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Who Loses?

[The *Gemara* quotes statements of Rava regarding employment where the circumstances changes. 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.]

Just as Rava said: If one engaged workers to dig ditches, and rain fell and rendered it [the land] waterlogged [making work impossible], if he inspected it the previous evening, the loss is the workers; if not, the loss is the employer's, and he must pay them as unemployed workers. (76b4 – 77a1)

And Rava said: If one hired workers to draw water and irrigate his field, but rain came and watered it (without their work), this is the workers' loss (as the rain was unforeseeable, and the employer has no obligation to pay). However, if the river overflowed and watered the field, this is the employers' loss (as 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), and he must pay the workers, but at a lower idle rate. (77a1)

And Rava said: If one hired workers to draw water and irrigate his field, but the river, which was the source of the water, stopped flowing (it dried up). If it is uncommon for the river to stop flowing, it is the workers' loss. If it is common to stop flowing, then if the workers are local (and

should know that is common), it is the workers' loss, while if they are not local (and do not know this), it is the employers' loss (and they are paid at the idle wage rate). (77a1)

[Rava discusses the halachah regarding a case where work was done early in the day.] And Rava said: If one hired workers (for the day) for a piece of work (which he specified), and they completed it in the middle of the day; if he has some [other] work easier than the first, he can give it to them, or even if of equal difficulty, he can charge them [with it]; but if it is more difficult, he cannot order them to do it, and must pay their wages in full. - But why? Let him pay them as unemployed workers! — Rava referred to the porters of Mechoza, who, if they do not work, become weak. (77a1 – 77a2)

Quitting and Firing

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

[The *Gemara* first discusses the Sages' statements, and then Rabbi Dosa's.] The master said: [If they contract to harvest a field of standing grain for two *sela'im* (eight *dinarim*), and they harvested half, and they left half; or they were hired to weave a garment for two *sela'im*, and they wove half and left half] the portion completed is assessed: How so? If (*the price has since risen*) it is worth six *dinarim*, he must pay them a *sela* (and it will cost him another six *dinarim* to complete the job).¹ - This is because the Rabbis maintain that

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.

a worker has the upper hand (and he always has the right to quit, without being penalized).

The Baraisa continued: Or they can complete the work and receive two *sela'im*. – Isn't this obvious? - The *Gemara* 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 them to return to work. We may have thought that the workers may say to the employer, "When we were appeased by you, it was our understanding that you would be paying the higher rate," so the *Baraisa* teaches us that (he hadn't changed the rate) but "It was with the understanding that I will bother myself to provide you with food and drink."

The Baraisa continued: If it is worth a *sela*, he must pay them a *sela*. - Isn't this obvious? - This is necessary only if labor was cheap originally [when he hired them], while he engaged them for a *zuz* above [the usual cost], but subsequently the cost of labor increased and stood at more than a *zuz*; I might think that they can claim, "You promised us a *zuz* above [the usual price]; give us a *zuz* more [than was stipulated, since that is now the usual wage]." We are therefore told that he [the employer] may answer them, "When did I promise you an extra *zuz*, only when you did not agree; but now you have agreed."

Rabbi Dosa said: That which still remains to be completed is assessed. If (*what is left*) it is worth six *dinarim*, he pays them a *shekel* (*two dinarim*. – This is because he maintains that the worker has the lower hand.

Rabbi Dosa continued: Or they can complete their work and receive two *selaim*. Isn't this obvious? - This is necessary only when labor costs decreased, and the employer retracted; whereupon the workers went and persuaded him. I might think, he can say to them, "[I reengaged you] on the understanding that you would decrease the wages you are charging me;" therefore we are taught that they can answer

him, "It was on the understanding that we perform superior work for you."

Rabbi Dosa continued: If it is only a *sela*, he must pay them a *sela*. – Isn't this obvious? - Rav Huna, the son of Rav Nassan, said: It is necessary only in a case where they [the workers] contracted for a *zuz* below [the usual wage] in the first place, and subsequently labor costs decreased. I might think that [the employer can claim,] "You agreed with me for a *zuz* less [than usual], therefore, I will give you a *zuz* less;" so we are taught that they can reply, "We agreed upon a *zuz* less only when you would not agree [to pay the full price]; but now you have agreed." (77a2 – 77a4)

Rav said: The halachah is like Rabbi Dosa. The *Gemara* suggests that this contradicts Rav's statement that a worker has the right to quit in middle of the day (indicating that workers have the upper hand). - And should you answer, Rabbi Dosa draws a distinction between hiring by the day and hiring by the job, [I can rejoin:] Did he really make such a distinction? Has it not been taught in a Baraisa: If one engages a worker, and in the middle of the day he [the worker] learns that his relative has died, or is seized with a fever: then if he is a worker hired by day, he must pay him his wages; if a worker hired for the job, he must pay him his contract price. - Now, with whom does this agree? If with the Rabbis, why particularly if he learns that his relative has died, or is seized with a fever, and so unfortunately forced [to break the agreement]? Even if he is not forced, surely the Rabbis maintain that the worker has the upper hand! Hence it must agree with Rabbi Dosa, thus proving that he allows no distinction between hiring by the day and hiring by the job! — Rav Nachman bar Yitzchak said: Here the reference is to a thing of irretrievable loss, and therefore it agrees with all.²

We learned in the Mishnah: Whoever changes (*from the work which he was assigned to do*) has the lower hand, and whoever retracts from his commitment has the lower hand.

² In such a case, even the Sages agree that the worker is penalized, unless he quits due to unavoidable circumstances.

Now, it is well [to state]: Whoever changes (*from the work which he was assigned to do*) has the lower hand, as thereby Rabbi Yehudah's opinion is given as a general view; but what is added by: Whoever retracts from his commitment has the lower hand? Surely [its purpose is] to extend the law to a worker hired for the day, and in accordance with Rabbi Dosa? — Rather, Rabbi Dosa refers to both cases [alike], whereas Rav agrees with him in one and disagrees in the other.

Alternatively: Whoever retracts from his commitment has the lower hand [is stated] for the following purpose: It has been taught in a Baraisa: He who retracts — how is that? If one sold a field to his fellow for a thousand zuz, and the fellow paid a deposit of two hundred zuz, if the vendor retracts, the purchaser has the upper hand; if he desires, he can demand, “Either return me my money or give me land to its value.” And from what part [of the estate] must he satisfy his claim? From the best. But if the purchaser retracts, the seller has the upper hand; if he desires, he can say to him, “Here is your money.” Alternatively, he can say, “Here is land for your money.” And what [part of the field] may he offer him? The worst. Rabban Shimon ben Gamliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the seller] must draw up a deed, stating, “I [so-and-so] have sold such and such a field to so-and-so for a thousand zuz, upon which he has paid me two hundred zuz, and now I am his creditor for eight hundred zuz.” Thus he [the purchaser] acquires the title to it, and must repay him the rest, even after many years. (77a4 – 77b2)

The master said: And from what part [of the estate] must he satisfy his claim? From the best. - Now, this was assumed to mean, ‘from the best part of his estate.’ But let him [the buyer] be even as an ordinary creditor! And we learned in a Mishnah: A creditor is entitled to medium quality! Furthermore, here is the land for which he paid money!³

³ He should be able to collect from this very parcel of land!³

⁴ This proves that he sold his field through financial pressure, and therefore,

Rav Nachman bar Yitzchak said: [It means:] From the best of the land he wished to purchase and from the worst of the land he wished to purchase.

Rav Acha, the son of Rav Ika, said: It may even mean the best part of his estate; yet the average person, when buying a field for a thousand zuz, must sell off his other property cheaply, and therefore, he is as one who has sustained damage. And we learned in a Mishnah: For damages, we assess [and collect] the best [of the offender's estate]. (77b3)

Rabban Shimon ben Gamliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the seller] must draw up a deed, stating, “I [so-and-so], etc. - The reason is only because he writes thus; but if not, he [the purchaser] does not acquire it. - But has it not been taught in a Baraisa: If a man gives a deposit to his fellow and stipulates, “If I retract, this deposit be forfeited to you,” and the other stipulates, “If I retract, I will double you your deposit,” the conditions are effective; these are the words of Rabbi Yosi. - Rabbi Yosi [ruling here] in accordance with his general opinion that an asmachta is valid. – Rabbi Yehudah said: It is sufficient that he [the purchaser] shall gain possession [of the object sold] in proportion to his deposit. Rabban Shimon ben Gamliel said: This holds good only if he stipulates, “Let my deposit effect possession;” but if he sells him a field for a thousand zuz, of which he pays him five hundred, he acquires [it all], and must repay him the balance even after many years.? — There is no difficulty: The former refers to a case where he [the seller] goes in and out [after the buyer] for his money;⁴ the latter, where he did not go in and out after his money. For Rava said: If one sold an article to his fellow, and repeatedly demanded payment, it does not become his [the purchaser's]; but if not, he [the buyer] acquires it. (77b3 – 77b4)

And Rava also said: If one loaned a hundred zuz to his fellow, who repaid him a zuz at a time, it is [valid] repayment, but

unless he explicitly arranged for the balance to be treated as an ordinary loan, he can cancel the sale if full payment is delayed.



he may bear resentment against him, for he can complain, "You caused me a loss (of one hundred zuz)."⁵

A man once sold a donkey to his fellow, and one zuz [of the purchase price] being left [unpaid], he [the seller] made repeated calls for it. Now, Rav Ashi sat and analyzed the case: What [is the law] in such a case? Does he [the purchaser] acquire it or not? Rav Mordechai said to Rav Ashi: Thus did Avimi of Hagronia say in Rav's name: One zuz is as [many] zuz, and he does not acquire it.

Rav Acha, the son of Rav Yosef, protested to Rav Ashi: But we have stated in Rava's name that he does acquire it? — He replied: You must interpret your teaching [as referring] to one who sells his field because of its poor quality. (77b4 – 78a1)

DAILY MASHAL

Torah Teachers Cannot be Idle

The *Gemara* 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.

⁵ A hundred zuz in a lump sum can be put to business use; one zuz at a time is spent as received, with no visible or

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.

tangible advantage.