

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #116 / PARSHAS MATOS-MASEI
FRIDAY, JULY 20, 2012
1 AV 5772

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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Close to Home

Adam worked in Wolf's Wholesale Sefarim store. He worked until 5:00 PM, but he would often leave earlier to deliver sefarim (Jewish books) as part of his job.

Today was no different. In the early afternoon, Mr. Wolf helped Adam load ten boxes of sefarim into his car for delivery.

"These go to a store on my block," Adam commented to Mr. Wolf. "That will be convenient to deliver on the way home."

At 4:30, Adam drove off to deliver the sefarim.

The following day, Mr. Wolf reviewed Adam's timecard.

"I see that you left a half-hour early," he said to Adam. "I thought you were going to drop the sefarim off on your way home."

"I did," said Adam. "It was very convenient; it saved me the extra half-hour drive home."

"Exactly; you could have stayed till 5:00,"

replied Mr. Wolf. "I assumed you would work a regular day and deliver the sefarim when you got home. You were going there anyway."

"If I have a package to deliver, that's part of work," said Adam. "Sometimes the deliveries take me farther from home, and sometimes they take me closer."

"That's understandable," said Mr. Wolf. "But this required no extra effort on your part; it was right on your block. It's a case of zeh neheneh v'zeh lo chaser (this one benefits and this one does not lose out)."

"You asked me to deliver the sefarim, so I included it in my work hours," Adam responded. "Whether it's on my way home or not should be of no consequence to you."

"I'm not going to make a fuss about it; it's only half an hour," said Mr. Wolf. "But I attend a fascinating business halacha shiur

on Sunday mornings with Rabbi Tzedek. I'm interested in finding out what the halacha would be in this situation."

"I'll join you," said Adam.

On Sunday after the shiur, Mr. Wolf and Adam approached Rabbi Tzedek.

"An interesting case occurred last week," began Mr. Wolf. "We were wondering what the halacha is."

He related the story to Rabbi Tzedek and asked: "Can Adam count the sefarim delivery to his block as part of his work hours?"

"Unless agreed otherwise beforehand, Adam is entitled to deliver the sefarim to his block during work hours," said Rabbi Tzedek, "even though it saved him the usual drive home."

Rabbi Tzedek explained. "The overriding principle regarding working conditions is 'minhag hamedinah,' the common practice

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Spare Change

Submitted by Y. M. H.

When I travel for work, my employer gives me enough money to cover a first class ticket and lodging at a five-star hotel. I am actually just as comfortable with a regular seat on the plane and a cheaper hotel.

Q: Am I permitted to purchase a cheaper ticket and stay at a less expensive hotel, keeping the saved money for myself?

A: If you are reimbursed after the trip by submitting receipts for your expenses, it would be outright theft to lie about your expenses in order to increase your remuneration.

Your question is only relevant if your employer gave you cash to cover the expenses for your trip. Is it permitted for you to keep money that you were given for your trip by spending less than your employer had planned for?

A similar situation arises concerning a husband's obligation to provide his wife with money for food. If the wife does not spend all the monies her husband gave her, the remainder belongs to the husband (Rema E.H. 70:3). However, this ruling applies only if the husband supplied her with the necessary means according to his lifestyle and she did not spare expenses. If she lowered her usual standard of living, the remaining monies are hers (Pischei Teshuvah ibid. 1).

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(C.M. 331:1, 2),” replied Rabbi Tzedek. “It seems clear that the common practice nowadays is to pay for hours ‘on the job’ without consideration of travel time. Some workers live an hour from their work and others live five minutes away; both get paid the same salary for equivalent work. Most places in America do not reimburse for travel expenses, while in Israel most do. Therefore, as long as Adam was servicing Wolf’s Wholesale Sefarim, he is entitled to consider it as part of his work, even if it spares him the travel time home.”

“But what about the concept of zeh neheneh v’zeh lo chaser?” asked Mr. Wolf. “Since Adam had to go home anyway, and lost nothing in delivering the sefarim, shouldn’t I be exempt from paying for the benefit I gained?”

“The concept of zeh neheneh does not apply here for a few

reasons,” answered Rabbi Tzedek. “First, the concept relates primarily to de facto situations, where someone already benefited from another’s property or efforts. However, if you request that someone do you a service, you usually must pay, even if it did not cause the other person additional effort or expenditure (see 363:6).

“Second, zeh neheneh applies only when there was no additional effort or cost involved,” added Rabbi Tzedek. “However, when there is even a small additional cost, then the beneficiary must pay for the entire service, not only the additional small amount. Thus, since the delivery was a few houses away and required an additional stop, as well as time and effort to unload the sefarim, it is not considered ‘lo chaser,’ and you must pay your worker the full amount for the delivery (363:7).”

Furthermore, some opinions maintain that even if she merely retained her original standard of living rather than entertaining the higher standard of her husband, to which she is entitled, the additional savings are hers to keep. Since she may just go ahead and enjoy his standards, he has no right to protest her keeping the money she saved (Maharsham 9:151, She’eris Yaakov 2:60).

Accordingly, an employee who spent less than he was allotted may keep the leftover funds for himself, since he has the option to spend the money on the first class seat and five-star accommodations.

It must be noted that this hala-

cha applies only if the employee actively limited his expenses. If savings were generated due to circumstances unrelated to efforts of the employee, he would not be able to keep the money. For example, if he rides coach rather than first class because there was no first class seat available, he would not be able to keep the difference. Similarly, if an employee saved on bus fare because he was offered a ride, he may not keep the remaining funds since he did not do anything to save that money. It would be considered as if the need for the bus ride no longer exists, and the employee may not keep those funds (Mishpetei Hachoshen 331:[4]).

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Shomrim: Guardians #16

Q: I lent someone a car, a dress, or a tool, but now need it. Can I demand that the borrower return it immediately?

A: If no time was specified at the time of the loan, the lender can demand the item back at any time (unlike a monetary loan, which is generally granted for 30 days).

Conversely, until the lender asks for the item, the borrower can use it for as long

as he wants; but he remains fully responsible during this time (C.M. 341:1; Nesivos 341:1).

If a time was specified, once the borrower took possession of the item in a manner of kinyan or began using it, the lender cannot demand it back until the agreed time is up. On the other hand, the borrower can return it earlier if he no longer wants it (RA”E 341:1).

If the item was lent for a specific purpose — a car to go on a trip, a dress to wear to a wedding, or a tool for a certain job — the lender cannot demand it back until the borrower completes the specified task (341:5). According to some authorities, this is true even if the borrower delayed a reasonable amount of time before using it (Aruch Hashulchan 341:7; Pischei Choshen, Pikadon 4:[13-14]).

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