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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

CONTINUATION Mr. Strauss was hired to coach the community's Little League baseball team. The initial agreement was for a year, for which he was to receive a monthly salary. In addition, his family was granted free membership at the local Jewish Community Center.

At the end of the year, since no one said otherwise, Mr. Strauss continued serving as coach. Two months later, he received a bill from the JCC for annual membership dues.

Mr. Strauss approached his employer about the membership bill.

"The free membership was a perk for the first year only," said his employer.

"We never discussed terms for this year."

"I assumed that last year's agreement would continue," said Mr. Strauss. "I'm continuing in the same capacity, so without any discussion otherwise, the same salary and conditions should continue."

"Not necessarily," said his employer. "We gave you special consideration for the first year to introduce you to the activities of the JCC. This year we are not interested in providing free membership."

"But the free membership is part of the salary!" argued Mr. Strauss.

"Who says?" responded his employer. "You're still getting a monthly salary. Even the salary was never explicitly spoken about beyond the first year."

"What do you expect?" asked Mr. Strauss. "That I should work for free?"

"No," said the boss. "I just meant that the salary beyond the first year is negotiable. Certainly, I don't see the need to toss in free membership."

"This seems unfair to me," said Mr. Strauss. "I'd like us to discuss the issue with Rabbi Dayan."

The two came to Rabbi Dayan.

"I continued working after the completion of my one-year agreement," said Mr. Strauss. "Do the same salary and benefits continue?"

"The Rivash (Responsum #475) addresses the similar case of a chazzan who was hired with the additional benefit that he be exempt from certain municipal taxes," replied Rabbi Dayan. "He was rehired by subsequent community leaders without explicitly stating this benefit. The Rivash ruled that an employee who is rehired is assumed to enjoy the same conditions as previously."

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BHI HOTLINE

ESROGIM AFTER YOM TOV

A customer took an esrog to show his Rav. I stipulated that if he will not purchase it, the esrog should be

returned that day. However, he did not return it until after Yom Tov when it was obviously worthless.

Q: Is he obligated to pay, considering that his actions caused me a loss?

A: The first issue to consider is hezek she'eino nikar — indiscernible damage (i.e., the object was not discernibly altered but something was done to make it prohibited). Shulchan Aruch (C.M. 385:1) states that one who causes hezek she'eino nikar is not liable because it is not considered damage.

However, Chazal instituted that one who intentionally causes indiscernible damage is liable. Nevertheless, this enactment is limited to damage that one actively causes. If the damage resulted from inactivity, the thief is not liable and may return the damaged goods (harei shelcha lefanecha) without any further penalty since the thief did not damage the goods; he merely prevented salvaging them (Ramban, Dina D'Gormi, see Shaar Mishpat 176:4). Thus, one who stole and retained possession of chametz through Pesach, thereby causing it to become prohibited, may return the chametz without any further penalty (C.M. 363:1).

Similarly, a thief who stole a coin that went out of circulation may return it to the owner without further penalty. Some authorities contend that the exemption is limited to where the coin remains valid currency in another country, but if it was invalidated entirely it is considered discernible damage and the thief is liable (C.M. 363:1). Others contend that even if the coin is invalidated altogether it is categorized "indiscernible damage" and the thief may return the coin (Rema 363:1 and



STORY LINE

Similarly, one who rents a house for a set time and continues beyond the time pays the same rent.

"The Rema (333:8) cites this ruling, with the qualification that the worker was rehired. However, if he simply continued working, we do not necessarily assume that all the original conditions continue.

"He brings proof from a responsum of the Maharik (#118) regarding two partners, one of whom agreed to a certain stipulation for a number of years. If the partnership continued in silence, this stipulation does not continue. It seems, according to the Rema, that the worker is considered like one who works with no agreement and would get paid the minimum going rate.

"The Taz (333:8) and Shach (333:44), however, dispute the Rema's qualification, and maintain that the original terms continue. Taz explains that only when there was no requirement to pay initially, as in the Maharik's case where the stipulation was a compromise forced by arbitrators, does the stipulation not continue. When payment is required for services, though, the terms remain even if the worker continued working in silence.

"Aruch Hashulchan (333: 30) suggests that even the Rema only meant that regarding future months the former conditions are not binding, but regarding any work already done in silence, the original conditions continued.

"Others suggest that the Rema referred only to additional benefits, but the base salary clearly continues, since one cannot expect the worker to continue working for free, similar to a rental when the base rent continues if nothing was said (see Pischei Choshen 8:6[16])."



BHI HOTLINE

Shach 363:5).

According to some, returning a stolen esrog after Sukkos is subject to the debate concerning invalidated coins (Pischei Teshuvah 363:1 and Mishpat Shalom 200:7). Others contend that one who steals an esrog is certainly liable, since everyone recognizes that after Sukkos the esrog lost its value and thus the damage is discernible (Beis Shmuel Acharon, cited in Pischei Teshuvah, ad loc. and Nachlas Tzvi 291:24; see Ohr Same'ach 2:14 for an explanation).

The above discussion relates to whether beis din could compel someone to pay for indiscernible damage, but it would seem that one who is negligent has a moral obligation to pay (see Imrei Binah, Pesach 12). Consequently, in your circumstance, although he may be considered a shomer rather than a thief (see Ketzos 294:1), many authorities maintain that a shomer is also exempt when it is an indiscernible damage (see Shach 363:7). Therefore, if the esrog indeed lost value due to his delay in returning it to you, his liability is subject to the above debate concerning indiscernible damage. However, all authorities agree that if he was negligent he would have a moral obligation to reimburse you for your loss.

This analysis assumes that when he took the esrog it did not have a set price. If the esrog did have a set price, he is liable for the full amount, since taking something on consignment is halachically a purchase with the allowance to return it (C.M. 200:11; see also Nesivos 186:1). It is therefore understood that the allowance is limited to it being returned in a timely fashion. If his delay prevents you from selling it for a satisfactory price, he forgoes the right to return it and the sale is now final, so he must pay you the agreed-upon price (see Hayashar V'hatov 7:9 and 14:15).

For questions on monetary matters,
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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

PARTNERSHIP # 2

Corporations & LLC

Q: How does Halachah view corporations and limited liability companies (LLC)?

A: A corporation or LLC is viewed in secular law as an independent entity. The corporation or LLC remains distinct from the personal assets of its shareholders, and the liabilities do not extend to them. In this regard, it is like a partnership without personal ownership.

There is a significant dispute among the Poskim as to how Halachah views a corporation or LLC. Some maintain that Halachah also views it as a partnership without personal ownership. However, the consensus of most Poskim is that corporations and LLC are similar, in principle, to classic partnerships in which each owner has personal ownership of his share. Nonetheless, the liability of the corporation's or LLC's business ventures is limited to its assets based on dina d'malchusa, since everyone who deals with it does so with this understanding (see Chiddushei Seridei Esh, p. 554, in the name of Rav Shaul Weingart; Minchas Yitzchak 3:1).

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