

BUSINESS WEEKLY



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

Issue #573 | Ki Savo | Friday, August 27, 2021 | 19 Elul 5781

לז"נ ר' יהודה נטע בן ר' צבי ע"ה, נלב"ע ביום י"ז אלול תשע"ו



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

MISSED LEARNING

The Schillers had spent the summer in a bungalow colony. It was their last week there.

Throughout the summer, they had paid Rabbi Lerner to learn with their son, David, for half an hour a week, on Tuesday afternoon at 5:00 p.m.

This Tuesday morning, Mrs. Schiller announced to her family: "Since it's our last week here, I planned a special surprise for today." The family set out for a day-long outing.

As 5:00 p.m. approached Rabbi Lerner settled down at his table, waiting for David to come learn. The clock ticked, but David did not arrive. At 5:10, Rabbi Lerner said to his wife: "This is strange. David is usually pretty punctual."

"Perhaps he was in the middle of a ballgame and got delayed," his wife said. "You know, it is summer."

At 5:15 Rabbi Lerner tried calling the Schillers, but there was no answer.

At *Maariv* that evening, Rabbi Lerner met Mr. Schiller. "I missed David today," he said. "What happened?"

"I'm so sorry!" apologized Mr. Schiller. "My wife had planned a special day-long outing for today."

"I was waiting for David," said Rabbi Lerner. "I would have appreciated advance notice."

"Of course," replied Mr. Schiller. "Unfortunately, we completely forgot about David's lesson with you."

"I will be away tomorrow and Thursday," said Rabbi Lerner, "so that I don't think we can make up the lesson this week."

When Mr. Schiller returned home, he mentioned to his wife that they had forgotten David's lesson.

"I can't believe I forgot that!" exclaimed Mrs. Schiller. "David so much enjoys learning with his *Rebbi!*"

"Did Rabbi Lerner say anything about payment?" asked Mrs. Schiller

"He didn't ask for payment," replied Mr. Schiller, "but did mention that he was waiting and would have appreciated advance notice."

"Even if he doesn't demand payment," said Mrs. Schiller, "perhaps we owe him? At least morally?"

Mr. Schiller called Rabbi Dayan and asked:

"Do we owe Rabbi Lerner anything for the missed lesson?"

"This depends on whether Rabbi Lerner lost an alternate opportunity to earn," replied Rabbi

DID YOU KNOW?

Many businesses can restructure their employee contracts to avoid Shabbos concerns without the need for a Heter Mechira.

Ask your Rav or email
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for guidance and solutions.



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

WITNESS AGAINST EMPLOYER

Q: My coworker got into a fight with our boss and was fired. He took my boss to a *din Torah* to settle several monetary claims, and he asked me to come testify on his behalf in *beis din*. I know that some of his claims are valid, and my testimony would help him, but I'm concerned that if I testify, my boss will get angry at me and perhaps even fire me.

When I relayed my concern to my former coworker, he told me that it is an *aveirah* not to testify on his behalf.

Is he correct?

A: In order to understand your coworker's statement, we must explain some *halachos* about testimony in *beis din*.

If a person witnesses something and his testimony can help another Jew, he is required to testify in *beis din*. Even if he is a lone witness, and the most his testimony will accomplish is that the other party will be required to swear, he is still required to testify (*Shulchan Aruch, C.M. 28:1, and see Rabbi Akiva Eiger*).

But a person is obligated to testify only if one of the parties demands, in *beis din*, that he testify (*Levush ibid., Sma 28:6-7 according to Tosafos, Bava Kamma 56a, s.v. Pshita*). Some *poskim* argue that even if the request was made outside of *beis din*, the would-be witness is still required to testify (*Imrei Binah, Dinei Eidus 8*). All *poskim* agree, however, that if no one demands that a person testify, he is not required to do so. But some *poskim* rule that this is the case only if the party for whom the testimony will be helpful is aware that this person knows information that can help him, in which case we view the fact that he hasn't demanded that he testify as proof that he is willing to forgo his testimony (*Erech Shai*).

If he never knew that this person could serve as a witness, however, then the witness is required to testify if it will enable someone to win the case,



CASE FILE

Dayan. "In the setting of a bungalow colony this is less likely.

"The *Mishnah* (B.M. 75b) teaches that if an employer or employee retracted before work began, the other party has only *tar'omes* (rightful complaint) against him, but not a monetary claim. Some write that there is not even a heavenly monetary obligation" (C.M. 333:1; *Pischei Choshen*, *Sechirus* 10:[7]).

"In this case, you are the employer and Rabbi Lerner the employee. When David did not attend the scheduled learning session, this is comparable to an employer who retracted. Although Rabbi Lerner taught David throughout the summer, since each lesson is paid for and considered separately, each lesson stands by itself and missing it would be considered as retracting before work began. Therefore, in the absence of a lost alternate option, you have no monetary obligation.

"However, if Rabbi Lerner had rejected an alternate work option because of his commitment to you, you would be liable for the lost wages. This is considered a *davar haaved*, which is *garmi* (directly caused loss), and carries halachic monetary liability. Usually this payment is only partial, since the worker had free time (*k'po'el batel*), but regarding a *melamed* (teacher), we assume that he would prefer the opportunity to teach Torah to idle time, so that the employer is liable for the full wages" (C.M. 333:2, 334:4).

"In the context of a bungalow colony, unlike a professional tutor during the year, it is unlikely that David's learning came at the expense of alternate opportunities and that the circumstances are those of *davar haaved*.

"Nonetheless," concluded Rabbi Dayan, "since Rabbi Lerner has *tar'omes*, while there is no mandated payment, it is appropriate to appease him in some way, taking into account that this was an oversight, not willful canceling."

Verdict: An employer who retracted before the worker began and did not lose an alternate opportunity has no financial liability, but should appease the worker to mitigate his rightful complaint.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #32
(Bordering Property)
Creditor

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

Q: What are the rights of a *bar-metzra* in cases that a property is collected by a creditor?

A: If a creditor collected the borrower's property, the *bar-metzra* can take it from him as from any other buyer. Some say that he is required to pay the creditor only the value for which the property was assessed toward the debt, not the debt's full amount (C.M. 175:9,20).

[We mentioned previously (MM — *Bar Metzra* #10) that a mortgaged property may be different from a regular loan.]

Conversely, if the *bar-metzra* took the property from a buyer, and the seller defaulted on a prior loan, the creditor can collect the property from the *bar-metzra* as from other buyers. In this case, some say that the *bar-metzra* can turn to the initial buyer for compensation, whereas most authorities maintain that he has no claim to the initial buyer, but rather only to the seller/borrower, since we view the initial buyer as the agent of the *bar-metzra* (C.M. 175:21; *Gra* 175:59).



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even according to the *poskim* who maintain that a person is only required to testify if one of the parties demands, in *beis din*, that he do so. This halachah is derived from the *mitzvah* of *lo saamod al dam rei'echa* (see *Pischei Teshuvah* 28:4).

This *lo saaseh* requires us to do anything we can to save a fellow Jew from monetary loss (see *Chofetz Chaim*, *Hilchos Rechilus* 9 in *Be'er Mayim Chaim*, but see *Shu"t Shoel Umeishiv Tinyana* 3:110 and *Imrei Binah*, loc. cit. regarding whether this *mitzvah* applies only to preventing loss of life, or to monetary loss as well).

In addition, the *mitzvah* of *hashavas aveidah*, which requires us to prevent another Jew from incurring monetary loss, includes the requirement to testify on someone's behalf if that will prevent him from losing money (*Pischei Teshuvah* 28:4, *Ketzos Hachoshen* 28:3, *Nesivos* 28:1, *Yeshuos Yisrael* 28:1).

Some *poskim* say that the *mitzvah* of *hashavas aveidah* applies only when someone is in proximity to the "*aveidah*," which, in this case, would be *beis din*. Therefore, *hashavas aveidah* would not *obligate* the witness to come to *beis din* to testify (*Imrei Binah*, *Dinei Eidus* 8), but it would be a *mitzvah* and *middas chassidus* (an act of piety) for him to testify (see *Tur*, C.M. 154:15 and *Shaar Mishpat* 28:2).

For all these reasons, your coworker's assertion does have merit – certainly if there is a second witness who can testify on his behalf, which would make this obligation *d'Oraysa* according to many *poskim*. But even if you are a lone witness, and there is no *d'Oraysa* obligation to testify, the commandments of *lo saamod* and *hashavas aveidah* might apply.

Nevertheless, according to many *poskim* you would not be required to testify. The *Beis Yosef* (*Shu"t Avkas Rochel* 195, cited in *Yeshuos Yisrael* 28:1) writes that if a person is afraid to testify because it will cause him monetary loss, we do not require him to lose money in order to save someone else money. The obligation to testify falls under the rubric of *gemillus chassadim* (*Nimukei Yosef*, *Bava Kamma* 24a, cited in *Beis Yosef*, C.M. 28), and we are not required to lose money in order to perform *gemillus chassadim*. A person has more of a responsibility to safeguard his own possessions than those of another person, as we see from the *halachah* that a person who finds an object is not obligated to take the time to return it if it will cause him a financial loss (*Bava Metzra* 30b, C.M. 264:1; see *Shu"t Minchas Shlomo* 1:82).

Therefore, if you have reason to believe that your boss will fire you if you testify for your coworker, you are not obligated to testify. But this exemption allows you only to avoid going to *beis din*, or to go and tell *beis din* that you can't testify. It does not allow you to lie to *beis din* and claim that you don't know anything about the matter; that would be considered somewhat like false testimony (*Yeshuos Yisrael* *ibid.* based on C.M. 29:1, but see *Haflaah*, *Kesubos* 27b, commenting on *Tosafos* s.v. *Amar li*).

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