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Bava Metzia Daf 112

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Work Ethic

Rabbi Yosi the son of Rabbi Yehudah says that the verse describing a worker : *ailav hu nosai es nafsho* - to his work he raises his soul teaches us that the worker will risk his life to do his work, indicating his wages are worth his life to him. Therefore, one who does not pay his worker is tantamount to taking his life.

Another *braisa* reads the verse as referring not to the work, but to the payment itself, stating that his soul depends on the payment. This indicates that if one does not pay his worker, he is taking away the soul.

Rav Huna and Rav Chisda dispute how to read this *braisa*. One says it is that of the employer, as the verse in Mishlei says that one should not steal from a poor man, since God will exact from such robbers a soul, i.e., the soul of the robber. The other says that the soul referred to is that of the worker, as the verse in Mishlei states that if one steals from someone, he is taking away *nefesh b'alav* – the owner's soul.

The *Gemora* explains that each verse can be explained according to the other opinion. When the verse refers to *nefesh b'alav*, it is referring the current owner, i.e., the robber. When the verse says that God will exact

from the robber a soul, it means that God will exact from the robber a punishment, since he took away the soul of the victim. (111b - 112a)

Exclusions to Bal Talin

The *Mishna* says that one transgresses *bal talin* only if the worker demanded payment. The *braisa* explains that the verse says that you should not keep the wages of the worker *itecha* – with you. This word implies that the only prohibition is

1. When you withholding the wages on your own prerogative. However, if the worker has not asked for it, he has agreed to the delay.
2. If the wages are with him - but not if he does not have cash on hand.
3. If the wages are still his responsibility. If the employer directed the worker to collect his wages from a proxy, the wages are not in his domain anymore, and he does not violate the prohibition. (112a)

Payment by Proxy

The *Mishna* stated that if the employer sent the workers to a storekeeper or moneychanger to collect their wages from his account, he does not transgress *bal talin*.



The *Gemora* questions whether the worker may return to the employer for his wages. Rav Sheishes says he may not, while Rabbah says he may.

Rabbah says the language of the *Mishna* indicates that this transaction only removes the prohibition, implying that the employer is still obligated, in case the proxy does not pay. Rav Sheishes says the *Mishna* means that the prohibition is not at all in force, since the monetary obligation is gone. (112a)

Contracted Worker

The students asked Rav Sheishes whether *bal talin* applies to a contracted worker, or only to a salaried worker (*paid by time*).

The *Gemora* assumes this question depends on the nature of a worker done by contract. If we assume a craftsman who creates or fixes an item owns the appreciation of the item, and then gives it to the owner in return for the payment, then the payment is a simple loan, and not subject to *bal talin*. If a craftsman has no ownership of the improvement to the item, then his payment is standard wages, and are subject to *bal talin*.

Rav Sheishes answered that the employer transgresses *bal talin*.

The *Gemora* attempts to disprove this from a *braisa* that says that a contracted worker's wages is not subject to *bal talin*.

The *Gemora* deflects this by saying the *braisa* is referring to the exemption when the employer sent the worker to a proxy.

The *Gemora* then suggests a *braisa* to support Rav Sheishes. The *braisa* says that if one gives his garment to a worker, and he finished it and notified the owner, the owner does not transgress *bal talin*, even if he delays picking it up. If the worker returned the garment, *bal talin* is in effect immediately, even though he is a contracted worker.

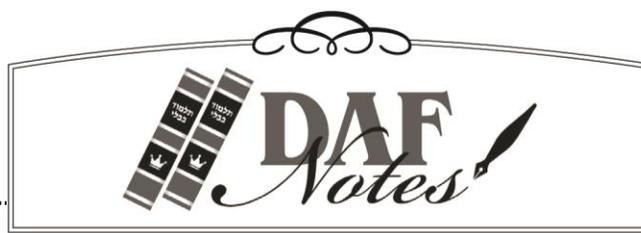
The *Gemora* deflects this by saying that the *braisa* is referring to one hired to shake out the garment, who gets paid a set amount for each shake, making him a salaried worker. (112a)

Swearing to Collect Wages

The *Mishna* said that during the period that an employer has to pay his worker, if the worker claims he was not paid, but the employer claims he paid, the worker may swear to his position, and collect his wages.

The *Gemora* first suggests that this was an institution of the Sages to ensure a worker a livelihood.

The *Gemora* rejects this, since the concern for the worker's livelihood cannot unfairly disadvantage the employer. Neither employers nor workers want to change the terms of employment to advantage either side, since both are interested in a stable fair labor market.



Instead, the *Gemora* explains that an employer is preoccupied with his workers, and often forgets whether he paid them or not. We therefore consider his denial to be incorrect. However, if we disregard his denial altogether, the *Gemora* questions why the worker must swear before collecting.

The *Gemora* explains the oath is to assuage the employer, who wants proof that the worker was not paid.

The *Gemora* considers, and rejects, other options for hiring workers, that would avoid this issue:

1. Hiring only in the presence of witnesses is too much trouble.
2. Prepayment is not an option, sine both employer and worker prefer to work on credit, to ease liquidity of the labor market.

The *Gemora* discusses two exclusions to the oath, explaining how they can be valid, if we seem to disregard the employer's denial:

1. The *braisa* say that if they dispute not whether the worker was paid, but the amount of the agreed wages, the worker must bring a bona fide proof, and may not just swear. The *Gemora* explains that the employer remembers how much he agreed to pay, but not whether he paid.
2. The worker has the right to swear only during the time period given to the employer. The *Gemora* explains that while for the worker's

advantage, we have an assumption that he does not steal, for the employer's advantage, we have two assumptions: that he does not transgress *bal talin*, and the worker does not wait so long to collect his wages. (112b - 113a)

Extension of Oath Period

The *Mishna* says that if the worker provides witnesses that he demanded his wages, he may swear and collect wages even after that period. The *Gemora* clarifies that the *Mishna* means that if the witnesses testify that the worker demanded his wages *during* the whole time period for payment, he may still swear and collect after the time period. Rav Chama bar Ukva explains that this testimony extends his time to swear by one day. (113a)

INSIGHTS TO THE DAF

Payment by Proxy

The *Gemora* discusses the dispute of Rav Sheishes and Rabbah as to whether a worker can return to his employer when he directed him to a proxy for payment.

The Rishonim discuss the exact parameters of this dispute, and present different options.

1. If the worker explicitly agreed to forgive the employer, regardless of the whether the proxy pays him, all agree that the employer is not liable at all. If the worker conditioned his forgiving the wages on receiving the money from the proxy, all agree that he may return to the employer if the proxy did not pay him. The dispute is in the case where he accepted the

arrangement, with no explicit declaration, and the proxy now refuses to pay. Rav Sheishes and Raba dispute whether the proxy has a status of a guarantor or not. Rav Sheishes says that he is a guarantor, and is obligated to pay, and therefore, the worker relied on him, and forgave his employer. Rabbah says that he is not a guarantor, and the worker did not rely on his payment. [Tosfos 112a Chozer, explanation 1]

2. The case in dispute is when the worker agreed to forgive the wages if the proxy pays, but the dispute is whether the worker can claim his wages from the employer before the proxy pays. Rav Sheishes says that as long as the proxy has not refused to pay, the worker's forgiveness is in effect, and he may not return to the employer. [Tosfos, explanation 2, Rosh]
3. Both Rav Sheishes and Rabbah agree that the worker may claim his wages from his employer. The dispute is whether the employer now will transgress *bal talin*. Rav Sheishes says that once he's removed the *bal talin* prohibition by directing the worker to the proxy, it may not return, while Rabbah says that *bal talin* is removed only while the worker is dealing with the proxy, but returns once the worker returns to the employer. [Tosfos, explanation 3]

The Yerushalmi (brought by the Rif and Tosfos) seems to rule like Rav Sheishes, but the Rishonim rule like Rabbah. However, if the employer had a debt owed to him by the proxy, and transferred that debt to the worker in lieu of his wages, the worker now owns the debt through *ma'amad shloshton*, and no one may back out of the arrangement.

Tosfos learns from the discussion of this case that one need not make a *kinyan* transaction to effect binding *mechilah* – forgiveness of a debt.

In all three explanations, the dispute does not relate to whether the worker's forgiveness is valid, but rather the parameters of the forgiveness, or other prohibitions.

Tosfos explains that a *pesharah* - compromise judgment does need a *kinyan*, since each side does not know what they are forgiving before, so their forgiveness is akin to a mistaken one, which is not binding without a *kinyan*.

The Rosh suggests that a *kinyan* is needed to be able to enforce the *pesharah* afterwards, not to make the forgiveness binding.

Bal Talin and Contracted Work

The *Gemora* tied the question of *bal talin* on contracted work to the question of whether a craftsman owns the improvement of the item.

Tosfos (112a Uman) says that although Rav Sheishes answered that a contracted worker's wages are subject to *bal talin*, he holds that a craftsman does own the improvement of the item. Rav Sheishes simply meant that some contracted work – e.g., shaking a garment for a set fee per shake – is subject to *bal talin*.



Extending a Worker's Oath

The *Gemora* says that if the worker brings witnesses that he claimed his wages at the end of his allotted period, he now has an extension of the period to swear and collect.

Rashi learns that this is a one time extension, for a period of a full day.

The Rambam (Sechirus 11:6) says that this extension can occur multiple times, and each extension is for the next time period – a day or night period – after the claim. See Sma HM 89:13 for an alternate reading of the Rambam.

DAILY MASHAL

The tailor who made himself a suit

Our sugya clarifies the mitzvah to pay workers on time: A worker finishing a job during the day must be paid before sundown and one who does so by night must be paid before sunrise ('Aroch HaShulchan, C.M. 339). The Torah says: "On his day give him his wage" (Devarim 24:15). An employer who fails to do so transgresses the prohibition of delaying a worker's wage till the morning (Vayikra 19:13). Our sugya asks if this prohibition also applies to someone who gives materials to an artisan and orders him to make something thereof, such as bringing cloth to a tailor to make a suit. The gemara concludes that one who delays an artisan's payment transgresses the same prohibition and the halachah was so ruled (Shulchan 'Aruch, C.M. 339:6; see Sema', *ibid*, S.K. 12 and Shach, *ibid*, S.K. 1).

A warm-hearted Jew in Levov pitied an indigent tailor who fashioned suits for the wealthy while having to go threadbare. He purchased a bolt of luxurious fabric, brought it to the tailor and ordered a suit, meaning to leave it with him as a gift. When the tailor finished the suit, though, his benefactor lacked the money to pay him and wondered if, then, he was guilty of delaying his wage.

HaGaon Rav Y. S. HaLevi Natanson zt"l, author of *Shoel Umeshiv*, decided there was no transgression and, aside from various points of halachic evidence, supported his argument with a profound interpretation of the verse "do not delay [the reward for] the activity (pe'ulas) of a hired worker with you till morning" (Vayikra 19:13). Many commentators have been confounded by this wording. The prohibition is to delay a worker's wage so why doesn't the Torah say "the wage of the hired worker"? According to the *Shoel Umeshiv*, when we give material to an artisan to fashion or repair, we take and benefit from the activity he applied to it. The Torah therefore warns that the result of that activity – the finished item – must not be kept overnight without payment as the owner is taking the work without paying for it, thus exploiting the worker. Back to our case, the finished suit is held by the tailor who actually even owns it; thus his benefactor could not be seen as exploiting him. Still, HaGaon Rav Yaakov Bloy (*Pischei Choshen*, *Hilchos Sechirus* 9:24) remarks that the Poskim make no such distinction but imply that the prohibition of delaying wages pertains to hiring any worker.