THE WERDIGER EDITION

BUSINESS WEEKLY

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

Issue #547 | Terumah | Friday, February 19, 2021 | 7 Adar 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

TEACHER'S DUTY

Mr. Melamed lived in a small out-of-town community and taught Jewish studies at the Jewish elementary school.

Overall, Mr. Melamed taught his classes reasonably, although no one considered him an outstanding teacher. One issue which posed a challenge to the school was his relatively frequent absences, considerably more than the average teacher. He seemed to be sick more than others, sometimes with week-long injuries, and he also took absences for other reasons.

One winter day Mr. Melamed sent a message to the school, just before class began, "I will be unable to teach today and tomorrow due to personal reasons." The principal, Rabbi Rubin, tried calling him, but was unable to reach him.

Rabbi Rubin immediately made some phone calls to find a substitute teacher on short notice, but was unsuccessful. He finally found somebody who could at least oversee the class and supervise them, and quickly drafted a reading assignment to keep the children occupied.

When Mr. Melamed returned, Rabbi Rubin called him in for a meeting. "I'd like to know what were the pressing 'personal reasons' were that made you unable to teach?" he said.

"I'm sorry, but they're personal reasons that I don't feel comfortable sharing," Mr. Melamed replied. Rabbi Rubin decided to respect him and didn't press the issue.

A week later, Rabbi Rubin discovered that Mr. Melamed was an avid skiing hobbyist, and, after the recent snow storm, had decided to take a two-day skiing trip to the mountains.

Mr. Rubin decided to fire Mr. Melamed and replace him. He sent him a notice of discontinuation, effective immediately.

Mr. Melamed sued the yeshivah for breach of contract. They came before the *beis din*, with the basic question:

"Could the yeshivah fire Mr. Melamed without warning him?"

"The *Gemara* (*B.B.* 21a-b) addresses the verse in *Melachim I* (11:15) that Yoav smote every male in Edom, whereas the *mitzvah* is to completely eradicate the memory of Amalek," replied Rabbi Dayan. "It explains that Yoav's childhood teacher mistakenly taught them *timchech es zachar Amalek* (males of Amalek) instead of *zeicher Amalek* (memory of Amalek).

"On this, the *Gemara* teaches that certain professions – among them teacher, *shochet*, and doctor/*mohel*, in which malpractice damage cannot be undone – do not need warning before being fired, since they are automatically

Did You Know?

Using another person's credit card for your purchase and paying back the cost including the interest accrued can entail ribbis.

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

BORROWED BUNGALOW BUNGLE

Q: A friend lent me a large sum of money to help me pay for my daughter's wedding. After I repaid the loan, he called me and asked whether he could rent my bungalow in the mountains for a week.

"Certainly," I replied. "I'm so grateful to you for the loan that you can have it for free!"

Two days into his stay in the bungalow, he called in a panic. Someone pointed out to him that his use of my property might constitute *ribbis* (interest) for the loan he had extended.

Is this truly prohibited?

A: The prototype case of *ribbis* that the Torah prohibits, called "*ribbis ketzutzah*," is when the two parties agree, at the outset of a loan, that the borrower will return more than he is borrowing.

If no such agreement is made at the time of the loan, anything of monetary value he adds onto the amount borrowed during the loan period is called "*avak ribbis*" (lit. the dust of interest) and is prohibited *mid'Rabbanan*.

Ribbis ketzutzah can be litigated in *beis din*; even if the interest was already paid, the lender is obligated to return it (see *Shulchan Aruch, Yoreh De'ah* 160:5 as to whether the borrower may forgive the interest he already paid). *Avak ribbis* cannot be demanded back in *beis din*, but the lender is required to return it *latzeis yedei Shamayim* (to avoid Heavenly justice).

If the borrower repaid the original amount he borrowed, and at a later date sent a gift to the lender to express his gratitude for the loan, it is called *ribbis meucheres* (belated interest), which *Chazal* also prohibited (*Yoreh De'ah* 160:6).

But *Chazal* only prohibited *ribbis meucheres* if the borrower expresses clearly that he is giving the gift in gratitude for the loan, or it is obvious, because of the size of the of the gift, that it is for the loan (*Rema* ibid.). If the borrower does not express, or even allude to, the reason he is giving the gift, and

CASE FILE

considered as being warned.

"Rambam and Shulchan Aruch understand this to refer to public employees, whom the community appointed, while *Rama* cites from *Tur* that it applies even if they serve individuals (*C.M.* 306:8).

"Nonetheless, *Rama* cites from *Maggid Mishneh* that only if the worker fails regularly can he be fired without warning, but not for individual instances. However, he cites from *Mordechai* that even a teacher who negligently skipped individual days or a full 24-hour period should be replaced, since loss of Torah learning is irreplaceable!" (*Sma* 306:21).

"Chazon Ish (*B.K.* 23:2) explains that although an employer is not obligated indefinitely to an employee, the *Gemara* refers to cases where it was customary to appoint for a lifelong position. Therefore, once the worker began, he cannot be fired without cause" (*Pischei Choshen*, *Sechirus* 10:9).

"*Haamek She'eilah* (142:5), however, writes that even within the time frame of a contract it is possible to fire the worker in such cases where the damage is irrevocable.

"*Tzitz Eliezer* (7:48:10) addresses the case of a worker who was frequently absent due to medical reasons, which caused his organization substantial losses. Although he was fired without warning, *Tzitz Eliezer* upheld the discontinuation of his work based on the above, since his absence caused the organization irrecoverable loss, even if not done intentionally.

"Nonetheless," concluded Rabbi Dayan, "if there is a practice that requires warning even for these professions, it is binding, as are other employer-employee issues that depend on the local common practice" (*C.M*. 331:1-2).

Verdict: A teacher who is negligent in his duties and causes irrevocable loss of Torah learning can be replaced, even without warning, unless there is a clear local practice otherwise.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #7
(Bordering Property)
Relatives; New *Bar-Metzra*

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

Q: What is the status of relatives regarding the rights of *bar-metzra*? Are *bar-metzra* rights transferable?

A: Since the rights of *bar-metzra* are based on doing what is "fair and good," a person's own descendants have priority over others. Therefore, if a person sold his property to his children or grandchildren, the *bar-metzra* cannot claim it from them. However, a child cannot claim the property from another who purchased it. Other relatives, unless they are the immediate inheritors, do not have priority over the *bar-metzra* (see Shach 175:30; *Pischei Teshuvah* 175:2, 13; *Nachalas Zvi*, *Kesef Hakodashim* and *Mishpat Shalom* 175:37).

Bar-metzra rights are not transferable. Therefore, for example, if Reuven sold his property to an outside party, Shimon, and his *bar-metzra*, Levi, subsequently sold his property to Yehuda, Yehuda cannot claim Reuven's property from Shimon as the new *bar-metzra* of Reuven. Moreover, even if Shimon bought also Levi's property, other pre-existing *bar-metzras* of Reuven can claim Reuven's property from Shimon (*C.M.* 175:15, 35; *Sma* 175:61).

BHI HOTLINE

it is an inexpensive item that people will sometimes give others without any particular reason, then it is permissible even if in his mind the borrower does give it as a token of his gratitude. *Chazal* did not forbid the gifting of such items after a loan, as long as these are items that people sometimes give even for no reason (*Taz* and *Chavas Daas* ibid. 3; *Shulchan Aruch Harav, Dinei Ribbis* 7).

Some *poskim* argue that if the borrower's unspoken intention is to give the gift as a token of his appreciation, then even if it is an inexpensive item that he would sometimes give to this very friend for no reason, it is forbidden (*Shach* ibid. 10; *Chochmas Adam* 131:8). It follows that the lender may not accept a gift if he realizes that the borrower is giving it in appreciation for the loan.

The *Shulchan Aruch Harav* writes that it is best to follow the stringent opinion of the *Shach*.

Either way, all *poskim* agree that the borrower may not give something of significant monetary value to the lender, unless a long time has elapsed since the repayment of the loan, because if he does so, it is obvious that it is a token of appreciation for the loan. This is true even if this borrower has given gifts of similar value to the lender in the past for no reason. And it is certainly prohibited to give a gift while expressing, in any way, that it is in appreciation for the loan (*Shach* 9 and *Shulchan Aruch Harav* ibid.).

Obviously, then, your telling your friend that you were allowing him to use your bungalow out of gratitude for the loan he extended was a problem of *ribbis meucheres*. But *ribbis meucheres* is less stringent than *avak ribbis*, and one is not required to return it even *latzeis yedei Shamayim* (*Yoreh De'ah* 161:2). Your friend is, therefore, not required to pay you for the days he already spent in your bungalow. (There are grounds to consider that perhaps his acceptance of the gift was a mistake, because had he known that it was prohibited, he would not have accepted it for free. It might therefore be considered as though he never accepted the gift, and he is now required to pay; see *Machaneh Ephraim, Ribbis* 16; *Shu"t Maharsham* 2:145; *Nesivos* 208:1; *Nesivos Shalom, Introduction,* 105.)

In regard to the rest of the week, if he wants to continue using your bungalow, he must pay you whatever rent you would have charged had he not extended the loan. (However, *Nachal Yitzchak* 72:4, addressing *avak ribbis*, suggests that once the lender made a *kinyan* on the house by living there, it is considered as though he acquired the property for the entire week, and since he is not required to return *ribbis meucheres* already received, he can live there for the entire week. The *Machaneh Ephraim* [*Ribbis* 30] preceded the *Nachal Yitzchak* on this possibility, but the Rema [*Yoreh De'ah* 172:1] seems to rule against it.)

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

The digital distribution is sponsored by **DMT Plumbing and Heating Corp.**

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