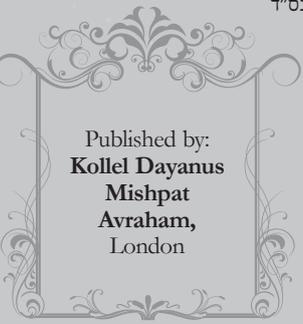


# THE Devar Hamishpat BULLETIN



Clarifications in the Laws of Choshen Mishpat and Ribbis | #33 Adar 5785

## - Halacha Insights -

ע"י הרב"ג ר' ברוך אברהם עסטרייכער שליט"א רא"ח"כ ופרבני הוי"כ תוראה דברי המשפט

### Paying Wages on Time

- A. **Shulchan Aruch states (Choshen Mishpat 339), it is a mitzvah min haTorah to pay an employee on the same day,** and one who delays his wages sins transgresses a *lav* and *asei*. This *lav* is only applicable to rental or hiring payments, be it rental of a car or machine, or hiring workers [there is a *machlokes* regarding renting land, see 33:1, and the Ketzos Hachoshen writes there that regarding houses one should be *machmir*. The Gr"a is *machmir* even regarding land rental, and Ahavas Chessed (9:5) tends to agree with the Gr"a even regarding land, and certainly regarding houses]. But there is no *issur Torah* for delayed payment of a bought item [although Shulchan Aruch (339:8) writes that one who delays the payment of a bought item transgresses the *issur derabanan* of the *passuk* (Mishlei 3:28) – אל תאמר לרעה לך ושוב ומחר אתן – “Don’t tell your friend, ‘go, and I will give you tomorrow”]. If he totally withholds wages, he transgresses *issurei Torah* of לא תגזול לא תעשוק.
- B. **A day-worker who finishes his work at nightfall, must be paid until the morning,** since the Torah gives the hirer time to bring the money (Sema 339). If not, the hirer transgresses the *issur* of לא תלין פעולת שכיר אתך עד בקר. A night-worker, who finishes

his work at daybreak, must be paid until the evening. If not, the hirer transgresses the *issur* of לא תבא עליו השמש. But the Ahavas Chessed (Nesiv Hachessed 25) writes that although he only transgresses the *issur* in the morning, or at night, the *chiyuv* to pay begins right after the end of the time he was hired. This is similar to the mitzvos of *milah, shofar, lulav* and other mitzvos, where one transgresses the mitzvah only if the whole day passes and he didn't perform the mitzvah, but the *chiyuv* begins at the beginning of the day.

If the day work was completed before nightfall, he must be paid before nightfall. Ahavas Chessed adds, even if he finished at the *shekiyah*, he must be paid before nightfall. On *erev Shabbos*, when it is customary to finish working before the *shekiyah*, he must be paid before the *shekiyah*.

- C. **The issur Torah of לא תלין is only applicable if the hirer has money, but if he doesn't have money he doesn't transgress the issur.** This means that he doesn't have any money at all, but if he has money but wants to spend it, even if he wants to spend it on a *mitzvah derabanan*, he transgresses the *issur* since he has money (Biar Halachah 242 s.v. *lechabed*). Shita Mekubetzes brings the ruling of the Ritva, that if one has food for sale, it is included in the definition of having money, and it appears that so rules the Ahavas Chessed. But Shulchan Aruch Harav (*bilchos*

## Editorial

With praise and thanks to Hashem, we present some of the *chidushim* from our *Beis Medrash* and *halachic* clarifications, for the benefit of the *lomdei Torah*, who will certainly enjoy the material in this pamphlet.

We have added a section of advice and help in monetary matters, since those who take *halachic* advice in these issues save much disappointment and grief.

As the *Alshich* writes (Devarim 4:8) clear words regarding the importance of understanding that our minds cannot understand the Torah's monetary laws:

“These non-Jews mistakenly think that although the mitzvos are unique to the Jews, the *משפטים*, the logical monetary laws, are not, since the non-Jews also have monetary laws. But they are mistaken, because the Torah's monetary laws connect us to Hashem just like the *mitzvos*. This is the meaning of the *passuk* ומי גוי גדול אשר לו חוקים ומשפטים צדיקים – ‘which great nation has righteous mitzvos and monetary laws,’ the mitzvos and monetary laws are equal, rebutting the non-Jews' claim that they also have monetary laws. As we wrote in *parashas Mishpatim*, the non-Jews' monetary laws are only correct physically, but these laws don't have any holy dimension, while *משפטי ה' אמת*, Hashem's monetary laws are also spiritual. Whoever obeys the Torah's *mishpatim* brings much *kedushah* in its root, and is *maspia* much Light. Just as one who performs a mitzvah creates an advocate angel, similarly one who acts in accordance with Hashem's *mishpatim* brings a holy power, from Hashem's power. This is why the Torah writes חוקים ומשפטים צדיקים, *righteous mishpatim*, and not חוקים ומשפטים צודקים, *correct mishpatim*, because they are the power of Hashem, and from every *mishpat* is created an angel, which are the many *משפטים צדיקים* referred to in the *passuk*. These angels, created by following the Torah's *mishpatim*, are termed *משפטים צדיקים* because they are created from the *משפט צדק*.”

Needless to say, although the rulings stated here are based on the *poskim*, the ruling can differ when even one small detail is changed, so every matter must be brought to the Rabbanim.

The Editors  
Adar 5785

### Heichal Hora'ah Devar Hamisphat

For shaalos and halachic clarifications Monetary Dinim and Hilchos Ribbis of Kollel Dayanus Mishpat Avraham, London

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בראשות האגון האדיר רבי נפתלי נוסבום שליט"א ובהכוונת הגר"ש סג"ל שליט"א

*sechirus*) writes that only if he has cash does he transgress the *issur*, not if he has other items [although the Shulchan Aruch Harav may be referring to items that aren't for sale, but if he has items for sale, it is possible that he agrees to the Ritva]. Ahavas Chessed adds, if he is able to borrow money, he must do so in order to fulfill the mitzvah of שכרו. ביומו תתן שכרו. Shulchan Aruch Harav (*Sechirus* 18) adds [citing the Arizal], it is a *midas chasidus* to borrow money in order to pay a worker the same day.

The *better* of lacking money only applies before the worker finished his work, but if he spends the money after the worker completes his work and the hirer knows that he won't have any more money to pay the worker, it is *assur* even if the worker hasn't yet asked for the money, since the hirer has actively uprooted a mitzvah. And if the worker asks for his money, the hirer also transgresses the *issur* of לא תלין (Ahavas Chessed).

D. **If the time has passed, the hirer doesn't transgress the *issur* of לא תלין.** Nevertheless, he must pay him immediately, and if he refrains from paying, he transgresses the *issur derabanan* of אל תאמר לרעהך לך ושוב ומהר אתן ויש אתך.

The hirer is not obliged to go to the worker's home to pay, and he only transgresses the *issur* if the worker come to him and asks for his wage. But the Ahavas Chessed writes that some are of the opinion that one must pay on time even if he doesn't ask for the money, only that there is no *lav* in such a case.

E. **The *issur* of לא תלין only applies the first morning,** but if he usually pays on a certain day, for example the day of the market, he doesn't transgress the *issur* of לא תלין, but he does transgress the *issur derabanan* of אל תאמר לרעהך לך ושוב ומהר אתן ויש אתך. Similarly, if the hirer only pays after making a reckoning with the worker, he only transgresses the *issur* after making the reckoning, since the worker gave his consent to this

agreement (Shulchan Aruch *ibid*).

F. **If he was hired by a messenger, and the messenger told him that his boss will pay, neither transgress the *issur* of לא תלין, but if he hired the worker over the telephone or email it isn't considered a messenger but like the person himself.** If one hires the workers but they are only in contact with their supervisor, the boss is *patur* since there is a messenger, but the supervisor would transgress the *issur*.

**But one could argue that since there is a supervisor and it is common to hire workers** by speaking with their supervisor, since the worker is always hired via such a messenger, the supervisor is the messenger of the workers, and then it is as if the person hired the workers themselves even though he spoke with their supervisor, since he is **their** messenger [this only applies if he pays the workers, but if the supervisor pays them, the hirer doesn't transgress the *issur*].

The Shulchan Aruch Harav (*Sechirus* 18) notes that wise people would only hire workers via a messenger so as not to transgress the *issur*, and the messenger would inform the workers that the hirer will pay them. If this isn't possible, the hirer should make a condition with the worker that he won't have to pay him on time since it is possible that he will be busy at the time of payment and will forget to pay.

### Does one transgresses the *issur* if part is rental, part buying

G. **Catering is both buying and hiring, since the client buys the food and hires the cook and waiters,** and the caterer brings along a cook and waiters. Is this termed buying, in which case there is no *issur*, or is it hiring and then there is an *issur*? Even if it is hiring, perhaps the caterer is a messenger to hire the waiters, in which case there is no *issur*<sup>1</sup> [but if it is common to pay

only after the whole week of the *simchah* is over, it is considered as if the caterer has accepted not to claim his money till then, and then there is certainly no *issur*].<sup>2</sup>

H. **The same can be asked regarding *mikvaos*. Is it considered hiring the building and its services, and there are *poskim* who hold that hiring land is included in the *issur*,** or is one merely paying for the use of the water. Or do we also take into account the mikveh attendant – is he being hired by every person who goes to the mikveh? Possibly, regarding the mikveh attendant, it is considered hired by a messenger, since the person pays the *gabbai* or the person in charge. But this in itself is a question, if the *gabbai* is the attendant's messenger, or his *apotropos* (legal guardian) in which case it is as if one hired the mikveh attendant himself, וצ"ע.

**The same question applies to a hotel, if one transgresses the *issur*.** On one hand, he is buying food since he eats the hotel's food and has to pay for it, but he also rents the room, which is rental.

I. **Regarding a car mechanic who buys the parts and fits them into the car, and takes payment for his service, as well as for the parts he buys:** if he takes all the money together, he is considered a worker and the *issur* would be transgressed if he delays the payment, since he is paying for the service, and not for the parts, which are only included in the service bill.

J. **If he made a bank transfer without informing the worker, he doesn't transgress the *issur*.** But one can question if he fulfilled the mitzvah of שכרו, since many *poskim* say that money deposited in the bank is not considered money (regarding *ribis*), and if so he doesn't fulfill the mitzvah. But if he informed the worker of the bank transfer it is considered payment according to all views.

1) It appears that one looks at what is the main reason for payment: If the main reason is the service, then it is considered hiring, while if the main reason is the selling, it is selling. If so, regarding a caterer it is mainly for the sale of the food, since a hired worker starts when he leaves home to go to his work, while one certainly wouldn't claim that a caterer started his service when he left home. If so, the main part is the food being sold, and the payment for the hired worker is included in the bill.

2) A shop that charges for delivery, this part of the bill is considered hiring and there would be an *issur* of *lo salin* if he delays the payment, even though he doesn't transgress the *issur* on the item he bought, since one pays separately for delivery.

מתוך מכתב מהגאון רבי יצחק דב הלוי שכטר שליט"א: "העלה על הכתב פרי עמלו בין מה שהביא היסודות מרבותינו מעתיקי השמועה לבית בריסק ומעוד רבותינו האחרונים, ובין מה שהוסיף עוד מדיליה הערות ובאורים כיד ה' הטובה עליו, והכל בשפה ברורה ובנעימה דבר דבר על אופניו, ושמעתי מכ' מו"ד הגאון הגדול הגר"ש ליברביץ זללה"ה שזקנו מרן הגר"ב זצלה"ה היה בבין הזמנים עוסק במסכת מעילה ואמר שע"י לימוד מסכת זו חוזר על עיקרי היסודות של רבו מרן רבינו חיים הלוי בסדר קדשים".

הופיע לשמחת לב לומדי קדשים בעיון  
ספר מעיל יוסף  
על מסכת מעילה  
ובו חידושים ובאורים על סדר הדף  
ומילואים על עניני מעילה