

BUSINESS WEEKLY



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

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



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

RENTAL ONA'AH

Ari came to day camp with his new bike, which cost \$300.

"That's a nice bike!" Dov complimented him. "Could I borrow it for an hour to ride around the camp?"

"I'd rather not lend it out," replied Ari. "I just bought it, and it's still gleaming. I'm afraid that if I lend it to someone, he might fall or bang into something, and the bike will get scratched."

Dov thought for a minute. "I'm willing to rent it for \$40 for the hour," he said. "I'll pay you tomorrow."

"If you're willing to rent it, then OK," Ari said.

Ari took the bike and rode around; he returned an hour later. "You're bike really rides nicely!" he exclaimed.

The next day, Ari asked Dov for the \$40.

"This morning, I asked some friends how much the rental was worth," replied Dov. "They told me that bike rentals are usually about \$20 an hour, and no more than \$30 an hour. I'm willing to pay you \$30, but no more."

"But we agreed on \$40," said Ari. "I don't care what rentals usually are."

"But \$40 an hour is an unfair price!" argued Dov. "That's called *ona'ah*, aggrievement, and not allowed! I didn't know yesterday how much a bike rental should be."

"I know that there is *ona'ah* regarding sales," replied Ari, "but I never heard about *ona'ah* regarding rental. Anyway, I didn't overcharge you; you offered \$40 on your own! Besides, you should have asked around yesterday. You can't come today and claim *ona'ah*."

"What's the difference?" argued Dov. "Sale or rental, the price was unfair!"

"Rabbi Dayan is giving a *shiur* today," said Ari. "We can ask him!"

After the *shiur*, the two approached Rabbi Dayan and asked:

"Is Dov required to pay the full \$40?"

"The *Gemara* (B.M. 56b) teaches that the *halachos* of *ona'ah* – unfair pricing – apply also to rental," replied Rabbi Dayan. "Regarding this, we consider rental as a sale for the day" (C.M. 227:35).

"Similar to *ona'ah* of a sale, we differentiate in rental *ona'ah* between [overpaying] less than a sixth and a sixth or more, and between real estate (which is generally excluded from *ona'ah*) and movable items.

"However, unlike a sale, where the buyer must claim *ona'ah* shortly after the sale, once he is able to check the price, a rental *ona'ah* claim can be made even if discovered later, since the rental item is no longer in his hands to check the fair rental price (Sma 227:65).



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

WITHDRAWING A FREE OFFER

We recently received the following *she'eilah*, which we answered in a timely fashion, and we now present our full response and rationale to the public:

Q. I work as a manager in the catering industry, and I offered to arrange a *sheva brachos* for my friend free of charge.

On the morning of the *simchah*, we went shopping for supplies, and we agreed to meet later in the day to cook and set everything up.

Before that time came, someone else called to ask me to do a catering job during the same hours as my friend's *simchah*, for a significant sum of money. If I accept the offer, I obviously won't be able to keep my word to help my friend. May I retract my offer to my friend if it means that he will have to hire other people to help him?

A. Based on a *gezeiras hakasuv* (Biblical decree), a laborer is permitted to quit during his term of agreed-upon employment. But if his departure will cause a financial loss to his employer, he may not quit in the middle (*Shulchan Aruch, Choshen Mishpat* 333:3&5).

It would seem, then, that since your withdrawal from your offer to help your friend will mean that he will have to pay someone else to help him — causing him a financial loss — you would not be permitted to withdraw, despite your losing money because of it.

But the Rema (ibid. 5) writes that if a laborer is working for free, then he may withdraw even if it does cause a financial loss to the employer.

There are two approaches to explain the Rema's ruling, with halachic consequences that will affect your case.

Some *poskim* write that the Rema's ruling is limited to cases in which the laborer only withdrew his offer to work for free but is willing to continue working for pay. If the employer refuses to pay, then the laborer may leave.

If, however, he does agree to pay, then even the Rema



CASE FILE

“Another possible difference is regarding personal items. When a person sells his personal items at more than their market value, the buyer cannot claim *ona'ah*, since a person is not always willing to sell his personal items at their value. (C.M. 227:23-24)

“The *poskim* do not explicitly discuss whether rental of personal items is also excluded from *ona'ah*; presumably, the *halachah* is parallel. However, the aforementioned logic seemingly does not apply, since the owner does not part with his item in a rental, so the *halachah* may be different. Furthermore, even regarding sale of personal items, there is a dispute whether there is *ona'ah* when *more* than a sixth.

“Although the aggrieved party, in this case Dov, offered the unfair price of his own accord, out of ignorance, and was not misled by Ari, Dov can claim *ona'ah*. Moreover, since *ona'ah* is considered a form of theft, the owner is obligated to alert the buyer or renter that he is overpaying (*Pis'chei Choshen, Ona'ah* 10:1[1]).

“Thus,” concluded Rabbi Dayan, “since the price was at least 25% more than it should be, and Dov hasn't paid yet, he does not have to pay the unfair price of \$40.”

Verdict: The laws of *ona'ah* apply also to rental of movable items, with some differences. It is questionable whether it applies to rental of personal items. Even if the buyer or renter offers an unfair price of his own accord out of ignorance, the owner has to clarify that this price is significantly more than typical.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #28
Expenses

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

Q. My employer sent me from the office to do a job elsewhere. Must he reimburse me for all the expenses I incur in the course of this job?

A: Rema (C.M. 182:3) addresses this situation regarding an agent who was sent to deal with an issue and incurs expenses. The sender is responsible for reimbursing expenses reasonable for this task, but not if the agent spent more than is typical.

Similar *halachos* would apply to a worker who was sent by his employer to work elsewhere; the employer is responsible for reasonable expenses.

Trumas Hadeshen (#323) rules that a very high salary can stipulate that expenses are already included; Ketzos (331:2) disagrees.

A contractor, on the other hand, usually includes his projected expenses in the price quote, and therefore is not entitled to reimbursement of expenses, unless specified (*Pis'chei Choshen, Sechirus* 8:9:[20]).

Regardless, if there is a common commercial practice regarding employer reimbursement of expenses, we follow the *minhag hamedinah* (*Shach* 122:23; *Pis'chei Choshen, ibid*; 14:1[2]).

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would require the laborer to continue working if withdrawing would cause a financial loss to the person he's working for, due to *dina d'garmi* — indirect causation of damage (see *Shach* *ibid.* 31).

Other *poskim* rule that even if the employer is willing to pay from this point on, the laborer may still withdraw, because the employer should never have expected that someone who is working for free will continue doing so indefinitely, considering that he is entitled to withdraw at any point (see *Nesivos* *ibid.* 12).

Some contemporary *poskim* rule according to the first opinion (see *Chazon Ish, Bava Kamma* 22:12). Therefore, if your friend commits to pay you the standard rate if you follow through on your offer to cater his *simchah*, you may not withdraw even if it will cause you a financial loss (because the other job will pay more than the standard rate).

But this applies only if your friend would actually be taking a financial loss because of your withdrawal, such as if he has to pay someone else to help him extra because it's the last minute. But if he can still hire workers for the same price he would have paid had you never offered to help him [gratis], then you may withdraw and he has no claim against you (see *Shach* *ibid.* 28).

Furthermore, although a person who reneges on his word is considered *mechusar amanah* (lacking trustworthiness) — because every Jew is expected to keep his word, as the *passuk* says: “The community of Yisrael do not inflict injustice and do not speak lies (*Tzefaniah* 3:13)” and the *chachamim* disapprove of someone who reneges on his word (*Choshen Mishpat* 204:7) -- if his reason for renegeing could not have been foreseen (such as a steep rate change), many *poskim* write that there is no issue of *mechusar amanah* (*ibid.* 11); (*Taz, Yoreh De'iah* 264:5; see *Shu"t Chasam Sofer, Choshen Mishpat* 102).

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