

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Reluctant Reference

Mr. Lazer ran a successful restaurant and employed close to twenty people. At the end-of-year accounting, there was a small, but noticeable, discrepancy in the cash receipts of his enterprise. In the following semi-annual account, a similar discrepancy was noted.

"What explanation can there be?" Mr. Lazer asked his accountant.

"Perhaps one of your workers is 'taking home' a little bit?" suggested the accountant. "You might want to keep a tighter tab on the money."

Mr. Lazer implemented certain security measures and began watching his workers more carefully. He came to suspect one particular employee, Mr. Shuker, and finally caught him pocketing some money!

Mr. Lazer informed Mr. Shuker that he was releasing him, on account of his theft.

Mr. Shuker protested slightly. "It was just this one time, and only a small amount," he argued.

"Money has been missing for two years now," Mr. Lazer said to him bluntly. "I suspect that's also linked to you."

Mr. Shuker remained silent. He packed up and left.

Shortly afterwards, Mr. Lazer was talking with a neighbor, who ran a catering business.

"I interviewed someone today for a position at my company," the neighbor said. "Apparently, he worked with you for a number of years, and recently left."

"Who is that?" asked Mr. Lazer.

"Mr. Shuker," said the neighbor. "He said that he wasn't earning enough with you, and was looking for a higher paying position."

"I see," said Mr. Lazer, as thoughts raced through his head.

"What should I say?" he wondered. "Should I protect Mr. Shuker? My neighbor? Play dumb? Spill the beans? I need to buy some time!"

"I need to run now," Mr. Lazer said to his neighbor. "We'll talk tomorrow."

Mr. Lazer pondered the sticky situation. "Perhaps Rabbi Dayan can give me some guidance on this issue?" he said to himself.

Mr. Lazer called Rabbi Dayan and explained the uncomfortable circumstances. "What are my responsibilities here?" he asked. "What sort of reference should I provide?"

"The issue of references is a very delicate one," replied Rabbi Dayan. "On one side stands the prohibition of lashon hara, negative talk that can harm the prospective employee. On the other side stands the

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## The Matter of the Batter

*Submitted by E. P.*

I had someone help me bake some cakes for an upcoming simcha. While preparing the batter, she helped herself to some.

**Q: I heard that it may be prohibited for me to refuse to allow my helper to lick the batter. Could you explain this halacha?**

**A:** You raised an interesting question - and

the answer is even more interesting. Basically, it depends whether the batter contains flour. If the batter does not contain flour, e.g. a gluten-free cake or one that is Kosher for Pesach, you may deny your helper permission to taste. If the batter contains flour, denying your helper permission to lick it might constitute a Biblical prohibition.

There is a Biblical prohibition of lo tachsom, lit. 'do not muzzle'. The Torah permits an employee hired to work with produce to eat that

produce, and an employer who denies his employee this right violates this prohibition. Poskim rule that this right is not only for employees, but even a volunteer has the right to eat from produce with which he is working (Shulchan Aruch HaRav Shealah 22). Accordingly, one must allow a child that was asked to bake a cake to eat the batter.

There are two qualifications to this halacha.

1) Employees may only eat from produce that grew from the ground and 2) the allow-

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requirement to protect the prospective employer from harm or loss."

"Is there really such a requirement?" asked Mr. Lazer.

"Yes, based on the mitzvah of hashavas aveidah," answered Rabbi Dayan. "Just as there is a mitzvah to return lost items to a fellow Jew, there is a mitzvah to protect him from potentially harmful situations. There is also a prohibition, lo ta'amod al dam reiecha – 'Do not stand aside when your fellow's blood is shed' – if you see him facing danger (C.M. 426:1; SM"A 426:1). The Chofetz Chaim explains at length that this also includes a requirement to protect him from financial loss or a potentially harmful partnership (Be'er Mayim Chaim, Rechilus 9:1)."

"How do we balance this requirement with the prohibition of lashon hara?" asked Mr. Lazer.

"The Chofetz Chaim (Hil. Rechilus 9:1-2) stipulates five conditions," answered Rabbi Dayan.

"First, you must not assume in

haste that the potential worker or partnership is bad, but must consider carefully that it is, in fact, bad. Second, you must not inflate the situation more than it actually is. For example, you cannot say that he has been stealing for two years, but rather that you caught him stealing once, but suspect that he might have been doing so for a while.

"Third, you must intend only for your neighbor's benefit, to spare him from loss; not out of hatred for your former worker," continued Rabbi Dayan. "Fourth, if it is possible to bring about the benefit without revealing the bad – such as by simply saying, 'I have reservations about recommending him' – you should do so."

"Finally," concluded Rabbi Dayan, "if actual damage will come to the worker, e.g. he has already entered an agreement and signed a contract, and the employer will break it off unilaterally, there are further restrictions (see Hil. Rechilus 9:5-6)."

ance to eat ends when the produce is halachically completed. Produce is considered completed when the obligation to separate ma'aser begins. If another obligation will follow, e.g. the separation of challah, it is not complete until that time. Therefore, when preparing a loose batter, the employee may eat the batter until it is baked, since that is when the obligation to separate challah begins (Tosafos B.M. 89). Some authorities maintain that when making a small quantity of batter that doesn't require separation of challah, the ma'aser obligation deems it complete (Ohr Sameach Bikurim 6:12). Others contend that the obligation to separate challah is merely an indicator that the produce is complete, but even when one will not separate challah, it is considered incomplete until baked (Minchas Shlomo 1:68).

Accordingly, when baking cake for Pesach, the prohibition of lo tachsom does not apply. The employee may be denied permission to eat because the batter does not contain unprocessed flour, so it will not be subject to challah. The ingredients that are used, e.g. nuts, potato starch, or matzah meal, were already completed and subject to ma'aser. In contrast, when making a loose batter containing flour, the batter is not considered completed until it is baked; lo tachsom remains in force.

However, one who does not allow his helper to lick the batter out of health concerns (for example, raw eggs are potentially harmful) does not violate lo tachsom (338:7).

In all circumstances, an employer and employee can stipulate that the employee will not eat the produce with which he is working (337:17).

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## Damages #20

**Q: What is the halachic perspective on malpractice liability?**

**A:** In general, a paid professional who damages is liable. If he served gratis, he is exempt if properly certified and not guilty of negligence (C.M. 306:4). An exception is made, however, for an officially appointed dayan who erred, since he has a mitzvah to judge. We consider his mistake an oness;

he is exempt, even if paid (C.M. 25:2).

This applies also to a medical practitioner, who erred in the mitzva of healing. Thus, if officially licensed, he is legally exempt, but is nonetheless liable b'dinei shamayim. If he acted responsibly, yet the procedure was unsuccessful, he carries no liability whatsoever (Y.D. 336:1; Aruch Hashulchan Y.D. 336:2). Some also exempt the practitioner completely if he did not actively injure, but

only prescribed inaccurately, as that is unintended grama or garmi (see Pischei Choshen, Nezikin 12:[17]).

However, if the professional has malpractice insurance, the company is liable to pay whatever is required by law. This is a contractual obligation of the insurance company to the professional and his clients, even if the court ruling is not in accordance with Torah law (Rav Z.N. Goldberg, Techumin, 19:322).

## MONEY MATTERS

## 150 WEEKS AND COUNTING

### MAZAL TOV!

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