



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

FINISH THE JOB! While it was still winter Mr. Zimmer decided to renovate his summer home. After some inquiries, he chose Mr. Hendler for the job. They agreed on the work needed and the total price for the job.

"I won't get to it for another month," said Mr. Hendler. "Is there any rush on it?"

"No, do it at your leisure," said Mr. Zimmer. "As long as it's ready by the summer."

About a month later, Mr. Hendler began the renovations. Halfway through the job, he received an offer for a very lucrative, long-term project.

"I'm in the middle of a job," Mr. Hendler said, "but should be available in a few weeks."

"We need to start the project immediately," the other party replied. "If you're not available now, we'll have to get someone else!"

Mr. Hendler called Mr. Zimmer. "I'm halfway through the renovations," he said, "but just received an offer for a long-term project that must start immediately. I'd like to quit your job and let someone else finish. I'll make an accounting of the work I did."

"That's not fair," said Mr. Zimmer. "I waited for you and don't want to get involved with someone else. You need to finish the job!"

"I can recommend someone else," said Mr. Hendler. "I know that he does high-quality work."

"I don't accept this," said Mr. Zimmer. "You're not allowed to stop in the middle!"

"I'd like to check this out with Rabbi Dayan," said Mr. Hendler. "Let's discuss the issue with him."

Mr. Hendler told Rabbi Dayan that he was renovating Mr. Zimmer's house, but just received an offer for a long-term project. "I'm willing to take a cut in the work that I did and let someone else finish the job, but Mr. Zimmer insists that I finish. Am I bound to him?"

"The Gemara (B.M. 77a-b) teaches that a salaried, time-based employee (po'el) can quit his job when it does not cause the employer a sudden loss," answered Rabbi Dayan. "Hashem says, 'Ki Li Bnei Yisrael avadim — Yisrael are My slaves,' and should not be bound by an irrevocable commitment to another. The po'el employee is entitled to full pay for whatever work he did. However, a flat-fee worker contracted for the job, who is not time bound (kablan), is not included in this" (C.M. 333:3-4).

"Does this mean that I am not able to quit?" asked Mr. Hendler. "Even though I am willing to forgo some of

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CHOOSING A MECHANIC

Reuven damaged Shimon's car. Reuven is

friendly with a mechanic who is willing to do the repairs for a discounted price. Shimon does not trust Reuven's mechanic and would like it to be fixed at the shop of the dealer who sold him the car, which will obviously be more expensive.

Q: Who determines where the car will be fixed, the owner or the mazik (the damager)?

A: A similar question is raised concerning one who injures a friend and the assailant offers to treat the victim or suggest the name of a doctor who will treat the injury free of charge. The victim is not obligated to receive treatment from either one and may hire another doctor at the assailant's expense (C.M. 420:21).

The victim does not have to receive treatment from the assailant, even if he is a renowned doctor (Rosh, B.K. 8:1), since he may claim that he does not trust the assailant to provide proper treatment. He may also reject the doctor willing to provide treatment free of charge with the contention that a doctor who does not receive remuneration will not be sufficiently attentive to his patient (Sema 420:24). The victim may even reject a doctor who is willing to charge a discounted price for the same reason (Yam shel Shlomo, B.K. 8:10). Even if the doctor is from another town where they charge less, the victim



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the pay?"

"There is a dispute on this issue," replied Rabbi Dayan. "The Rivash, Rosh and Tur (333:2) indicate that a kaban is not able to retract in the middle; beginning the work is like a kinyan (act of transaction). Although the Tur continues, 'If he did retract, he has the lower hand' — meaning that if the employer was unable to force the kaban to finish the job, or if he was able to find other workers to complete the job, but at a greater cost — the kaban must bear the monetary consequences" (Machaneh Ephraim, Sechirus Po'alim #4-5).

"How is beginning the work like a kinyan?" asked Mr. Zimmer.

"The Ritva (Kiddushin 47b) writes that it is a takanas chachamim (Rabbinic enactment)," replied Rabbi Dayan. "Additionally, Harav Y.E. Spector, zt"l, suggests that the shibud (lien) generated on the employer's property to pay the worker also binds the worker to the job; alternatively, the work serves as a kinyan chazakah on the kaban's service" (see Nachal Yitzchak, C.M. 39:17; Pischei Choshen, Sechirus 7:3(9); 11:6).

"However, other Rishonim indicate that a kaban can retract, but must suffer the monetary consequences," continued Rabbi Dayan. "Harav Spector understands this to be the opinion of the Shulchan Aruch, who only mentions that 'he has the lower hand.'" (See also Aruch Hashulchan, C.M. 333:11.) Thus, it is questionable whether you can retract, unless there is a qualified replacement, and you must certainly bear any monetary consequences."



MONEY MATTERS

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Among the issues that have been addressed are:

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One may not infringe on a company's trademark or reputation (monitin).



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may refuse his treatment with the assertion that doctors are more conscientious when providing treatment in their hometown (C.M. 420:22).

Some authorities assert that if there are two local qualified doctors the victim may not insist on one doctor over the other unless one is a greater expert or has a better bedside manner [which may affect the healing process] (Aruch Hashulchan 420:26). It would seem that when a condition requires a specialist, the victim can insist on being treated by a specialist, but if the condition is commonly treated by a doctor who is not a specialist, the victim may not insist on receiving treatment from a specialist.

The above parameters are limited to bodily injury where improper treatment by a doctor who will not be as attentive or invested could lead to irreversible results, permanent injury or a more lengthy recovery. In contrast, when dealing with damaged property, the worst that could happen if a repairman makes a mistake is that it will be necessary to bring it back for repairs a second time. Therefore the damaged party may not insist on bringing his object to a more expensive expert to perform the repair. Even if the mazik wants to repair the damaged object, the owner cannot prevent him from doing so unless it is clear that he does not have the skills or the expertise to make the necessary repair.

For questions on monetary matters,
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