

## WHAT'S THE LAW?™ – ISSUE 162: THE THERAPIST'S MORAL DILEMMA &amp; THE GOWN GAFFE

The news leaked. Excitement was thus abound in the Jerusalem apartment building, as Shira Berger was about to officially announce her engagement in but two hours. Some of the neighbors even figured out to whom. As most of the neighbors began baking for the "surprise" event later that evening, Alan Weiner seemed awfully perturbed.

"The guy is my client," Alan thought to himself, "and he's not emotionally stable. In my personal professional

assessment, I don't believe that he is ready to get married, but as a professional, I am forbidden to disclose confidential information about my patients.

If I let this relationship materialize, I may be guilty of standing idly by my brother's blood, but if I disclose information, I will breach the trust, destroy my client, jeopardize my job as well as the entire field of practice; should the public lose faith in the ability for therapists to respect the confidentiality of their patients."

## WHAT'S THE LAW?

Please email us with your comments, questions, and answers at [weekly@projectfellow.org](mailto:weekly@projectfellow.org)



## LAST WEEK'S CASE 279: THE GOWN GAFFE

With a family of seven daughters, preparations for the eldest's wedding was a holiday of its own. Rather than have her daughter's spend the next few months combing through gown rentals, Mrs. Gold decided to commission a dressmaker to come to their home. Three local dressmakers came highly recommended.

At 8:30 A.M. on Tuesday, January 22nd, Mrs. Gold phoned The Dress Shop and asked if they could send someone over during the afternoon. The Dress Shop told Mrs. Gold that they were not sure they could make it and they would call her back at 2:00 PM to confirm.

At 2:00, The Dress Shop duly phoned. "Hello Mrs. Gold, Should we come over?" "Sure! All my daughters will be

waiting patiently for you." "O.K. we'll be over before 4 PM."

Dianne from The Dress Shop showed up at the door only to find that her competitor, Gail from The Gown Gallery had already began to work.

Not knowing if The Dress Shop would pull through, Mrs. Gold had subsequently called The Gown Gallery at 9 AM. When The Dress Shop called at 2, Mrs. Gold thought she was speaking with The Gallery and told The Dress Shop to come...

"Do you realize, Mrs. Gold that I opted for your family of seven over another job? Now, I'm out both."

- Diane demanded compensation for her trip and missed opportunity.

## WHAT'S THE LAW?



## The Answer:

Mrs. Gold is liable to pay Dianne. (see below for compensation rate).

[Detailed Explanation](#)

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### Cancelled Employment Compensation

A negligently cancelled his/her employment commitment with B after B could no longer find any previously available work. B's reliance on A's commitment caused him to lose alternative wages. While A is not required to pay B for the service that he did not receive, A is required to compensate B for the financial loss incurred as a result of responsibly relying on A's word.

However, once B begins or sets out for the job, the commitment was further solidified. By beginning the work, the employee earned his/her legal right to force the employer to uphold his/her side of the verbal commitment.

Where A then cancels the employment, A is required to compensate B even if B did not forfeit alternative employment as a result of relying upon A's word.

### Subjective Compensation Rate

**Does the employer have to pay the employee for the full wages he/she expected to earn?**

While on one hand, the worker lost the job opportunity, on the other hand, he/she did not have to work. The employer is liable to pay for the loss the employee suffered as a result of the employer's negligence in upholding the commitment. If the employee would be willing to accept less money for vacationing, then the employer need not pay the employee the full expected wages.

The degree of liability (i.e. the amount the specific worker would honestly agree to take in order not to have to work) is subjective to both the nature of the job, the worker, and the worker's financial situation.

For example, some workers would agree to take less money if it meant not having to work, while others would rather work hard and receive their full pay.

### Exception

If A was not negligent or irresponsible, but cancelled due to an unforeseeable accident A is absolved.

### Explanation

#### Indirect Damage (*grama*)

1. Beit Din generally lacks authority to collect for indirect damages resulting from the aggressor's actions. Nevertheless, the aggressor has a moral obligation to pay for intentional indirect damages, while is absolved from paying for unintentional indirect damages [Choshen Mishpat 386, Imrei Yosher].

#### Intentional Indirect Clear and Present Damage (*garmi b'pshia*)

2. At times, Beit Din even has the authority to collect for indirect natural progressions of the aggressor's action or inaction if the damages are due to a clear and imminent result of the aggressor's irresponsible action, provided the prescribed indirect damages is of common occurrence [Sha"ch ibid.]

*Consider the following scenario:*

**A verbally committed to meet B in court on a particular day. B spent money to get there. A was negligent and did not show. A must compensate B for the reasonable and foreseeable expenditures he/she spent as a result of relying on A's word** [Choshen Mishpat §14: 5 Rema].

### APPLICATION

Mrs. Gold knew that there was a *chance* that Dianne would call to confirm. Telling the caller to show up without clarifying to whom she was speaking was irresponsible.

Irresponsibly calling the wrong service provider to come purposelessly; Mrs. Gold would be liable for the traveling expenses and clear and present indirect losses she caused to Dianne.

As Mrs. Gold "cancelled" Diane's job after Dianne already set out to the job, she would be required to configure her degree of liability based upon the travel expenses and an expected job of seven dresses, subtracting the discounted amount Dianne would willingly accept for not having to actually work.