them violate the prohibition.

(Some *poskim* argue that the main prohibition is to appear and present arguments in civil court - which is the job of the lawyer, so he is the primary violator [author of *Birchas Shlomo* in the *Oraisa* journal, v. 17. p. 216]).

Therefore, if a lawyer is approached by a Jew who wants to sue another Jew in civil court, not only should he abstain from taking the case, but he should also try to convince him to take the case to *beis din*, in fulfillment of the mitzvos of *tochachah* and *arvus* (see *Rambam, Sefer Hamitzvos, ase* 205 and *Talmud Babil, Sotah* 37b).

If the plaintiff has received permission from *beis din* to go to civil court, the lawyer may take the case, but he should check with a Rav what he is allowed to sue for, so that he doesn't inadvertently transgress the prohibition of *ribbis* (interest).

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 or visit us on the web at www.businesshalacha.com

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

CALL 718-233-3845 X 201. OR EMAIL : OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS

לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל