

WHAT'S THE LAW?™ – ISSUE 160: DOWNTOWN DENTURES, OIL SURGE, & CONTINGENT COMMITMENTS

CASE 277: OIL SURGE

The landlord promised to cover heating expenses for the duration of the three year contract. During the first

winter, the price of oil increased to exceed the fixed rental fee.

Does the landlord have recourse?

CASE 278: DOWNTOWN DENTURES

“Esophagogastroduodenoscopy (EGD) is a test to examine the lining of the esophagus stomach, and first part of the small intestine. It is done with a small camera (flexible endoscope) that is inserted down the throat.

The patient receives a sedative and a painkiller. A local anesthetic may be sprayed into the mouth to prevent coughing or gagging when the endoscope is inserted. Dentures must be removed.”

Grandma was sent home after the procedure, and her health slowly began to improve. However, the hospital

Who pays the dentist?

sent her home without her dentures. The hospital verbally agreed to pay for new ones.

The family commissioned their dentist to begin constructing new ones; projecting to complete the job in a week in a half.

In the middle of the week, the hospital called Grandma's home and told her that her teeth were located in a nursing home, downtown. “The nurse inadvertently sent them home with another patient. You'll receive your new teeth in two days, but we refuse to pay for the construction of the new ones.”

What's the Law?

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

LAST WEEK'S CASE 276: CONTINGENT COMMITMENT?

Alexander Klein owned numerous high-end apartment buildings on Ft. Washington Avenue in Upper Manhattan. A two-bedroom apartment averaged at \$1800 a month.

Klein though, signed a discounted three-year lease with Moshe Morrison; his grandson-in-law, for a nominal charge of \$200 a month.

Two months later; Klein began upgrading the kitchens in Moshe's building. He planned on raising rents for apartments with new kitchens by \$100 a month.

The granite countertops and stainless steel appliances greatly enhanced Moshe and Daniella's steal-of -a-deal. The lease unfortunately, outlived their marriage. When Klein's granddaughter returned to her parent's home after ten months, Alex made three demands on Moshe: 1) to meet market value and pay \$1600 more a month till the remainder of the three-year lease. 2) to pay \$1600 retroactively from the first month 3) to pay an additional \$100 a month for the months he benefitted from a new kitchen.

Moshe argued that the contract fixed the lease at \$200 a month.

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The Answer

Alex may not retroactively charge Moshe for the true market value, but henceforth, according to Torah Law - barring local custom - may null the lease.

Detailed Explanation

Contingent Commitments invokes the following Halachos.

In order to Halachically condition the effectiveness of a valid transaction unto a defined factor, the conditioning party needs to clarify beyond reasonable doubt that the effectiveness thereof is strictly contingent upon the prescribed factor and will be conversely ineffective if the factor is not duly met.

Otherwise; simply mentioning a factor at the time of negotiation, merely indicates the party's preference, but lacks the legal ability to influence the effectiveness of the transaction if the factor is not met.

The Torah's prototype for a transaction's condition influencing its effectiveness is the double-ended deal which Moshe struck with the Tribes of Reuben and Gad who requested their inheritance in Transjordan instead of within Israel's mainland.

"If the children of Gad and Reuven will cross the Jordan before you - everyone armed for battle...you shall give them the land of Gilead as a heritage.

But if they do not cross over armed with you...they will take their heritage among you in the land of Canaan" [Bamidbar 32: 29, 30].

By clearly clarifying the converse as well; that the transaction would be **ineffective** if the condition was not met; Moshe left no room for misunderstanding that his condition to their receiving their inheritance in Transjordan was more than a preference; it was vital to the effectiveness of the deal.

Accordingly, verbal transaction stipulations must generally mimic this double-ended deal to be effective. Nonetheless, such a double-ended deal is unnecessary, when surrounding circumstances unquestionably explain the full intent of the stipulating party.

A case in point: Background While people sell moveable objects for a myriad of reasons; unless someone is in the real-estate business; people generally do not sell their real-estate if not for extreme circumstances.

A sold his real- estate while informing his/her buyer that the sale was motivated by his/her intention to relocate to Israel.

Compelling circumstances caused him/her to cancel his/her plans to relocate. As it was clear beyond questionable doubt that he/she sold the real-estate due to move to Israel, if the plans fall through - barring local custom -, Torah law permits A to repossess his/her real estate, although he/she did not express the converse "If I do not make Aliya, the sale is invalid."

Ketzos Hachoshen [Choshen Mishpat 319: 1] points out that real-estate rentals are similar to the sale of moveable objects. As it is customary for people to rent out their premises for a myriad of reasons; in order to pin the effectiveness of the rental agreement on a specific factor (i.e. making Aliya) the landlord would need to express the converse as well, (i.e. *if I fail to make Aliya, the rental is invalid*). Otherwise, whether or not the landlord succeeds in making Aliya, the rental agreement could not be revoked.

Nesivos [Choshen Mishpat 312: Rema 9: Nesivos 7] points out however, that renting out real-estate which is not on the rental market is similar to the sale of real estate; only done for extreme purposes. As such, *barring local custom*- if plans to relocate to Israel would motivate a homeowner to rent out his personal home, he/she can reposes the home should the plans fail, even if the nature of the stipulation did not mimic Reuben and Gad's.

Application:

While it is not uncommon for landlords to give reductions for a myriad of reasons, it was clear beyond reasonable doubt that the drastic reduction in rental price was due to Moshe's relationship with Alex. In light of the aforementioned Nesivos, Alex would not need to have expressed the converse to Moshe (i.e. should the marriage fail; I will charge you in full.) Instead, should the marriage fail, Alex may null the agreement henceforth, and approach Moshe with an ultimatum, "Pay from now on like market value including for the kitchen upgrade, or leave." Alex may not however, charge Moshe retroactively.