



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

A BETTER OFFER

Nate's company downsized, and he was laid off. "It's min haShamayim (from Heaven)," he said. "B'ezeras Hashem, something else will turn up." He sent his resumé to contacts of his and was granted several interviews.

Nate interviewed with Double Inc., who said they would contact him again in two weeks. Meanwhile, he met also with First Co., who offered him a position starting the day after the interview. Nate negotiated details of the salary and terms of employment, and gave his verbal acceptance of the job.

"Please meet with Mrs. Sanders in the HR department to sign the contract and complete the hiring process," Nate was told. Mrs. Sanders was on vacation for the week, though, so he made an appointment for the following week.

During the week, Double Inc. called to say that they were interested in making Nate an offer. The terms were similar to those of First Co.

"Thank you for your offer," Nate said to Double, "but I already received a similar offer from another company. I made an appointment to sign there next week."

"Let me see what I can do for you," said the person from Double. "Until you sign, you're under no obligation to the other company."

A senior officer called back a short time later. "We checked your references and are very eager for your services," he said. "We're willing to enhance our offer significantly, provided that you sign tomorrow."

"I appreciate the offer and want to consider the issue overnight," replied Nate.

Nate compared the pros and cons of each job. The enhanced offer of Double was significant. He wasn't sure whether it was ethical, though, after having agreed to First, even though circumstances delayed his signing.

Nate decided to consult with Rabbi Dayan on this issue. "Is there any ethical problem in accepting the enhanced offer of the second employer?" he asked.

"There are several halachic issues to consider," answered Rabbi Dayan, "but if the difference is significant it is not unethical to accept the second offer."

"Generally, for a transaction to be halachically binding, there is a need for a kinyan (act of acquisition),"

DID YOU KNOW?

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BHI HOTLINE

DAMAGE TO PUBLIC PROPERTY FROM A TREE

The branches of a tree on my property hang out over the sidewalk.

Q: Am I obligated to trim the low-hanging branches? Can someone else trim those branches?

A: The Mishnah (B.B. 27b) rules that branches that extend over the public domain may be trimmed to a height that allows a camel and its rider to pass beneath it (C.M. 155:27, 417:4).

Last week we learned that when a person's tree branches or roots extend into a neighbor's yard, causing damage, the neighbor has the right to trim the tree but the owner is not obligated to do so. Seemingly, the same halachah applies when branches extend into the public domain and a passerby may trim them, but the tree owner is not obligated to do so.

However, there seems to be a contradiction. The Gemara (B.B. 60b) relates that Rabi Yannai had a tree whose branches extended into the street, and so did another person. The public filed a complaint against the other person to trim those branches and the case was presented before Rabi Yannai. Realizing that he was guilty of the same thing, that night Rabi Yannai had someone trim his branches. The next day Rabi Yannai ruled that the tree owner must trim back his branches.

The defendant challenged the ruling based on the fact that Rabi Yannai's branches also extended into the street. Rabi Yannai invited the defendant to confirm whether or not his branches extended into the street. If Rabi Yannai trimmed his branches, the defendant would have to comply with his ruling, but if Rabi Yannai had not trimmed his branches, the defendant need not trim his. It seems evident from Rabi Yannai's behavior, as well as his ruling, that the



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explained Rabbi Dayan. "However, a verbal employment agreement is binding, even without a kinyan, once the employee began working. If one party backed out before work began, the other party has a 'rightful complaint' (tar'omes) against him for any inconvenience that he caused.

"In addition, if the party retracted without good basis, he is considered mechusar amanah — lacking trustworthiness," added Rabbi Dayan. "This is true also for someone who retracted from a verbal agreement to a transaction without good basis. However, if there is a significant reason, according to many authorities he is not considered mechusar amanah" (C.M. 204:7, 11; Pischei Teshuvah, C.M. 207:5; Sma 333:1; Aruch Hashulchan 333:1).

"What about the halachah that an employee is allowed to retract without penalty, even after beginning work?" asked Nate. "This certainly should be no worse!"

"That halachah is rooted in the idea that Jews are servants only to Hashem and cannot be irrevocably bound to others," replied Rabbi Dayan. "Therefore it does not apply to an employee who intends to continue working, but wants to retract and charge a higher rate. Similarly, according to some authorities, it does not apply to a worker who wants to switch jobs from one employer to another for a greater salary.

"Furthermore, since signing a contract is likely considered a kinyan situmta, there is an opinion that the employee cannot retract, other than in accordance with terms of contract that he signed" (Rema, C.M. 333:4; Pischei Teshuvah 333:4; Shach 333:14; Pischei Choshen, Sechirus 11:1-3[2]).



MONEY MATTERS

PARTNERSHIP # 16

Outstanding Debt

Q: How do we handle outstanding debt when disbanding a partnership?

A: Uncollected debt owed to you is not cause to prevent disbanding the partnership. You should divide the current assets now and the outstanding debt when you collect it. Alternatively, if there are numerous debts, the uncollected debts can be assessed at their current value, and divided; each partner will collect those in his share at their appropriate time. Some say that one party can also offer to sell his share, or buy the other party's share, of the uncollected debt at a set price (gud o agud); (C.M. 176:20; Sma 176:53).

If the partners owe a debt, if each party is liable only for his half, the partnership can be disbanded and each party pays his half at the proper time. However, if both parties are liable for the entire amount, each can refuse to divide that amount and continue investing it until the loan becomes due (see Taz 176:20; Pischei Choshen, Shutfim 3:23-25).



BHI HOTLINE

tree owner of a tree hanging over public property bears the responsibility to trim his branches. This is in contrast to the above ruling that absolves the tree owner of responsibility to trim his branches when it affects his neighbor. One could deflect proof from Rabi Yannai's ruling by suggesting that it was based on the assumption that the defendant would wish to trim his own tree so that it would not become damaged by an inexperienced trimmer. However, since Rabi Yannai had his tree trimmed even though the public did not file a complaint against him, it seems clear that he maintained that a tree owner is obligated to prevent his branches from extending into the public domain.

Some authorities explain that although generally a tree owner is not obligated to trim the damaging branches, when the branches damage the public, he is responsible. Precedent for this principle is found elsewhere (C.M. 155:22; Sma 48). The rationale is that since there is no one else to take responsibility for the interests of the community the responsibility shifts to the tree owner (Chelkas Yaakov, C.M. 10; Imrei Yaakov, Biurim 8:16).

Others contend that there is a dispute whether the fact that it is damaging the public makes a difference (C.M. 155:34). Furthermore, Meiri explains that a Torah scholar must adopt a stringent position about the matter and trim his own tree. Rabbeinu Yonah (B.B. 26a) also writes that it is considered pious for one to trim his own tree even when he is not the direct cause of the damage (Mishkan Shalom, p. 168).

In your circumstance, it is certainly proper (middas chassidus) for you to trim the branches, and according to some authorities it is obligatory. If your tree branches impede the regular use of the sidewalk and you do not trim them, someone else may.

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