

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

POST-DATED CHECK

Mr. Green had lent his nephew Yossi the substantial sum of \$100,000 for a year, without interest, to expand his business. However, Yossi's business had taken a severe, unexpected downturn during

the year and was nearly bankrupt. "I would like to honor the loan," Yossi said to his uncle toward the end of the year, "but I don't have available cash to repay you."

"I'm willing to work something out," said Mr. Green. "What do you suggest?"

"I can give you a post-dated check for \$100,000 from a client," offered Yossi. "It's due in half a year."

Mr. Green wrinkled his nose. "I don't like dealing with post-dated checks from third parties," he said. "There's the risk that their checks might bounce. I also don't want to have to wait half-a-year for the money. You can take the check to a check cashing place."

"But they charge very high fees," said Yossi, especially with my current credit rating. "I'm willing to consider the check at 95% its face value and will pay you the \$5,000 difference. This way you won't lose from waiting the half-a-year."

"But what about the possibility of default?" said Mr. Green. "It's bad enough that you are unable to pay. How do I know that the check from this client of yours won't bounce? Then I'll be out the money entirely."

"I'm willing to take responsibility for the check," offered Yossi. "If the issuer defaults, I will remain obligated to you."

"I assumed that was obvious!" said Mr. Green. "In any case, let me mull over your offer. I'll let you know tomorrow."

As Mr. Green considered the issue, he became concerned that perhaps there was a ribbis issue in accepting the post-dated check at a discount from its face value. He contacted Rabbi Dayan and explained Yossi's offer. He asked:

"Can I take the post-dated check from Yossi at a discount?!"

"A person who owns a loan or possesses a third-party check, even if not yet due, is allowed to sell it to another below its face value," replied Rabbi Dayan. "There is no prohibition of *ribbis* in this" (Y.D. 173:4).

"However, the seller may not take responsibility for the loan in the eventuality that the borrower will default, and the buyer will not be able to collect the debt. This is because then the sale is effectively annulled, so that the money paid

DID YOU KNOW?

An MCA (Merchant Cash Advance) is halachically considered a loan and subject to *hilchos ribbis*.

Ask your Rav or email
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for guidance and solutions.



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

EXTRA PAY FOR EXTRA WORK?

Q: Last year I was hired to teach a class of young girls. Since handling all these youngsters alone is difficult, the administration agreed to hire an assistant for me.

At the beginning of the school year, they informed me that they hadn't found an assistant. After handling the class for a while on my own, doing the work of two people, I asked that in addition to my own salary, they pay me whatever they would have paid an assistant.

They apologized, explaining that they really tried to hire an assistant, and they agreed to raise my salary a little bit, but not to add the full amount they would have paid the assistant.

Who is correct?

A: There are instances in which employees who put in more work than they were initially hired to do are entitled to additional compensation, and there are cases in which they are not.

If the employee decided to invest more effort with the knowledge that he would not receive any additional compensation, then the extra work was "gifted" to the employer, and the employee cannot demand additional payment (*Nesivos* 12:5). Furthermore, if the worker delivered a more impressive product than originally requested, he is entitled only to the amount initially promised (*Shach* 332:11).

Furthermore, even if the worker voluntarily did more than he was responsible to do, if he was planning to be *mochel* (forgo) additional payment, and is demanding that payment now only because he and his boss got into an argument, then he is not entitled to additional payment (*Shulchan Aruch*, C. M. 246:17).

If there is no proof that the worker was *mochel* the amount due for the extra work, the employer is required to pay him for it. Even if a lot of time has elapsed and he never demanded payment, it is possible that he failed to do so out of embarrassment



CASE FILE

initially to the seller was like a loan. When the buyer/lender is guaranteed not to lose yet has the possibility of gaining if he collects the loan at face value, it is not allowed" (*Taz* 173:3; *Bris Yehuda* 15:1).

"Furthermore, the loan has to be sold in a manner that is halachically valid; it is not sufficient simply to hand over the loan document. The manner of selling a loan is detailed in *Shulchan Aruch* (see *C.M.* 66:1; 126:1). However, if the common commercial practice is to sell loans in a certain manner, such as when selling bonds, it is binding and suffices. Similarly, endorsing a check is considered by many as sufficient to sell it to others nowadays" (*Pischei Choshen, Halvaah* 10:13).

"A similar *halachah* applies regarding paying debts with bonds or post-dated checks from others. A person who does not have money with which to pay, can pay his debt with bonds or checks from others at their current value, just as he can pay with other moveable items" (*C.M.* 101:5; *Pischei Choshen, Halvaah* 4:12).

"The current value takes into account the risk of default," concluded Rabbi Dayan, "but can also include in it the delay in payment, if this factor is considered commercially in assessing the current value of the check."

Verdict: A person can sell a post-dated check at a discount, and there is no prohibition of interest, provided that he does not take liability for the check. Similarly, a person who does not have money can pay with a third-party check at its current value.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #39 (Bordering Property) Property Exchange

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

Q: Reuven and Shimon exchanged houses. Reuven's bar-metzra wants to take Reuven's former house from Shimon and give Shimon a different house, instead. Is this allowed?

A: *Bar-metzra* rights apply only when the property was sold, not when it was exchanged, even when the *bar-metzra* is willing to offer a comparable property. This is because, unlike money, which is identical, sometimes a person wants a specific property and not another (*C.M.* 175:24).

Thus Shimon can claim that he was fond of his original house, and was only willing to exchange it for Reuven's, not for the house offered by the *bar-metzra* and not even for cash. Therefore, it is not "fair and good" to take from him Reuven's house that he received in exchange (*Sma* 175:39).

This applies even if the properties were of different nature, such as if Shimon received Reuven's field in exchange for his house, even though people are usually not as particular about a specific field as they are about a house.



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or because he didn't want to cause a rift with his employer, so he waited for an opportune time (*Shu"t Chasam Sofer, C.M.* 119, cited in *Pischei Teshuvah*, loc. cit. 4; *Pischei Choshen, Sechirus* 88, fn. 72).

If the employer added to the employee's workload, and the employee never complained about the additional work, the *poskim* debate whether his silence is considered *mechilah* (*Ta"z* 308:7) or whether the employer is obligated to pay him for the additional work (*Bach*, cited in *Chiddushei Rabbi Akiva Eiger* *ibid.*).

All these sources provide background for your situation, but don't apply directly to your case, because your employer expressed clearly that you would have an assistant, and if you did double duty assuming that you would be compensated for it, it is likely that you have a valid claim, as we will explain (see *Mishpetei Hachoshen*, pp. 266-7).

In Salonica, Turkey, some 450 years ago, the custom was that each child in a Talmud Torah would be furnished with new clothing for Chanukah, with material donated for that purpose.

As the Talmud Torah grew, the amount of wool that was donated no longer sufficed for all the garments, and the Talmud Torah had to purchase material at a significant cost. The administration decided to shear raw wool from sheep and create the garments on their own, and they asked an employee of the Talmud Torah, Reb Moshe, to be responsible for manufacturing the clothing. Reb Moshe agreed, on condition that they would hire an assistant to help him with his responsibilities.

Despite this condition being recorded in the communal ledger and Reb Moshe's frequent reminders to the administration, they never hired an assistant for him – either out of negligence or because they couldn't find an appropriate candidate for the job. Reb Moshe nevertheless produced those garments for several years.

Eventually, the Maharashdam (*C.M.* 372, cited in *Shach* 332:5) was asked whether Reb Moshe should be paid the amount an assistant would have cost the administration during those years.

The Maharashdam answered that it is clear that they must pay him that amount, because he agreed to do the additional work *only* on condition that they hire the assistant. As proof, the Maharashdam cites a *halachah* (*C.M.* 332:1) that if someone asked an agent to hire workers to do a job for a certain amount, and the agent hired workers and promised them a higher amount, if it is clear that the workers produced work worth the higher amount, then the employer is required to pay them that amount. Certainly, if the worker was promised that the workload would be divided between him and an assistant, and, for whatever reason, they didn't supply an assistant, he deserves both salaries.

Some *poskim* argue, however, that the case cited from *Shulchan Aruch* proves only that a worker who produces more should receive added payment equivalent to the value of his extra work, but that does not have to equal the amount an additional employee would have been paid to do the extra work (*Pischei Choshen, Sechirus* 8, fn. 34, and *Davar Lamishpat* 13:8).

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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