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Bava Metzia Daf 77

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Daf Notes is currently being dedicated to the neshamot of

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Who Loses?

The *Gemora* quotes statements of Rava regarding employment where the circumstances change. The general rule is that whenever circumstances change, the workers lose, since they are claiming money that is currently in the employer's possession. If the employer is the only one who should and could have foreseen the change, he is responsible, and therefore loses. (76b)

Unnecessary Work

Rava discusses the halachah regarding a case where one hired workers to water his field, but the field was watered without their work. If it rained, this was unforeseeable, and the employer has no obligation to pay. However, if the river overflowed and watered the field, the owner of the field should have accounted for this predictable occurrence, and he should have stipulated that he will not pay in such a case. Since he did not, he must pay the workers, but at a lower idle rate. (76b – 77a)

Impossible Work

Rava discusses the halachah regarding a case where one hired workers to water his field, but the river, which was the source of the water, dried up. If it is uncommon, the employer is not responsible. If it is common, then if the workers are local and also know that is common, they lose their wages, while if they are not local and do not know this, they are paid at the idle wage rate. (77a)

Finished Work

Rava discusses the halachah regarding a case where work was done early in the day. If one hired workers for a day, but the job was done early, he may give them similar or lighter work. If he only has heavier work, they need not work for him, but he must pay their full wages. Although one generally pays idle workers at a lower idle rate, Rava is referring to workers that carry heavy packages, who become weak when idle. Therefore, idle time is not to their advantage, and the employer must pay their full wages. (77a)

Quitting and Firing

The *Gemora* now discusses in further detail each part of the *braisa* cited above (76b), which discussed a worker who quit at midday.

The *Gemora* first discusses the Sages' statements, and then Rabbi Dosa's.

1. The Sages said that if a worker quits in the middle of the day, he receives half his wages, even if the remaining work now costs more than half the original wages, due to increased wage rates. This is because the Sages' maintain that a worker always has the right to quit, without being penalized.
2. The Sages said that the worker can opt to finish the day and earn his full wages. The *Gemora* explains that this includes a case where wages have risen since the beginning of the day, the worker then quit, and then the employer convinced him to return to work. We may have

thought that the employer was convincing him by offering to pay him the higher rate, so the *braisa* teaches us that he hasn't changed the rate, but agreed only to enhanced work benefits, such as snacks.

3. The Sages said that if the remaining work was half the wages agreed upon, the worker receives half his wages. The *Gemora* explains that this includes a case where the original wages were higher than the standard rate at the time of employment. Since standard wages have now risen, we may have thought that the worker receives a premium on the new rate. Therefore, the Sages say that once the worker agreed to a specific rate -that is his price, and it does not change over time.
4. Rabbi Dosa said that if the remaining work costs more than half, the worker must deduct the difference from his pay, since the employer has the upper hand.
5. Rabbi Dosa said that if the worker opts to finish the job, he receives his original wages. The *Gemora* explains that this includes a case where standard wages fell during the day and the employer fired the worker. When the worker convinced the employer to continue the job, we do not say that the new agreement was at the lower rate, but rather, it was due to the worker's commitment to work extra hard.
6. Rabbi Dosa said that if the remaining work is half of the agreed wages, the worker receives half his wages. The *Gemora* explains that this includes a case where the original wages were discounted from the standard rate, and only now have standard wages fallen to the agreed rate. We may have thought that the employer can tell the workers that they agreed to be paid below the standard rate, so their wages should be lowered below the new standard rate. Rabbi Dosa is teaching us that once the employer agreed to a specific amount - that indicates his price, and it does not change over time.

Rav ruled like Rabbi Dosa. The *Gemora* suggests that this contradicts Rav's statement that a worker always has the

right to quit, indicating that workers have the advantage. We cannot say that Rabbi Dosa's ruling is limited to a case of project work, while Rav allows only an hourly worker the upper hand, because another *braisa* states that both an hourly worker and a project worker, who are forced to quit due to circumstance beyond their control (*e.g., a death in the family or illness*) are paid at their full rate. This *braisa* seems to follow Rabbi Dosa's opinion, since it is limited to a case where the worker is not at fault, and it applies Rabbi Dosa's ruling to both types of workers.

Rav Nachman bar Yitzchak suggests that the *braisa* is in accordance with both opinions, but is discussing a case where the employer sustains a financial loss due to the workers leaving the job half done. In such a case, even the Sages agree that the worker is penalized, unless he quits due to unavoidable circumstances.

However, the *Gemora* proves that Rabbi Dosa's ruling applies to both types of workers from the last statement of the Mishna (76a), which says that anyone who reneges on an employment agreement is at a disadvantage. This general rule is stated to include even the case of an hourly worker.

The *Gemora* offers two answers

1. Rabbi Dosa applies his ruling to both types of workers, but Rav ruled like Rabbi Dosa only in the case of a project worker.
2. The general rule in the Mishna is referring to a sale agreement - if one made partial payment on a field, whoever backs out of the sale is at a disadvantage. (77a – 77b)

When is a Sale Final?

The *Gemora* quotes a *braisa* that discusses backing out of a sale in more detail. If the seller backs out, the buyer can demand his money or the value of his money from the best field, while if the buyer backs out, the seller can return the money, or the value of the money from the worst field. Rabban Shimon ben Gamliel says that we



teach buyers and sellers to structure the deal in a way that they cannot back out. When there is partial payment, they stipulate that the field is fully sold, with the remainder converted to a loan.

The *Gemora* questions why the seller must pay from the best field, since a debtor pays from an average value field.

Rav Nachman bar Yitzchak says that the *braisa* is referring to the best and worst part of the field sold.

Rav Acha the son of Rav Ika says that someone who buys an entire field needs to liquidate his other property at a discount to pay for the field. Therefore, when the seller backs out, the buyer is akin to one who suffered damage, and therefore, he must pay from the best quality field, as is the rule with a damager.

The *Gemora* discusses Rabban Shimon ben Gamliel's opinion. The *Gemora* quotes another *braisa* that cites opinions of *Tannaim* in cases of a security given by a buyer to a seller. Rabbi Yosi says that even if each side of a transaction agrees to a fine on their security, the stipulations are valid and enforceable, since Rabbi Yosi accepts *asmachta* – a conditional obligation – as a valid obligation. Rabbi Yehudah says that in the case of default, the seller may keep only the security. Rabban Shimon ben Gamliel says that if the buyer said that the security should acquire part of the field, then the seller may keep that money in the case of default. Otherwise, the security acquires the whole field, and the remainder is a loan that the buyer must pay in the future.

This *braisa* indicates that even if the payment was not explicitly structured as a loan, it is considered one, while the original *braisa* said that the buyer and seller must explicitly state this.

The *Gemora* says that the first *braisa* is referring to a case where the seller was actively seeking his payment, indicating that he sold his field only to raise cash.

Rava said that if one sold a field, but was actively seeking the payment, the field is not sold until he receives his money. Therefore, unless they stipulated otherwise, we assume that he wanted to sell the field only if he got all his money, and he does not want partial payment to acquire the field, with the remainder converted to a loan.

Rava says that if one lends 100 *zuz* to a debtor, and the debtor pays back one *zuz* at a time, he has paid back his loan, but the creditor can complain that the method of payment made it likely that he would spend the money faster.

A man sold his friend a donkey, and the buyer paid all but one *zuz* of the price. The seller was seeking the last *zuz*, and the *Gemora* says that even seeking one *zuz* indicates that the seller did not want the sale to complete until he receives all his money.

The *Gemora* clarifies that if one is selling an inferior field to unload it from his possession, even if he is seeking the money, we assume he wants the sale to complete immediately, but he is seeking the money to ensure the buyer does not back out.



DAILY MASHAL

Torah Teachers Cannot be Idle

The *Gemora* introduced the concept of workers who carry heavy bundles. Since they need to stay in shape for such strenuous work, when they are idle, it is a loss for them, and therefore an employer must pay them full wages even for idle time.

The Rosh (3), as well as other Rishonim, apply this to Torah teachers. If one hired a Torah teacher for his son, but the son fell ill, the employer must pay the Torah teacher his full wages. When a Torah teacher does not teach, this leads him to forget his knowledge, and not be as sharp as when he is teaching. Therefore, idleness is a loss for him, and he gets paid full wages.

The Ashri Notes questions this Rosh, and states that if the teacher is not employed to teach, this does not preclude him from still learning, to hone his knowledge and intellectual skills.

However, the Pilpula Charifta (10) explains that the work involved – and consequent sharpening of knowledge and skills – increases when one has a student, compared to one who learns on his own. If the employer can provide the teacher with a similar student, he must teach him, but if he does not, his own personal learning does not adequately replace the loss of not teaching.

The Tur (HM 334) rules like this Rosh. The Shulchan Aruch (HM 335:1) also follows this Rosh, but the Rama adds that if the court sees that this teacher is pleased by not having to teach, he is not paid his full wages.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: If the employer's instructions were to hire the workers at a rate of four *zuzim* per day, and he went and hired them for three, what is the *halachah*?

A: They are only owed three, but they are entitled to complain, for the agent held benefits from them.

Q: If the employer's instructions were for three *zuzim* per day, and the agent went and hired them at four, and the agent said to them, "I am responsible for your wages," what is the *halachah*?

A: They receive four.

Q: If one hires craftsmen and they quit in middle of the day, what is the *halachah* if the employer will suffer a loss (*without workers*), and there are no other available workers (*to pay at the same rate*).

A: He can hire the other workers (which the original workers will be liable to pay the difference), or he can deceive them into working.