

VOLUME II: NUMBER 3: PAYING A WORKMAN'S WAGES

by Rabbi Aron Tendler

Question:

1. Reuven hired Shimon to do some data entry for him. After completing the job, Shimon sent the computer disks with the data on them to Reuven via a friend. On the way, the friend's attache case which contained the disks was stolen from him, and all of Shimon's work was lost. Does Reuven have to pay Shimon for the work done, if he will have no benefit from it?
 2. Reuven called a repairman to come to his house to fix his washing machine. The repairman arrived and spent an hour working on the machine until he realized that it was not worthwhile to fix it. Does Reuven have to pay the repairman for the time spent working on the machine, if ultimately he gains nothing from it?
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Answer:

1. In the first situation, if the empty disks used by Shimon to enter the data onto belonged to him (Shimon), he can not demand payment for his work, even though the theft was through no fault of his. This is true even if Shimon had no intent to charge Reuven for the disks.

However, if Reuven provided Shimon with the disks used, or if he acquired the disks from Shimon before he commenced working, Reuven must pay Shimon the wages he had agreed to pay for this work, even though Reuven receives no benefit from the work.

2. In the second situation, if the repairman inspected the machine, located the problem, and recommended that it not be fixed and that a new machine should be purchased, he deserves to be paid whatever the going rate for such an inspection is in that area. If the repairman was unable to locate the problem and fix it, or if he did not have with him the proper tools with which to fix the machine, Reuven has no obligation at all to pay for this visit.

If the repairman had no idea of what the problem might be, and started the machine

running to inspect it while it was on, and caused that the machine be irreparably damaged, he has no liability for the damage that he caused. In this situation the owner of the machine is obligated to pay for the visit, if the repairman requests it.

Sources:

There are times that hiring someone to do work for you is considered as if he is your employee, and the money paid to him is Halachically considered wages, and there are times that it is considered as if you are purchasing a service and money paid is considered payment for a sale. The Ketzos HaChoshen (339:3), in the name of the Teshuvos MaHar"a Sasson, explains that this depends on the following. If you were to hire someone to do work for you and provide him with the materials necessary to do the work, he is considered your employee. In this case, failure to pay him on the day that he completes his work, would be a violation of the Mitzvah of (Devarim 24:15) "On that day you shall pay him", which is specifically stated regarding an employee. However, if the worker is expected to provide the primary materials necessary for the job, even if the cost of the materials is negligible in relation to the price being paid, this is considered a purchase, and there is no specific Mitzvah obligating the person that the work is being done for to pay on the completion date.

Therefore, in the first situation in our question, if Reuven provided Shimon with the disks used for the job, he must pay Shimon the wages that they had agreed upon. Although Reuven will derive no benefit from this work, since the work was completed as requested, and Shimon as his employee can not be held responsible for a loss that occurs through no fault of his (as is discussed in the Teshuvos Chasam Sofer, Choshen Mishpat Siman 15), it is considered as if the theft happened after Reuven took possession of the disks.

However, if the disks belonged to Shimon (the worker), this is considered as if Reuven is interested in purchasing the disk that is custom made to his specifications, i.e. with the data that he requires on it. Therefore, until Reuven actually takes possession, he has no obligation to pay Shimon for the disk that he never received.

(This is true in our case where the primary item being transferred from Shimon to Reuven is the disk. In a situation where the primary item belongs to Reuven but other materials used in customizing it belong to the workman, he is considered an employee and must be paid even if Reuven ends up not deriving any benefit from his work, as long as it is through no fault of the worker.)

Regarding Question B, we must realize that when someone is contracted to repair something, he is paid for the results that he produces for the person who hired him, and not for the actual work done. Therefore, when an electrician, plumber, or any repairman comes to someone's home and is not successful in locating the problem and fixing it, according to Halacha there is no obligation to pay for the labor or for the visit. However, if the worker stipulated before coming that he expects payment for the visit even if he can not repair the item, and this was agreed upon, obviously he must be paid. Likewise, if the workman can prove that it is customary in this place (Minhag HaMakom) to be paid even when unable to locate the problem, the owner of the item must pay him.

If the repairman determined that it is not worth fixing the appliance, he has fulfilled his job and must be paid for his visit and the time spent in making this determination, since the owner of the item is making use of his expertise.

If the repairman follows normal protocol for making repairs, and in the process irreparably damages the appliance, he can not be held liable for such damage (as is stated in Tosafos in Bava Kamma 27b D"H U'Shmuel). Additionally, he has the right to expect to be paid for his visit, since it is not his fault that he is unable to fix it.

Feedback is appreciated! It can be sent to atendler@torah.org.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bais Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His Column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!