

Halana Schar Sachir—Withholding the Worker's Wages

Chaim Saiman
Villanova Law School

ויקרא פרק יט פסוק יג

לא תעשק את רעך ולא תגזל לא תלין פעלת שכיר אתך עד בקר :

דברים פרק כד

(יד) לא תעשק שכיר עני ואביון מאחיק או מגרך אשר בארצך בשעריך :
(טו) ביומו תתן שכרו ולא תבוא עליו השמש כי עני הוא ואליו הוא נשא את נפשו ולא יקרא עליך אל יקוק והיה בך חטא : ט

משלי פרק ג

אל תאמר לרעך לך ושוב ומחר אתן ויש אתך :

Leviticus 19:

13: You shall not oppress your neighbor or rob him. The wages of a hired servant shall not remain with you all night until the morning.

Deuteronomy 24:

14: You shall not oppress a hired servant who is poor and needy, whether he is one of your brethren or one of the sojourners who are in your land within your towns;

15: you shall give him his hire on the day he earns it, before the sun goes down for he is poor, and sets his heart upon it; lest he cry against you to the Lord, and it be sin in you.

Proverbs 3

Do not say to your neighbor, "Go, and come again, tomorrow I will give it" -- when you have it with you.

Major points developed in Mishna and Talmud

- Biblical prohibition applies only the during the first pay period after work is completed
- Rabbinic prohibition kicks in after biblical prohibition “runs out”
- Discussion of interrelationship between several prohibitions found in these verses
- Does not apply until wages are demanded
- Does not apply if parties agree (or are assumed to agree) that wages will not be paid immediately
- Does not apply if hired via agency
- Does not apply if owner has no money
- Query as to whether prohibition applies to “jobber” as well as day laborer
- Query as to whether prohibition applies if employee had arranged for wages to be paid by a third party.

Emerging Themes in “Halakha as Values”

- Literary sensitivity to the structure of *sugyot*. A concerted effort to reintegrate halakha and aggadah, and claims that even “halakha” can in fact be telling “aggadic” messages. This is less about sharp-edged rules as much as frameworks and perspectives for solving life’s and societies’ hard problems.
- Halakhic categories are substantive. Their interpretation, has, and should be, performed in line with an awareness of what the law looks to accomplish and the results it produces in the world. The legal debates in the Talmudic literature reflect attempts by different rabbis to weigh the pros and cons, costs and benefits of different forms of how the mitzvah is constructed and conceptualized. The Talmudic discourse invites us to participate in the ongoing dialogue of concretizing God’s commandments in our lives. Halakha is **authoritative** rather than **authoritarian**.
- Law cannot be discussed from a purely analytical-textual perspective but must be considered in light of the social forces that give rise to the legal rules and analysis. Because legal talk is cheap until it is put into action, the best way to study the halakha’s underlying commitments is to test how *halakhot* have been put into practice.
- A greater awareness that that halakhic tradition is comprised of a variety of competing strands developed over the centuries and across continents. In our learning and reading of halakha we are aiming not for a reading that “answers” every *shitta*, but for a “best reading” of the tradition. In determining what counts as a “best reading” we invariably employ tools and perspectives that are governed by a broader range of factors, many of which lie beyond the technical halakhic details found in a given *sugya*, but which are derived from the system as a whole.
- Learning and thinking about halakha must begin from the classical sources, and needs to be aware of their complexity and nuance. However, halakha looks to speak not only to the world reflected in the Gemara, but to the world that we find ourselves living in. The values approach aims to translate rabbinic concepts and terms into those which prevail in the current intellectual and cultural milieu so that we can recognize and apply halakha in every facet of our lives.

