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PLAYFIGHTING: I CANCELLED MY PLAYGROUP SLOT

By: Rav Baruch Meir Levine

CANCELLING A PLAYGROUP

This past year, right after Tu'bshvat, I signed up my daughter in a playgroup next to my home, for the coming school year. Now it turns out that we will be moving to a new neighborhood. After doing some research I found out that there is a playgroup for my daughter's age on my new block and that they have an opening for the coming school year. This is a huge benefit for me, since travelling to my first playgroup at those times of the day would be as they say "a nightmare", and would take up time which I simply don't have. However, when I mentioned this to the Morah, she did not seem too happy about losing a slot in her playgroup. Am I halachically obligated to keep my daughter in the first playgroup, considering the difficulties it will impose?

A. The first thing to do in such a situation is to determine if the current playgroup slot can be filled. If indeed it can be filled you would have the right to back out, provided that the new child would not be more challenging for the Morah to care for[1]. Nevertheless, even though you have the right to back out, *Chazal* allowed the Morah to have "*ta'aromet*" – a grievance, against you for causing her the inconvenience of replacing your slot. However, if she is able to find a replacement without difficulty, *ta'aromet* would not apply[2]. Even so, according to one view in the *Shulchan Aruch,* since you would be reneging on your word you would be classified by *Chazal* as *mechusar amana* – lacking faithfulness[3]. However according to the other opinion, that in any case of a significant change in circumstances one may go back on his word, this would not apply. The custom today is to rule like this latter opinion[4].

If the slot cannot be replaced, you may be required to keep the slot. This is because anytime an employer hires a worker, even verbally, for a job and subsequently cancels the job, if at the time the worker was hired he could have found another job and is now no longer able to find one, the employer is considered as having caused him financial damage and is responsible to pay him his wages.

Accordingly, if by signing up, you caused the Morah to turn down additional children from enrolling in her playgroup, then even if you choose not to send your child there you would still be responsible to continue paying her until a replacement can be found[5]. However, you would not have to pay the full amount rather you may deduct the amount that a Morah would agree to forfeit in order to have one less child in their playgroup. The custom today is to pay half the normal wage[6].

On the other hand, if the Morah still has empty slots available, this indicates that by signing up with her you did not cause her to turn

1 חו"מ סי' של"ג ס"ב ברמ"א, דכו"ע מודים דאין הפועל מחוייב לעשות מלאכה כבידה אם לא משלמים לו יותר בשביל זה

2 ש"ך שם (סק"א).

3 הי"א בהרמ"א (חו"מ סי' ר"ד ס"ז) לדעת הסמ"ע (סי' של"ג סק"א). ועיין בפתחי חושן (פ"ה ס"ב) שכתב דהסמ"ע מיירי אפילו כשהפועל יכול לקבל עוד עבודה בקלות, ויש לדון, אם ההורים בעצמם מוצא ילדה אחרת בעד המורה אם עדיין יש בו משום מחוסר אמנה.

4 כך פוסק הרה"ג רב נפתלי נוסבוים שליט"א ואמר לי הרב ראובן עבודי שליט"א, בנו של הרה"ג רב חוגי עבודי שהיה דיין בבגדד, שכך פסקו הלכה למעשה בבית דין שלו

5 שו"ע שם (ס"ב) דבדבר האבוד אפילו בלא הלכו משלם להם כפועל בטל.

6 ט"ז חו"מ סימן של"ג

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Parasha & Halacha Shiur Summary by Rabbi Yitzhak Grossman

LOAN REMISSION (SHEMITAT KESAFIM) IN OUR TIMES

Maran, the Shulchan Aruch (CM 67:1) rules clearly, in accordance with the Rambam, that Shemitat Kesafim is an obligation, even in our times, albeit rabbinical.

The Rama however mentions that the custom in Europe was to rely on the poskim that it is not an obligation, an opinion reiterated by modern day poskim such as HaRav Moshe Feinstein zt"l, that it is "Midat Chasidut" (a praiseworthy act but not an obligation) in contemporary times.

However, we find from the writings of HaRav Yosef Chaim zt"l, the Ben Ish Chai, Parshat Ki Tavo, that Shemitat Kesafim was observed amongst Eastern Jews, and the form of a prusbol, used today in Jerusalem, is known to have been used in the Holy city for hundreds of years, as HaRav Ovadia Yosef's son, the current "Rishon LeZion" writes, in his monumental work, "Yalkut Yosef".

GENERAL HALACHA

PET PEEVE: YOUR ANIMAL DAMAGED MY CAR
Hezek on the Safari

By: Rav Yonoson Hool

Let us begin with a story. Mr. Cohen is taking his family on a trip to the local safari park. He rides, uneventfully, with his family through the park. At one point Mr. Cohen gets out of his car to wash *Netilat Yadaim* so that he can eat his lunch. Mr. Cohen leaves the car door open and while he is out of the car a monkey enters, grabs Mr. Cohen's lunch and eats it in the car. Discovering this, Mr. Cohen goes to the owner of the safari park and asks him to pay for the damage his monkey has caused. The question is whether the owner is obligated to pay?

At first glance, it would appear that the safari owner would have to pay. It would seem that this is a classic case of the damage of *shein* where the owner of an animal who ate another's produce is liable to pay for his animal's damages. This is learned from the *posuk* of *U'bier b'sedei acheir*. While we learn from the word *achier* that the owner is only obligated to pay if his animal ate in the *reshut hanizak* i.e. in the other person's property and not for example in the public domain, it would appear that by eating Mr. Cohen's lunch in his car that is exactly what the safari owner's monkey did. The safari owner should therefore be obligated to pay Mr. Cohen for his monkey's damages.

However, from the Gemara in *Baba Kama Daf 23b:* one might see that it is not so simple. The Gemara there relates that the goats of a certain family were causing damage to Rav Yosef's property. Rav Yosef told Abaye to tell the family to guard their goats from doing more damage. Abaye responded that if he tells that to the family they will say to Abaye that Rav Yosef should build a fence around his property preventing the goats from causing damage. According to Abaye the responsibility is on the owner of the field to protect his field from outside damage. Asks the Gemara according to Abaye how is there ever an obligation to pay for *shein*? If there is no fence the owner of the animal is not obligated to pay and if there is a fence how did the animal get into the field to cause damage? The Gemara answers that either the owner had properly erected a fence but the animal knocked down the fence which is unusual or in the middle of the night the fence collapsed unknown to the owner of the field. The *Chazon Ish Baba Kama* 11:20 and the *Teshurat Shai Simon* 122 both say that the owner of the animal was aware that the fence was down and therefore he is obligated to pay for *shein*.

Do we *pasken* like Abaye that the obligation is on the owner of the field to protect his field and when he does not build a fence the owner of the animal would not be responsible for his animal's damages? Concerning this question, we find a *machlokes rishonim*. The *Rif* says that Abaye's ruling is not the Halacha. The *Rosh*, however, quotes the *Rabbeinu Chananel* that the Halacha is like Abaye. Maran the Shulchan Aruch rules like the *Rif,* while *Shach* quotes the *Rosh* in the name of *Rabbeinu Chananel* and rules like him.

When an animal wanders into a neighbor's unfenced field and begins eating according to the *Rif* the animal owner will be *chayiv* and according to the *Shach* who *paskens* according to the *Rabbeinu Chananel* the animal owner is *patur*.

Since we pasken like Maran the Shulchan Aruch, even where the Shach disagrees, and do not accept a claim of "kim li" against his rulings; therefore, the safari owner must pay for *shein* damages even though the door to the car was left ajar.

However, even according to the *Shach* who *paskens* like the *Rabbeinu Chananel* that there is no *shein* damages when the *reshut* of the *nizak* is left unprotected there is still an obligation for the safari owner to pay the cost of *mah shenehne* i.e. the cost of cheaper monkey food as the *Chazon Ish* and the *Teshurat Shai* point out.

However, it is very likely that there was a notice warning all car owners not to open doors and windows, and certainly not to leave there cars unattended with the doors open, and for this reason, no claim could be made even according to Maran, as it is a general rule that any conditions made in monetary matters are binding, even when they contradict the halacha.

MATTERS OF INTEREST

USING A COLLATERAL PHONE

If a lender was given collateral (a mashkon) by the borrower, such as a cellphone with unlimited minutes, may the lender make use of the collateral for himself, or would that be considered as extra payment and consequently present a ribbit problem?

Maran, in the Shulchan Aruch (CM 72:1) rules that a lender may make no use of a mashkon. Any such use is rabbinically forbidden as it looks like ribit. (The reason why it is not actually ribit is because the debt is not increased in any way).

It makes no difference whether the borrower regularly allows the lender to use his telephone, unless the lender is given specific permission to do so, as explained in Brit Yehudah. Where specific permission was given, the monetary value of the calls may be deducted from the amount of the loan.

EXPENSIVE COLLATERAL

A borrower gave the lender an item as collateral which was significantly more valuable than the loan amount. Subsequently, the borrower defaulted and did not pay back the loan.

May the lender keep the collateral, or would the extra value of the collateral be considered "extra payment" and thereby present a ribbit problem?

Maran, the Shulchan Aruch, identifies between two types of Mashkon.

A mashkon given to the lender at the time of the loan, which is presumed to be security, and not for repayment.

A mashkon given after the loan has been made, which is presumed to be for repayment.

In either case, where the mashkon was worth more than the loan, the difference must be returned to the borrower. If it is not, then it would be considered as a rabbinically forbidden form of interest.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Brachot of the Hurricane Season

Is there a bracha that should be recited on a hurricane?

Maran, the Shulchan Aruch writes (OH 227:1) that on a exceptionally strong wind, one makes the beracha of "HaOseh Ma'aseh Bereshit"

The Kaf HaChaim explains, in the name of the Birchei Yosef and other poskim, that on an extraordinary wind that is not heard all over the world, (presumably this means until the horizon), the correct beracha is "HaOseh Ma'aseh Bereshit, while on a wind that blows wildly and is heard all over the world, "Shecocho Ugevurato Maleh Olam" is the required beracha, and this would seem to be a hurricane.

However, since we are not sure, the beracha should only be said where there is a hurricane and not just a strong wind.

However, the Kaf HaChaim concludes that since our custom is to recite these berachot without saying the name of Hashem, either or both can be recited.

The Ben Ish Chai agrees with the Kaf Hachaim as to this custom, and adds that this was the custom both in Baghdad and Jerusalem (to say these berachot without saying the name of Hashem -"Shem Umalchut")

HaRav Ovadia Yosef zt"l ruled that these berachot should be recited with the name of Hashem, as Maran ruled in the Shulchan Aruch, and on a hurricane, the correct beracha would be "Shecocho Ugevurato".

HaRav David Yosef shlit"a, in his book, "Halacha Berura" reiterates his father's opinion in this matter.

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down any potential enrollees. Therefore In such a case you would have the right to switch your child out of the playgroup unless a *kinyan* was done to finalize the enrollment[7]. (This would depend on the custom. If it is customary that after signing, parents are obligated to send their children to that kindergarten, then the halacha too will consider the signing as a contractual and binding act, obligating the parent to pay for a full year unless a replacement can be found. קנין סיטומתא). If this were the case, the halacha is that the Morah could not even have *ta'aromet* on you as there has been a significant change in circumstances as discussed earlier.

There is however a scenario where an employer may terminate an employment contract without any halachic ramifications even when this will cause financial loss to the worker. This is in a case of an *oness* – an unavoidable termination. The classic example of this, brought down in *Shulchan Aruch*[8] is one who hires a worker to water a field and before the start of the job it begins to rain unexpectedly thus negating the need for the job. In such a case the employer does not have to pay the worker for cancelling the job as this was due to an *oness*.

There are no hard and fast rules as to what constitutes an "unavoidable termination". Certainly without knowing all the details of your situation and what you mean by "time which I simply don't have", it would be impossible to determine if your termination were halachically considered "unavoidable". You would likely need to go to a Bet Din or a Dayan, who could personally hear your situation and possibly determine if it is indeed one of an *oness*, thus allowing you to back out.

One important point though is, that if you had knowledge of the likelihood of this move at the time that you signed up yet did not inform the Morah of this, the fact that it is an *oness* would not absolve you from your responsibility. In such a case you should have informed the Morah of your possible plans and let her decide if she wanted to accept your child and the possible risk of losing a slot or rather look for another child. Since you did not do so, you would be responsible to reimburse her for all the payments she ends up losing because of your cancelation[9], taking into account the fact that she had less work, as explained above.

ז הנה בדרך כלל קשה להוציא ממון בכה"ג מכח שנעשה בו קנין, דהתש־ לומין שעושה ההורים בשעת ההרשמה, אינו ברור אם הוא בתורת פרעון או רק לערבון. ותופס ההרשמה שההורים ממלאים על הרוב לא חשיב שטר מכמה טעמים. אלא שיש פוסקים שסוברים דאם כבר קנתה המורה דברים בעד הגן חשיב כהתחלת מלאכה כמו בהלכו החמרים והוי קנין. ולכאורה יש לחלק ואכמ"ל. ועצל"ע בזה.

8 שם סי' של"ד ס"ב

9 שם בס"א ועיין בסמ"ע שכתב בשם הטור "דלעולם לא יתחייב הבעה"ב אא"כ הוא היה יודע והפועל לא היה יודע דה"ל להבעה"ב להתנות ולגלות לו". ובנ"ד אפילו אם לא ידע בבירור שיעברו למקום אחר לכאורה חייבים כמו בפסק הנהר שבעה"ב יודע רק שדרך הנהר לפסוק ואפ"ה חייב.