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י' אייר תש"פ

General Guidelines for Halachic Queries Regarding Common Financial Issues in the Current Circumstances

A number of enquiries have been made in recent days regarding financial issues that have arisen in the current circumstances of the coronavirus crisis pandemic. In particular, people have been asking whether parents are obliged to continue paying for kindergarten and playgroup services when the services are no longer being provided, and whether people who have rental contracts for apartments in Eretz Yisroel but are currently stranded in the UK and cannot return to Eretz Yisroel need to continue paying for the rent of their apartments.

Most Battei Dinim in town are at the moment only open for emergency situations, and so are not able to adjudicate individual cases. It should be understood that the halachos in these situations can be extremely complex. Furthermore, every case is unique, and a slight change in the circumstances can mean a significant change in the halachah. Nonetheless, as an aid to the public, the Beis Din hereby publishes some general guidelines to enable parties to understand their positions and to negotiate some arrangements with other parties.

Kindergartens and playgroups

1. All kindergartens and playgroups are closed every year for at least two weeks for Pesach, and yet charge a full fee for the month of April (or Nissan). This is because payment for the weeks of Pesach is considered holiday pay for the kindergarten, and thus the kindergarten would be entitled to charge that element of the fee, seeing as it has provided services from the onset of the school year until now. (A small reduction in this, in recognition of the fact that the kindergartens were closed for a couple of weeks earlier before Pesach, is justified.)
2. Regarding days before Pesach that the kindergarten would have remained open if not for the emergency circumstances, there is a *machlokes haposkim* as to whether the parents remain obligated to pay even though they do not receive the services. Therefore, if the parents have paid already in advance, the kindergarten has a stronger case, whereas if they parents have not yet paid, they have the upper hand.
3. Nonetheless, in situations similar to the current one, for various reasons the Chasam Sofer advises that a *peshara* (compromise) is the correct approach, and it is likely that Beis Din would rule the same in the present cases, for the same reasons. A fair compromise in this case would be to pay a half of the fees that would have been paid for the weeks before Pesach that the classes were cancelled. This would mean that the kindergarten would repay part of any advance payment, and conversely parents who had not yet paid would make a part payment to the kindergarten. This approach is particularly pertinent in the current situation, where everyone in the country (and indeed the world) is affected financially.
4. Regarding the first month after Pesach, the Beis Din recommends a compromise payment of a third of the normal charge.

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- The following though should be noted: Firstly, there may be a small saving for the kindergarten in materials, food etc that are not required during this period. This should also be taken into account when deciding an appropriate amount for a compromise. Secondly, it would appear that the government here in the UK is compensating employees and the self-employed for loss of earnings. If that is the case regarding the kindergarten, then when considering a compromise the fact that the kindergarten may not have to pay its employees, and that the kindergarten owners themselves may receive government compensation, may well obviate the requirement for parents to make any compromise payment.

Schools

- Regarding schools, there are many different factors and variables that make it impossible to give a general ruling that would apply across the board. These variables include the fact that most schools are providing programmes of learning as well as live sessions via telephone or video conference; some parents are anyway paying reduced fees; there is a personal interest of the parents, as well as a communal concern, that the school remains financially viable to resume full services when the crisis ends; and conversely the fact that the school may have reduced overheads, and may have furloughed some of the teaching staff.

Apartments in Eretz Yisroel

- Regarding the currently common situation of a young couple living in Eretz Yisroel who travelled to Chutz La'Aretz for Pesach and are unable to return, there is some debate amongst contemporary Dayanim as to whether they are liable to continue paying rent for their apartment in Eretz Yisroel. The main issues involved are whether a tenant can rescind a rental contract due to an אונס – a situation in which he is prevented from living in the apartment through unforeseen circumstances – and whether travelling to Chut"z La"aretz and then being unable to return is called an אונס at all.
- It is the opinion of this Beis Din that in most cases the tenant will be liable to continue paying for the rental of the apartment. Even those authorities who exempt the tenant for paying only do so if the tenant vacates the apartment of his possessions, and informs the landlord at the beginning of the month that he intends to rescind the contract.
- Nonetheless, every case will turn on its own merits, and a clear ruling cannot be given on any specific case without the Beis Din hearing both parties. Here too the Beis Din recommends that the tenants try to negotiate a compromise with the landlord. (For example, the tenant might offer to make a partial payment for the month of Iyar, particularly bearing in mind that the tenants' possessions are in the apartment, and to review the situation as the month of Sivan approaches.)

General guidance

- This unprecedented crisis has adversely affected almost everyone financially. Particularly at times such as these, we recommend that parties come to a suitable compromise themselves. Nevertheless, either party has the right to insist that their case is heard by a Beis Din.

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Hearings in person at a Beis Din may not be able to take place for some time, but the Federation Beis Din is offering the possibility of hearings via Zoom video conferencing if both parties agree to this. (It should be noted that regarding issues of rental apartments in Eretz Yisroel, in most cases the landlord will have a right to insist if he wants that the case be heard by a Dayan or Beis Din there rather than in Chutz La'Aretz.)

והאמת והשלום אהבו

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לענין אונס בשכירות, עי גמרא ב"מ ע"ו: כי הא דאמר רבא האי מאן דאגר אגירי לרפקא ואתא מטרא ומלייה מיא וכו', (ושם ע"ט. סוגיא דספינה ויין), ושו"ע חו"מ סי' של"ד סעי' א' והש"ך והנו"כ שם, ושו"ע חו"מ סי' של"ג סעי' ה' א"כ נאנס, כגון שחלה הוא או אשתו ובניו, ועי' היטב בתרומת הדשן סי' שכ"ט.

ולענין השאלה בגנים ובבתי ספר, יש גם ענין של מכת מדינה, עי' בד"מ (חו"מ) סי' שכ"א בשם מהר"ם, ורמ"א סי' שכ"א סעי' א', ובסמ"ע שם ס"ק ו', ובט"ז שם ס"ס א', ובש"ך שם ס"ק א', ובנתיבות המשפט סי' של"ד ס"ק א', ובגרי"א סי' שכ"א ס"ק ז', ובספר זכרון לחתם סופר עמוד 37

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