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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

TRIED MY BEST!

The current parshiyos relating to Balak and Bilaam raise an interesting monetary question," Uri said to Rabbi Dayan. "How so?" asked Rabbi Dayan.

"Balak offered Bilaam great honor and wealth to come and curse Am Yisrael," said Uri. "Three times Bilaam tried his best to curse Israel, building altars at various vantage points, but was unsuccessful, as Hashem turned his curses to blessings.

"Balak finally sent Bilaam off, saying, 'I said that I would honor you greatly, but now G-d prevented me from honoring you.' Bilaam replied that he told the messengers from the outset: 'Even if Balak would give me a houseful of silver and gold I cannot violate G-d's words' (Bamidbar 24:11-13). It seems that Balak sent Bilaam away without pay, since he was unsuccessful in cursing Israel, while Bilaam objected.

"When a person performs a service, but despite his best efforts is unsuccessful, is he entitled to a salary or not?" asked Uri. "Shouldn't the fact that he warned ahead of time that he might not succeed also make a difference?"

"The Gemara (B.K. 116a) addresses this issue in the case of a river that swept away two donkeys," replied Rabbi Dayan. "The owner of the less valuable donkey agreed to abandon it and save the more valuable one instead, provided that he would be compensated for his own donkey. The Gemara states that if the rescue was unsuccessful, he is entitled to the normal value of such services; the implicit understanding is that additional compensation was promised only on condition of a successful rescue. However, if the rescuer explicitly stipulated that he be compensated for his donkey even if unsuccessful, he is entitled to compensation, as with any other monetary agreement.

"Thus, the person is entitled only to the regular cost of such service, but not to extras promised, unless stipulated otherwise" (C.M. 264:4; Sma 264:11).

"Is there a difference between rescuing and other services?" Uri asked.

"Chavos Yair (#154) rules that someone who hired a political activist to advocate with the authorities on his behalf must pay for his services at a reasonable rate, even if he is unsuccessful,"



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PAYMENT THROUGH A SHALIACH

I gave my iron to an appliance repairman for a minor repair. When he was finished he

called me to pick up the iron and pay, since he needed the money. I believed that I was Biblically obligated to pay him that day in order to avoid violating the prohibition of bal talin (paying a worker beyond the day he completes his employment) so I sent my son with money to pay him for his services.

Q: May I assume that my son paid the repairman or must I contact him to confirm that he received the money?

A: Regarding the prohibition of bal talin there is no difference between a salaried employee (poel) or an independent contractor (kablan) and one must pay him before the end of the period in which the employment was completed if the employee asks for payment (C.M. 339:6). This means that if the employee finished his job during the day and the employer has the funds to pay him, the employee must be paid before sunset. If the job was completed at night, e.g., a babysitter, the employer has until the end of the night to pay the employee (C.M. 339:3, 10).

The Pri Megadim (Mattan Secharo shel Mitzvos, Chakirah 4) relates that he once hired an employee and sent an agent to pay the employee. He subsequently wondered whether an employer who sent an agent to pay his employee may rely on the presumption (chazakah) that the agent carried out his assignment. One part of the inquiry is that when it comes to Biblical matters the rule is that we do not rely on the presumption that an agent carried out his task. Therefore, when a farmer instructs an agent to separate

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answered Rabbi Dayan. "Thus, a person who hires a lawyer to represent him must pay for his toil and services, even if he loses the case, since it's known that the outcome is uncertain.

"However, a person who hired a plumber to clear a blockage or a technician to fix an appliance would not have to pay the serviceman for his toil (other than for the call) if he was unsuccessful, since he is paid not for his efforts but for the repair. Of course, this also depends on the common commercial practice.

"Machaneh Ephraim (Hil. Sechirus #23) distinguishes further based on the language of the agreement," added Rabbi Dayan. "In the Gemara's case, the agreement was to pay extra compensation for the rescue. Thus, the obligation remains to pay the normal rate of the services even if the rescue was unsuccessful. However, had the owner said: 'If you rescue it, I will pay you,' he clearly committed only if the rescue would be successful. Machaneh Ephraim suggests that even 'Rescue my animal and I will pay you' is a commitment to pay only if the rescue is successful.

"Thus, Bilaam argued that he had warned ahead of time that he could only speak as Hashem would permit him," concluded Rabbi Dayan. "Perhaps he felt that he had stipulated to receive pay for his efforts regardless, whereas Balak insisted that he did not do the job at all. Nonetheless, after the sin of Shittim and the subsequent plague in Am Yisrael, Bilaam came to claim payment for the partial 'success' of his advice" (Sanhedrin 106a).



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terumah, the farmer may not eat his produce under the assumption that the agent carried out his assignment (Y.D. 331:34; see also Ahavas Chessed 1:10, Nesiv Hachessed 25).

Secondly, although one witness is reliable regarding matters that relate to prohibitions (eid echad ne'eman b'issurim), perhaps when the matter is easily confirmed one must do so rather than rely on a presumption that the agent carried out his assignment.

On the other hand, there are authorities who maintain that even regarding Biblical matters, when not carrying out the assignment will be detrimental to the principal and the principal will likely assume that the assignment was completed, we do rely upon the presumption that the agent completed his assignment (Y.D. ibid. and Mishnah Berurah 409:50). This being so, the employer should at least inform the agent that the money must reach the employee so that he does not violate the prohibition of bal talin. However, as mentioned and due to the ease of communication, verifying that payment was received is commendable.

In your case, however, the prohibition of bal talin does not apply. The obligation to pay an independent contractor who was hired to repair something begins from the moment that one takes the article back from the contractor, but as long as he retains possession of it, the prohibition of bal talin does not apply (C.M. 339:6). The reason is that since the contractor is in possession of the article, which he may hold as collateral for his service, it is not considered as though he is owed money because he already has an object worth that amount that he could keep (Sma 339:10; see also Ketzos 72:23).

For questions on monetary matters,
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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

BEIS DIN AND CIVIL COURT #18

Appeals

A: Is a ruling in beis din subject to appeal?

A: The Gemara (Sanhedrin 88b) describes a hierarchy of batei din when the local beis din is divided or in doubt how to rule. However, there was no formal appeals court for a ruling that was already issued. Nonetheless, if an error is found in the ruling or if new information comes to light, the ruling of beis din can be revoked by the initial beis din or by one of greater authority (C.M. 25:1-3).

On a routine basis, one beis din need not check up after another beis din. However, in intricate matters, nowadays since not all batei din are fully qualified, there is halachic basis for a more qualified beis din to review the decision of another beis din. Many others disagree and permit review only if the first beis din issued its decision pending approval of a greater beis din. Practically speaking, in absence of a beis din hierarchy, the decision of a beis din is final (see C.M. 19:2; Pischei Teshuvah 19:3; Yabia Omer C.M. 2:2; Mishpetei Uziel C.M. 4:1).

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