

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Paying Workers Shiur Three

Mareh Makomos for this Shiur

Rif (Bava Metzia 51b)

Rosh (Bava Metzia Perek Hapoalim Siman 1)

Rambam (Laws of Hiring, 9:1)

Tosfos (dibur hamas'chil hasocher)

Yerushalmi (Bava Metzia 7:1)

Rivash (Siman 475)

Bava Metzia 87a

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An Employer's obligations to his Workers



Siman 331 Seif One

1 One who hires workers and tells them to come to work early and stay until nightfall, in a place where the custom is not to come to work early and stay until nightfall, he cannot force them [to do so], 1 even if he adds to their wage, since he did not make this condition when he hired them.

Rama: If there was no custom in the city, or he told them: I am hiring you as per the law of the Torah, 2 they must leave their homes at sunrise and do work until the stars come out (Tur 64). And on erev Shabbos, he goes home early enough to fill a barrel with water 3 and roast a small fish and light the candle (ibid. 65 in the name of the Yerushalmi). (1) If there was no custom in the city, but most of the people came from a place where there is a custom, we follow the custom of the city from where they came. He left a place where they had the custom to come to work early and stay until nightfall and came to a place where they did not have the custom to come to work early and stay until nightfall or vice-versa, we follow the place where he hired the workers (Nemukei Yosef, beginning of Perek Hapoalim in the name of the Yerushalmi). (2) It is not called a custom unless it is a common thing that is done many times, but something which is only done once or twice is not called a custom (Rivash, Siman 475).

Siman 331 Seif Two

2 In a place where the custom is for the employer to give his workers food, he should give them food; [if the custom is] to give figs, dates or the like, he gives [this] 4 — everything is based on the custom of the country.

Siman 331 Seif Three

3 One who hires a worker, telling him “like one or like two of this city,” they calculate the highest and lowest wage paid, and he pays the average, 5 for example if the highest wage is six and the lowest is four, the employer pays him five.

How much an employee has to work

SIMAN 331: 1

The source of this *Halacha* is the *Mishna* in *Bava Metzia* 83a. The *Genara* states,

- 1) When an employer hires workers without stating specific conditions for their labor,
 - a. If there is a local custom concerning how the work is done and for how long, the employer may not deviate from this custom.
 - b. The same is true concerning whether or not the employer must provide food for his workers.
 - c. The employer must give the workers according to the local custom.

The above applies when both employer and employee are aware of this custom. Since they both know of the custom and do not specify otherwise, it is assumed that both agreed to operate according to the local custom.

There is a custom and a condition was made

What happens if there is a custom that an employer provides his workers with food while they are on the job, yet they nevertheless made an explicit condition that the employer give the worker food while on the job. Is this condition understood as meaning that the employer must add more than the accepted amount, or is he obligated to supply the normal amount and no more?

The *Gemara* brings two opinions on this:

1. The *Tanna Kama* holds that the employer must add more than the accepted amount.
2. **Rabban Shimon ben Gamliel** holds that he does not have to provide more than the normal amount.

The *Mishna* relates that **Rabbi Yochanan ben Massya** told his son:

“GO AND HIRE WORKERS.”

The son hired workers and fixed with them that he would supply them food. When he came back to his father, his father said:

EVEN IF YOU PREPARE FOR THEM A FEAST LIKE THAT OF **SHLOMO** [HAMELECH] IN HIS ERA, YOU HAVE NOT FULFILLED YOUR OBLIGATION TO THEM, BECAUSE THEY ARE THE SONS OF AVRAHAM, YITZCHAK AND YAAKOV. RATHER, BEFORE THEY START WALKING, GO AND TELL THEM ‘ON CONDITION THAT YOU HAVE NO CLAIM ON ME BEYOND BREAD AND BEANS ALONE.’

Rabbi Yochanan ben Massya was concerned about an undefined condition. **Meaning,**

- a. If the son made a condition with them that they would receive food, the term “food” has no specific limitations.
- b. Since Jews are of royal lineage, they must receive a lot.
- c. Therefore, he asked his son to make an explicit agreement with the workers as to what food they would receive.

Rabban Shimon ben Gamliel differs, **holding,**

- I. The father did not have to say this to his son.
- II. Rather, the amount of food he owes to his workers is determined by the custom of that country.
- III. Meaning, even if the employer agreed to provide the workers food and did not specify what food and how much, he is only obligated to provide them what is accepted in that area.

The *Gemara* (86a) explains,

- a. Since there already was a custom concerning food supplied to workers, the fact that the son of **Rabbi Yochanan ben Massya** stipulated that he would provide food,

THIS MAY BE INTERPRETED AS A STIPULATION TO PROVIDE MORE THAN
THE CUSTOMARY AMOUNT OF FOOD.

What is the Halacha in this Machlokes between the Tanna Kama and Rabbi Shimon ben Gamliel?

The Tur writes,

It seems that the *Halacha* is like the *Tana Kama*, but he notes that the **Ramah** holds that the *Halacha* is like **Rabban Shimon ben Gamliel**.

The Beis Yosef notes,

It seems that the **Rif** (*Bava Metzia* 51b) and the **Rosh** (*Bava Metzia Perek Hapoalim Siman* 1) also ruled like the **Ramah**. He adds that it seems that this is also the opinion of the **Rambam** (Laws of Hiring, 9:1).

What is an employee's work obligation?

In *Bava Metzia* 83a, it states that if an employer tells his workers to come to work early in the morning and keep working until late at night, if the local custom is that workers do not come early and stay late, he cannot force his workers to do so.

The Gemara asks:

Peshita—it is obvious that the local custom is the determining factor.

The Gemara explains,

The intent is when the employer added to the workers' wages (more than what is customary).

- a. This gave room to say that he did so in order for the workers to come earlier and stay later.
- b. The *chiddush*, the lesson of this teaching is that the employer cannot demand this.
- c. Rather, the workers can reply that they understood the increase in pay as being in order for them to do better work, but not to work more hours.

In the **Tosafos** (*dibur hamas'chil hasoche*), **Rabbeinu Yitzchak** (known as “the **Ri**,” based on the abbreviation that appears in **Tosafos**) explains,

- a. The above *Gemara* is dealing with a case where workers were hired without making a specific condition as to their hours.
- b. This is why the employer cannot demand that they work more than the prevailing custom.

However,

IF THE EMPLOYER STATED AT THE OUTSET THE SPECIFIC TIME THAT HE WANTED THEM TO ARRIVE AND LEAVE AND THEY ACCEPTED THIS, THE CONDITION IS BINDING ON THE WORKERS.

Hiring workers based on Torah law where there is no custom

Reish Lakish states in the above *Gemara*:

“A WORKER’S ENTRY IS HIS AND HIS EXIT IS HIS EMPLOYER’S.”

According to **Rashi**, this means that when a worker enters the city after a day’s work,

- i. The worker must do so on his own time, as he must work until the evening.

- ii. When he exits the city to set out for work, this is done on the employer's time, meaning he does not have to set out for work before dawn.
- iii. **Reish Lakish** bases this on the verses in *Tehilim* (104, 22-23): "The sun rises and they are gathered in, in their dens they crouch. Man goes forth to his work and to his labor until evening."
- iv. The verse states explicitly that a worker must go out to work with the sunrise and return home at night. (This explanation is according to **Rashi**, but the **Rabbeinu Chananel** and **Tosafos** explain the *Gemara* differently).

The Gemara asks:

Why bring laws about hours of work when it is well known that in monetary matters, one goes after the custom. What do these verses teach us if the local custom is understood as being like a condition made between employer and employee?

The Gemara answers,

This is a case of a new city that does not yet have any custom concerning work hours.

The Gemara asks:

If this is a case of a new city, still, the residents must have lived elsewhere before. Therefore, one must verify what the custom was in their previous residence, and on that the norms of work hours should be based.

The Gemara brings to answers:

1. This is a case where workers came from a variety of areas, some of which had a custom to come early and stay late at work, and others which did not.
2. One does not follow the local custom when the employer made the condition that he is hiring them to be "like a worker according to Torah law."

The Beis Yosef writes,

According to the explanation of **Rabbeinu Chananel**, **Reish Lakish** was referring to the custom of workers in his era, not the law, as it should be practiced. Therefore, the **Rambam** and the **Rif** do not bring **Reish Lakish's** teaching in their rulings, because the normal custom is the determining factor.

The Beis Yosef notes,

Even according to **Rashi's** explanation of **Reish Lakish**, it is understandable why the *Rishonim* did not bring **Reish Lakish's** teaching in their rulings.

- a. This is because the *Gemara* concludes that **Reish Lakish's** teaching only applies when an area is made up of people from various places and has no custom, or the employer made the condition that the hiring would be according to Torah law.
- b. Since neither of these cases are to be found in reality, the *Rishonim* did not mention **Reish Lakish's** ruling.

Ruling of the Tur

The **Tur**, however, does take **Reish Lakish's** teaching into consideration in his ruling, which is:

Concerning work, one operates according to the custom. If workers do not have the custom of coming early and staying late, he cannot force them to come early and stay late, even if he adds to their pay, since he did not make this condition when he hired them.

Then the Tur adds:

When does the above apply? When there is a known custom, but if a city has no known custom (the *Gemara's* first response) or even if there is a custom but he tells his workers: I am hiring you according to Torah law (the *Gemara's* second response), the workers must leave their homes at sunrise and work until the stars come out.

The law of workers on erev Shabbos

Is there a difference between a worker's obligation on a normal weekday and on erev Shabbos?

Concerning this question, the **Tur** brings the *Yerushalmi* (*Bava Metzia* 7:1), stating,

THE ABOVE LAWS CONCERN A REGULAR WEEKDAY, BUT ON *EREV SHABBOS*, BOTH THE ENTRY AND EXIT OF A WORKER ARE AT THE EMPLOYER'S EXPENSE.

Meaning,

- i. The worker does not have to stay late as on a weekday.
- ii. Rather, he leaves a bit before *Shabbos*, so that he has time to fill a barrel with water, roast a small fish and light a candle after he gets home.

The **Shulchan Aruch** brings the above array of rulings, writing,

ONE WHO HIRES WORKERS AND TELLS THEM TO COME TO WORK EARLY AND STAY UNTIL NIGHTFALL, IN A PLACE WHERE THE CUSTOM IS NOT TO COME TO WORK EARLY AND STAY UNTIL NIGHTFALL, HE CANNOT FORCE THEM TO DO SO, EVEN IF HE ADDS TO THEIR WAGE, SINCE HE DID NOT MAKE THIS CONDITION WHEN HE HIRED THEM.

We see that the **Shulchan Aruch** did not mention **Reish Lakish's** ruling and the two answers on it.

The **Rama**, however, does add that section of the *Genara*.

Therefore, he wrote,

If there was no custom in the city, or the employer told them:

"I AM HIRING YOU AS PER THE LAW OF THE TORAH,"

They must leave their homes at sunrise and do work until the stars come out. On *erev Shabbos*, the worker can leave so that he has enough time to fill a barrel with water and roast a small fish and light a candle. This comes from the *Yerushalmi* that is brought by the **Tur**.

The **Rama** adds the earlier section of the *Gemara*, before its conclusion, writing

IF THERE WAS NO CUSTOM IN THE CITY, BUT MOST OF THE PEOPLE CAME FROM A PLACE WHERE THERE IS A CUSTOM, WE FOLLOW THE CUSTOM OF THEIR PREVIOUS LOCATION.

The **Rama** adds the ruling of the **Nemukei Yosef** (who bases this on the *Yeushalmi*),

IF EITHER AN EMPLOYER OR WORKER LEAVES HIS AREA, WHERE THE CUSTOM IS TO COME TO WORK EARLY AND STAY UNTIL NIGHTFALL, AND HE GOES TO A PLACE WHERE THEY DID NOT HAVE THE CUSTOM TO COME TO WORK EARLY AND STAY UNTIL NIGHTFALL OR VICE-VERSA, WE FOLLOW THE PLACE WHERE HE HIRED THE WORKERS.

Meaning,

THE CUSTOM WHERE THE HIRING IS DONE IS WHAT DETERMINES THE NORMS OF PAYMENT

The **Rama** concludes with the ruling of the **Rivash** (Siman 475),

IN ORDER FOR A CUSTOM TO SERVE AS THE BASIS FOR NORMS OF PAYMENT, IT MUST BE A COMMON THING THAT IS DONE MANY TIMES. SOMETHING WHICH IS ONLY DONE ONCE OR TWICE IS NOT CALLED A CUSTOM.

Is there an obligation to provide workers with food?

SIMAN 331: 2

The source of this *Halacha* is the same as the above *Halacha*, as it concerns whether an employer is obligated to provide food for his workers and how much.

The **Shulchan Aruch** rules in this *seif*

- I. In a place where the custom is for the employer to give his workers food, he gives them.
- II. If the custom is to provide figs, dates or the like, he gives this.
- III. What he gives is based on the custom of the state.

The **Sma** (*seif* katan 4) mentions the ruling of **Rabban Shimon ben Gamliel** brought above,

EVEN IF THERE IS AN EXISTING CUSTOM THAT EMPLOYERS SUPPLY WORKERS WITH FOOD, IF AN EMPLOYER NEVERTHELESS GOES AHEAD AND STIPULATES THAT HE WILL PROVIDE HIS WORKERS WITH FOOD, WE DO NOT INTERPRET THIS AS MEANING THAT HE WOULD GIVE THEM MORE THAN THE FOOD THAT IS CUSTOMARILY PROVIDED

No specific Wage was Set

SIMAN 331: 3

The source of this *Halacha* is *Bava Metzia* 87a. When an employer says he will pay a worker “like one or two of the city,” **Rabbi Yehoshua** rules that the employer must pay him according to the lowest wage that is paid in that area. The *Chachamim* counter that the employer and worker calculate the average pay of the city’s workers, and this average is what the worker is paid. The **Tur** brings two differing opinions of *Rishonim* on what is meant by average pay.

1. **Rashi**: The employer pays the specific median wage earned in that city. For example, if there are three going salaries in the city, 100, 400 and 10, the worker is paid 40.
2. The **Ramah**: The highest and lowest wages of the area are determined, and the employer pays the worker the average of these two sums.

There is a well known rule, that in a *Machlokes* between *Chachamim* and **Rabbi Yehoshua**, *halacha* is like the *chachamim*. The source of this rule is *Brachos* 9a.

The **Shulchan Aruch** rules that one who hires a worker, telling him “like one or like two of this city,” they calculate the highest and lowest wage paid, and he pays the average. This is like the **Ramah** and not **Rashi**. The **Shulchan Aruch** gives an example: If the highest wage is 6 and the lowest, 4, the employer pays him 5.

Questions and Answers

1. **When an employer hires workers without stating specific conditions for their labor, if there is a local custom concerning how the work is done and for how long, the employer may not deviate from this custom. The same is true concerning whether or not the employer must provide food for his workers. The employer must give the workers according to the local custom.**

The above applies when both employer and employee are aware of this custom. Since they both know of the custom and do not specify otherwise, it is assumed that both agreed to operate according to the local custom.

2. **What happens if there is an existing custom for an employer to provide his workers with food, yet the employer makes a condition that his workers will be provided food? Is this condition understood as meaning that the employer must add more than the accepted amount, or is he obligated to supply the normal amount and no more?**

The *Tama Kama* holds that the employer must add more than the accepted amount. **Rabban Shimon ben Gamliel** holds that he does not have to provide more than the normal amount.

3. **What incident is related concerning Rabbi Yochanan ben Massya?**

The *Mishna* relates that **Rabbi Yochanan ben Massya** told his son: “Go and hire workers.” The son hired workers and fixed with them that he would supply them food. When he came back to his father, his father said: “Even if you prepare for them a feast like that of **Shlomo** [Hamelech] in his era, you have not fulfilled your obligation to them, because they are the sons of Avraham, Yitzchak and Yaakov. Rather, before they start walking, go and tell them ‘on condition that you have no claim on me beyond bread and beans alone.’”

Rabbi Yochanan ben Massya was concerned about an undefined condition. Meaning, if the son made a condition with them that they would receive food, the term “food” has no specific limitations. And since Jews are of royal lineage, they must receive a lot. Therefore, he asked his son to make an explicit agreement with the workers as to what food they would receive.

4. What is the *Halacha* concerning the *Machlokes* between the *Tanna Kama* and *Rabban Shimon ben Gamliel* mentioned above?

The *Tur* writes that it seems that the *Halacha* is like the *Tanna Kama*, but he notes that the *Ramah* holds that the *Halacha* is like *Rabban Shimon ben Gamliel*. The other *Rishonim* ruled like the *Ramah* as well.

5. What is an unexplained increase in pay by the employer interpreted as meaning?

The *Gemara* explains that when an employer adds to the workers' wages, this gives room to say that he did so in order for the workers to come earlier and stay later. However, the employer cannot demand this. Rather, the workers can reply that they understood the increase in pay as being in order for them to do better work, but not to work more hours.

6. Why does the *Gemara* bring laws about hours of work when it is well known that in monetary matters, one goes after the custom. What do these verses teach us if the local custom is understood as being like a condition made between employer and employee?

The *Gemara* brings these laws for two cases:

1- A new city where workers came from a variety of areas, some of which had a custom to come early and stay late at work, and others which did not.

2- The employer made the condition that he is hiring them to be "like a worker according to Torah law."

7. Why did the *Rishonim* disregard this ruling?

According to the explanation of *Rabbeinu Chananel*, *Reish Lakish* was referring to the custom of workers in his era, not the law, as it should be practiced. Therefore, the *Rambam* and the *Rif* do not bring *Reish Lakish's* teaching in their rulings, because the normal custom is the determining factor.

Moreover, the *Beis Yosef* notes that even according to *Rashi's* explanation of *Reish Lakish*, it is understandable why the *Rishonim* did not bring *Reish Lakish's* teaching in their rulings. This is because the *Gemara* concludes that *Reish Lakish's* teaching only applies when an area is made up of people from various places and has no custom, or the employer made the condition that the hiring would be according to Torah law. Since neither of these cases are to be found in reality, the *Rishonim* did not mention *Reish Lakish's* ruling.

8. Is there a difference between a worker's obligation on a normal weekday and on *erev Shabbos*?

The *Yerushalmi* states that the above laws concern a regular weekday, but on *erev Shabbos*, both the entry and exit of a worker are at the employer's expense. Meaning, the worker does not have to stay late as on a weekday. Rather, he leaves a bit before *Shabbos*, so that he has time to fill a barrel with water, roast a small fish and light a candle after he gets home.

9. What are an employer's obligations concerning providing food for his workers?

The **Shulchan Aruch** rules that in a place where the custom is for the employer to give his workers food, he gives them. If the custom is to provide figs, dates or the like, he gives this. What he gives is based on the custom of the state.

10. If no specific wage was set by the employer, what should he pay his worker?

The highest and lowest wages of the area are determined, and the employer pays the worker the average of these two sums.