



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

**GASOLINE EXPENSES**

Ben was debating where to learn. Family circumstances required him to live at home, but the local options were not ideal. His first choice required driving quite a distance, which meant significant expenses.

Uncle Jack strongly encouraged Ben to learn where he would best succeed. "I am willing to cover two year's worth of expenses," he said. "When you fill up, save the receipts."

"Are you serious?" asked Ben.

"Sure," he replied. "I'll even put it in writing."

"Thanks! I appreciate it," Ben said gratefully.

During the course of the year, though, events in the Persian Gulf caused gasoline prices to rise from \$2.50 a gallon to \$4.00.

One day, Uncle Jack joined Ben for the ride. On the way, Ben stopped to fill up with gasoline.

"Fill 'er up, please," Ben told the attendant. "I'll also need the receipt."

The attendant filled the tank. "That comes to \$80," said the attendant. "Here's your receipt."

"Filling the tank costs so much now!" exclaimed Ben. "Much more than we expected!"

"What can I do?" said Uncle Jack. "That was the agreement I committed to!"

"But you probably expected prices to remain relatively stable," argued Ben. "I'm uncomfortable asking you to pay so much. I'm not even sure that such an open-ended commitment is binding."

"I don't see why not; a commitment is a commitment," said Uncle Jack. "But, if you want, we can check with Rabbi Dayan about it."

The two went to Rabbi Dayan. "Uncle Jack committed to cover my gasoline expenses for two years," began Ben. "Is such a commitment binding, especially with the steady price rise?"

"If the price rise is within reason," ruled Rabbi Dayan, "according to almost all authorities, the obligation is binding."

"Why should anyone disagree?" Ben asked.

"This case is one of an unlimited obligation, *davar she'eino katzuv*," replied Rabbi Dayan. "The Rambam (Hil. Mechirah 11:16) is of the opinion that an unlimited obligation is not legally binding, other than in specific circumstances. Since the person does not know how much he is obligating himself to, it is similar to *asmachta*, an insincere commitment.

"Almost all other Rishonim disagree with the Rambam," continued Rabbi Dayan. "They understand that a person can commit with a *kinyan* even to an unlimited obligation.

"What is the source of this dispute?"

"The Mishnah (Kesubos 101b) deals with



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**GIVING NOTICE**

I was hired to work as a secretary for a company for two years. When that contract expired I

continued to work for another 15 months without a contract. I recently found another position with better benefits and a higher salary, and accepted that position. I know that generally it is appropriate to inform one's employer of one's intent to quit so that they have time to find a replacement, but I am hesitant to do so out of concern for my present employer's reaction.

**Q: Am I obligated to tell my employer that I will not be returning in a couple of weeks? If so, how much advanced notice must I give?**

**A:** A day worker (*sechir yom* — an employee paid for his time rather than for the completion of a task) is permitted to quit in the middle of his term of employment. This is because Hashem refers to us as His servants, which implies that we are not enslaved or forced to remain an employee of another (C.M. 333:3). The allowance to quit is limited to where quitting does not cause a loss to one's employer, but if quitting will cause one's employer a loss, he may not quit in the middle of his term of employment (C.M. 333:5). These parameters are in force when a *sechir yom* wishes to cut short his term of employment, but your inquiry involves a circumstance in which you wish to quit without having a term of employment since you do not have a contract. The issue is whether you have to be concerned that you will cause your employer a loss by not informing him in advance of your

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## STORY LINE

a person who marries a woman with a daughter from a previous marriage and commits to support the daughter for a number of years," explained Rabbi Dayan. "The man is obligated the support his stepdaughter whether prices rise or fall. The Gemara (102a) explains that because of the special circumstance of mutual commitment in marriage, this obligation is binding verbally; there is not even a need for a kinyan" (E.H. 114:1).

"Here, the amount of support is undefined, as the cost of living is variable," continued Rabbi Dayan. "The Rambam apparently understood that such a commitment is generally not valid at all, even with a kinyan, whereas the other Rishonim understand that a kinyan is required in general, but the commitment is always valid."

"What does the Shulchan Aruch rule?" asked Uncle Jack.

"The Shulchan Aruch (C.M. 60:2; 207:21) cites the Rambam, but writes that all subsequent authorities disagree with him and the halachah is like them," replied Rabbi Dayan. "Despite this, some Acharonim apply kim li, 'to follow' the lenient opinion of the Rambam and not enforce an unlimited commitment (see Yabia Omer, C.M. 3:4). However, the Shach (60:12) concludes that since all subsequent authorities disagree with the Rambam, as the Shulchan Aruch writes, one cannot even apply kim li.

"Therefore," concluded Rabbi Dayan, "Uncle Jack's commitment is binding, even though prices rose significantly. However, if the cost would skyrocket unreasonably — e.g., more than double — some authorities maintain that he never committed to this, and would not be liable for that price." (See Beis Shmuel E.H. 114:3; Avnei Miluim 114:2; Pischei Choshen, Kinyanim 18[27].)



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intent to leave.

Basis for such concern may be derived from the halachah that a tenant who leased a home without a contract must give notice to the owner of his intent to move so that the owner should be able to find a replacement tenant. In the event the tenant does not give advanced notice, he is not permitted to move out of the property (C.M. 312:7).

Some authorities contend that this enactment regarding rental properties does not serve as precedent concerning employees who wish to quit (Divrei Malkiel 3:151). Others argue that the halachah regarding rental properties is an instructive precedent since the underpinning of both cases is the responsibility to prevent others from unnecessarily suffering a loss. Accordingly, when quitting without giving advanced notice would cause one's employer a loss, the employee may not quit. The amount of advanced notice would have to be determined on a case by case basis (Chazon Ish, B.K. 23:2).

Even the opinion that contends that the halachah regarding rental properties does not serve as precedent for employment matters would agree that it is proper to take steps to prevent an unnecessary loss to others. This would certainly apply to an employer to whom one owes a debt of gratitude for one's employment. Therefore, one should inform his employer with enough advance notice for him to find a replacement employee and if necessary train him for the position.

[When there is a legal or contractual obligation to give notice before quitting, one must certainly comply with those obligations.]

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



Adapted from the writings of Harav Chaim Kohn, shlitza

## MONEY MATTERS

### BEIS DIN AND CIVIL COURT #10 Lost in Civil Court

**Q: If someone litigated in civil court and lost, can he then turn around and sue in beis din?**

**A:** If the plaintiff lost the case in civil court and then turns around and tries to sue in beis din, there is a dispute among the authorities whether beis din should address the case and summon the defendant. The Rema rules not to, either as a penalty to the plaintiff for suing in civil court or because, through his actions, the plaintiff implicitly accepted the ruling of civil court as binding. Nonetheless, if the decision of the courts was clearly false — even according to civil law — the defendant is still obligated to pay the plaintiff any money that he knows he owes him (C.M. 26:1; Nesivos 26:2).

Even in situations where beis din will address the case, the plaintiff must first cover the defendant's legal expenses (see Divrei Chaim, C.M. 2:1).

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