

BUSINESS WEEKLY



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

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לע"נ ר' בניהו בן ר' יהושע ע"ה, ר' שמואל בן ר' בנימין ע"ה



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

TIME ZONES

Mr. Samson owned a business which relied heavily on call centers located in India.

Each morning, he learned *Hilchos Shabbos* by phone with a *chavrusa*, Mr. Mizrachi, who lived in Israel. They were currently learning the laws of *amira l'nochri*, instructing a non-Jew to do prohibited work on Shabbos.

"What happens when there is a difference in time zones?" Mr. Samson asked his *chavrusa*. "For example, I use call centers in India. When it's Friday in America, it's already Shabbos in India. Is that a violation of *amira l'nochri*?"

"This would seemingly depend on whether we focus on the place where the Jew is standing or the place where the work is being done by the non-Jew," replied Mr. Mizrachi.

"I face the opposite question," Mr. Mizrachi continued. "I own a store in America. After it is already Shabbos in Israel, can my non-Jewish workers continue to operate the store on Friday, even though it's already Shabbos for me?"

"Presumably it depends on the same point, whom we focus on," said Mr. Samson. "If my case is allowed, yours should be prohibited, and vice versa."

"I have an additional twist on that," added Mr. Mizrachi. "If we follow the place where the Jew stands, then when it's already Motzoei Shabbos in Israel, can non-Jewish workers operate my store in America on Shabbos afternoon?"

"It's hard to believe that should be allowed!" said Mr. Samson. "Let's ask Rabbi Dayan." He asked:

"Is it permissible for a non-Jew to do work for a Jew on Shabbos when they are in different time zones?"

"Clearly, there is no inherent prohibition for a non-Jew to work on Shabbos," replied Rabbi Dayan. "There are two primary reasons why *Chazal* prohibited instructing a non-Jew to do work for a Jew on Shabbos: First, the Jew is speaking prohibited talk of *melachah*, for which reason it is prohibited even to instruct him on Shabbos to do work after Shabbos. Second, *Chazal* considered the non-Jew as the agent of the Jew in doing the work, for which reason it is prohibited even to instruct him before Shabbos to do work on Shabbos (O.C. 307:2-3; *Shemiras Shabbos K'hilchasa* 30:2[2]).

"However, in Mr. Samson's case of the call



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

PROMPT PAYMENT

Q. My accountant contacted me to let me know that he finished preparing my tax return and he wanted to email it to me. I explained that I am from the old generation and don't know how to deal with email. He responded that I could come pick up the return and pay him for his service.

Am I obligated to pay him on that day in order to fulfill the *mitzvah* of paying wages on time and avoid transgressing the prohibition of *bal talin*?

A. There are several reasons why *bal talin* — which prohibits us from delaying payment to a worker or tradesman once he has completed his work — may not apply to this case:

1. When you give something in for repair, as long as it is in the repairman's possession, there is no prohibition of *bal talin* (C.M. 339:6). Several explanations are given for this *halachah*:

a. Since the repairman can keep your object as collateral until you pay, the *passuk* that instructs us to pay on time does not apply. That *passuk* (*Devarim* 24:15) begins with "*Lo saashok* — you shall not oppress" and continues with "*beyomo titein secharo* — on that day shall you pay his wages." Since the worker will retain the customer's object until he is paid, this is not considered oppression and the prohibition does not apply (*Sma* *ibid.* 10, according to *Shulchan Aruch Harav*, *Sechirus* 13, and see *Imrei Yaakov* pp. 246-247 and *Pischei Choshen*, *Sechirus* 9:31).

In your case, since the accountant does not benefit from withholding your tax return, because it is useless to him and valuable only to you, it will not help him stop you from oppressing him, and the *passuk* and *halachos* of paying on time and not to delay payment do apply (*Mishpetei Hachoshen*, fn. 12, p. 384).

b. We assume that the worker is willing to forgo payment as long as the object he worked on remains in his possession (*Levush* 339:6 and *Me'iri*, B.M. 112a). According to this approach, if the worker makes it clear that he does not want payment to be delayed, the customer would transgress *bal talin* (*Me'iri*, *ibid.* and *Divrei Mishpat*).

According to this approach, it would seem that in

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CASE FILE

centers, neither reason applies. The Jew is not speaking any prohibited talk on his Shabbos, and we cannot consider the non-Jew as his agent in violating Shabbos, since for Mr. Samson it is not yet Shabbos when the non-Jew works (*B'tzel Hachochmah* 3:125; *Shevet Halevi* 3:172:4; *Shemiras Shabbos K'hilchasa* 31:27).

"Following this logic, though, according to the second reason of agency it should be prohibited for Mr. Mizrahi to instruct a non-Jew to do work for him on Friday afternoon in America when it will already be Shabbos for him in Israel!

"B'tzel Hachochmah writes, however, that the practice is to be lenient in this direction, as well, especially since he gave the instructions before his Shabbos to the non-Jew, since if Mr. Mizrahi were also in America, he would not be prohibited from working. He writes, though, that it is preferable in this case to make a partnership arrangement that allows the non-Jew to operate the business for him.

"Nonetheless, Chelkas Yaakov (*O.C.* #87) writes that a store in America known to belong to a Jew cannot operate on Saturday afternoon, even if the owner is in Israel and Shabbos is over for him, since this is something blatantly public.

"Thus," concluded Rabbi Dayan, "there is no prohibition is using a call center that has non-Jews working on their Saturday for a business where it is not Shabbos."

Verdict: A Jew for whom it is not Shabbos can instruct a non-Jew in a different time zone to do work for him, if it is not publicly blatant at that locale that he is working for a Jew. The practice is to be lenient also to instruct a non-Jew to work on his Friday after it will be Shabbos for the Jew elsewhere.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #33

Legal Expenses in Civil Court

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

Q: When the defendant refused to adjudicate in beis din and the plaintiff incurred legal expenses in civil court, is the defendant responsible for those expenses when found liable?

A: *Shulchan Aruch* cites the Rashba and Rivash that the defendant is exempt, since this is considered merely *grama* - indirect damage. A heavenly obligation could apply, though, like other *grama* (*C.M.* 14:5; *Be'er Hagolah* 14:60; *Pischei Choshen, Nezikin* 3:39).

However, Rema rules like the Rosh that the defendant is liable, provided that the plaintiff turned to civil court with permission of *beis din*. Many *Acharonim* follow this position. Some explain that they consider this *garmit* - directly caused damage (*Shach* 14:14; *Gra* 14:30; *Igros Moshe, C.M.* 2:26:1).

Some *Acharonim* write that if the plaintiff incurred legal expenses in civil court to force the defendant to adjudicate in *beis din*, the defendant is certainly responsible. Similarly, some write that if the plaintiff incurred expenses in civil court to force the defendant to pay what *beis din* ruled, he is responsible (*Pischei Teshuvah* 14:14; *Aruch Hashulchan* 14:12).



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your case, as long that the accountant didn't tell you specifically that he doesn't want to wait, you would not transgress *bal talin*, even though the documents have no value to the accountant.

c. Payment is due only when the work is done and completed, and as long the item is still in the worker's possession, it is not considered as though he completed the job, and payment is not yet due (*Ketzos Hachoshen* 72:23, and see *Mishpetei Hachoshen* note 85).

According to this approach, too, it is possible that since the accountant hasn't given you your tax return, payment is not due yet, and you therefore do not transgress *bal talin*.

Even according to the last two approaches, if an accountant only sends returns electronically, then the moment the client receives it, payment is due, and he must pay on that day to avoid transgressing *bal talin*.

Even if he didn't send an invoice for his service — in which case the client does not transgress *bal talin*, since the accountant never requested payment — according to many *poskim*, he still forfeits the opportunity to fulfill the *mitzvah* of *beyomo titein secharo* (see *Pischei Teshuvah* 7; cf. *Erech Shai*). It would seem, then, that he should make an effort to pay on the day he receives the email. As we will see, however, there are additional reasons why he is not obligated to put in that effort.

2. Some *poskim* rule that the customer is not required to bring payment to the tradesman — rather, the craftsman must approach the client for payment, and *bal talin* does not apply if he doesn't do so (*Kesef HaKodoshim* 339:10, *Ahavas Chessed* 9, *Nesiv Hachessed* 31; cf. *Mishpetei Tzedek Garmizan* 149).

In your case, however, if it is customary for the client to bring payment to the accountant, this exemption would not apply (*Mishpetei Hachoshen* 339:59).

3. The *poskim* write that if a worker knows that the client does not always have money, and that he earns money on the day of the market, the client does not transgress *bal talin*, because it is as though they agreed from the start that he will pay only on market day, and *bal talin* applies only if the client was obligated to pay the first evening or morning after the job was completed (*C.M.* 339:9).

Nowadays, when a worker completes a job, he generally contacts the client by phone, text or email to inform him that it is ready. Since the worker realizes that the client generally won't come that day to collect his item and pay — rather, he will come and pick it up when he has free time or is in the area of the worker's office or shop — it is as though they originally agreed that the pickup time would be the payment date, and the client does not transgress *bal talin* for paying at his convenience (see *Mishpetei Hachoshen*, p. 395 regarding the *mitzvah* of *byomo titein s'charo*).

Similarly, if it is common to render payment by mailing a check to the service provider, there is no *bal talin*. Since the service provider is aware that he might not receive payment on the same day, because it will take time for the check to arrive, it is as though they stipulated that payment would be due on a later date.

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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