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## VACATIONAL SCHOOL: MUST SHUTTERED SCHOOLS BE PAID?

When the best-laid plans of mice and men go awry.

Adapted from the writings of Dayan Yitzhak Grossman

In this article, we will consider whether parents are obligated to honor tuition commitments to schools that have temporarily closed.

The fundamental rule set forth by the Gemara is that if circumstances arise that prevent an employee from performing his work, he is not entitled to his wages, unless the circumstances were foreseeable by the employer but not by the employee.<sup>1</sup> This principle is explicitly applied by the *poskim* to the case of a parent who hired a tutor for his son and the child fell ill or died, *Rachmana litzlan*: The tutor is not entitled to his wages unless the child's illness is a frequent occurrence—and thus foreseeable to the parent—but the tu-

tor was unfamiliar with the child's condition.<sup>2</sup>

An important exception is that if the wages were paid in advance, the employee is not obligated to refund them.<sup>3</sup> The rationale for this is not entirely clear. Some *poskim* explain that by paying in advance, the employer is tacitly granting the employee the right to retain his wages even if he is later unable to perform his job.<sup>4</sup> This implies that the exception only obtains where the employer deliberately paid in advance. There is an opinion that the exception only applies if the employer had the option to pay later and chose to pay in advance, but not where the employee insisted on

2 Ra'aviah and Maharam of Rothenberg, cited in Rosh B.M. ibid. #3 and Mordechai ibid. #345; Tur and S.A. ibid. 334:4. This is the normative halacha, although there are dissenting views: R' Yoel maintains that if the child dies R"l, the tutor is entitled to his wages (Mordechai #356), and Maharam had initially ruled that way before changing his mind (Mordechai #346). See Machanei Efraim, Hilchos Sechirus #4, #5, and #8 and Shu"t Nechpach Vakessef cheilek 1, C.M. #30 for extensive discussion of these views, and cf. Pis'chei Choshen, Hilchos Sechirus ch. 12 n. 30.

3 Tosafos ibid. 79b s.v. ee atah; Rosh ibid. #3; Terumas Hadeshen 1:329; Shach 334, end of 2; Erech Shai 334:1 s.v. mihu yesh cholkim; Shu"t Shevus Yaakov 1:176 (cited in Pis'chei Teshuvah 310:1); Shu"t Be'er Yitzhak C.M. siman 6 anaf 4. Cf. Shu"t Bris Avraham #34 (cited in Pis'chei Teshuvah 316:2).

4 Tosafos and Terumas Hadeshen ibid.

1 Bava Metzia 76b-77a, Tur and Shulchan Aruch C.M. 334:1

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Excerpted and adapted from a shiur by Dayan Chaim Weg

### INYANA D'YOMA

This Is It

And you shall tell your son on that day saying, "On account of this did Hashem do for me when I left Egypt."

(Shemos 13:8)

According to the Mechilta, the words *ba'avur zeh* (on account of this) teach that the mitzvah to tell the story of the exodus from Egypt applies only when the matzah and *maror* are placed before you, i.e., at the Pesach Seder.

There are three ways to understand this Mechilta:

The simplest is the Sefer Hachinuch's approach (21) that *Chazal* are simply teaching us the date and time of the mitzvah: the night of Pesach, at the Seder.

The second approach is that *Chazal* are also teaching the order of the Seder: The story must be told first, while the matzah and *maror* are on the table, and they must be eaten immediately thereafter. This may be the meaning of the Rambam (Sefer

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### The Case of the Early Exit

**Q.** My landlord passed away several months into my lease. His widow assumed the management duties. After several years, I informed her that I would be moving out on the fifteenth of June, and she agreed to charge me for only half the month. On the first of June, she asked for the rent for May. Surprised, I told her I had paid for May on May 1, as I did every month. She replied that she had always assumed that I was paying in arrears and that the May 1 payment had been for April. As proof, she showed me the records, which indicated that the first check I had given as a tenant was dated the first of the second month.

My memory was hazy, but I was pretty sure I had always paid in advance, as is the standard practice. I vaguely recalled that I didn't yet have a local checking account at move-in and made my first payment in cash.

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A dayan ruled that while paying cash is unusual, this doubt would not override the general rule that without

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advance payment as a condition of his employment.<sup>5</sup> Other *poskim*, however, explain that the question of whether the employee is entitled to his wages hinges on who has possession of the money (*muchzak*), so if the employee has possession he may retain the money regardless of how this came about.<sup>6</sup>

The *poskim* also discuss the case where it was the tutor that fell ill and couldn't teach. Here, too, the basic rule is that he is not entitled to compensation,<sup>7</sup> although some *poskim* maintain here as well that if he received his wages in advance he may retain them,<sup>8</sup> though others disagree.<sup>9</sup>

There is an opinion that if the tutor can do at least some teaching, he is entitled to his full wages.<sup>10</sup>

The Maharil discusses a situation somewhat analogous to the current one, where a father employed a tutor for his son and then fled an outbreak of the plague along with his son. Maharil applies the above rule, that because the father had no greater knowledge of the future than the tutor, he is not obligated to pay him.<sup>11</sup>

5 Shu"t Maharach Or Zarua #66

6 Ezech Shai *ibid.*, and this is also the implication of Shevus Yaakov *ibid.*

7 Rosh *ibid.* #6; Mordechai *ibid.* #347; Rama *ibid.* 333:5

8 Maharam, cited in sources in the previous note

9 Schach *ibid.* s.k. 25. Cf. Pis'chei Choshen *ibid.* ch. 11 n. 50.

10 Rikanti #50, cited in Kenesses Hagedolah C.M. 334, Hagahos Beis Yosef #38. Cf. Pis'chei Choshen *ibid.* ch. 11 n. 49.

11 Shu"t Maharil #4, codified by Rama *ibid.* 334:1

clear proof we would not assume an agreement was made against the prevalent custom to pay in advance.

Hearing this ruling, the landlady said she no longer wanted to forgo the payment for the last half-month. She said she had made inquiries and discovered that the common practice is that a renter pays for the final month in full regardless of the moving date. Since she hadn't been aware of this, and she wouldn't be getting a month's rent that she had thought was coming to her, she would renege on her verbal agreement and keep the half-month's rent from my security deposit. May she do so?

The Maharam Padua<sup>12</sup> discusses a similar case and rules similarly, but he qualifies that the father's exemption is due to the fact that not all the locals had fled. Had they all<sup>13</sup> done so, he implies, the situation would be classified as a regional disaster (*makas medinah*), in which Maharam MeRothenberg rules that the tutor would be entitled to his wages. The latter also considers it a *makas medinah* if tutors couldn't teach by government edict.<sup>14</sup> This application of *makas medinah* is, however, subject to considerable controversy.<sup>15</sup> Additionally, some *poskim* say that even in a situation of *makas medinah*, the tutor is only entitled to his wages if he had not fled prior to the student and was ready to teach.

In summary:

- An employee, including a teacher, is generally not entitled to compensation for work he does not perform, even if he is prevented from work-

12 Shu"t Maharam Padua #86

13 Shach *ibid.* s.k. 3 infers from Maharam Padua's language that a majority having fled is insufficient to invoke the classification of *makas medinah*, but the Shach himself disagrees. Cf. Pis'chei Choshen *ibid.* ch. 6 n. 35.

14 Mordechai *ibid.* #343 and Hagahos Ashri *ibid.* 6:6, codified by Rama 321:1

15 Maharam Padua himself maintains elsewhere (#39, in the context of a rental agreement), in apparent contradiction to his ruling here, that *makas medinah* does not require the payment of compensation for benefit not received. Cf. Darkei Moshe and Rama 321:1 (and Rama 312:17); Sema s.k. 6; Taz; Shach s.k. 1; Biur HaGra s.k. 7; Nesivos HaMishpat, Biurim, s.k. 1; Shu"t She'eilas Shalom (Mahadura Kama) #73; Shu"t Zekav Aharon 2:143; Pis'chei Choshen *ibid.* ch. 6 n. 29; Shu"t Minchas Asher 2:120; and see the extensive list of contemporary discussions of this topic in R. Yehudah Zoldan, Mimon Hotzaos Tzeva'ios V'ezrachios B'ikvov Milchamah, fn. 2.

**A:** The landlady claims that she only agreed to forgo half a month's rent under a mistaken presumption, but *devarim shebaleiv*, unspoken stipulations, are generally disregarded. However, the Rama (C.M. 209) rules that *devarim shebaleiv* are given credence in the case of a gift. According to common practice, the tenant would owe for the final half-month. That makes the forgiveness of that payment a gift, so—at least in our case, where the landlady is *muchzak* (in possession of the funds)—she may change her mind.

ing by circumstances beyond his control. A parent would therefore not be liable to pay tuition for the period that his school was closed.

- If the employee was paid in advance, he may keep the money, although some *poskim* limit this to where the payment was made voluntarily by the employer. This is applicable to tuition that a parent paid before the closure.

- A school that continued to provide at least some form of teaching, e.g., by teleconference, would be entitled to its full tuition according to at least some opinions.

- The above notwithstanding, if school closures are universal throughout a region, the schools would be entitled to tuition, although there is an opinion that this would only apply if the schools were prepared to remain open and it was the parents' choice to keep their children home. Similarly, if the closures were mandated by the government, according to at least some *poskim* the schools would be entitled to tuition.

Note that our discussion only considers the default halachic principles, applicable in the absence of any express stipulation between the school and parent or any prevailing custom. We also do not consider here the potentially-complicating factor that the parents' agreement is with the school and not directly with the teachers.

May the *kol haTorah* soon fill the halls of our schools.

matzah and *maror* eaten (see Bi'ur HaGra, O.C. 483).

The third explanation is that *Chazal* are teaching that the matzah and *maror* must be used to help tell the story. This may be the approach of the Me'iri (Pesachim 116), who

says that *ba'avur zeh* teaches that one must pick the items up and display them. Similarly, the Shulchan Aruch HaRav (O.C. 473) says *ba'avur zeh* teaches that the *maror* must be on the table during the telling of the story. (Placing the matzah on the table is required based on a different *pasuk*, that of *lechem oni*.)

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Hamitzvos, *Asei* 157), who says that the telling must be performed at the beginning of the night, and only then are the



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