

Sechiras Po'alim: Halachos of Employment - Part I

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THE LIMITATIONS OF VERBAL AGREEMENTS BETWEEN EMPLOYER AND EMPLOYEE

The most common type of disputes that come before a *bais din* are those between an employer and an employee. Before delving into the halachos of *Sechiras Po'alim*, it must be stressed that many of these disagreements could be avoided if there was an agreement put in writing.

In America, there is an expression that a verbal agreement is “not worth the paper it is written on” – meaning that it has no value at all. To this end, the Chofetz Chaim writes that for an agreement to be effective and implemented properly, and to prevent misunderstandings, it is important that contracts should be written as clearly as possible.

However, the fact remains that verbal agreements are the norm in many situations. For example, if someone hires an electrician to do some work in his house or a neighbor's child to mow his lawn, these agreements are almost always made verbally, with no contract written up. Someone might assume that since nothing was put in writing, there is no problem with renegeing on such an agreement; however, as we will see this is not necessarily the case.

The *Mishnah* in *Bava Metziah*¹ discusses a case where one hires laborers to do a specific job and one party “tricks” the other. According to one explanation in the *Gemara*,

“tricking” in this context means that one side backed out of the agreement. The *Mishnah* says that in such an instance, the aggrieved party may have “*ta'arumos*”, complaints, against the party that terminated the deal. Even though he suffered no monetary loss, the Torah still allows him to bear a grudge.

THE PARAMETERS OF “TA'ARUMOS”

Rav Yisroel Salanter notes that this concept of “*ta'arumos*” is quite fascinating and unique. We know that one is obligated to compensate his friend if he causes him a monetary loss, but we see from here that one can have obligations even if he did not actually cause financial damage. Here, the Torah sanctions the aggrieved party to bear a grudge against the one who wronged him. Rav Yosef Shalom Elyashiv *zt”l*² explains that the Torah requires everyone to be very careful with their words and not to do anything that will lead people to have complaints against them. The *Talmidei Harashba* write that one should try to appease the worker he wrongfully terminated by offering him an amount of compensation that will satisfy him and bring him to drop his complaints.

We find a number of explanations in the *Rishonim* as to why the employee's complaints are sanctioned. The *Ritvah*³ lists three reasons.

A person may have grievances because he feels mistreated and hurt by being fired so suddenly.

¹ First Mishnah in the 6th Perek. Daf 75B.

² Sefer He'aros

³ Bava Metziah ibid.

He now has to create new relationships and deal with new employers. This may be very uncomfortable for him, which is justification for his complaints.

Although he had no monetary loss, he does suffer embarrassment. He probably told his friends that he had found employment and would be starting to work soon, and now he has to tell them that his job did not work out. This will cause them to look at him in a negative way and will cause him shame. For this reason, his complaints are considered justified.

A fourth reason found in the *Rishonim* to justify the workers' grievances is that he simply feels disappointed at this lost opportunity.

Lastly, *Tosfos*⁴ says that the reason he is justified in having complaints is because he will now have to exert time and energy to hunt for a new job.

With all of these justifications for grievances on the worker's side, it is understandable why the Torah tells us to avoid such situations, or at least to offer compensation to the worker to convince him to drop his complaints.

The *Shach* points out that if it is very easy for the worker to find another job, most of these justifications would not apply, and the worker would not have the right to bear a grudge against the employer; however, in most cases, it usually is not that simple to find a new job.

WHAT CONSTITUTES “MECHUSAR AMANAH”, UNTRUSTWORTHINESS?

The *Mechaber*⁵ states that if someone verbally commits to a business deal, it is proper for him to keep his word. While this may seem like common sense, it is unfortunately not so obvious to some people.

If one does not stand by his word, he is labeled with the undesirable title of “*Mechusar Amanah*”, untrustworthy. This is extremely serious, as Rav Chaim Kanievsky *shlita* writes that when *Chazal* give someone a label in this world, it remains with him in the World to Come as well.

Of course, if someone makes a pronouncement that is clearly an exaggeration – for example, he tells his friend, “I’m going to give you a million dollars” – his

words are obviously a joke and are not meant to be taken seriously. But if one commits to a deal by saying that he will buy/sell something or will give someone a typical present, he must complete the transaction. If he does not, he is given the label of *Mechusar Amanah*.

While, in general, one may not back out of a verbal commitment, there may be an exception in situations where there is a considerable change of circumstances. For example, if someone verbally commits to buy a large number of shares in a certain stock, and the value of those stocks suddenly skyrockets and he can no longer afford to purchase them, many *Poskim* rule that the potential buyer may renege on his commitment. The practical halacha follows this opinion.

Despite this, *Sema* writes that a worker may still have *ta’arumos* against an employer for breaking a commitment, even if the employer did so because of a significant change of circumstances. Since the justifications for grievances still apply, the worker still has the right to have complaints.

WHEN A FINANCIAL LOSS IS INCURRED DUE TO BACKING OUT

Until now, we have discussed cases where no financial loss was incurred by one party backing out on an agreement. If a monetary loss does occur, the penalty for dissolving an agreement is more severe.

The aforementioned *Mishnah* in *Bava Metzia* continues by discussing a case where someone hired a donkey driver to deliver musical instruments to a wedding or workers to remove flax from vats of dye in which it is soaking. In these time-sensitive instances, the workers are obligated to complete the job and fulfill the agreement. If they try to leave in the middle of the job, the owner has two methods he can employ. He can hire new workers at the expense of the original employees, or he can trick them to stay by promising to pay them much more. After the job is completed, he does not have to pay them the new price, and only is responsible to give them the amount they had originally agreed upon.

CONTEMPORARY EXAMPLES OF

⁴ Ibid 76B
⁵ Choshen Mishpat 204:7

FINANCIAL LOSS

A contemporary example would be if a father of a groom hires a band to play at a wedding, and the band decides that they want to leave in the middle of the affair. The father of the groom may trick the band to stay by telling them that he will pay them double. After the wedding, he only has to pay the price they originally made up.

Another example would be if factory workers want to leave in the middle of production, which will cause defects to the item being made. The owner can either trick them in the manner described above, or he can hire new workers in their place, and charge them the difference if these replacement workers cost more.

Another case discussed in the *Poskim* revolves around an employee who wishes to leave a position in a company to accept a better paying job. For example, if a company employs an office manager who is familiar with all the ins and outs of the business and carries much of the responsibility of ensuring everything runs smoothly, and she is offered a larger salary by a rival company. Since her departure from the company would necessitate hiring a replacement and training her in, and would cause serious losses to the business if she left without due notice, the *Rama* rules that it is forbidden for her to leave her job without notice, and if she does, she would have to pay the cost involved in mitigating the damages caused. Alternatively, her boss can trick her into staying in the manner explained above. In practice, the *Shach* writes that a *dayan* would have to examine if the manager is actually irreplaceable, as other authorities may not consider these cases of loss.

WHEN THERE IS A WRITTEN CONTRACT

The repercussions for breaking a commitment are more severe when a written contract exists.

While not all documents used today have the status of a genuine contract, as some are merely “letters of intent” or the like; however, if a real contract is created, the consequences of backing out are greater.

The same is true if a *kinyan*, a binding act of

transaction, takes place. Once a *kinyan* is made, it is more difficult for either side to back out.

One unique form of *kinyan* is the commencement of labor. Starting work on a job is considered a *kinyan* on the employment agreement; therefore, even if no financial loss occurs, once work on a job has started both sides are locked into the agreement and would be penalized if they renege on their commitment. For example, if someone hires workers to transport a shipment to a specific place, and after they started working, calls to inform them that he changed his mind and no longer wants the shipment brought to that place, he must still pay them the cost of the job. Even though the workers suffered no monetary loss, and even though they did not complete the job, since a *kinyan* was made when the work began, the employer is obligated to pay them.

The *Gemara* subsequently discusses exactly how much the workers are owed. That matter will be discussed in a future *shiur*.

IF THE WORKER BACKS OUT

The verse in the Torah states⁶: “*Ki li bnei Yisroel avadim; avadei heim*. For the children of Yisroel are slaves to Me; they are My slaves.” The *Gemara* in *Bava Metziah*⁷ learns from this verse that a “*po’el*”, hourly worker, is permitted to leave a job in the middle of a commitment and cannot be forced to work against his will. The *Shach*⁸ rules that this applies even if a *kinyan* was made between the worker and the employer and even if there was a written contract.

Since a *po’el* has a right to leave a job in the middle, he is paid for whatever work he did complete and incurs no penalties. The *Rema* cites an opinion that he may only quit if he no longer intends to work at all; however, if he wants to quit so that he can accept another job, even if the new job pays more, he will be penalized. This is because he is simply switching from working for one employer to working for another, and is not escaping from his “servitude” by quitting his job. In this case, if the worker does leave a job in the middle of a contract, he will not necessarily be paid in full for the work that he did complete, as we shall explain in the coming *shiur*.

⁶ Vayikrah 25:55

⁷ 10A

⁸ Choshen Mishpat 33:17

SUMMARY

In a case where there is no contract, and no monetary loss will be caused to either side, and work has not yet begun on a job, if one side reneges the other may have grievances against him but have no monetary claim against him in beis din.

In a case where there will be a monetary loss, neither side is permitted to back out. If they do renege on the

agreement, they will be penalized. We will discuss how this penalty is calculated in a future *shiur*.

If there was a written contract, a *kinyan* was made, or the job was already started, the employer will be penalized if he backs out, even if the workers sustain no monetary loss. In most cases, hourly workers are permitted to back out of their commitment without any penalty.



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