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### **Delaying Payment of Worker’s Wages**

The *Gemara* cites a *Baraisa*: If one says to his fellow, “Go and hire workers for me,” neither of them will transgress the prohibition of holding a worker’s wages overnight. The employer cannot be liable, for he did not hire him (*and the employee is therefore not regarded as “his hired worker”*). The agent cannot be liable, for he is not the one who owes the worker his wages.

The *Gemara* analyzes the case: How are we talking? If the agent said to them, “I am responsible for your wages,” then he is surely responsible, for it has been taught in a *Baraisa*: If one hires a worker to labor in his own field, but he directs him to his fellow’s field (*where he goes and works*), the one who hired him must pay him in full, and he may receive compensation from the owner of the field according to the value for that which he benefitted him!?

The *Gemara* answers that the *Baraisa* must be referring to a case where he said to them, “The employer is responsible for your pay.”

Yehudah bar Mereimar used to instruct his servant, “Go and hire workers for me, and say to them, ‘Your employer is responsible for your wages.’”

Mereimar and Mar Zutra used to hire workers for each other (*and this way, just in case they could not pay the wages on time, they would not be violating the prohibition*).

Rabbah son of Rav Huna said: The market traders of Sura do not transgress the prohibition of holding their worker’s wages overnight, because it is well known that the traders rely upon the market day (*to get the funds to pay their workers; and once the first day passes, there is no more Biblical prohibition for delaying their wages, as we learned above 110b*). However, there is a Rabbinical prohibition against delaying their wages (*if they do not pay once the market day arrives*). (110b4 – 111a1)

The *Mishnah* had stated: If he is paid by the hour, he must be paid all day and all night.

Rav said: A man hired for several hours of day work can collect his wages all day (*and afterwards, the owner, if he still didn’t pay, will have violated the prohibition of holding his worker’s wages*). One who was hired for several hours of night work, can collect his wages all night (*and afterwards, the owner, if he still didn’t pay, will have violated the prohibition of holding his worker’s wages*). Shmuel disagrees: A man hired for several hours of day work can collect his wages all day (*like Rav*). One who was hired for several hours of night work, can collect his wages all night and the following day (*for the day, in the Jewish calendar, follows the night; it is still regarded as the same day*).

The *Gemara* asks on Rav from our *Mishnah*: If he is paid by the hour, he must be paid all day and all night. This refutes Rav!?

The *Gemara* answers that Rav can say that the *Mishnah* is in fact teaching two separate *halachos*. A man hired for several hours of day work can collect his wages all day. One who was hired for several hours of night work, can collect his wages all night.

The *Gemara* again asks on Rav from our *Mishnah*: If he was hired for a week, month, year, or seven years, if his employment finishes during the day, he must be paid on that day. If he finishes during the night, he must be paid that night and the next day!?

The *Gemara* answers that Rav can say that there is a *Tannaic* dispute regarding the matter. For we learned in a *Baraisa*: A man hired for several hours of day work can collect his wages all day. One who was hired for several hours of night work, can collect his wages all night; these are the words of Rabbi Yehudah. Rabbi Shimon said: A man hired for several hours of day work can collect his wages all day. One who was hired for several hours of night work, can collect his wages all night and the following day.

The *Baraisa* continues: From here they said: Whoever withholds the wages of a hired worker transgresses five prohibitions and one positive commandment. They are as follows: *Do not retain what is due to your fellow; Do not rob him; Do not retain the wages of your worker that is poor; Do not withhold his wages overnight*; the positive commandment is: *On his day you shall give him his hire; and the sun shall not go down upon him*.

The *Gemara* asks: But surely those that apply to a worker by day do not apply to the worker at night, and those that apply at night do not apply at day!?

Rav Chisda answers: The *Baraisa* is referring to the prohibitions of hiring workers in general. (111a1 – 111a2)

The *Gemara* asks: What is regarded by ‘retention’ (*of his wages*) and what is regarded as ‘robbing’ (*his wages*)?

Rav Chisda said: If he constantly says, “Go, and come back again, go and come back again,” that is ‘retention’ (*of his wages*). If, however, he says, “I have your wages, but I will not pay it,” that is ‘robbery.’

Rav Sheishes asked: For what form of ‘retention’ (*of his wages*) did the Torah impose a sacrifice (*when he swears falsely*)? It is for that which is analogous to a case of deposit, where one denies money falsely (*so here, it cannot be that he is merely delaying the payment of the worker’s wages*)!?

Rather, Rav Sheishes said: If he says, “I have already paid you” that is ‘retention’ (*of his wages*). If, however, he says, “I have your wages, but I will not pay it,” that is ‘robbery.’

Abaye asked: What is ‘robbery’ for which the Torah imposed a sacrifice? It is for that which is analogous to a case of deposit, where one denies money falsely (*so here, it cannot be that he is admitting that he owes the wages*)!?

Rather, Abaye said: If he said, “I never hired you,” that is ‘retention’ (*of his wages*). If, however, he says, “I have already paid you” that is ‘robbery.’

Now, as for Rav Sheishes, how does ‘retention’ differ from ‘robbery’, that he objected to the former, but not the latter? — He can answer you: ‘Robbery’ implies that he first robs him and then denies [liability]. - If so, may not ‘retention’ too refer to subsequent denying? — What comparison is there? As for the other [sc. ‘robbery’], it is well, for it is written: Or in the matter of a robbery, which implies that he originally made admission to him. But with respect to ‘retention,’ is it then written: Or in the matter



of retention? – It is written: or he retained — implying that he had already retained.

Rava said: ‘Retention’ (*of his wages*) and ‘robbing’ (*his wages*) are identical. Why then did the Torah divide them? It is so that the employer will have violated two negative prohibitions. (111a2 - 111a4)

### **Mishnah**

[*This Mishnah continues to teach the halachos concerning the wages of a hired worker.*] It is all the same, whether it is the hire of a man, the hire of an animal, the hire of utensils - “*On his day you shall give him his hire*” applies to it, and “*The wages of a hired worker shall not remain with you overnight until the morning*” applies.

When does the prohibition apply? It is when the worker claimed his wages from him. If he did not claim from him, the employer does not transgress it. If the employer instructed him to go to a shopkeeper or a moneychanger (*where the worker can take food or money for his wages*), the employer does not transgress it.

A hired worker during the time that the wages are due may take an oath (*that he was not paid*) and collect his wages. After that time, he does not take an oath and collect. If there are witnesses that he requested to be paid, he takes an oath and collects.

Regarding a resident alien (*ger toshav*) - “*On his day you shall give him his hire*” applies to him, but “*The wages of*

*a hired worker shall not remain with you overnight until the morning*” does not apply to him. (111a4 – 111a5)

### **Opinions and Scriptural Verses**

The *Gemara* asks that the *Tanna* of our *Mishnah* is not in accordance with the *Tanna Kamma* or Rabbi Yosi the son of Rabbi Yehudah, whose opinions are cited in the following *Baraisa*.

[*You shall not retain the wages of an employee*] among your brethren — this excludes others (i.e., idolaters); or from your convert — this means a full-fledged convert; in your gates — i.e., (a resident alien) who eats meat from unslaughtered animals. From this I know [the law only in respect of a man’s wages; from where do I know to extend it to (the rental payments for) animals and utensils? From: *that are in your land*, implying, all that are in your land. And in respect of all these injunctions, all are transgressed. Hence it was said: The hire of man, the hire of an animal, the hire of utensils – they are identical in that they are subject to [the laws]: *On his day shall you give him his hire*, and it is subject to the prohibition of: not to hold the wages of a hired worker overnight.<sup>1</sup> Rabbi Yosi the son of Rabbi Yehudah said: In respect to a resident alien one is subject to [the law]: *On his day shall you give him his hire*; but not to that of: *the wages of a hired worker shall not stay overnight*. In respect of [the hire of] animals and utensils, only the injunction of not to retain is applicable.<sup>2</sup>

<sup>1</sup> The *Tanna Kamma* holds:

1. Idolaters are excluded in the prohibition (since it is written: *brethren*).
2. A righteous convert is included (since it is written: *your convert*).
3. A resident alien is included (since it is written: *in your gates*).
4. Renting an animal or utensils is included (since it is written: *in your land*).

5. One who holds back any of these payments violates all the prohibitions.

<sup>2</sup> Rabbi Yosi the son of Rabbi Yehudah holds:

1. Regarding a resident alien - “*On his day you shall give him his hire*” applies to him, but “*The wages of a hired worker shall not remain with you overnight until the morning*” does not apply to him.
2. Renting an animal or utensils is only included in the prohibition of retaining payment.

Now, who is [the authority for our Mishnah]? If the Tanna Kamma, who interpreted ‘among your brethren,’ the resident alien presents a difficulty. If Rabbi Yosi, (the rental payments of) animals and utensils presents a difficulty!<sup>3</sup> — Said Rava: This Tanna [of our Mishnah] is a Tanna of the School of Rabbi Yishmael, who taught: Whether the hire of man, the hire of an animal, the hire of utensils – they are identical in that they are subject to [the laws]: *On his day shall you give him his hire*, and it is subject to the prohibition of: *The wages of a hired worker shall not remain with you overnight until the morning*. In respect of a resident alien one is subject to [the law]: *On his day shall you give him his hire*, but not to the prohibition of: not to hold the wages of a hired worker overnight.

What is the reason of the Tanna Kamma who interprets [the verse] ‘among your brethren’? — He deduces a gezeirah shavah] from the word ‘hire’ written twice (sachir, sachir). Rabbi Yosi the son of Rabbi Yehudah, however, does not accept this deduction. - But granted that he does not, yet one should be liable to [the law]: *On his day shall you give him his hire*, in respect of animals and utensils too! — Rabbi Chananya taught a Baraisa: Scripture said: *And the sun shall not go down upon him, for he is poor*; [hence it applies only to] those who are subject to poverty or wealth, and so excludes animals and utensils, which are not subject to poverty and wealth. And the Tanna Kamma, how does he interpret this [verse], ‘for he is poor’? — It is necessary to show that the poor receive precedence over the wealthy.<sup>4</sup> - And Rabbi Yosi the son of Rabbi Yehudah? — That follows from: *You shall not retain the wages of an employee who is poor and destitute*. – And the Tanna Kamma? — One teaches the

<sup>3</sup> The *Mishnah* cannot be in accordance with the Tanna Kamma on account of the alien resident ruling (for the *Mishnah* ruled that the prohibition of “The wages of a hired worker shall not remain with you overnight until the morning” does not apply to him). And it cannot be following the opinion of Rabbi Yosi the son of Rabbi Yehudah on account of his ruling pertaining to the rental of animals or utensils (for our *Mishnah* ruled that both “On his day you shall give him his hire,”

priority of the poor man over the rich; the other, the priority of the poor over the destitute.<sup>5</sup>

The *Gemara* explains why both of those *halachos* are necessary to teach. For if we were merely taught that the poor man takes precedence over the destitute one, I would think that it is because the one who is destitute is not ashamed to demand his wages from the employer (and he will do so later). But as for the wealthy, who is ashamed to demand it from him, I might say that it is not so (and a poor man will not take precedence over him). And if we would learn this *halachah* only in respect to the wealthy, I would think that it is because he is not in need of the wages (and that is why a poor man takes precedence over him); but as for the destitute one, who desperately needs the wages, perhaps it is not so (and he would take precedence over the ordinary poor person). This is why both rulings are necessary.

Now as to our Tanna, in either case, [it is difficult]: if he accepts the gezeirah shavah of sachir, sachir - then even a resident alien should also be included; if he rejects it, from where does he know [the inclusion of] animals and utensils? — In truth, he does not accept this gezeirah shavah. Yet there (regarding rental payments) it is different, because Scripture writes: *The wages of a hired worker shall not remain ‘with you’ overnight until the morning*: implying, the hire of anything that is with you. - If so, then even a resident alien too [is meant]! — The Torah said: your fellow; ‘your fellow’ [is specified], but not a resident alien. - If so, then even animals and utensils too should be excluded! — But surely ‘with you’ is written! - What reason have you to include animals and utensils and exclude a resident alien? — It is logical that animals and

and “The wages of a hired worker shall not remain with you overnight until the morning” apply to it)!

<sup>4</sup> If one hired two workers, one wealthy and one poor, and he only has enough funds to pay one of them, he is obligated to pay the poor worker before the wealthy one.

<sup>5</sup> One who is destitute is not ashamed to ask for his wages, while a poor man is too proud to do so.

utensils are to be included, since they come within the category of the property of *'your fellow,'* whereas [the hire of] a resident alien is not within this category.

Now the Tanna Kamma, who interpreted *'among your brethren,'* what does he expound from *'your fellow'?* — He needs this, as it has been taught in a Baraisa: *'Your fellow,'* but not an Amalekite. - An Amalekite? But that follows from *'among your brethren'?* — One allows retention in regard to his wages; the other, permits robbery (of his property). - And both are necessary. For if we were informed that [the retention] of his *'robbery'* is permitted, that may be because he [the Amalekite] has not worked for him, but as for retention [by withholding his wages] — I would think that that is not [permitted]. While if we were taught thus about retention, that may be because it [his wage] has not yet reached his [the Amalekite's] hand, but as to his *'robbery'* — I would think that is not [allowed]. Hence both are necessary.

And Rabbi Yosi the son of Rabbi Yehudah, how does he interpret this verse: *The wages of a hired worker shall not remain with you overnight until the morning?* — He needs it to teach the law stated by Rav Assi, for Rav Assi said: Even if he [the employer] engaged him only to harvest a single cluster of grapes, he is subject to the prohibition not to hold wages overnight. - And the other? — That follows from the verse: *ailav hu nosai es nafsho - to his work he risks his life,* implying, anything for which he commits his life. - And the other? — That is needed, as it has been taught in a Baraisa: *And for it he risks his life:* why did this man (the worker) climb a ramp, or suspend himself from the tree, and risk death itself; was it not that you should pay him his wages? Another interpretation: *And on it he stakes his life:* he who withholds an employee's wages is as though he deprived him of his life. Rav Huna and Rav Chisda [differ on this]: One says: The life of the robber [is meant]; the other: The life of the

victim. The view that the life of the robber is meant is based on the verse: *Do not rob an impoverished person though he is impoverished; and do not oppress the poor in the gate.* And this is followed by: *For Hashem will fight their battle, and rob the life of those who rob them.*<sup>6</sup> While the opinion that it means the life of the victim follows from: *So are the ways of anyone who is greedy of gain; he takes away the life of its [rightful] owner.*<sup>7</sup> - And the other too: is it not written: *he takes away the life of its [rightful] owner?* — It means, of its present owner. - And the other too: is it not written: *and rob the life of those who rob them?* — That states a reason. Thus: Why shall he rob those that robbed them? — Because they took their lives. (111a5 - 112a1)

#### DAILY MASHAL

##### The Reward for Faith

Our sugya explains that someone who hires a worker through a representative is exempt from the prohibition on delaying his wage. Rebbe Heshel of Krakow clarified an apparently questionable midrash in the spirit of this halachah:

According to the Midrash, "Everything the Jews eat in this world is in reward for their faith". Why only for their faith? Rebbe Heshel explains that, as we know, the Jews got the Torah from Moshe Rabeinu, Hashem's representative. We are thus not like workers hired by the employer who, if he fails to pay them immediately, transgresses the prohibition on delaying their wage. At the announcement of the Ten Commandments, though, the first two, demanding faith in Hashem's oneness and the denial of any other divine power, were given directly by Hashem and He therefore gives us our reward for them immediately in this world (Chanukas HaTorah, Yisro, #84).

<sup>6</sup> "Life" refers to the robber.

<sup>7</sup> "Life" refers to the victim.