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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

Exclusions to Bal Talin

The *Mishnah* had stated: When does one transgress *bal talin*? When the worker demands payment. But if he does not demand payment, the employer does not transgress this prohibition.

The *Gemara* cites a *Baraisa*: *The wage of an employee shall not stay overnight*. I might think this holds good even if he did not demand it; therefore, Scripture writes: *with you*, meaning: with your will. I might think that even if he lacks the money (to pay the wages), the Torah states: *with you*, meaning: only when you have it with you. I might think that it (the prohibition) is in force even if he directed him to a storekeeper or a moneychanger; the Torah teaches: *with you*, but not if he directed him to a storekeeper or a moneychanger. (112a1 – 112a2)

Payment by Proxy

The *Mishnah* 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 *Gemara* questions whether the worker may return to the employer for his wages, or not.¹ Rav Sheishes says he may not, while Rabbah says he may.

Rabbah says: How do I know this? — Since it is taught: He does not transgress the law, it is implied, there is only no transgression, yet he may return to him [for payment].

¹ If the storekeeper did not supply him. Do the employer's obligations in respect of him still continue, or is the employee considered to have transferred them to another?

But Rav Sheishes explained: What is meant by: He does not transgress the law? He is no longer subject to the transgression. (112a2)

Contracted Worker

The students asked Rav Sheishes: Does *bal talin* apply to a contracted worker, or not (*but only to a salaried worker - paid by time*).

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

The *Gemara* deflects this by saying the *Baraisa* is referring to the exemption when the employer directed the worker to a storekeeper or a moneychanger.

The *Gemara* then suggests a *Baraisa* to support Rav Sheishes. The *Baraisa* says that if one gives his garment to a worker, and he finished it and notified the owner, even from now until ten days, the owner does not transgress *bal talin* (even if he delays picking it up). If the worker returned the garment in the middle of the day, *bal talin* is in effect when the sun sets down. Now, should you say that a craftsman acquires the improvement [he effects upon] the utensil, why is he guilty [of that transgression]? — Rav Mari son of Rav Kahana said: This refers to the teaseling (removal of the woolly surface) of a thick cloth (which is not regarded as an improvement). - But why did he give it to him [to do this]? [Surely] to soften it! Then that is its improvement? — But this holds good only if he engaged him for stamping, each and every stamping manipulation for a ma'ah.² (112a2 – 112a3)

Swearing to Collect Wages

The *Mishnah* 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.

Why did the Rabbis enact that a hired worker should swear and receive [payment]? — Rav Yehudah said in Shmuel's name: Great laws were taught here. Are these then [Biblical] 'laws'? They are surely merely [Rabbinical] measures! — But said Rav Yehudah in Shmuel's name: Important enactments were taught here. - 'Important'? Does that imply the existence of unimportant ones? — Rather, said Rav Nachman in Shmuel's name: Lasting measures were taught here. Thus: The oath is the employer's privilege, but the Rabbis took it away from the employer and imposed it upon the employee, for the sake of his livelihood. - And on account of the employee's livelihood, are we to cause loss to the employer? — The

employer himself is pleased that the employee should swear and be paid, so that workers should be willing to hire themselves to him. - [On the contrary], the employee himself is pleased that the employer should take an oath and be exempt, so that he should engage him! — The employer is bound to engage [workers]. - But the employee too is forced to seek employment! — Rather, [the reason is that] the employer is busily occupied with his workers.³ - If so, let us award it [the wages] to him without an oath! — [The oath is] in order to appease the employer. - Then let him pay him in the presence of witnesses. — It is too much trouble. - Then let him pay him in advance! — Both prefer credit. - If so, even if (the dispute concerns the amount of wages) he stipulated, it should be likewise so. Why then has it been taught in a *Baraisa*: If the worker maintains, "You arranged with me for two [zuz]," and the other [sc. the employer] claims, "I arranged only for one," the plaintiff must furnish proof? — The stipulated wage is certainly well remembered. - [Again] if so, even if the set time passed, he should also be believed. Why did we learn in our *Mishnah*: But if his set time passed, he cannot swear and receive payment? — It is a presumption that the employer will not transgress [the law] of holding wages overnight. - But have you not said that he is busy with his employees? — That is only before his obligation matures; but when it matures, he takes it upon himself and remembers it. - But is the employee then likely to transgress the law of: You shall not rob? — There [in the case of the employer], we have two presumptions [in his favor]; while here there is only one. Thus: In respect to the employer there are two presumptions. Firstly, that he will not transgress the law of holding back wages overnight; and secondly, that the employee will not permit delay of his payment. But in favor of the employee there is only the one presumption

² He did not contract for the whole piece of work at all, but was paid according to the amount done.

³ An employer is preoccupied with his workers, and often forgets whether he paid them or not. We therefore consider his denial to be incorrect.



(that he will not steal by taking money a second time).
(112b1 - 113a1)

INSIGHTS TO THE DAF

Payment by Proxy

The *Gemara* 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 *Gemara* 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 *Gemara* 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 'Aruach, 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.