

BUSINESS WEEKLY



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

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

“HAVE TO LEAVE EARLY!”

Aharon Klein was working as the lifeguard at a day camp. His contract ran through the middle of August.

Two weeks before camp was over, Aharon got a call from his mother. “Mazel tov,” she said. “Your sister Miriam in Israel had a baby boy! Thank G-d, everyone is doing well.”

“Wow! That’s wonderful!” exclaimed Aharon. “What about the *bris*?”

“We’re trying to make arrangements to go,” replied Mrs. Klein.

“Keep me updated,” said Aharon.

The following day, Mrs. Klein said: “We plan on flying to the *bris* in two days. Be”H it will be on Sunday, so we have to get there before Shabbos. Do you want to come?”

“Sure!” said Aharon. “I’m not going to miss the *bris*!”

“What about your work?” asked his mother.

“I’ll tell the director that I have to leave early,” said Aharon. “He’ll have to get someone else to fill in.”

Aharon immediately told the camp director that he wanted to stop working, so that he could fly to the *bris*.

“I’m very happy for you and your family,” said the director, “but I can’t let you go without first getting someone else. You know that swimming is one of the most essential parts of the camp day.”

“I need to book the ticket already,” said Aharon. “I’m not missing the *bris* in any case. I’m sure you can find someone else.”

“I’ll try, but it might not be easy,” said the director.

The director sought a replacement lifeguard, but all the potential candidates were working elsewhere. He finally found a professional lifeguard who agreed to work for the remaining week, but at a significantly higher salary.

“I found someone,” the director told Aharon as he left, “but it will cost us much more.”

“Sorry, but I don’t want to miss the *bris*,” said Aharon.

The director called Rabbi Dayan and asked:

“Can I deduct from Aharon’s salary the differential in wage for the remaining week?”

“Once a worker begins working, he is committed to his employer,” replied Rabbi Dayan. “Nonetheless, the *Gemara* (B.M. 10a, 77a) teaches that a per-diem worker (*po’e*) can retract even in the middle of the day. This is because G-d declares Israel to be His servants alone, whereas an irrevocable work commitment is a form of bondage” (C.M. 333:3).

“Therefore, since the worker can retract, he is entitled to the full salary for the time he worked,

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

LOAN EXTENSION

Q: Someone loaned me \$50,000, and we made up that I would pay back \$5,000 a month over ten months. Two months have passed, and the lender never approached me to ask for payment. Am I obligated to contact him to pay, or am I allowed to wait until he demands payment? The reason I’m asking is because my budget is still tight, and I’m hoping that things will ease up in a few months.

If the *halachah* is that I am not required to contact him to pay, then when he does demand payment, am I required to pay the accumulated amount until that point, or can I begin the ten-month payoff plan from then?

A: There is a dispute among the *poskim* that pertains to your first question, and the answer to your second question will depend on the same dispute.

The *Rishonim* write that if a borrower took an oath to repay a loan before a certain time, and the lender never demanded payment before that time, he does not violate his oath if he does not repay — but when the lender approaches him at a later date for payment, he must pay immediately, to fulfill his oath. The *halachah* follows this view (*Shulchan Aruch*, C.M. 72:6 and *Shach* 19), but some *poskim* rule that the oath obligates him to contact the lender to repay him on time (*Taz* *ibid.*; *Ketzos* 6).

Some *poskim* contend that this *halachah* applies only to the oath – i.e., we assume that he only intended to swear to pay by a certain date if the lender would demand payment – but regardless of his intention at the time of the oath, the concept of *priyas baal chov mitzvah* obligates him to pay on time (C.M. 97:15), even if the lender does not demand payment (*Nesivos* 104:2).

Many *poskim* disagree, however, and maintain that there is no difference between the oath and the *mitzvah* to repay; if the lender does not demand payment, the borrower is not required to pursue him. Rather, if the lender does not demand repayment, we assume that he decided to extend the payment deadline (*Shu”t Shai Lamora* 34, *Ketzos* 104:2; *Nachal Yitzchak* 9; *Imrei Binah*, *Dinei Geviyas Chov* 2).

If the borrower knows that the lender has forgotten



CASE FILE

even if it will cost more to hire an alternate worker" (C.M. 333:4. See however Chazon Ish B.K. 23:2 and Pischei Choshen, Sechirus 11:[1] regarding giving sufficient notice).

"However, this applies only to regular work. When the work is time-bound and entails a potential imminent loss (*davar haaved*), the worker may not retract. In this case, if an alternate worker cost more, the employee is liable for the differential in cost of the replacement worker" (C.M. 333:5).

"Rama (C.M. 333:5) cites from the *Terumas Hadeshen* (#329) that the services of a household servant, whose employer cannot manage without him and is liable to suffer loss in various matters, is also considered *davar haaved*. In truth, *Terumas Hadeshen* remains inconclusive on this, so that Maharashdam (#119) writes that if the servant already received his full pay and is in possession, the employer cannot demand that he return the differential. Shach (333:23) concludes that it depends on the *Dayan's* evaluation of the particular circumstances.

"*Responsa V'shav Hakohen* writes that it is considered *davar haaved* regarding that the servant is not allowed to retract, even though it is not clear that the owner will lose, since one cannot cause even questionable loss, but not regarding his paying the differential" (see *Nesivos* and *Pischei Teshuvah* 333:8).

"Aharon's work is certainly considered *davar haaved*, though, even if it doesn't entail direct financial loss to the camp," concluded Rabbi Dayan. "The camp cannot function properly without a lifeguard, so that if Aharon backs out, he is liable for the differential in salary, and the director can deduct it from his pay."

Verdict: If an essential worker quits prematurely, he is liable for the differential in salary of a replacement worker.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #30
(Bordering Property)
Tzedaka Organization
or Yeshiva

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

Q: Can the bar-metzra take a property granted to a tzedakah organization or Yeshiva?

A: Chazal did not grant the *bar-metzra* rights against young orphans who bought a property, even if they have an *apotrofus* (legal guardian) (C.M. 175:47).

Rivash (#507) writes that a tzedakah organization has the same rule as orphans. Furthermore, bar-metzra rights do not apply to a gift (C.M. 175:54-55). Some authorities suggest a property bought by a Yeshiva is also not subject to *bar-metzra* rights. This is "good and fair" and this is considered a better use of the property, as we find that certain other limitations regarding neighbors are waived in favor of establishing a Torah institution (Divrei Chaim C.M. 2:18).

Others, however, reject this analogy, since the Yeshiva can buy a property elsewhere and establish itself there. Thus, there is no reason to revoke the rights of the *bar-metzra*. However, if the property was donated, bar-metzra rights do not apply, as any other gift (Sho'el U'maishiv 3:1:422).



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about the loan, however, then he must remind him, in fulfillment of the *mitzvah* of *hashavas aveidah*.

Regarding your second question – whether you would have to pay in one installment for all of the months that have elapsed, when the lender approaches you for payment for the first time, or whether you may start the monthly installments at that time – *Shu"t Shai Lamora* (34) addresses this topic in a responsum (cited in summation in *Ketzos* 73:9 and *Chiddushei Rabbi Akiva Eiger* 74:4; cf. *Miktzoa BaTorah* 73:22).

He writes that payment in installments is clearly bad for the lender, because it means that he receives the money in small increments that he can't use to buy merchandise. It favors the borrower, because it is much easier to pay in small increments. There are, therefore, *halachos* that govern when a borrower is allowed to pay in installments and when he must pay in one lump sum (C.M. 74:4).

In your case, however, since the lender has already agreed to allow the borrower to pay in installments, he may not withdraw that consent.

Since the reason you haven't yet made any payments is that the lender failed to request payment during the first months of the loan term, the installment plan should start from the first time the lender demands payment.

But this is true only according to the opinion that a borrower is not required to pay a loan until the lender demands payment. According to the *poskim* who rule that the borrower is required to pay even if the lender does not demand payment, we certainly do not assume that he meant to give you more time to pay just because he failed to demand payment (see *Pischei Choshen, Halvaah* ch. 3, p. 22).

If the lender did demand payment on schedule, but the borrower did not pay, he must pay the entire debt that has accumulated as soon as possible, because the lender obviously had no intention to extend the payment deadline (*Shai Lamora* *ibid.*, and *Mishkenos Haro'im, Halvaah* 55).

Furthermore, if the only reason the lender did not demand payment is that he knew the borrower did not have money to pay — in which case the prohibition of *lo yigos* bars him from demanding payment (see C.M. 97:2), then when the borrower does have money, he is required to pay as much as he can immediately, since the lender had no intention to extend the repayment deadline (see *Mishpatim Yesharim* 2:196 and *Paamonei Zahav* 73:1 regarding back-pay owed to an employee).

Returning to your case, we must stress that you should not take advantage of the lender's original largesse in lending you this sum of money and his subsequent grace in not demanding payment. Rather, you should be grateful for the favor he has done for you, and you should try to pay him as soon as he needs the money.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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