



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

THE NEIGHBOR'S LAWN

Mr. Solomon kept a model lawn; a professional gardener from shul tended to it regularly. His neighbor, Mr. Farber, barely tended to his lawn, nor was he interested in spending money for a gardener.

As spring arrived, Mr. Solomon decided to surprise his neighbor.

"I'd like you to do a one-time job on my neighbor's lawn," Mr. Solomon said to his gardener.

"The bushes need to be trimmed, the grass thickened, and flowers planted around the edges."

"Who's paying for it?" asked the gardener.

"I'll pay you," said Mr. Solomon.

The gardener looked at the lawn. "It will take a number of hours to get this lawn into shape," he said. "With the flowers it will come to \$800."

"OK," replied Mr. Solomon.

The following morning, the gardener came and unloaded his equipment at the Farbers' house. He had just begun trimming the bushes, when Mr. Farber — who was home sick that day — came outside with a surprised look.

"What are you doing?" Mr. Farber asked the gardener. "I didn't hire you."

"Mr. Solomon hired me to do your lawn," the gardener answered. "Didn't he arrange this with you?"

"No," replied Mr. Farber. "It was thoughtful of him, but there's no point. Please stop."

"Why?" asked the gardener.

"We're redoing the lawn entirely," said Mr. Farber. "We're putting down artificial grass and expanding the patio where the flowers are. The contractor is supposed to begin next week."

The gardener loaded his equipment back on his truck. "I began working, but your neighbor told me to stop," he notified Mr. Solomon. "I'd like my \$800."

"If you didn't do the job, I shouldn't have to pay the \$800," said Mr. Solomon. "Anyway, the work wasn't even for me!"

"You hired me to do the job, and I came," argued the gardener. "It's not my fault that your neighbor stopped me!"

Mr. Solomon called Rabbi Dayan and related what happened. "Must I pay the gardener?" he asked.

"You must pay the gardener, but not the

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BHI HOTLINE

REIMBURSEMENT FOR COURT EXPENSES

I received a summons from a court regarding a "non-

competent" matter filed by my Jewish ex-employer. I will have to hire a lawyer to represent me.

Q: Will I be able to recover my lawyer's fees from the plaintiff?

A: The preferred response to a court summons where the plaintiff is a Jew is to contact a *beis din* to issue a summons to the Jewish plaintiff to withdraw his claim from court and submit it to *beis din*. Doing so avoids the prohibition of submitting a grievance to secular courts, for which the defendant may also be liable (*Tumim* 26:1). Also, if the defendant does not take steps to prevent the plaintiff's court action, he may be liable for assisting in the violation of the transgression (*mesaye'a* — see *Maharsham* 1:89).

Additionally, if the plaintiff wins the case in court, the defendant is allowed to not only challenge the court's decision in *beis din* but also seek reimbursement for the expenses involved in the court case.

There is a general prohibition against litigants adjudicating before a secular court. The prohibition applies even if both parties agree to submit to the authority of the court (*C.M.* 26:1). However, when both parties agreed to adjudicate in court and the court issued a decision, they are bound by that decision (*Rema* 22:2; cf. *Shach* 22:15). Furthermore, according to many opinions the court's decision is binding even though they did not make a *kinyan* accepting the court's decision (*Birkas Yosef*, *C.M.* 23; *Maharsham* 1:89; cf. *Tumim* 26:2).

Once you were summoned to court, it is not necessary for you to obtain permission from *beis din* to defend yourself from financial



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full amount," answered Rabbi Dayan. "A person who hired a worker to do a job for someone else and took responsibility for the payment owes the worker his wages. This is true whether or not the worker knew that the work was for somebody else" (C.M. 336:1; *Pischei Choshen*, *Sechirus* 8:39).

"But he barely did the job," said Mr. Solomon. "My neighbor stopped him right away."

"When a worker came or began a job, but external circumstances prevented him from completing the work, sometimes the worker remains entitled to his wages and sometimes not," answered Rabbi Dayan. "If the employer and the worker were equally aware or unaware of the potential problem, the employee gets paid only for the work that he did, since the employer is in possession of the money."

"However, in this case, the gardener had no reason to assume that you hired him without consulting the neighbor, who might object to the work, whereas you knew it was a surprise," continued Rabbi Dayan. "Only if the gardener knew that it was a surprise, so that there was a chance that the neighbor might object, and you had no way of checking your neighbor's plans without ruining the surprise, would you be exempt" (C.M. 333:1; *Sma* 333:6).

"Why did you say not the full amount?" asked Mr. Solomon.

"Since the gardener remained with free time for himself and also saved the expenses associated with the work, you are not obligated in the full \$800, only about half," replied Rabbi Dayan. "This is called *k'poel batel* (as an idle worker). Moreover, if the worker is able to fill the time with other, equivalent work, you would not have to pay him, since he can recoup the missing wages" (C.M. 333:2; *Taz* 332:1).



MONEY MATTERS

RENTALS #2

Rental Fee Due

(Adapted by Rabbi Meir Orlan from the writings of Harav Chaim Kohn, shlita)

Q: Is the rental fee due at the beginning or end of the rental period?

A: The *Gemara* (B.M. 65a, 110b) teaches that the rental fee is due only at the end of the usage, even though a *kinyan* is made at the beginning. Since the rental fee is for usage, it is due only after usage has been completed, unlike payment for a purchase, where the transfer of ownership takes place immediately with the *kinyan* (C.M. 126:18; *Sma* 317:2; *Avnei Nezer*, C.M. #25).

Included in rental is hiring an employee; the employer acquires the labor (usage) of the employee. Thus, wages are due at the end of the period (see *Y.D.* 176:6).

Nonetheless, as with other monetary law, the common rental practice is binding if not stipulated otherwise (*Rema* 331:1). Thus the common practice for real estate rental is to pay at the beginning of each month, not at the end. On the other hand, workers continue to be paid at the end of the month.



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harm (*Knesses Yechezkel* 97. However, *Kesef HaKodoshim* 26:1 writes that even in this situation one should obtain permission from *beis din* before going to court). Some authorities maintain that a defendant who was summoned to court may recover the expenses incurred in defending himself. (*Knesses Yechezkel*, *ibid.* However, *Maharsham* [*ibid.*] contends that although it is not necessary to obtain permission from *beis din* to go to court, if one wishes to recover the related expenses, it is necessary to obtain formal permission from *beis din*.)

If the defendant does not contact *beis din* to transfer jurisdiction, some authorities interpret this to mean that he is accepting the authority of the court. Accordingly, if the court does not obligate the plaintiff to reimburse the defendant's expenses, the defendant will not be able to recover those expenses in *beis din* (*Maharsham*, *Minchas Pittim* 26:1, citing *Maharal Tzintz*, C.M. 30:[6]).

Others do not interpret this as an acceptance of the court's authority, and consequently, even after the court issued a decision, the defendant could file a case in *beis din* against the plaintiff. However, he may not be able to recover the court-related expenses since he could have avoided those expenses had he attempted to have the case moved from the court's jurisdiction to *beis din* (*Harei Besamim* 2:237; *Minchas Shai* 2:60; *Teshuras Shai* 2:162, 164; and *Maharshag* 3:127). Although it is not known whether the plaintiff would have agreed to withdraw his case from the court, nevertheless, since he might have agreed, the plaintiff cannot be compelled to reimburse the defendant for those expenses (*Teshuras Shai* 2:164). If, however, the plaintiff was warned, the defendant may file for reimbursement of those expenses since he clearly did not wish to have the matter adjudicated by the court (C.M. 388:5; *Shach* 26. See also *Pischei Teshuvah* 14:13).

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