THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #669 | Shoftim | August 18, 2023 | 1 Elul 5783

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

PROMPT PAYMENT OF WAGES – REVISITED

Mr. Kahn enjoyed reading the Business Weekly with his family at the Shabbos table. The recent article about prompt payment to a car mechanic raised some questions that elicited lively debate. After Shabbos, he sent the following email to Rabbi Dayan:

If the mechanic who actually repaired the car wasn't Jewish, does b'yomo titen scharo apply to paying the Jewish owner of the car shop?

If the mechanic was Jewish, presumably the owner would have to pay him promptly, unless he was on a fixed salary.

You may be interested in the following real case, where a Jewish consultant was in Vancouver, and we consulted by Zoom. Do I have to pay him before sunset where I live or in Vancouver 3 hours later.

"Indeed, these points require elucidation," Rabbi Dayan said to himself. He responded:

"What if the car shop owner and/or mechanic were non-Jewish?"

The mitzvos associated with prompt payment apply to a Jewish employee, although a non-Jewish employee should also be paid according to his contractual terms. In the case of a car shop, your financial arrangement is with the owner, so prompt payment depends on him, whereas the mechanic's wages are the owner's responsibility, according to his terms of employment.

Thus, if the owner is Jewish, the mitzvos of prompt payment apply, even if the mechanic himself was non-Jewish, and vice versa.

However, some write that if the owner is not involved in doing the labor or actively overseeing it, he is not considered an employee (but more like a sale), and the mitzvos regarding prompt payment to a worker would not apply to him (see Pischei Choshen, Sechirus 9:[28]).

"Is there a difference whether the wages were based on an hourly rate or a flat rate for the job?"

A worker for an hourly rate is generally considered a *po'el*, whereas a flat-rate employee is generally considered a *kablan*. Most poskim assume that the mitzvos of prompt payment apply also to a *kablan* (C.M. 339:6).

However, if the employee holds the item until payment (as typical with dry cleaners, etc.), these mitzvos do not apply, since the items then serve as collateral in his hands (Sma 339:10; Pischei Teshuva 339:2).

"If the employee works in another time-zone, does prompt payment follow the time-zone of the employer or employee?"

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

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

HOT MESS

Q. One Friday, I rented a car for a month. Immediately upon leaving the city for the Catskills, I noticed that I had a big problem: the air conditioner wasn't working. I did not have enough time to return to the rental location to ask for a replacement before Shabbos, so I continued on to the mountains. When I return to the city on Monday morning, may I demand that the company cancel the rental or give me a different car?

A. When a person buys something, he may not arbitrarily decide to void the sale. Similarly, once someone makes a *kinyan* for a rental period, he may not void the rental.

Nevertheless, just as a buyer *is* entitled to nullify a sale if the item is defective enough that most people would consider it worth voiding the sale (*Shulchan Aruch Choshen Mishpat* 232:6), when someone rents an object that is similarly defective, the rental is void (see *Nesivos* 312:1). There are certain defects, however, that would be considered reason to invalidate a sale but not a rental.

In the case of a sale, if the buyer used the object after noticing the defect, he forfeits the right to void the sale, and he may no longer renege (*Shulchan Aruch* 232:3). The question is whether your usage of the car for two days similarly prevents you from voiding the rental contract.

There are several reasons why it would not prevent you from doing so. To understand them, we must first examine why someone who uses a defective item he bought forfeits the right to cancel the sale.

Some *poskim* explain that since a person who borrows something without permission is considered a thief (ibid. 292:1), if a person who bought an item that he plans to return uses it in the interim, it would be considered theft. We therefore assume that he decided *not* to void the sale so as not to be a thief (*Galya Mesechta* 10, cited in *Pis'chei Teshuvah* 232:1; *Divrei Geonim* 6:10, according to

CASE FILE

"This issue is not found explicit in classical poskim. The verse in Devarim (24:15) focuses on the employee: "In his day you shall pay his wages; the sun should not set upon him, for he is poor, and towards it he is longing...". On the other hand, the verse in Vayikra (19:12) seemingly focuses on the employer: "A worker's wages should not stay overnight with you."

From a logical perspective, the rationale of the mitzvah also supports following the time-zone of the employee, since he is eagerly awaiting his wages. On the other hand, since the mitzvah is incumbent on the employee, there is logic that the time should depend on his location.

[It is also possible that we should be stringent to follow the earlier time-zone, or lenient to follow the later one.]

Rav Wozner zt"l (Shevet Halevi 7:232:1) rules that presumably the mitzvos depend on the worker's location. Thus, if someone in Israel works in the evening for an employer in America, where it is still day, bal talin applies to pay by the employee's morning. In the reverse case, an American employee working in the afternoon for an Israeli employer, b'yomo titen scharo applies to pay by sunset in America. Of course, this is only if the employee expects to be paid immediately despite the distant location (339:9-10).

However, Rav Kanievsky is cited (Halacha Berurah, Hil. Sechirus Poalim 339:37) that the employer does not violate if the time of payment hasn't arrived in his location.

Verdict: The mitzvos associated with prompt payment apply to a Jewish employee, even a kablan. Some poskim write that we follow the time-zone of the employee.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Property #8 Permission to Take Away the Enhancement

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

Q: A gardener planted a fruit tree in my yard, without my asking; I told him to remove it. Later, I decided that I wanted the tree, but he said that already arranged to plant it at another client. Can he remove it?

A: We mentioned that the enhancer cannot remove the enhancement against the owner's will if doing so will weaken the property, such as uprooting trees. However, if the owner told him to remove the enhancement, the enhancer can subsequently do so, even if the property is fit for enhancing or the owner demonstrated meanwhile that he wanted the enhancement, and now changed his mind and wants the enhancer to leave it (Rama 375:3; Shach 375:4).

Since you negated your right to acquire the tree, you forgo the damage done by uprooting it, and can no longer retract and demand that the enhancement remain, if the enhancer wants to take it away (Aruch Hashulchan 375:4; Gra 375:6).

BHI HOTLINE

Nesivos 232:1).

This approach likely applies only to a sale, because the buyer has no right to use the object if he doesn't accept the sale as final. In the case of a rental, however, even if the initial rental contract was for a month, if he uses it for two days it is not considered theft, because the item is meant to be rented out and it is a favor to the owner of the object if it is rented for just those two days because he probably wouldn't have found someone else who would agree to rent it with that defect (*Shu"t Teshuras Shai* 285; see *Pis'chei Choshen* ch. 6 fn. 29 for another approach that differentiates between rentals and sales).

Other *poskim* write that the reason a buyer may not void the sale if he used the object after noticing the defect is that this usage is considered a *mechilah* (forgoing the right to a claim). This approach would apply to rentals just as much as it applies to sales (*Ra'anach* 39, cited in *Shach* 232:3). [It is possible, however, that a broken car air conditioner during the summer months is such a bad defect that your usage is not considered a *mechilah*; see *Shulchan Aruch* 155:36 for a similar scenario.]

In your case, though, there is a clearer reason why you may void the rental.

The halachah is that if someone buys a horse, and on his way home he notices that it is wounded, and he rode the horse back to return it, that usage is not considered a *mechilah* because he is considered an *oness* (compelled to act) because he had no other way to get it back there (*Pis'chei Teshuvah* 232:1).

Since you did not have time to return the rental before Shabbos, your driving it to the mountains and back is not considered a *mechilah*, and you may void the rental (*Teshuras Shai* loc. cit. and *Shu"t Maharsham* 4:108).

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