

A בס"ד

Intro

Today we will Be"H learn דף קי"ב of מציעא בבא. Some of the topics we will learn about include:

הכובש שכר שכיר

The gravity of withholding wages;

בל תלין

Several exceptions to the prohibition against delaying payment of wages, including:

לא תבעו

If the worker did not request his wages;

אין לו

If the employer does not have funds available; and

המחהו אצל חנוני

If the employer arranges for a shopkeeper to give the employee merchandise as his wages;

The Gemara also discusses

חוזר או אינו חוזר

Whether the employee can return and demand payment

from his employer if the shopkeeper does not pay.

A

הכובש שכר שכיר

בל תלין

לא תבעו

אין לו

המחהו אצל חנוני

חוזר או אינו חוזר

B

The Gemara discusses several other aspects of this Halachah, including:

Whether בל תלין applies to

קבלנות

A worker who is paid a fixed amount for the job;

שכיר נשבע ונוטל

The employee's right to swear and collect if they are disputing payment before the allotted time.

B

קבלנות

שכיר נשבע ונוטל

1 So let's review...
 The Mishnah on א"ק" ruled
 אחד שכר אדם
 ואחד שכר בהמה
 ואחד שכר כלים
 Whether one employs a person, or rents an animal or a utensil,
 יש בו משום ביזמו תתן שכרו
 ויש בו משום לא תלין פעולת שכיר אתך עד בוקר
 He is subject to the prohibitions against delayed payment for both day and night workers.

The Gemara cites a ברייתא which offers two interpretations of the Pasuk regarding the severity of withholding wages:

The Pasuk states
 ביזמו תתן שכרו ולא תבא עליו השמש
 כי עני הוא
 ואליו הוא נושא את נפשו

1.
 מפני מה עלה זה בכבש ונתלה באילן
 ומסר את עצמו למיתה
 ללא על שכרו
 The employee endangers his life in his work of climbing up high ramps and trees to earn his wages.

2.
 כל הכובש שכר שכיר
 כאילו נוטל נפשו ממנו
 Withholding the worker's wages is akin to taking his life.

According to the second explanation, the Gemara cites a Machlokes as to the interpretation of the word נפשו:

חד אמר
 נפשו של גזלן
 וחד אמר
 נפשו של נגזל

And as Rashi explains, both agree that both are true;
 By withholding the wages the employer endangers the life of the employee because of the hardship it will cause him;
 as the Pasuk says
 כן ארחות כל בוצע בצע
 את נפש בעליו יקח
 The thief takes the life of the owner.

And as a result the employer endangers his own life,
 because he will be punished; as the Pasuk says
 אל תגזל דל כי דל הוא ואל תדכא עני בשער
 כי ה' יריב ריבם וקבע את קבעיהם נפש
 Hashem will avenge a thief with his life.

The Machlokes is merely to which one the word נפשו of the Pasuk is referring.

=====

1 The Mishnah earlier stated...

אחד שכר אדם
 ואחד שכר בהמה
 ואחד שכר כלים

Whether one employs a person, rents an animal or utensil,

יש בו משום ויש בו משום
 ביומו לא תלין
 תתן שכרו פעולת שכיר אתך
 עד בוקר

He is subject to the prohibitions against delayed payment for both day and night workers.

ברייתא

ביזמו תתן שכרו ולא תבא עליו השמש
 כי עני הוא
 ואליו הוא נושא את נפשו

2 כל הכובש שכר שכיר
 כאילו נוטל נפשו ממנו
 Withholding the worker's wages is akin to taking his life.

1 מפני מה עלה זה בכבש ונתלה באילן
 ומסר את עצמו למיתה
 ללא על שכרו
 The employee endangers his life in his work of climbing up high ramps and trees to earn his wages.

כל הכובש שכר שכיר
 כאילו נוטל נפשו ממנו

נפש של נגזל נפש של גזלן

As Rashi explains both agree that both are true;

By withholding the wages the employer endangers the life of the employee because of the hardship it will cause him; as the Pasuk says

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אל תגזל דל כי דל הוא ואל תדכא עני בשער כי ה' יריב ריבם וקבע את קבעיהם נפש
 Hashem will avenge a thief with his life.

2 The Mishnah continues
 אימתי בזמן שתבעו
 לא תבעו אינו עובר עליו
 He only transgresses this prohibition if the worker
 demanded payment. If he did not ask for his wages, the
 employer does not transgress, because the Pasuk says
 אתך
 לדעתך
 The prohibition is to keep his wages against his will.

Similarly, the ברייתא expounds

יש לו

עובר

אין לו

אינו עובר

One only transgresses if he has the money but refuses to
 pay; but if he cannot pay, he does not transgress, because
 the Pasuk says

אתך

שיש אתך

=====

2 *The Machlokes is merely
 to which one the word נפלו of the Pasuk is referring.*

◆ The Mishnah continues...

אימתי בזמן שתבעו
 לא תבעו אינו עובר עליו

*He only transgresses this prohibition
 if the worker demanded payment.*

*If he did not ask for his wages,
 the employer does not transgress...*

לא תלין

פעולת שכיר אתך

עד בוקר

אצותך

*The prohibition is to keep his wages
 against his will.*

ברייתא

אין לו - אינו עובר

*But if he cannot pay,
 he does not transgress*

יש לו - עובר

*One only transgresses
 if he has the money
 but refuses to pay;*

לא תלין

פעולת שכיר אתך

עד בוקר

ליל אתך

3 The Mishnah continues:
 המחזהו אצל חנוני או אצל שולחני
 אינו עובר עליו
 If the employer tells the employee to collect his wages as merchandise from a certain shopkeeper or moneychanger, he does not transgress the prohibition, because we expound
 אתך
 ולא שהמחהו אצל חנוני ואצל שולחני
 He is not withholding the wages.

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 המחזהו אצל חנוני או אצל שולחני
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 If the employer tells the employee to collect his wages as merchandise from a certain shopkeeper or moneychanger, he does not transgress the prohibition...

לא תלין
 פעולת שכיר אתך
 עד בוקר

ואם לפתחו אצל חנוני ואצל שולחני
 He is not withholding the wages.

4 If the shopkeeper refuses to pay;
 מחלוקת אמת, רב ששת אמר
 אינו חוזר
 He cannot return and demand his wages from his employer.
 רבה אמר
 חוזר
 He can return and demand his wages from his employer.

4 If the shopkeeper refuses to pay. . .
 רב ששת אמר
חוזר
 He can return and demand his wages from his employer.
 רב לל אמר
אינו חוזר
 He cannot return and demand his wages from his employer.

Tosfos explains that there is no Machlokes in the following two cases:

1.
 If the worker specifically said
 אני פוטרך לגמרי
 אפילו לא יתן לי
 I agree to collect from the moneychanger, and exempt you even if the moneychanger does not pay me;
 פשיטא דאינו חוזר
 ולא בעי קנין
 He certainly loses his right to demand payment, even if he did not finalize this agreement with a קנין.

Tosfos explains that there is no Machlokes in the following two cases:

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 אני פוטרך לגמרי
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 He certainly loses his right to demand payment, even if he did not finalize this agreement with a קנין.

5 2.
 And, if he specifically said
 אני פוטרך
 אם יפרע לי שלחני
 I only exempt you if the moneychanger pays me;
 פשיטא דחוזר
 He certainly may demand payment from the employer.

5

2

If he specifically said
 אני פוטרך
 אם יפרע לי שלחני
 I only exempt you if the moneychanger pays me;
 פשיטא דחוזר
 He certainly may demand payment from the employer.

6 The Machlokes is only if the employee agreed to the arrangement
 סתמא
 Without specifying; he simply agreed to get his wages from the moneychanger.
 רב ששת אמר
 אינו חוזר
 רבה אמר
 חוזר

רבה cites our Mishnah as proof:
 אינו עובר עליו
 If he sends him to a shopkeeper, he no longer transgresses the prohibition.
 The Gemara infers
 מעבר הוא דלא עבר
 הא מיהדר הדר
 The employer does not transgress, but he is still responsible for his wages?

The Gemara answers by interpreting the Mishnah
 מאי אינו עובר
 אינו בתורת לעבור
 It is no longer possible to transgress, because he is no longer responsible.
 =====

6

The Machlokes is only if the employee agreed
 סתמא
 Without specifying

<p>רב ששת אמר חוזר He can return and demand his wages from his employer.</p>	<p>רב ללל אמר אינו חוזר He cannot return and demand his wages from his employer.</p>
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Proof from our mishnah

מלפני:
 המחזהו אצל חנוני או אצל שולחני
 אינו עובר עליו

~~מאן~~
 מאן אינו עובר
 אינו בתורת לעבור
 It is no longer possible
 to transgress, because
 he is no longer responsible.

מאן עבר הוא לא עבר - פא מופדו כדון
 The employer does not transgress,
 but he is still responsible
 for his wages?

7 The Gemara proceeds to inquire whether בל תלין applies to קבלנות

A worker who gets a fixed payment for the job, not by the hour or day;

Do we say

אין עובר משום בל תלין

Because

אומן קונה בשבח כלי

והלואה היא

The worker acquires the increased value of the item he works with, and when taking it back, the owner is actually purchasing the worker's part in the item from him.

Therefore, the money owed is a loan, and so it is NOT considered withholding wages?

OR

עובר עליו משום בל תלין

Because

אין אומן קונה בשבח כלי

ושכירות היא

The worker does not acquire part of the item, but is merely a hired worker. Therefore the money owed is his wages, and so it IS considered withholding wages?

rules רב ששת

עובר

This prohibition does apply to קבלנות.

=====

7

קבלנות

A worker who gets a fixed payment for the job, not by the hour or day

Do we say

אין עובר משום בל תלין

Because

אומן קונה בשבח כלי והלואה היא

The worker acquires the increased value of the item, and when taking it back, the owner is actually purchasing the worker's part in the item from him.

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Or do we say

עובר עליו משום בל תלין

Because

אין אומן קונה בשבח כלי ושכירות היא

The worker does not acquire part of the item, but is merely a hired worker. Therefore the money owed is his wages, and so it is considered withholding wages?

רב לל

עובר

This prohibition does apply to קבלנות.

8 The Mishnah continues
 שכיר בזמנו נשבע ונוטל
 עבר זמנו אינו נשבע ונוטל
 If a worker demands payment and the employer claims to have paid, it depends: During the proper time for payment, i.e. before nightfall or daybreak, the employee swears and collects his wages. After this time, the employer is believed.

The Gemara explains

תקנות קבועות שנו כאן

The Rabbim saw fit to institute a Halachah contrary to Torah law:

שבועה דבעל הבית היא

The Torah only obligates the defendant, in this case the employer, to be נשבע ונפטור, to swear and be exempt from payment. However,

עקרוה רבנן ל שבועה דבעל הבית

ושדיוה אשכיר

Instead, the רבנן instituted that the claimant, in this case the employee, may be נשבע ונוטל, to swear and collect his payment, because

בעל הבית טרוד בפועלים הוא

The employer is preoccupied with his workers and we assume that he erred and did not actually pay. Nevertheless, the worker must swear,

כדי להפיס דעתו של בעל הבית

To appease the employer;

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כדי להפיס דעתו של בעל הבית

To appease the employer;

9 The Gemara explains why the רבנן did not institute several other measures instead:

1.

וניתב ליה בעדים

Let the employer always pay in front of witnesses, so there will be no doubt?

The Gemara answers

טריחא להו מילתא

That is too inconvenient.

2.

וניתב ליה מעיקרא

Let the employer pay him in advance?

The Gemara answers

שניהם רוצים בהקפה

The both prefer him to work on credit; as Rashi explains בעל הבית

פעמים שאין לו

The employer does not always have money available; פועל

שמוא יפלו ממנו

The employee does not want to risk losing the money while he works.

9 *The Gemara explains why the רבנן did not institute several other measures instead:*

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בעל הבית – פעמים שאין לו

The employer does not always have money available;

פועל – שמוא יפלו ממנו

The employee does not want to risk losing the money while he works.

10 The Gemara explains several exceptions to this principle:

1.
 אומן אומר שתיים קצצת לי
 והלה אומר לא קצצתי לך אלא אחת
 If the employee claims he was promised two coins as
 payment, while the employer claims he only promised
 him one;
 המוציא מחבירו עליו הראיה
 The burden of proof rests on the employee, who is
 claiming the money, because
 קציצה ודאי
 מידכר דכירי ליה אינשי
 Even if he is preoccupied, the employer remembers the
 terms of his hire.

10

Several exceptions to this principle:

1

**אומן אומר שתיים קצצת לי
 והלה אומר לא קצצתי לך אלא אחת**

*If the employee claims
 he was promised two coins as payment,
 while the employer claims he only promised him one;*

המוציא מחבירו עליו הראיה
*The burden of proof rests on the employee,
 who is claiming the money,*

because

**קציצה ודאי
 מידכר דכירי ליה אינשי**

*Even if he is preoccupied,
 the employer remembers the terms of his hire.*

11

2.
 The Mishnah ruled
 עבר זמנו אינו נשבע ונוטל
 After the allotted time, the employee cannot swear and
 collect; rather, the employer is believed that he paid,
 because
 מטא זמן חיוביה
 רמי אנפשיה ומידכר
 Once he is obligated to pay, he will remind himself of his
 obligation;
 And
 גבי בעל הבית איכא תרי חזקי
 There are two arguments supporting the employer's
 claim:
 1.
 חזקה אין בעל הבית עובר משום בל תלין
 We assume he would not transgress the prohibition of
 delaying payment.
 2. And
 חזקה אין שכיר משהא שכרו
 We assume the employee would not delay in asking for
 his wages.
 On the other hand, there is only one argument supporting
 the employee's claim:
 חזקה
 אין שכיר עובר משום בל תגזול
 We assume the employee is not a thief.
 =====

11

2

עבר זמנו אינו נשבע ונוטל

*After the allotted time,
 the employee cannot swear and collect; rather,
 the employer is believed that he paid,*

because

**מטא זמן חיוביה
 רמי אנפשיה ומידכר**

*Once he is obligated to pay,
 he will remind himself of his obligation;*

And

גבי בעל הבית איכא תרי חזקי

*There are two arguments
 supporting the employer's claim:*

*Only one argument
 supporting the employee:*

-1-

**חזקה
 אין שכיר עובר
 משום בל תגזול**

*We assume
 the employee
 is not a thief.*

-1-

**חזקה אין בעל הבית
 עובר משום בל תלין**

*We assume he would not
 transgress the prohibition
 of delaying payment.*

-2-

**חזקה אין שכיר
 משהא שכרו**

*We assume the employee
 would not delay
 in asking for his wages.*



12 The Mishnah concludes

אם יש עדים שתבעו
הרי זה נשבע ונוטל

If the employee brings witnesses that he demanded payment during the allotted time, he can swear and collect even at a later time.

The Gemara explains
שתבעו כל זמנו

He must bring witnesses that he demanded payment and was not paid that entire day; for example, he came at the end of the day and was not paid. In this case, the Chachamim granted the employee

כנגד אותו היום של תביעה

Another full day to be נשבע ונוטל, because we assume the employer did not yet pay.

12

The Mishnah concludes...

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הרי זה נשבע ונוטל

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