



BUSINESS WEEKLY

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WERDIGER EDITION

Issue #265 | Balak | Friday, July 3, 2015 | 16 Tamuz 5775

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

SHORT-CHANGED

Shraga worked as the head waiter for a caterer, doing bar mitzvahs, sheva brachos and family simchos. For a weekend affair, each waiter earned \$300.

"I'm short a waiter this Shabbos," the caterer said to Shraga. "See if you can find someone else. It's \$300 for the weekend, like the other waiters."

Shraga asked Dan. "We need another waiter this weekend," he said. "Are you interested?"

"How much for the weekend?" Dan asked.

Shraga decided to try his luck and save the caterer some money. "It's \$250 for the weekend," Shraga offered. "Is that OK with you?"

"That's great," replied Dan. "I'm available."

On Motzoei Shabbos, after cleaning up, the waiters came to collect their wages from the caterer. Dan noticed that the other waiters each received \$300. When he inquired, they all said: "That's what the caterer always pays!"

When it came Dan's turn, Shraga said to the caterer: "We agreed on \$250 for the weekend."

"I noticed that the other waiters got \$300," Dan protested. "What did the caterer offer?"

"He offered \$300 but you agreed to \$250," said Shraga. "You even said that it was great."

"I thought that's what everyone else got," replied Dan. "I didn't realize that the caterer offered \$300. I should get whatever salary he offered!"

"What difference does that make?" replied Shraga. "What counts is the agreement that we made. I said \$250 and you accepted."

"It was wrong of you to say \$250," said Dan. "Regardless, what should count is not what you said but what the caterer offered. I should get \$300."

The caterer suggested approaching Rabbi Dayan. "Shraga hired me to work for his caterer for \$250," said Dan. "I found out that the caterer offered \$300, as usual. How much am I entitled to?"

"The Mishnah (B.M. 75b) teaches that if someone hired workers and they misled one another, they have only a rightful complaint (tar'omes) against each other," answered Rabbi Dayan. "One interpretation is our case. One of the workers, who was an agent of



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MECHILAH ON A RENTAL

I rented a car from a friend for a month and

on Erev Shabbos while on my way to the Catskills I realized that the air conditioner wasn't working. Since there wasn't time to return the car, I used the car over the weekend and returned the car on Monday.

Q: Do I have the right to cancel the rental agreement?

A: Renting a car is similar to purchasing a car; therefore once a kinyan was performed neither party may cancel the transaction. However, if the rented car is defective (see C.M. 232:6 for parameters regarding defects), the lease is voided the same way a sale is canceled if the merchandise is defective.

If a customer uses the purchased merchandise after noticing the defect he forgoes the right to cancel the sale since use of the item while knowing it's defective constitutes acceptance of the item as is (C.M. 232:3). The question is whether that principle is applicable in your circumstance.

There are numerous reasons why your use of the car does not prevent you from canceling the lease.

Some employ the following reasoning. One who uses an object without permission (shoel shelo midaas) is a thief. Therefore, if the customer intends to cancel the sale due to a defect, the object actually belongs the merchant. Use of that object is an act of theft and so we assume his intent is to maintain the sale rather than steal

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STORY LINE

the employer, misled the other employees and arranged with them a lower salary than the employer offered. In this case, the workers receive only the salary that they agreed to, but they have a rightful complaint against the coworker who misled them" (C.M. 332:2).

"What about the fact that the work is worth more?" asked Dan. "I did a good job!"

"Even so, since the employees agreed to the salary that the coworker stated, they are not legally entitled to more," replied Rabbi Dayan. "This is no different from any worker who willingly agreed to work at a discounted salary" (Pischei Choshen, Sechirus 8:15[36]).

"But if the employees agreed to this salary, why do they have a rightful complaint?" asked Shraga.

"Since the employer willingly offered to give more," replied Rabbi Dayan, "the employees have a rightful complaint against the coworker who denied them potential benefit, as it says in Mishlei (3:27), 'Do not withhold good from its rightful recipient when you have the power to do so.' They have a right to be upset with him. He owes them an apology and should try to appease them, but he has no financial responsibility to them" (Tiferes Yisrael, B.M. 6:[3]; Pischei Choshen, Sechirus 10:[7]).

"However, if the coworker had said: '\$250, like the other workers,' and the employees responded, 'We accept, like the other workers,' the Rema maintains that the employer is required to pay \$300," Rabbi Dayan concluded. "In this case, they agreed not to the specific salary quoted, but to the going rate of the other workers" (C.M. 332:4; Sma 332:10; see also Shach 332:10).



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the merchandise (Galya Maseches cited in Pischei Teshuvah 232:1; Divrei Geonim 6:10). This rationale, however, is limited to sales when there is no indication that the seller would permit anyone to use his possessions. Regarding a rented item, even if the customer intends to return the defective merchandise it is assumed that the owner does not mind if the customer continues the rental agreement since that allows him to collect rent.

Secondly, he will have a difficult time finding someone to rent his object now that he is aware of its defect, and the current customer provides for him easy income (Teshuras Shai 285; cf. Pischei Choshen, Sechirus 6[29]).

Other authorities contend that there is no difference between a sale and a rental, and if the customer uses the item after realizing the defect he forgoes his right to cancel the rental (Raanach 40 referenced by Shach 232:3).

In your circumstance all opinions agree that you did not forgo your right to cancel the lease by using the car. If one rented a horse to travel to another city and in the middle of the journey realized that the horse was defective, he does not forgo his right to return the horse by riding it back to the owner. The reason is that he had no choice but to ride the animal back and thus nothing regarding his intent can be inferred from his behavior (Pischei Teshuvah 232:1). In your case since there was no time for you to return the car before Shabbos, your use of the car that weekend does not prevent you from canceling the rental agreement.

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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlitza

BEIS DIN AND CIVIL COURT #17

Advocates

Q: Are lawyers or rabbinic advocates acceptable in beis din?

A: It is preferable that the Dayanim in beis din hear directly from the litigants, whereby they can get a clearer picture of the truth, similar to the Biblical obligation for witnesses to testify orally. For this reason beis din should also understand the language of the litigant, and if possible not rely on a translator's interpretation (C.M. 13:3; Sma 12, 17:6, 14; Kovetz Haposkim ad loc.).

Nonetheless, the common practice nowadays is to allow for a legal advocate (to'en) to help a litigant to better voice his position. The to'en may also add halachic arguments in his client's favor, after the litigant has presented his arguments. It is also common practice to allow a legal advocate to present his client's arguments if the litigant cannot appear personally in beis din (see C.M. ibid., Aruch Hashulchan 124:2).

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