

Dissolution & Severance

PART 2

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

RENEGING ON A COMMITMENT:

The Gemara says that, in general, if either an employee reneges on a commitment to do a job or an employer backs out on a job offer to a worker, the aggrieved party has no monetary claim and can only have “*taarumos*”, complaints. The Rishonim and Acharonim offer various suggestions regarding what type of complaints he can have. Some say that all it means is that he has a right to be upset, while others suggest that the aggrieved party has a right to tell other people about how he was treated. In any case, we see that there usually is no financial claim if one party takes back a commitment to work or a job offer.

The Gemara explains that an exception to this rule would be if the employee has already gone down to the job site. If the employer tries to renege on his commitment to provide work at this point, the employee does have a monetary claim. He cannot claim the full amount that he would have been paid; however, he has the right to demand payment like a “*po’el batul*”, a worker that doesn’t actually do any labor.

An alternative factor at play that might obligate the employer to provide compensation is if the worker lost out on other opportunities because of his commitment to this job. Tosafos and the Rosh say that if the worker had other opportunities that he missed out on because he was relying on this job, the employer is considered to have caused him a loss and is obligated to reimburse him under the law of “*garmi*”, which is the type of indirect damage one is required to pay for.

MECHUSAR AMANAH:

Even when no monetary liability exists, there is a concept in halacha known as “*mechusar amanah*”. A Jew is obligated to keep his word. If someone breaks a promise, he gets the label of “*mechusar amanah*” (untrustworthy), which is a very serious pejorative term.

In general, if a person makes a commitment to buy merchandise but conditions change before any *kinyan* is made – for example, the market changes – there is a *machlokes* amongst the Rishonim whether this is sufficient grounds to renege on his commitment. According to some Rishonim, he is still obligated to keep his word and go ahead with the purchase or be labeled a *mechusar amanah*.

The Sema says that the same *machlokes* would apply in a case where an employer commits to hiring a worker and conditions subsequently change that cause him to renege on the offer – for example, he is able to find cheaper workers. Other Acharonim disagree and say that an employee places more reliance on an employer than a seller places on a buyer and, therefore, the employer is always considered a *mechusar amanah* if he backs out on a commitment to a worker, even if conditions have changed since he made the commitment.

IN THE MIDDLE OF A JOB:

The same issues would apply in a case where an employee is hired to work for a certain time span – such as a year or six months. If the employer wants to renege on the commitment before any work begins, the employee could have *taarumos* and the employer could be labeled a *mechusar amanah*. If the work already began or the employee lost out on other opportunities because of this commitment, he would also have monetary claims.

UNFORESEEN CIRCUMSTANCES:

One big exception to the above rules would be in a case where an unforeseen “*oness*” occurred. An example of this would be if a worker is hired for agricultural work, and then the field he was meant to work on dries out or becomes unusable for any reason. In such cases, the halacha is that the employer would only be obligated to pay the worker if he had enough knowledge to foresee the potential problem but the employee had no way of anticipating it.

If neither the employer nor employee could have foreseen the problem, neither can be held responsible; therefore, since the employer is the “*muchzak*”, the money remains with him and he is not liable to pay the worker. (The Poskim discuss whether a case where the worker was paid in advance is different because the employee is the *muchzak* or not.) There is a *machlokes* Acharonim in a case where an *oness* is completely unexpected and unforeseeable. Bais Yosef cites one opinion that holds that the employer is obligated to pay the worker in such a case, but the Minchas Pitim and others question why this should be any different than standard cases of *oness* and rule that the general assumption is that the employer will be off the hook in such a case as well.

One additional case that is discussed is that of “*makkas medinah*”, a national tragedy. An example of this would be the recent outbreak of COVID, which affected the entire world. If an employer hired workers to do some work for him that ultimately could not be done because of the lockdowns, that would be an example of *makkas medinah*. The halachos of such cases are very complex and dependent on a broad *machlokes* amongst the Poskim. Since the halachos are so difficult and unclear, Rav Asher Weiss recommends that the two sides reach some sort of compromise that they both can accept.

FIRING FOR A CAUSE:

Even if an employee has begun to work on a job, there are some causes that permit his termination. The Gemara speaks about a case of public workers who commit errors that lead to damages that cannot be reversed, saying that workers who make such errors can be fired without any warning. The Nimukei Yosef adds that they can only be fired if they have a “*chazakah*” of making such errors – meaning they did it more than once. The Rema agrees and says that a worker can be fired if he either has a *chazakah* or was warned about such errors.

The Rambam quotes the Gemara as applying only to public workers. The Raavid, however, says that the same rules also apply to private workers.

As we said, the employee can only be terminated if the damage he does cannot be undone. The Rishonim explain that if it is possible to pay money to fix the mistake, that is considered reversible damage and the employee should be given the opportunity to pay, instead of being fired. An example of irreversible damage would be if a teacher teaches wrong things to the students, which cannot simply be removed from their heads, or wastes time in class, which, of course, cannot be returned. Some say that if a teacher beats students or engages in other forms of abusive treatment, that is considered damage that cannot be undone. Rashi in Bava Basra gives an example of a *sofer* who writes a Sefer Torah with errors that cannot be fixed or who wrote a *shtar* in a way that cannot be used or replicated.

As we said, the Rambam only cites this halacha as applying to public workers. This may be because he agrees with numerous Acharonim who rule that, when it comes to private workers, an employer does not need any reason to fire them. Many Acharonim say that an employer may always fire an employee who does not have a contract that stipulates a specific timeframe. They say that a worker is not hired indefinitely and can be terminated at will. The *Even Ha’azel* suggests that this is why the Rambam restricts this

Gemara to public workers who can only be fired if they cause damage.

Some Poskim rule that a private worker may be terminated if they are accused of any form of misconduct. The Rema and Shevus Yaakov say that it is enough for a worker to be suspected of theft as grounds for termination, even if the employer had given him a commitment to provide him with work for a specific term. The Erech Shai clarifies that the employer does have to have some proof for his suspicion. Although he does not need witnesses, he needs to have a solid basis for his suspicion. If he does have some basis to suspect the employee, he may terminate him because he never committed to keep him on board if there is reason to think that he is a thief. The Divrei Malkiel says similarly that even if one cannot prove his suspicion, *bais din* will allow him to fire the employee if he has reason to suspect him; for example, he saw him nosing around in places where he shouldn’t have been or if there are serious rumors that this person is stealing.

Returning to the *rebbe* or teacher who is unable to teach a class properly, some Poskim differentiate between instances where the teacher knows how to teach but is wasting time and when it isn’t his fault because he simply doesn’t know how to teach properly. Others say that if he doesn’t know how to teach properly, that itself is sufficient grounds to terminate him. Similarly, the Teshuvos HaRosh speaks about a case where a *shochet* made an error that led to a cow being rendered *treif*. He says that if he merely made a mistake and can get it right next time, he cannot be faulted and should not be fired, but if there is some aspect of the job that he cannot do, it is permissible to fire him. The Mishpat Poalim speaks about a *rebbe* who cannot maintain discipline. Even though it may not be his fault, if he is not cut out for the job that may be grounds to terminate him. On the other hand, Rav Moshe Feinstein writes that, in general, if a *rebbe* is a *yarei shomayim* and is doing his best to teach the class, he should not be fired.

In general, Rav Moshe takes a different approach to private workers than the majority of Acharonim, ruling that they cannot be terminated without cause as long as the position still exists. He says that by default, once a worker is hired there is a commitment to keep him in the position as long as it is available. With regard to *kli kodesh*, he goes even further and says that even if the directors of a school explicitly state that they have a right not to renew a *rebbe*’s contract, they do not have the power to enforce that decision and must keep him on as long as he is capable of doing the job.

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