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Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Canceled Counselor

Eliyahu was enjoying a relaxing summer. He spent time with his family, learned a few hours daily in the community beis medrash, and worked sporadically when jobs were offered.

On Motzoei Shabbos he received a call from Mr. Stone, director of Kayitz Day Camp.

"Are you available on Tuesday to accompany the camp on a trip?" Mr. Stone asked. "Yes," said Eliyahu. "I'm taking it easy this summer."

"Great," said Mr. Stone. "Please be at the camp by 8 a.m."

On Tuesday morning, Eliyahu got up early, davened with the first minyan, ate quickly, changed his clothes and biked over to the camp.

"Good morning," Eliyahu said to Mr. Stone. "I'm here for the camp trip."

"Oh, I'm sorry," Mr. Stone apologized.

"They predicted rain, so we cancelled the trip. I meant to notify you, but somehow it slipped my mind."

"That's unfortunate," said Eliyahu. "I got up early and rushed over here. I was also looking forward to the day's income; I'm not working much this summer."

"I'm willing to compensate you for coming here early in the morning," said Mr. Stone, "but don't see the need to pay you for the day's work."

"Once we arranged it, you owe me for the whole day," said Eliyahu.

"Let's consult Rabbi Dayan," said Mr. Stone. He called Rabbi Dayan on speakerphone and explained the situation.

"The Gemara (B.M. 76b) teaches that if a person arranged verbally with a worker, without a formal contract, and cancelled the job, the worker has only rightful com-

plaints," answered Rabbi Dayan. "However, if the worker went to the place of work and was unable to work due to the negligence of the employer, then the employer has to pay him partially (approximately half) for the day's work, k'poel batel (C.M. 333:1; Taz 333:1)."

"What difference does it make whether the worker went to the place of work?" asked Mr. Stone.

"Tosafos and the Rosh explain that the real issue is whether the employer caused the employee a loss," explained Rabbi Dayan. "When the employer cancels the job before the worker sets out, he usually can find alternate work but has rightful complaints for the trouble he was caused. However, once the worker goes to work, it's usually too late to procure alternate employment for the day."

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## Still Staying

My tenant's lease expired, yet he refuses to leave the apartment. I told him that if he does not leave by the end of the month, his rent will increase by 20 percent.

**Q: If the tenant stays, is he obligated to pay that amount? What if the tenant agrees; can he later claim that he was not serious about his agreement?**

**A:** There are three different possibilities in

such a case:

1. If the tenant agrees to pay the higher amount to continue living in the apartment, he is definitely obligated to pay the higher amount. Such an agreement is no worse than at the beginning of a lease, where the landlord may charge a high price for rent; if the tenant agrees to pay that inflated amount, he is bound by that commitment. The tenant cannot claim that due to the exorbitant amount, he did not consider his

commitment as binding.

2. If the tenant did not respond to the landlord's threatened rent increase, his silence constitutes an acceptance of the higher rent (shetikah k'hodaah) and he must pay the higher rate (Kesef HaKodashim 221; Divrei Geonim 104:24-25, citing Har Hakarmel, C.M. 5).
3. If, when informed that in the next month the rent would dramatically increase, the tenant answered that he would leave before

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"What if the worker has no other job options, such as here?" asked Mr. Stone. "In this case, the employer caused no real loss."

"According to this approach, the employer would not be liable even if the worker already set out," replied Rabbi Dayan.

"However, Ramban and Rashba explain that once the worker set out to work, the employer is financially responsible to him, even if the worker did not have another job option," continued Rabbi Dayan. "Heading to the place of work is considered as having begun the job, which commits the employer to his financial liability. If the worker finds alternate work to replace the income, though, the owner is relieved of this responsibility (C.M. 333:2)."

"Whom do we rule like?" asked Eliyahu.

"The Shulchan Aruch rules according to the second opinion," answered Rabbi Dayan. "Once the worker sets out to work, the employer is financially liable,

even if the worker had no alternate job options (Sma 333:6; Shach 333:7)."

"It seems strange to consider heading to work as having begun work," said Mr. Stone. "I travel an hour each day, but punch the clock only when I arrive!"

"You raise a valid point," said Rabbi Dayan. "Some Acharonim limit this halacha to a per-diem worker who is hired for the entire day. Going to the assigned destination was included in his work hours (Avnei Nezer, C.M. 52:4)."

"Nowadays, when travel is usually not included in the work hours, one can question whether to consider coming to the workplace as having begun work," concluded Rabbi Dayan.

"Nonetheless, it seems that the Sages treated it as such for this halacha. Therefore, the employer is liable for approximately half the amount, if the worker does not find replacement employment (Hayashar V'hatov, vol. 10, pp. 196-197)."

the beginning of the month - but then continued living there, he is not obligated to pay the higher amount and pays only the market value for such an apartment.

Since he initially responded that he would rather leave the apartment than pay the increase, when he subsequently stays in the apartment, he is no different than a complete stranger who illegally takes up residence in someone's apartment. Such a person is obligated to pay the owner market value for the time that he occupied the apartment. The fact that the landlord warned him of an increase in rent is irrelevant (Paamonei Zahav 312:5, quoting Mishpatim Yesharim 1:49).

Some authorities question this ruling. In their opinion, by staying in the apartment while knowing that the land-

lord intends to raise the rent, the tenant essentially accepts responsibility to pay the rent increase (Pischei Choshen, Sechirus 5:[10]).

However, it would seem that all opinions would agree that wherever it is evident that the landlord was merely threatening the tenant and did not truly intend to raise the rent so high, the tenant is not required to pay any more than the market value for the apartment.

This having been said, it is obvious that it is wrong for the tenant to remain in the property owner's apartment without making an effort to obtain another dwelling for himself. At the same time, the landlord should appreciate the difficulties involved in obtaining a new home and allow the tenant reasonable time to find a suitable place.

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## Lost and Found #5

**Q: A river overflowed during a heavy rainstorm and swept away items. Does the finder of these items have to return them?**

**A:** Something that an owner loses and which, generally speaking, it was not possible for him to save may be kept by the finder, even if it has identification. This is called "avudah mimenu umikol adam"

(C.M. 259:7).

Examples include: an item swept away in a flood, a coin that fell in the sand, a small jewel that fell in grass, and items trapped in a house engulfed in flames (C.M. 262:14; Rema 264:5).

Even so, it is morally proper lifnim mishuras hadin to return the item. The same is true for an item lost by a Jew in a place where most of the passersby are gentile.

If there is a local law (dina d'malchusa) to return such items, one must do so (C.M. 259:5).

If the item could be saved with difficulty, though, and the owner attempted to save it or was not present, it must be returned. If the owner did not attempt to rescue the item, there is no need to return it, since he clearly abandoned hope (yei'ush) of retrieving it (Rema 259:7).

## MONEY MATTERS

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