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SOCIAL JUSTICE AND THE WORLD OF BUSINESS

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INTRODUCTION

As corporations strive to meet their bottom line and as employees move freely from one company to another seeking upward mobility, career satisfaction, and individual success, building trust and loyalty between employees and employers has become increasingly difficult. Labor law discussions have become commonplace both in the boardroom and in the courtroom, focusing on employee rights and employer responsibilities.

Long before labor law and corporate ethics emerged in the secular society, however, the Torah established a model for an abiding relationship between employee and employer. As early as in the book of Deuteronomy we find one such operative principle:

You shall not abuse a needy and destitute laborer, whether a fellow countryman or stranger in one of the communities of your land. You must pay him his wages on the same day, before the sun sets, for he is needy and urgently depends on it; else he will cry to the Lord against you and you will incur guilt.” (Deuteronomy 24: 14-15, NJPS)

On one level, the Torah relationship is best characterized as a simple leasing contract. A worker’s time, effort and expertise were leased by the employer for the period of employment. In return, the worker received payment for the services provided. Consequently, the rabbinic attitudes regarding the worker and employer are born out of the laws of contract negotiation and cancellation, pricing, and the like. Since the relationship involved buying and selling of services, employers had no claims over the employee outside of those relevant to the work to be done. Likewise, the employee’s only responsibility was to fulfill in good faith that which he was contracted to do, without work stoppage or other barriers.

At the same time, though, employers and workers are both individual human beings, and therefore independent agents free of enslavement to any other person. The Leviticus command, “but for your Israelite kinsmen, no one shall rule ruthlessly over another... For it is to me that the Israelites are slaves; they are My slaves whom I freed from the land of Egypt: I am The Holy One your God,”¹ reminds both master and worker that all are servants of God. The Talmud expands this concept, adding that they are slaves only to God and not slaves of slaves.²

In addition to whatever codified legislation has developed (and in some cases, in the absence of codified legislation), Jewish law on employment and other business dealings relies heavily on the precedent created by *minhag hamakom* (local custom). In a discussion about the need to provide food for workers while on the job and the acceptable hours one can demand workers to be on the job, the Talmud reinforces that the local *minhag* governs. Elsewhere, the Talmud says “Everything is according to accepted custom.”³ The Jerusalem Talmud extends this to mean that, within given parameters, *minhag* even can nullify enacted law, even biblical law.⁴

VALUE OF LABOR

To understand the nature of the employee/employer relationship, we must first understand the value of work. In the Garden of Eden, Adam and Eve are given but one mandate – do not eat the fruit from the Tree of Knowledge of Good and Evil. Of course, they do eat, and are banished from the Garden. As punishment for this act of Divine disobedience, Adam is told that the land will forever be cursed by man, and that only by the hard work of the “sweat of his brow” would humans earn bread.⁵ This might lead one to understand that work is a punishment for Adam’s original sin, the curse that is borne by each person through the evil committed by our forbearer. Troubled by this, some Biblical commentators suggest that the verse is intended not to describe the curse of work, but rather the transformation of the human role: from now on, humans have the responsibility for their own livelihood and sustenance.

The rabbinic sources, on the other hand, view work as a necessary part of human development and moral consciousness. Recognizing the importance of work in helping to earn the necessary livelihood, the rabbis also emphasize how

¹ Leviticus 25:46-55

² Babylonian Talmud Bava Metzia 10 and 11b; see also Babylonian Talmud Kiddushin 22b, Bava Kamma 116b and Bava Batra 11a.

³ Babylonian Talmud Bava Metzia 83a and other parallel sources

⁴ Jerusalem Talmud 7:1, 11a

⁵ Genesis 3:17-19



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work helps individuals take responsibility for society and social order. Rabbi Yehudah and Rabbi Shimon both declare “Great is work for it brings honor to its master.”⁶

The rabbis envisioned an integration between Torah study and the pursuit of livelihood. Pirke Avot, the tractate of the Mishnah devoted to the ethical teaching and homilies of our ancestors, cites the teaching of Rabban Gamliel: “Excellent is the study of Torah combined with some worldly occupation, for the energy for both cause sin to be forgotten. And for all (study of) Torah without a worldly occupation, it is for naught and becomes the cause of sin.”⁷ Rambam, in his Mishneh Torah, codifies as law the need to work even if the work is combined with Torah study:

...all Torah that is not accompanied by work will be nullified and will end in sin. Ultimately, such a person will steal from others. One is at a high level if he is sustained by the efforts of his own hand, a characteristic of the pious of early generations. In this he merits all the honor and good of this world and the world to come, as it is written. “If you eat by the work of your hands, happy are you, and it will go well for you.” [Psalms 128:2] Happy are you in this world and it will go well for you in the world to come.⁸

So according to the rabbis, work is essential to personal development and to achieving religious depth and meaning. Through work, humans assume their places in the social order as active agents, like Adam. Work is a pathway to personal health, a conduit to greater understanding of Torah and of faith, and a mechanism through which one ultimately leaves a mark on this world. For a person’s work to achieve and maintain this degree of personal and religious meaning and expression, the employee/employer relationship must be carefully defined and have distinct boundaries.

WAGES

Jewish law has a specific set of rules regarding the payment of wages. The primary focus, based on numerous biblical injunctions, is that wages be paid on time.⁹ The Mishnah in *Bava Metzia* explains that while the Torah’s pronouncements are based on a framework of daily workers, the requirements to pay on-time refer to the agreed upon pay period – be it daily, weekly, monthly or some other time period.¹⁰ The reason for this stringency is made clear in the verse from Deuteronomy 24 quoted above, in which the Torah explains that workers are assumed to live hand-to-mouth and thus to be reliant on the wages to cover immediate needs - without wages the worker is presumed unable even to eat. Practically, this means that whatever pay period is agreed upon at the time of employment, the employer has an obligation to pay the wages at that time. An employer who purposefully withholds payment, according to Rambam, is classified as an *oshek* (extortionist) and may be liable for breach of up to five biblical commandments.¹¹

But if the worker is not in financial need, could we not relax the directive? The Talmud anticipates this question and asks, “Why does he ascend upon a ladder, suspend himself from a tree, and place himself at risk if not for his wage? ... One who withholds the pay of a worker, it is as if he has taken his spirit from him.”¹² Hence, the payment of wages is connected to needs which are more than financial – the worker’s spirit, the innermost sense of personal meaning and purpose. Therefore, regardless of financial need, the effort and investment that an employee puts into work automatically comes with the right to receive on-time payment of wages and obligates the employer to provide it.

EATING ON THE JOB AND OTHER NON-FINANCIAL BENEFITS

In Deuteronomy 23, the Torah secures a worker’s right to eat the grapes or other produce while working in the fields in addition to whatever wages upon which the worker and employer have agreed. Rambam also uses this verse to regulate the employer’s obligation to provide this benefit throughout the duration of the work time.

⁶ Babylonian Talmud Nedarim 49b

⁷ Mishnah Avot 2:2

⁸ Rambam, *Mishneh Torah, Hilkhhot Talmud Torah* 3:10-11

⁹ Speaking of the worker hired on daily basis, *Leviticus* 19, verse 13 establishes the requirement to make payment of wages on the same day that work was done, saying: “the wages of a laborer shall not remain with you until the morning.” (*Leviticus* 19:13, NJPS)

¹⁰ Mishnah *Bava Metzia* 9:12

¹¹ Rambam, *Mishneh Torah, Hilkhhot Sekhirut* 11:2

¹² Babylonian Talmud *Bava Metzia* 112a



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In the 14th century, Rabbi Jacob ben Asher, author of the Tur, based on earlier comments from Rambam, limits this benefit only to the worker and only during work hours, and prohibits overeating or abuse. In so doing, the employer allows the employee to eat and to sustain the energy necessary to complete the requirements of the job. According to the Tur, it is the worker's responsibility to make sure that this right is not turned into theft by over-eating, overstepping the boundaries of benefit eligibility or causing work stoppage.¹³

Today, while this halakhah certainly still applies directly to workers involved in agriculture or food industries, it does not mean that all employers have an obligation to feed their employees.¹⁴ The application for the modern employee and employer, however, is not limited only to feeding employees while working. To the extent that food is necessary for the continued ability to complete the job requirements, an employee should be granted time to eat, provided that the employee recognizes that the time allocated is for the purpose of him/her continuing to work. In most work environments, *minhag hamakom* and labor laws outlining acceptable break assignments reinforce this right. The basic principle seems to be that the workday is for work and that during that time, the worker's responsibility is therefore to focus on fulfilling the job responsibilities as outlined by the employer.

EMPLOYEE OBLIGATIONS

In most conversations about labor relations, great attention is paid to obligations of the employer, while the responsibilities of the employee are often ignored or forgotten. As we saw above, though, an employee has an obligation to act in good faith to serve the purpose for which the hiring occurred.

In the same section of the Tur cited just above, the author continues to limit the activities of the employee outside the place of work to the extent that these activities will impinge on his or her ability to fulfill job responsibilities, while also reinforcing the employer's obligation to offer similar consideration in return.¹⁵ The employee's primary responsibility is to fulfill the job requirements. It follows that if a person is freed from *mitzvot* in order to concentrate on his/her job, all the more so, there is an obligation to fulfill job requirements in a satisfactory manner; otherwise the exemption from *mitzvot* would be empty.¹⁶

The most challenging of these circumstances in today's workforce is the issue of secondary work. To make ends meet, many people find it necessary to hold a second job. While one could argue that there is a prevailing custom in the work environment permitting secondary work, it could still result in an interruption to ability to work at full capacity. Therefore, in the absence of any written policies at the time of employment, it is advisable to discuss specifics with an employer before engaging in secondary work.

In addition, as part of the employment agreement, and to avoid stealing from the employer, an employee should be cautioned against any distractions that compromise the time that belongs to the employer and/or the ability to fully focus on the work. This could include, but is not limited to, personal phone calls, socializing with co-workers, internet surfing, or taking care of personal business.

In return for the employee's good faith efforts to fulfill the job requirements, the employee has the right to expect and the employer has the obligation to provide fair treatment in addition to his wages and other benefits. We have already mentioned the Torah's prohibition of an employer dominating an employee. The Midrashic explanation of this verse is that one should not ask a servant to heat up his cup unnecessarily – or to perform any unneeded task – simply to keep the servant busy or to assert one's authority. Also, a worker should not be told to remove his master's work or carry his clothing to the bath house or do other such demeaning work.¹⁷ Consequently, an employee has every right to expect that the work that he does and the environment in which it is done will continue to bring the honor promised by Rabbi Yehudah and Rabbi Shimon.

¹³ Tur, Hoshen Mishpat 337:13

¹⁴ As the Talmud says, "where it is the custom to provide food, he (the employer) must provide food." (BT Bava Metzia 83a.)

¹⁵ Tur, Hoshen Mishpat 337:13

¹⁶ In fact, in addition to shortening the Grace After Meals, the worker is given the flexibility to pray from the location of his work and when necessary to shorten the fixed prayers. (BT Berakhot 45b)

¹⁷ Sifra, Kedoshim 6



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HIRING AND FIRING

Throughout the past few decades, employee separations have, in fact, become a fact of organizational life in both for-profit corporations and not-for-profit agencies. In the corporate world, poor job performance, insubordination, or other for-cause termination are no longer the only reasons for dismissal. Corporate lay-off, job termination, and corporate shut-downs have contributed to an increase in job dismissals.

Once an employer and employee agree to terms of employment, there is an implicit understanding that the two have entered into an employment contract. In the absence of specific contractual provisions to the contrary, many states today define employment for an indefinite period as terminable at will, by either party. This means that where a contract of employment is indefinite in duration, both the employee and the employer have the right to terminate the employment at any time with or without cause and with or without due notice.

For one accustomed to this normative practice, the halakhic rulings are likely to cause a stir of challenge and discomfort. Jewish law regards the termination of an employment agreement as a right, within certain parameters, for either party. Inherent in this right, however, are also responsibilities which differ depending on the timing and circumstances.

Let us first consider the situation where a contract has been concluded but has not yet commenced. Rambam rules that an employer or an employee may, in fact, sever the agreement, leaving no legal claims against the other, except for compensation for *taromet* (resentment).¹⁸ If, due to the contract, the worker lost the opportunity to find other employment, the employee is to be compensated - in the case of a worker hired by the day, this equals one day's pay, calculated at the least amount of work, for the least amount of pay, that such a worker would demand in the market-place.¹⁹ Today, this would mean that an employer is obligated to pay the employee the 'idle pay' until the worker is able to secure other work (or perhaps until unemployment wages, which provide the accepted lowest common wage, kick in). Given the reciprocal nature of the employee/employer relationship, there is also compensation available for an employer who sustains quantifiable financial loss due to a worker's defection.

Once the work commences, the parameters for retracting the agreement change. In the case of an employee hired for a finite amount of time, there is no halakhic precedent for extending the agreement; the end of the work period signifies the end of the parties' responsibilities towards one another. If an employee was hired for long term position in which there is no specific time period, though, the position is different. The employee operates within a structure of employment at will, and has the right to terminate the employment at any time.

This principle is found in the Shulhan Arukh, and is based on an earlier statement of Rambam allowing workers to stop working even in the middle of the time period for which they were hired. There, Joseph Caro rules that workers can stop their work even if they have already spent their prepaid wages for the whole period - in such a case, the money owed becomes a debt to the employer, but the workers are nonetheless free to leave.²⁰ The reason cited for this leniency is, once again, that workers are not slaves. Even as a worker hires out his/her services, the individual remain free of enslavement to any other human being. Paramount to the employee's ability to work for the employer is the preservation of the individual's spiritual freedom.²¹

An employer also has the right to terminate a work agreement. However, unless the term of employment agreed upon at the outset has expired, implicit in Jewish law is a need for just cause. Given that the employment agreement in Jewish law is a form of a contract, failure to comply with the terms of the contract can result in its early termination. As discussed earlier, the employee is required to fulfill the job requirements in good faith and to the best of his/her ability. Consequently, an employee who is not adequately fulfilling job responsibilities agreed to at the time of employment can be discharged.

¹⁸ *Taromet* is a primarily non-monetary remedy, which amounts to court recognition that a person's legal rights have been infringed. The nearest equivalent in our legal system is nominal damages.

¹⁹ Rambam, *Hilkhot Sekhirut* 9:4

²⁰ *Shulhan Arukh*, *Hoshen Mishpat* 333:3

²¹ Rabbi Moshe Isserles established that while employers can offer long term or even lifelong contracts, a worker may not offer himself out for more than three years, the period which represents dividing line between the biblical understandings of a worker and an indentured servant (*Rema* on *Hoshen Mishpat* 333)



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One of the greatest impacts of modern corporate life has been retrenchment and job elimination, resulting in the discharge of any number of employees for causes not at all related to their job performance. Here, the impact of the separation is two-fold: it represents both a loss of income to the employee and a loss of social status. Despite the fact that such terminations are becoming all too common, the employee still suffers the mental anguish of financial pressure, individual loss of purpose, and the social stigma of having lost a job. While there the halakhah does not legally mandate any assistance on the part of the employer in these circumstances, the same ethical principles that drive the discussion that will follow regarding severance pay also apply to other forms of assistance: interest free loans, career counseling and placement assistance, training, and personal counseling and assistance.

There is a further aspect of termination of employment where the halakhah has a good deal to teach us. Dismissals undoubtedly stir questions and often gossip. Even the most well intended people, concerned about the welfare of the person (or people) who have been terminated, want to know why a person has been dismissed. Laws exist prohibiting *lashon hara* (gossip)²² and mandating Jews to take active steps to protect the reputation of a fellow person. Hence discretion should be exercised in discussing and/or disseminating any information, even if it is accurate, about a discharged employee that might lower the status of the person about whom it is said. In *Pirke Avot* Rabbi Eliezer teaches: “Let your fellow man’s honor be as dear to you as your own.”²³ *Avot D’Rabbi Natan*, a midrashic amplification of *Pirke Avot*, expands this idea further:

How is this so? [It] teaches that just as a man has regard for his own honor, so must he have regard for the honor of his fellow man; just as he desires that there should be no reflection on his good repute, so he must be anxious not to damage the reputation of his fellow man.²⁴

When someone is released from a job, allowing open discussion about the circumstances of the dismissal would certainly lower the status of the employee within the community. It is for this reason that Jewish law limits sharing any information unless it is essential that the person to whom one is speaking should have it. If the hearer does not need the information, a person who engages in discussions about the employee’s dismissal is causing themselves and others to violate the obligation to avoid *lashon hara* – not to mention the fact that a litany of gossip and rumors can cause even more damage to the discharged employee than the discharge itself.

Finally, this essay does not permit us to deal with the question of severance pay in the depth it deserves. Suffice it here to say that while some authorities have ruled that there exists a halakhic mandate that gives an employee the right to receive severance, others rely on the requirement to act righteously even when the letter of the law might not obligate them.

CONCLUSION

The equity and justice of the Jewish legal system demands that the employer/employee relationship be one in which both parties are free agents, with individual rights and responsibilities in relation to the other. Jewish law also reminds us that the relationship between an employer and an employee is not a detached matter of contract. Rather, the two parties are in a three-dimensional relationship in which they have moral and ethical obligations to each other, over and above what any written contract may provide.

We carry our Torah and our values with us into our workplaces. Work is a matter of personal and spiritual self-determination, engaging the whole person. Work relationships are a matter of honor and dignity, as well as providing income and personal satisfaction. Furthermore, Jewish law requires us to look outward as well as inward – it is not only our own work relationship which is relevant, but also the relationships of other workers to their employers. Our obligations extend to acting upon our principles when we encounter unfair treatment in workplaces other than our own. According to Jewish law, nobody is a slave: even though people work, they are free.

²² derived from Leviticus 19 ‘You shall not go about as a talebearer among your people’ (NJPS)

²³ Mishnah Avot 2:15

²⁴ Avot D’Rabbi Natan 15



SOCIAL JUSTICE AND THE WORLD OF BUSINESS – TEXT 1

משנה בבא מציעא ט:יב

אָחַד שְׂכָר אָדָם וְאָחַד שְׂכָר בְּהֵמָה וְאָחַד שְׂכָר כְּלִים יֵשׁ בּוֹ מְשׁוּם [דְּבָרִים כד] בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ, וְיֵשׁ בּוֹ מְשׁוּם [ויקרא יט] לֹא תִלִּין פְּעֻלַּת שְׂכִיר אֲתָדָד עַד בִּקְרָא. אֵימַתִּי. בְּזִמְנֵן שֶׁתִּבְעוּ, לֹא תִבְעוּ, אֵינּוּ עוֹבְרֵי עָלָיו. הַמְחָהוּ אֲצֵל חֲנוּנִי אוֹ אֲצֵל שְׁלַחְנִי, אֵינּוּ עוֹבְרֵי עָלָיו...

MISHNAH *BAVA METZIA* 9:12

Whether the hire is of a person, an animal or an object, the principle of “payment must be made that day” [Deuteronomy 14] applies, as well as the principle, “The wages of a hired worker shall not remain with you until the morning.” [Leviticus 19] When does this rule apply? When the wages are demanded: but otherwise, the employer is not in breach. If the employer assigned [the person, animal or object hired] to a shopkeeper or to a money-changer, the employer is not in breach...

תלמוד בבלי בבא מציעא קיא:ב - קיב:א

וְרַבִּי יוֹסִי בְּרַבִּי יְהוּדָה, הָאִי לֹא תִלִּין פְּעֻלַּת שְׂכִיר אֲתָדָד עַד בִּקְרָא מֵאֵי עֶבֶד לִיהָ? - מִיבְעֵינָא לִיהָ לְכַדְרַב אָסִי. דְאָמַר רַב אָסִי: אֲפִילוּ לֹא שְׂכָרוֹ אֲקָא לְבָצוֹר לוֹ אֲשַׁכּוּל אֲחַד שֶׁל עֲנָבִים - עוֹבֵר מְשׁוּם בַּל תִּלִּין. - וְאִידָךְ: [דְּבָרִים כ"ד] מוֹאֲלָיו הוּא נִשָּׂא אֶת נַפְשׁוֹ נִפְקָא, דְּבַר הַמוֹסֵר נִפְשׁוֹ עָלָיו. וְאִידָךְ הָהוּא מִיבְעֵי לִיהָ לְכַדְתַּנְיָא: [דְּבָרִים כ"ד] וְאִלּוּ הוּא נִשָּׂא אֶת נַפְשׁוֹ, מִפְּנֵי מָה עָלָה זֶה בְּכַבֵּשׁ וְנִתְלָה בְּאֵילָן וּמָסַר אֶת עַצְמוֹ לְמִיתָה - לֹא עַל שְׂכָרוֹ?

BABYLONIAN TALMUD *BAVA METZIA* 111B-112A

And Rabbi Yossi said in the name of Rabbi Yehudah: How do we understand the principle, “The wages of a hired worker shall not remain with you until the morning?” It must be as Rav Assi explained it; he said that even if the worker was only hired to pluck a single cluster of grapes [and the employer does not pay on time], he [the employer] is in breach, because of the principle of “[wages] shall not remain.” Alternatively, we can learn this from “he [is poor and] maintains his life with it.” [Deuteronomy 24:15] Or we can understand it as follows: “He [is poor and] maintains his life with it” – why would a person put themselves under the pressure of climbing up a tree and risking death if it were not for their wages?

STUDY QUESTIONS

- According to the first text, what is implied in the agreement between employer and employee?
- What principles do these texts create about the payment of wages?
- What assumptions are being made here about why people work?
- Are the principles in these texts reflected in current business practice?



SOCIAL JUSTICE AND THE WORLD OF BUSINESS – TEXT 2

טור חושן משפט של:יג

אין הפועל רשאי לעשות מלאכה בלילה ולהשפיר עצמו ביום ולא ירעיב ולא יסגף עצמו ויאכיל מזונותיו לבניו מפני ביטול מלאכתו של בע"ה שהרי מחליש כחו שלא יוכל לעשות מלאכת בע"ה בכה: כתב הרמב"ם בדרך שמוזהר בע"ה שלא יגזול שכר עני ולא יעבדנו כד מוזהר העני שלא יבטל מלאכת בע"ה ויבטל מעט כאן ומעט כאן ומוציא כל היום במרמה אלא חייב לדקדק על עצמו שהרי דקדקו חכמים בזימון ועל ברכה רביעית שלא יברכו ברכה רביעית בברכת המזון וכן חייב לעבוד בכל כחו שכן יעקב אמר [בראשית ל"א] בכל כחי עבדתי את אביכן לפיכך נטל שכר בעולם הזה על כן שניאמר [שם ל'] ויפרוץ האיש מאד מאד:

TUR *HOSHEN MISHPAT* 337:13

A worker is not entitled to work [elsewhere] at night and then hire himself out in the daytime, nor may he fast or mortify his flesh, nor feed his own food to his children, as these weaken him and render him unable to do the work of the employer properly (as the Rambam wrote). In the same way as an employer is not allowed to steal the wage of his employees nor delay their payment, so too the worker is not allowed to idle away his time, a little here and a little there, until his whole day is fraudulent. Rather, he must be punctilious with himself, since the sages were punctilious in freeing him from the collective grace after meals, and the fourth blessing of that grace.¹ Hence he is obligated to work with all his strength - as Jacob our ancestor said, "I have worked for your father with all my strength" [Genesis 31] – so that he is paid what he deserves in this world, as it is said, "The man [Jacob] became extremely prosperous." [Genesis 30:43]

STUDY QUESTIONS

- According to this text, what responsibilities does an employee have towards the employer?
- How does this impact the employee's life outside work?
- Do you consider the principles expressed in this text to be fair? Why/why not?
- Are the principles in this text reflected in current business practice?

¹ This allowance on the part of the sages is based on the principle that a person engaged in the performance of one mitzvah is free from the obligation to perform another.



SOCIAL JUSTICE AND THE WORLD OF BUSINESS – TEXT 3

רמב"ם הלכות שכירות ט:ד

השוֹכֵר אֶת הַפּוֹעֲלִים וְהִטְעוּ אֶת בַּעַ"ב אוֹ בַּעַ"ב הִטְעָה אוֹתָם אִין לָהֶם זֶה עַל זֶה אֶלָּא תִרְעוּמָת, בַּד"א בְּשֵׁלָא הִלְכוּ אַבְל הִלְכוּ הַחֲמֵרִין וְלֹא מִצְאוּ תְבוּאָה, פּוֹעֲלִים וּמִצְאוּ שְׂדֵה כְּשֶׁהִיא לְחָה, אוֹ שֶׁשָּׂכַר לְהַשְׁקוֹת הַשְּׂדֵה וּמִצְאוּהָ שְׁנֵת־מְלָאָה מַיִם, אִם בִּיקַר בַּעַ"ב מְלֹאכְתּוֹ מִבְּעָרְב וּמִצָּא שְׂאֲרִיכָה פּוֹעֲלִים אִין לַפּוֹעֲלִים כְּלוּם מַה בְּיָדוֹ לַעֲשׂוֹת, וְאִם לֹא בִיקַר נוֹתֵן לָהֶם שְׂכָרָן כְּפּוֹעֵל בְּטֵל שְׂאִינוּ דוֹמָה הֵבֵא טְעוּן לְבֵא רִיקוֹן וְעוֹשֶׂה מְלֹאכָה לְבְטֵל, בַּד"א בְּשֵׁלָא הִתְחִילוּ בְּמְלֹאכָה אַבְל אִם הִתְחִיל הַפּוֹעֵל בְּמְלֹאכָה וְחִזַּר בּוֹ אֶפְּלוּ בְּחֻצֵי הַיּוֹם חִזַּר שְׁנֵאָמַר כִּי לִי בְנֵי יִשְׂרָאֵל עֲבָדִים וְלֹא עֲבָדִים לְעֲבָדִים, וְכִיצַד דִּין הַפּוֹעֵל שֶׁחִזַּר בּוֹ אַחַר שֶׁהִתְחִיל! שְׁמִין לוֹ מַה שֶׁעָשָׂה וְנוֹטֵל, וְאִם קִבְּלוּ הוּא שְׁמִין לוֹ מַה שֶׁעָתִיד לַעֲשׂוֹת...

MAIMONDIDES [RABBI MOSHE BEN MAIMON, THE RAMBAM] LAWS OF HIRING 9:4

If an employer hires workers and they mislead the employer, or he misleads them, they have no claim against each other except for *taromet*.¹ In what circumstances? If the work has not yet begun. But if donkey drivers go [to the appointed place] and find no produce, or workers find the field wet,² or a worker hired to water a field finds it is already flooded – if the employer had visited [the work site] the previous evening and decided the workers were required – the workers have no remedy, since what could the employer have done? But if the employer did not visit, he must pay them “idle wages” (since a person who comes loaded is not the same as a person who comes empty and wastes time). In what circumstances? When the workers have not yet begun to work. But if the worker begins to work and then changes his mind, he may do so, even if he has only worked half the day, as it says: “For it is to Me [God] that the Israelites are slaves,” – they are slaves to Me, not slaves to other slaves. What is the rule for the worker who changes his mind after he has begun work? An estimate is made of what he has done, and he takes [the money for that]; but if he has been hired for an indefinite period, an estimate is made of what he still has to do...

STUDY QUESTIONS

- How many different sets of circumstances can you discern in this text?
- Why do you think the law is different once work has commenced?
- What does this text teach us about the relationship between employer and employee?
- Are the principles in this text reflected in current business practice?

¹ *Taromet* – “resentment” in this context is a non-monetary remedy, which amounts to court recognition that a person’s legal rights have been infringed. The nearest equivalent in our legal system is nominal damages.

² It is not possible to harvest a field if the field is flooded.



SOCIAL JUSTICE AND THE WORLD OF BUSINESS – TEXT 4

דברים טו:יב-טו, יח

יב כִּי־יִמְכַר לְךָ אֶחָיִךְ הָעִבְרִי אֹד הָעִבְרִיָּה וְעַבְדְּךָ שֵׁשׁ שָׁנִים וּבִשְׁנֵה הַשְּׁבִיעִית תִּשְׁלַחְנוּ חֲפָשִׁי מֵעִמְךָ:
יג וְכִי־תִשְׁלַחְנוּ חֲפָשִׁי מֵעִמְךָ לֹא תִשְׁלַחְנוּ רִיקָם: יד הָעֲנִיִּק תַּעֲנִיֵק לוֹ מִצִּמְצָמְךָ וּמִגִּרְנֶךָ וּמִקֶּבֶךָ אֲשֶׁר בֵּרַכְךָ יְהוָה
אֱלֹהֶיךָ תִתֶּן־לוֹ: טו וְזָכַרְתָּ כִּי עֶבֶד הָיִיתָ בְּאֶרֶץ מִצְרַיִם וַיִּפְדֶּךָ יְהוָה אֱלֹהֶיךָ עַל־כֵּן אֲנִכִּי מִצְוֶה אֶת־הַדָּבָר הַזֶּה
הַיּוֹם: ... יח לֹא־יִקְשֶׁה בְּעֵינֶיךָ בְּשִׁלְחֶךָ אֹתוֹ חֲפָשִׁי מֵעִמְךָ כִּי מִשְׁנֵה שְׂכָר שְׂכִיר עַבְדְּךָ שֵׁשׁ שָׁנִים וּבֵרַכְךָ יְהוָה
אֱלֹהֶיךָ בְּכֹל אֲשֶׁר תַּעֲשֶׂה:

DEUTERONOMY 15:12-15, 18

If your brother Israelite, or your sister Israelite, is sold to you as a slave, they may work six years for you; but [at the end of] the seventh year, you must send them away from you, free. And when you send them away free, you shall not send them empty-handed. You shall surely donate to them; something from your flock, something from your threshing-floor and something from your winepress with which The Holy One your God blessed you, you shall give to them. You should remember that you were a slave in the land of Egypt, and The Holy One your God redeemed you; hence, I command you to perform this matter today...It must not seem difficult to you when you send him away free – he served you for six years at half the cost of a hired slave – and [then] The Holy One your God will bless you in all that you do.

ספר החינוך מצוה תפב

...מִשְׁרָשִׁי הַמִּצְוָה לְמַעַן נִקְנָה בְּנַפְשֵׁנוּ מַדּוֹת מַעֲוֹלוֹת יְקָרוֹת וְחַמוּדוֹת, וְעַם הַנֶּפֶשׁ הַיְקָרָה וְהַמְעוּלָה נִזְכָּה לְטוֹב, וְהָאֵל הַטוֹב חָפֵץ לְהִיטִיב לְעַמּוֹ, וְהוֹדֵנוּ וְהִדְרָנוּ הוּא שְׁנִרְחַם עַל מִי שֶׁעֲבַד אוֹתָנוּ וְנָתַן לוֹ מִשְׁלָנוּ בְּתוֹרַת חֶסֶד מְלֵבֵד מֵה שֶׁהִתְנִינוּ עִמּוֹ לְתַת לוֹ בְּשִׂכְרוֹ, וְדָבָר מוֹשֵׁכֵל הוּא, אִין צוֹרֵךְ לְהֶאֱרִיךָ בּוֹ...

וּבִין נִתְבָּרַךְ בְּעַל הַבַּיִת לְרַגְלוֹ אוֹ לֹא נִתְבָּרַךְ חַיִּיב לְהָעֲנִיֵק לוֹ, וְעֲנֵק הָעֶבֶד לְעֲצָמוֹ וְאִין בְּעַל חוּבוֹ גּוֹבֵה הַיְמִנּוּ. וְיִתֵּר פְּרֻטִיָּה מְבוֹאָרִים בְּפֶרֶק רֵאשׁוֹן מִקְדוּשִׁין.

וְנוֹהֵגֵת מִצְוָה זוֹ בְּזָכְרִים וּנְקֻבוֹת בְּזִמְן הַבַּיִת, שֶׁאִין דִּין עֶבֶד עִבְרִי נוֹהֵג אֶלָּא בְּזִמְן שֶׁהַיּוֹבֵל נוֹהֵג כְּמוֹ שֶׁכְּתוּבִי בְּמַה שֶׁקָּדַם [מִצְוָה מ"ב], וּמְכַל מְקוֹם אֶף בְּזִמְן הַזֶּה יִשְׁמַע חֶכֶם וְיוֹסֵף לְקַח, שֶׁאִם שְׂכָר אֶחָד מִבְּנֵי יִשְׂרָאֵל וְעַבְדּוֹ זִמְן מְרוּבָה אוֹ אֶפְיֵלוֹ מוֹעֵט שֶׁיַּעֲנִיֵק לוֹ בְּצִמְצָמוֹ מֵאֲשֶׁר בֵּרַכְו הַשֵּׁם.

SEFER HA-HINUKH, MITZVAH 482

...The essence of this mitzvah is to enable us to acquire elevated, precious and desirable characteristics for our souls; so, if those precious and elevated souls deserve goodness, and the good God wishes to do good to His people, we thank and glorify [God] by having compassion upon the person who has worked for us, and by giving to him, in conformity with the doctrine of lovingkindness, something more than the agreed salary – and this makes good ethical sense, there is no need to expand upon the point further.

... Whether the employer has acquired the blessing as the result of the slave's work or has not, the employer must give the donation, which should be given to the slave for himself – a creditor of the slave's should not be able to obtain it from him. Further details are given in the first chapter of *Kiddushin*.

This mitzvah applied to both males and females when the Temple was standing (since the rules about Israelite slaves only applied when there was a jubilee year, as I set out above). Nonetheless, in our times an intelligent person can learn from this that if he has hired a Jew who has worked for him for a long period – or even a short period – then he must give that person something of what God has blessed him with when the person leaves.

STUDY QUESTIONS

- According to the first text, how should the employer address the issue of severance pay?
- How does *Sefer Ha-Hinukh* extend the obligation, and what difference does that make?
- How might one go about calculating appropriate severance?
- Are the principles in this text reflected in current business practice?



SOCIAL JUSTICE AND THE WORLD OF BUSINESS – TEXT FOR GROUP STUDY

Halakhah expresses concern for a poor person's dignity as well as his or her material welfare. Rambam articulated that gifts, loans, partnerships, and offers of employment provide the highest level of *tzedakah*, since they liberate the poor person from public assistance altogether. The Bet Yosef – Joseph Caro's commentary on the Tur's law code - explains that Rambam elevated this level above all others precisely because these types of assistance most preserve the poor person's dignity.

Rambam also lays out a clear hierarchy of recipients. A person must first support her parents and then children, then siblings, followed by other relatives, then by poor people in her community, and finally those in need of support who live in other communities. The Tur adds that even if the employees came from a different city we must at least consider them equivalent to the poor in our community. But if we take a closer look at the hierarchy of recipients, we find that employees should take precedence even over other poor people in the city.

The highest ranked recipients, parents and children, have the most intimate relationship to the donor. Siblings have a slightly less close relationship. Extended family follows siblings on the list of recipients. It is only after exhausting even the most distant relatives that we arrive at the unrelated poor in the local city. Here the donor and recipient share only a local identity, which is what confers their minimal relationship.

When considered from this angle, employees look more like extended family. First, an employer is significantly more likely to know her employees than other poor individuals in her community. In addition, just as a person identifies with his extended family ("We are both Cohens"), employees at varying levels of a company tend to identify through that shared affiliation ("We both work at Cohen Manufacturing"). Hence, we can argue that employees take precedence over other non-related poor people in the hierarchy of *tzedakah*.

How would this work in practice? We can suggest that whenever it is possible for the employer to provide assistance to an economically vulnerable worker, the employer should do so. This might mean that if there are two equally qualified candidates for promotion, the needier of the two workers should take precedence, since promotion to a higher-paying position falls squarely within Rambam's highest means of giving. If a promotion is not available, a raise or bonus would also constitute high-level *tzedakah*. Further, the employer could ascribe the raise or bonus to the worker's performance and not to *tzedakah*, since the general obligation to tell the truth can be suspended in the interests of "the ways of peace" (דרכי שלום), which here would mean protecting the needy person's dignity. Even in the case of an employee with negative performance – where a bonus or raise is not feasible – the employer could offer direct *tzedakah* to the employee, as a means of affirming their relationship – a relationship that can, and should, be understood as far more than provision of services in return for money. In the workplace, as in all other areas of life, *halakhah* demands that we recognize and affirm each person's human dignity.

- Abe Friedman



SESSION SUGGESTIONS – SOCIAL JUSTICE AND THE WORLD OF BUSINESS

INTRODUCTION

There is a relationship between this essay and the workers' rights element of the unit on kashrut. We suggest that you do this session before the kashrut session, as participants will then be able to identify and build upon common elements.

Recap the basic areas of the essay:

- the relationship between employer and employee
- the employer's obligations: wages, benefits, hiring and firing
- the employee's obligations: the value of labor, benefits, commitment

Discuss which of these areas brought new insights to participants, and why. You might also want to take time here to draw out which of your participants are employers, which are employees, and which might not be in the field of paid employment at this time.

CHAVRUTA STUDY

The texts deal in more depth with the various areas identified in the essay. The final question in for each text is the same – it is designed to enable participants to focus directly on the relevance of the texts to the business world of today. Does any clear message emerge from the *halakhah* that could be usefully applied for participants in their day-to-day lives?

GROUP STUDY

The text provided is by Abe Friedman, a student in the Ziegler School. It is designed to open up the relationship between employer and employee in the light of the rules about priority in giving *tzedakah*. You might wish to bring along Rambam's 'ladder of tzedakah' for participants to use (see *Hilkhot Matanot L'Aniyim* 10:7). What would it mean for employer/employee relationships to be reconstrued in the light of the obligation to perform the mitzvah of *tzedakah*?

If you do not wish to use the text, there are numerous materials available on Jewish business ethics via the internet. Or you could turn the session more personally towards participants, asking them to articulate situations in which they found themselves having to consider some of the areas dealt with in the essay, and the way they acted then. Another possibility is roleplay – you could take each area of the essay and ask a group to present a small performance related to its content.

CONCLUSION

Has the material dealt with in this session changed participants' views of the employer/employee relationship? If so, how, and how does this apply to them personally? Allow them to update their manifestos with this information. Hand out the essay for next time, and conclude the session.



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MUSICAL PLAYLIST TO ACCOMPANY EACH SESSION

Compiled by Noam Raucher

You can use any or all of the songs in the suggested sessions. They are listed in the order of title-artist-album, and all are available on iTunes. Please note that one or two have explicit lyrics – these are clearly marked.

Introduction

How Come – Ray LaMontagne – Trouble
For What It's Worth – Buffalo Springfield – Buffalo Springfield
If I Had A Hammer – Peter, Paul and Mary – The Best of Peter Paul and Mary
What's Going On – Marvin Gaye – What's Going On

The Prophets and Social Justice

Fuel – Ani DiFranco – Little Plastic Castle
Chimes of Freedom – Bob Dylan – Bob Dylan: The Collection
Keep On Rockin' In The Free World – Neil Young – Greatest Hits

The Ethical Impulse in Rabbinic Judaism

Talkin' Bout A Revolution – Tracy Chapman – Tracy Chapman
Blowin' In The Wind – Peter, Paul and Mary – The Best of Peter, Paul and Mary
Down By The Riverside – Waste Deep In The Big Muddy And Other Love Songs

A Torah of Justice – A View from the Right?

Hands – Jewel - Spirit
The Times They Are A Changin' – Bob Dylan – The Essential Bob Dylan
We Are One – Safam – Peace By Peace

A Torah of Justice – A View from the Left?

He Was My Brother – Simon and Garfunkel – Wednesday Morning, 3AM
Oxford Town – Bob Dylan – The Freewheelin' Bob Dylan
A Change Is Gonna Come – Sam Cooke – Ain't That Good News

Environment

The Horizon Has Been Defeated – Jack Johnson -On and On
Holy Ground – The Klezmatics – Wonder Wheel
Mercy Mercy Me (The Ecology) – Marvin Gaye – What's Going On
Big Yellow Taxi – Joni Mitchell - Dreamland

Business Ethics

Working Class Hero – John Lennon – Working Class Hero: The Definitive Lennon
Carpal Tunnel – John O' Conner – Classic Labor Songs From Smithsonian Folkways
We Do The Work – Jon Fromer - Classic Labor Songs From Smithsonian Folkways

International Economic Justice

We Are The World. – USA For Africa – We Are The World (Single)
Outside A Small Circle of Friends – Phil Ochs – The Best of Phil Ochs
El Salvador – Peter, Paul and Mary – The Best of Peter Paul and Mary

Special Needs

What It's Like – Everlast – The Best of House of Pain and Everlast – **EXPLICIT LYRICS**
Mr. Wendall – Arrested Development – 3 years, 5 months, and 2 days in the life Of...
The Boy In The Bubble – Paul Simon – The Essential Paul Simon

Kashrut

All You Can Eat – Ben Folds – Supersunnyspeedgraphic, The LP – **EXPLICIT LYRICS**
Mr. Greed – John Fogerty - Centerfield
We Just Come To Work Here, We Don't Come To Die –Anne Feeney - Classic Labor Songs From Smithsonian Folkways

Israel

Hope: Pray On – Sweet Honey In The Rock - 25
Yihyeh Tov – David Broza – Things Will Be Better, The Best Of David Broza
Misplaced – Moshav Band

Afterword

With My Own Two Hands – Ben Harper – Diamonds On The Inside
Living For The City – Stevie Wonder – Number 1's
Redemption Song – Bob Marley - Legend



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