



# BUSINESS WEEKLY

WERDIGER EDITION

Restoring the primacy of Choshen Mishpat

Issue #363 | Shlach | Friday, June 16, 2017 | 22 Sivan 5777

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### DELAYED FLIGHT

Mr. Stein was leading a group of students to Eretz Yisrael for the summer. The group had booked seats on a flight scheduled to take off at 2 p.m. Mr. Stein arranged with Mr. Turk, a private bus driver, to drive the group to the airport in the morning. Mr. Stein prepaid 25 percent of the cost; the remainder was due upon service.

At 7 a.m. Mr. Stein received a message: "Your flight has been delayed until 9:30 p.m."

"I must notify everyone immediately!" Mr. Stein exclaimed. "I also have to reschedule the bus."

Mr. Stein notified all the participants and called Mr. Turk. "Our flight was delayed," he said. "We will have to reschedule the bus for 5 p.m."

"I'm not available at that time," Mr. Turk replied. "I already arranged another job then."

"In that case, we will have to cancel the order," said Mr. Stein. "We'll find another bus."

"What about the remainder of the payment?" asked the driver. "I turned away several potential jobs after I finalized with you."

"Perhaps you can still find an alternate job?" said Mr. Stein.

"I don't expect that I will find another job at this late hour," said Mr. Turk. "Most people order buses at least the day before."

"Even so, it's not our fault," said Mr. Stein. "The airline delayed the flight. It doesn't make sense to pay you and then hire another bus. In truth, I think you should even return the prepayment!"

"While I'm not blaming you," said Mr. Turk, "it's not my fault either! I shouldn't lose out on the remainder of the payment."

The two agreed to bring the case to Rabbi Dayan.

"Mr. Turk was supposed to drive our group to the airport this morning, but the flight was delayed and we had to cancel," said Mr. Stein. "What happens with the payment?"

"A person who hires a worker who then declined alternate jobs is liable if he retracts," replied Rabbi Dayan. "Many *Rishonim* base this on the principle of *garmi* — directly caused damage. However, this does not apply here, because Mr. Stein did not retract of his own accord, but due to circumstances beyond his control (*ones*)" (C.M. 333:2; *Sma* 332:8).

"It's not my fault, either," said Mr. Turk. "Why should I lose out?"



## BHI HOTLINE

### BROKEN KEYBOARD

I was hired as a one-man band to play at a *simchah*. While I was setting up

my keyboard and the speakers someone carelessly ran by and crashed into the keyboard. It was broken so badly that it cannot be fixed. Obviously, this meant that I was unable to play at that *simchah* and needless to say, I was not paid.

Q: Can I charge the *mazik* (damager) for the lost job in addition to what he owes for breaking the keyboard?

A: When a person commits assault, he is potentially liable for five different payments: 1) *Nezek* — loss of value; 2) *tzaar* — pain; 3) *ripuy* — medical costs; 4) *sheves* — unemployment; and 5) *boshes* — humiliation (C.M. 420:3).

Your question involves the category of *sheves*, since the damage the *mazik* caused prevented you from being able to play at the *simchah*.

A person is liable for *sheves* even though he did not assault his victim but prevented him from working. Therefore if someone locks a friend in a room, thereby preventing him from going to work, he must pay *sheves*. However, this applies only if he physically places his friend in the room and locks the door. If the friend was already in the room and he then locked the door, the *sheves* that he caused is only indirect and *beis din* cannot force him to pay (C.M. 420:11).

The above applies when a person prevents a friend from working. If he locks a friend's house, thereby preventing him from leasing it to others, he is exempt, since that damage is also categorized as indirect (C.M. 363:6). The obligation to pay *sheves* is limited to preventing a person from working and does not apply when one

### DID YOU KNOW?

**Buying and/or serving non-kosher food in business settings can present *shailos* of benefiting from *basar b'chalav* and *shailos* of doing commerce with *neveilos*?**

If your business purchases and/or serves non-kosher food, please speak to your Rav or contact the Business Halacha Institute for guidance.



## STORY LINE

"The *Gemara* (B.M. 77a) addresses the case of a person who hired workers, but circumstances rendered the job irrelevant," replied Rabbi Dayan. "For example, workers were hired to water a field but it rained or, conversely, the water source dried up. Rava rules that the workers lose when the employer and employee are equally aware or unaware of the potential problem. Only if the employer was aware and the workers were not — e.g., he knew that the river was liable to dry up and the workers did not — does the employer lose out and he must pay the workers."

"Why is this?" asked Mr. Stein.

"The Rosh (B.M. 6:3) bases this on *hamotzi mechaveiro alav haraayah* (the burden of the proof is on the plaintiff), so that when the employer and employee are on equal footing, we attribute the misfortune to the worker," answered Rabbi Dayan. "Workers are responsible to stipulate if they expect payment even when the work becomes irrelevant due to *oness*. Shulchan Aruch extrapolates to any unforeseen circumstance beyond control. Thus, since both parties were equally aware of the possibility of a flight delay, Mr. Stein does not have to pay for the cancellation" (C.M. 333:2; 334:1).

"What about the prepayment?" asked Mr. Stein.

"Since this *halachah* is based on *hamotzi mechaveiro*, Shevus Yaakov writes that the employee can keep whatever he possesses," replied Rabbi Dayan. "Minchas Pittim and Aruch Hashulchan (334:1) disagree when the worker later grabbed payment, but agree regarding wages prepaid willingly: the employer thereby accepted the risk. Thus Mr. Turk does not have to return the prepayment" (*Pischei Teshuvah* 310:1).



## MONEY MATTERS

### EMPLOYMENT #30 Requesting Pay

From the writings of Harav Chaim Kohn shlita

**Q:** Who is responsible to initiate prompt payment — the employer or the employee?

**A:** The employer violates the prohibition of delaying payment (*bal talin*) only if the employee requested payment; otherwise the employee presumably agrees to wait for his pay. Therefore if he comes expectantly to the employer after completing the work, even if he is embarrassed to ask explicitly, it is as if he requested payment (C.M. 339:10; *Nesiv Hachessed* 9:[29]).

A request by telephone or email also invokes *bal talin*; many maintain that it also does via an agent. However, the employer is not required to bring the payment to the employee, unless the employee is unable to come to him (*Rabi Akiva Eiger* and *Kesef Hakodashim* 339:10; *Nesiv Hachessed* 9:[32]).

Nonetheless, a person should always attempt to pay promptly (*Pischei Teshuvah* 339:7; *Zohar*).

A person who rented an item and finished using it is obligated to pay the rental fee promptly even though the owner did not request payment, since he does not know that the renter has finished using it (*Ahavas Chessed* 9:11).



## BHI HOTLINE

disables his tools. Similarly, if someone damaged a friend's animal, thereby preventing him from leasing it until the animal heals, the *mazik* is not liable for *sheves* since the Torah does not obligate a *mazik* to pay for *sheves* of his friend's animal (first opinion in C.M. 307:6 that is supported by the Remah; and C.M. 340:2. See also *Mishpat Hamazik* 31:19).

Even if one argues that breaking the keyboard should be categorized as *garmi* (the more extreme level of indirect damage for which one is generally liable; see C.M. 386) and the *mazik* should be liable since the worker is not able to perform his job, nevertheless indirect cause (*garmi*) of unemployment (*garmi d'sheves*) is equivalent to standard indirect damage (*grama*) and the *mazik* is exempt from liability (*Ketzos* 308:2 citing *Tur* and *Rema*; cf. Rosh, B.K. 8:8).

However, we have discussed many times that although a *mazik* who indirectly caused damage cannot be compelled to pay for the damages he caused, he nevertheless has a moral obligation to repay his victim (*chayav latzeis yedei Shamayim*; B.K. 55b). The moral obligation to pay for indirect damages also has limits, i.e., the obligation is in force only when the *mazik* was negligent (*poshei'a*). If the *mazik* caused the indirect damage inadvertently (*shogeg*) or it resulted from a mishap (*oness*), he does not bear even a moral obligation to repay his victim (*Minchas Pittim* 386).

*Poskim* also discuss whether there is a moral obligation to reimburse a victim when the damage merely prevented his victim from earning a salary but did not cause any loss of principal (see *Mishpat Hamazik* 29:2), and as such it is proper to negotiate a settlement (*pesharah*).

For questions on monetary matters,  
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