

WHAT'S THE LAW?™ – ISSUE 156: “FORECLOSURE & EXPULSION” & “FROM LAKEWOOD TO FLATBUSH”

FORECLOSURE AND EXPULSION

On a serene and stunning tree-lined Jerusalem block; a cohesive cross-sectional community began to blossom.

Two immigrant cousins; Aviva Goldstein from Forest Hills and Meira Steinberg from Los Angeles, enjoyed raising their young budding families alongside one another in Ramat HaGolan 16. Their husbands studied together in a vibrant Yeshiva in the Old-City.

After three-and-a-half wholesome years of comradery and caring, new emerging circumstances threatened their continued neighborly co-existence.

Both Goldstein's and Steinberg's respective landlords were experiencing financial upheavals and on December 23rd conveyed their mutual interests in terminating both rental agreements abruptly, come January 15th 2006.

1. Goldstein initially signed a one-year contract and upon completing the initial signed agreement, continued paying rent every three months for two-and-a-half years and counting.



All of that seemed to be coming to an unfortunate end as Goldstein's landlord Gadi Kahn; an expatriate from a cherry-tomato farm in Gush Katif slowly came to grips with the fact that his family was left tragically homeless itself.

Though Jerusalem city-life was far different than growing up amidst the Rafiach-Yam vines; living quarters were still a place to call home ...

2. The Steinberg's signed a new contract year after year on August 15th.

Strapped for cash due to a series of business failures, Steinberg's landlord was compelled to put his Jerusalem rental apartment up for an immediate sale to prevent the bank from foreclosing on his Kiryat Ono villa.

Notwithstanding Steinberg's lease; their landlord could only find a buyer who agreed to purchase the apartment on condition that the Steinberg's vacate it immediately.



- May the Goldstein's landlord kick them out on January 15th?
- Pressed for cash, may Steinberg's landlord sell the apartment to a buyer who refuses to respect the standing rental agreement?

What's the Law?

Please email us with your comments, questions, and answers at weekly@projectfellow.org

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Last Week's Case: From Lakewood to Flatbush

Aaron Friedman and his four friends' special relationships began years ago while playing stickball on Friday afternoons on a quiet side street in Flatbush.

Now, twenty years later, they studied Talmud together in the Lakewood Yeshiva. However, Friday afternoons still retained its unique comradery hours, as the young men would often rent a car and cross the Verazzano together to spend Shabbat in Flatbush.

One frigid Friday morning, Aaron rented a dyno blue pearl Honda Civic from Enterprise for \$60 for the weekend. Each friend paid him \$12 for their part. Gas and tolls, they'd split as well.



Friedman and friends intended to head back to Lakewood at 7:00 AM on Sunday morning.

On Saturday night, Yona and Levi called Friedman and told him that they found a ride back that night and as such would not be traveling back with the Friedman crew.

Two seats now remained vacant.

Mr. Cook heard about the vacant seats to Lakewood at a local Chinese Auction, contacted Friedman and requested to send his six year old grandson Eli Cook back to NJ with them, willing to pay for his seat.

One seat remained vacant.

Yona and Levi each paid \$12 and earned a right to ride both ways. Eli sat in one seat.

- *Whose seat did Eli sit in; Yona's, Levi's, or Aaron Friedman's?*
- *Does Eli pay Yona, Levi, both or Aaron?*

The Answer:

Rav Moshe Feinstein ruled that Aaron should take half and Yona and Levi should each take a quarter.

Detailed Explanation:

From Lakewood to Flatbush invokes the following Halachos:

1. A hired a ship from B to transport merchandise from Point 1 to Point 3 for an agreed upon price. Midway; at Point 2, A found a customer to purchase the merchandise and consequently unloaded the

ship. A wishes to pay a reduced price commensurate with the distance traveled. Unless B is able to find another fare to pick up the tabs, A must pay the full from Point 1 to Point 3. (If B gains financially from not having to travel all the way to Point 3, A may deduct appropriately.) [Choshen Mishpat 311: 6]

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2. A rented an apartment for a year from B, then vacated in the midst of the year *with no intention to return*. Even if A is willing to pay for the entire term of the lease, B need not keep the apartment vacant until the end of A's rental contract. Instead, B, as the owner of the property, may rent it out to C and charge A the appropriate reduced price.

Similarly, if A did not yet pay for the months he/she did not live in the apartment, B may not require him to do so, if B found new tenants to take over the remainder of the lease; as B did not lose as a result of A vacating early.

However, a scenario where a) A paid for the entire term of the lease, vacated the apartment mid-term b) *with no intention to return* and c) did not expect someone to take over the lease, raises a fundamental dilemma: **Who now owns the usage rights?**

This dilemma implicates four questions.

- 1) Even though B cannot charge A to pay for months he did not use the apartment when B finds replacement tenants, need the landlord return the rent money A already forwarded for the months A will no longer dwell in the apartment?
- 2) May the landlord rent the apartment to C after A vacates the premises?
- 3) Are 1 and 2 contingent on each other? Meaning'; may B rent the apartment to C, only if he/she returns the rental money to A, or may B “double dip” by renting the

apartment to C even if B is permitted to keep A's money?

- 4) Does A still retain the right to sublease the apartment to a third party even though A left without knowing that someone in fact would do so?

Sm”a [Choshen Mishpat 316:3] rules that B may keep the A's rental money as well as rent it out to C. Why should it remain empty? Pischei Teshuva [Choshen Mishpat 316: 3] brings dissenting opinions including Ketzos [ibid. 2, see Igros Moshe C.M. I 74 for more] who argues that the usage right still belongs to B and as such A lacks the authority to earn money by marketing the usage rights which belong to A [Choshen Mishpat 316:1].

Application:

From Lakewood to Flatbush may be comparable to a scenario where A paid for the entire term of the lease, yet vacated the apartment mid-term *with no intention to return*. In addition, it is unclear whose seat Eli took. In light of the dissenting opinions, Rav Moshe Feinstein [Igros Moshe Choshen Mishpat I: 74] ruled that the inquirers should split little Eli's fare between Aaron the “landlord” and the “renter”. Additionally, Rav Moshe viewed Yona and Levi as partners in Eli's seat and as such, should split the “renters” portion. In terms of dollars and cents, barring the costs of tolls and gas; of the remaining six dollars for one fare from Flatbush to Lakewood, Aaron would take three dollars and Yona and Levi would each take \$1.50. (See Pischei Choshen 2:57 for further discussion on this topic.)