The Business Lunch in the Eyes of Halachah and the CRA

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Case Study: Jack, an employee of Joe's business, is sent on a business trip from Toronto to London, England. While in London, Jack meets a client for lunch, at which the two of them spend $1000 on various alcoholic beverages and meats. Upon his return to Toronto, Jack bills his employer for the $1000 meal, talking about how he built goodwill between the client and the company, but Joe disputes the charge, saying he never authorized the lunch meeting. Additionally, Joe argues that Jack clearly overspent on the meal, and that even if he had authorized it, he should only have to pay a small fraction of the cost. What factors should be considered in rendering a halachic ruling in this case?

Company Policy or Other Agreement

1. **Rabbi Yoseph Karo, Shulchan Aruch, Choshen Mishpat 331:1**

השוכר את הפועלים ואמר להם להשכים ולהעריב מקום שנהגו שלא להשכים ושלא להעריב אינו יכול לכופן אפי' הוסיף על שכרן כיון שלא התנה כן בשעה ששכרן:

One who hires labourers and told them to rise early and remain late [to work], in a place where the practice is for them not to rise early or remain late [to work], he may not force them, even if he adds to their wages, since he did not stipulate this at the time that he hired them.

Legal Ruling by a Government Agency

2. **Rabbi Isaiah of Trani II, Piskei Riaz, Bava Batra 3:36 (Cited in Shach, Choshen Mishpat 73:39)**

ונראה בעיני שלא נאמר דד"ד אלא בדברים שהמלך גוזר להנאתו כגון המכסים והמסיות וכיוצא בהן אבל בדברים שבין אדם לחברו אין לנו לדון אלא על פי תורתינו

It seems to me that we don't say that "the law of the land is the governing law" unless it is something which the king decrees for his benefit, such as levies and taxes and similar things, but laws between two individuals should be judged according to Torah [law].

3. **Rabbi Chaim Kohn, Business Halacha Weekly Newsletter #431 (10/24/2018)**

Nonetheless, even according to those situations in which dina d'malchusa does not apply, it often generates a common commercial practice. On contractual issues, such as those between employer and employee, buyer and seller, or landlord and renter, it is not feasible to stipulate everything. Therefore, the common commercial practice is binding in these areas, whenever not stipulated otherwise (C.M. 330:1; Shach 356:10).

Common Practice

4. **Babylonian Talmud, Bava Metzia 75b (Citing Mishna 6:1), 76a**

השוכר את האומנין והטעו זה את זה אין להם זה על זה אלא תרעומת...

One who hires labourers, and they deceived one another, they have nothing but complaints against each other.

חזרו זה בזה לא קתני אלא הטעו זה את זה דאטעו פועלים אהדדי היכי דמי דאמר ליה בעל הבית זיל אוגר לי פועלים ואזל איהו ואטעינהו היכי דמי אי דאמר ליה בעל הבית בארבעה ואזיל איהו אמר להו בתלתא תרעומת מאי עבידתיה סבור וקביל אי דאמר ליה בעל הבית בתלתא ואזיל איהו אמר להו בארבעה ה"ד אי דאמר להו שכרכם עלי נתיב להו מדידיה... לא צריכא דאמר להו שכרכם על בעל הבית ולחזי פועלים היכי מיתגרי

"They reneged on the agreement with one another" it does not say, rather, "they deceived one another", [meaning] that the labourers deceived one another. What is the case? [The case is where] the employer said to [his employee], "go and hire labourers for me", and [the employee] went and deceived [the other labourers]. [Again,] what is the [exact] case? If the employer told him [hire me labourers] for four [Dinars], and he went and told them [that they are hired] for three [Dinars], why do they have complaints – they heard and accepted [the terms]? If the employer said to him [to hire labourers] for three [Dinars], and he went and told them [their pay would be] four, [again,] what is the case? If he told them that their wages would be paid by him, let him give them from his own…

[Rather,] he told them that their wages would be paid by the employer. [If so,] why don't we check how much labourers are [generally] hired for?

May an employee spend an employer's money and expect to get reimbursed?

- No

5. **Rabbi Yoseph Karo, Shulchan Aruch, Choshen Mishpat 358:10**

נסורת שהחרש מוציא במעצד שלו בכשיל של ב"ה ואם היה עושה אצל ב"ה אף הנסורת של ב"ה. רמ"א: וכן בשאר מלאכות כל שב"ה מקפיד עליו הוא של ב"ה שאינו מקפיד הוא של פועל:

The shavings of wood produced by a carpenter's plane belong to him. [If chips of wood were produced] by a hatchet, they belong to the employer, but if he was working with the employer present, even the shavings [produced by the plane] belong to the employer. Rema: So too for all work, anything that the employer is careful about, belongs to him, [but] that which he is not careful about, belongs to the worker.

6. **Rabbi Yechiel Michel Epstein, Aruch Hashulchan, Choshen Mishpat 331:6**

ואם לא התנה ליתן להם מזונות וגם אין מנהג קבוע בזה א"צ ליתן להם מזונות דהבא להוציא עליו הראיה.

And if he did not stipulate that he would provide them with food, and there is also no set custom in this regard, he does not need to provide food, as "he who comes to claim [from another] must bring proof".

- Possibly Yes

7. **Rabbi Yoseph Karo, Shulchan Aruch, Choshen Mishpat 182:1-3**

...האומר לשלוחו צא ומכור לי קרקע או מטלטלין או קנה לי הרי זה מוכר ולוקח ועושה לו שליחותו וכל מעשיו קיימין ואין העושה שליח צריך קנין ולא עדים אלא באמירה בעלמא בינו לבין חבירו ואין צריך עדים אלא לגלות הדבר אם כפר אחד מהם...
עבר השליח על דעת משלחו לא עשה כלום ודוקא שהודיע שהוא שליח של פלוני לפיכך אע"פ שמשך או המשיך אם נמצא שעבר על דעת משלחו בטל המקח ומחזיר אבל אם לא הודיעו שהוא שלוחו של פלוני נקנה המקח ויהיה הדין בינו ובין זה ששלחו:
טעה וקנה ביוקר אפילו בכל שהוא המקח בטל בין בקרקע בין במטלטלין שיאמר לו לתקוני שדרתיך ולא לעוותי לפיכך אם התנה עמו שעשהו שליח בין לתיקון בין לעוות אפילו מכר לו שוה מנה בדינר או לקח לו שוה דינר במנה אינו יכול לחזור בו וחייב המשלח ליתן כפי התנאי: הגה: מי שצוה לאחד שיתעסק לו באיזו דבר והוא הוציא עליו הוצאות אם הוציא עליו יותר מן הרגילות להוציא על עסק כזה א"צ להחזיר דלא אסיק אדעתיה שיוציא כל כך אבל אם לא הוציא יותר מן הרגילות חייב לשלם לו...

…If one said to his agent, go and sell land or merchandise, or purchase for me, [the agent may] buy or sell and perform his agency, and all of his actions are lasting, and the person who appoints the agent does not need a legal acquisition or witnesses, just simple discussion between the two parties [is required]. Witnesses would only be necessary to clarify the matter if one of them denied it…

If the agent [performed a transaction] against the wishes of his sender, it has no legal ramifications. This is specifically when he notified [the third party] that he was the agent of this individual, therefore, even if he [bought or sold by legal acquisition], if it was found that he went against the wishes of his sender, the purchase is invalid, and should be returned. But if he did not notify [the third party] that he was the agent of this individual, the purchase is valid, and the dispute will be between the agent and he who sent him.

If [the agent] erred and overpaid, even slightly, the purchase is void, whether land or merchandise, as [the sender] can say to him "I sent you for my benefit, not for my detriment". Therefore, if they stipulated that he would be made his agent for benefit or detriment, even if he sold him a Maneh's worth [of merchandise or land] for one Dinar [note: 1 Maneh = 100 Dinar], or if he purchased a Dinar's worth for a Maneh, he cannot renege on it, and the sender must pay according to his stipulation. Rema: One who commanded another to take care of a certain business matter, and he paid money for it, if he paid more than would be normal to pay [under these circumstances], he does not need to reimburse [his agent], since he never expected that [the agent] would pay so much, but if he did not pay more than would be normal, he must repay him…

8. **Rabbi Shabtai Hakohen, Shach, Choshen Mishpat 77:19**

ובשותפין, לא שייך לומר לתקוני שדרתיך ולא לעוותי...

[In a case of] partners, it is not possible to say "I sent you for my benefit, not for my detriment"…

9. Maimonides, Mishneh Torah, Laws of Agents and Partners 3:9 (Chabad.org translation)

הבא בהרשאה שמחל לזה הנתבע או שמכר לו או שמחל לו על השבועה או שעשה עמו פשרה לא עשה כלום שהרי אומר לו לתקן שלחתיך ולא לעוות לפיכך אם התנה עמו בין לתקן בין לעוות אפילו מחל לו על הכל הרי זה מחול:

When a person who was granted power of attorney waives the payment owed by the defendant, sells him the article he was sent to collect, waives his obligation to take an oath, or negotiates a compromise with him, his actions are of no substance. For the principal will tell the agent: "I sent you to improve my position, not to impair it." Therefore, if the agent had the principal stipulate that the agency is effective whether he improves his position or impairs it, his acts are binding, even if he waives payment of the entire obligation.

In what ways is our case study different than the case outlined in source 13? How might the differences change our ruling?

Guessing Based on Other Details of the Agreement

10. Rabbi Yisrael Isserlein, Responsa Terumat Hadeshen #323 (Cited in Ketzot Hachoshen, Choshen Mishpat 331:1)

ראובן שכר את שמעון עבור עשרה זהובים שילך לו למדינה פלונית אל לוי ומסר לו כתבים כו' ויחזור לתוך ג' שבועות, וקודם שיצא שמעון לדרכו הלך ראובן גם כן לצד אחר, וכשרצה שמעון לצאת לדרך אמר לאחד או לשנים מבני העיר ראובן שכרני בכך וכך ובדעתי שיתן לי מקודם ההוצאה על הדרך בהליכה ובחזרה כו', סובר אני שיחזיר לי ההוצאה מלבד השכר שקצב לי וחזר ועשה שליחותו ותובע מראובן הוצאות, השיב ראובן על הוצאות לא היה דעתי ובשביל כך קצבתי לך עשרה זהובים לשכרך אלמלא כך לא היה ראוי לתת לך עשרה זהובים, ושמעון טוען מנהג כל השוכרים כה"ג שיתנו לעולם הוצאות לבד השכירות ככה יעשה לי גם כן, הדין עם מי. תשובה, יראה דהדין עם ראובן מאותו טעם שהוא טוען דהדמים מודיעים ששכרו על הוצאות שלו, שהרי שמעון מודה לו שאין ראוי לתת שכר גדול כ"כ בשליחות כזאת...

Reuven hired Shimon for [a sum of] 10 gold coins to go to a certain country to Levi and deliver documents to him and return within 3 weeks. Before Shimon left, Reuven was absent, and when Shimon [was about] to leave, he mentioned to one or two of the locals: "Reuven hired me for such and such, and it was my understanding that he would advance me [money] to cover the expenses of the journey, in both directions etc. I understand that he will reimburse me for the expenses in addition to the wages he set for me." He went and fulfilled his agency, and he requested [the money covering] the expenses from Reuven. Reuven responded: "I had no intention of reimbursing you for your expenses, and that is why I set your salary of 10 gold coins. If not for [my understanding that you would be covering the expenses], it would not be appropriate to offer you 10 gold coins. and Shimon claims that it is the practice of all those who hire similar workers to always cover expenses in addition to the wages, and so should be done to me. Who is correct? Answer: It appears that Reuven is correct, for the reason that he claims, that the wages make it clear that he hired him with the intention that [Shimon] cover his own expenses. In fact, Shimon agrees with him that it is not fitting to give such a large salary for this type of agency…

11. Rabbi Yechiel Michel Epstein, Aruch Hashulchan, Choshen Mishpat 331:6

...ודע דאם ריבה להם שכר או מיעט להם נגד שארי פועלים אין בזה ראיה להוסיף או לגרוע נגד המנהג...

And know, that if he increased or decreased their wages relative to other workers, there is no proof to add or deduct [benefits] against the custom.

How does income tax law classify such a situation?

1) What would different governments allow to be 'written off' in these circumstances?
2) Would this constitute "Law of the land" or common practice? Why or why not?
3) Can we draw any ethics conclusions from these laws?

12. Canada.ca, Business Expenses (slightly modified for space purposes)

The maximum amount you can claim for food, beverages, and entertainment expenses is 50% of the lesser of the amount you incurred for the expenses or an amount that is reasonable in the circumstances

These limits also apply to the cost of your meals when you travel or go to a convention, conference, or similar event. However, special rules can affect your claim for meals in these cases. For more information, go to travel.

These limits do not apply if any of the following apply:
-Your business regularly provides food, beverages, or entertainment to customers for compensation (for example, a restaurant, hotel, or motel).
-You bill your client or customer for the meal and entertainment costs, and you show these costs on the bill.
-You include the amount of the meal and entertainment expenses in an employee's income or would include them if the employee did not work at a remote or special work location. In addition, the amount cannot be paid or payable for a conference, convention, seminar, or similar event and the special work location must be at least 30 kilometers from the closest urban centre with a population of 40,000 or more. For more information about urban centres, go to Statistics Canada data on population and dwelling counts.
-You incur meal and entertainment expenses for an office party or similar event, and you invite all your employees from a particular location. The limit is six such events per year.
-You incur meal and entertainment expenses for a fund-raising event that was mainly for the benefit of a registered charity.
-You provide meals to an employee housed at a temporary work camp constructed or installed specifically to provide meals and accommodation to employees working at a construction site (note that the employee cannot be expected to return home daily).

13. Canada Revenue Agency, Income Tax Interpretation Bulletin IT 518-R

Subsection 67.1(1) provides that costs in respect of the human consumption of food or beverages, or the enjoyment of entertainment are deemed to be 50% of the lesser of:
(a) the amount actually paid or payable in respect of these items; and
(b) an amount that would be reasonable in the circumstances to pay for them.
In this bulletin, this is referred to as “the 50% limitation.” It generally applies to amounts incurred after February 21, 1994 in respect of food and beverages consumed and entertainment enjoyed after February 1994. Before February 22, 1994, subsection 67.1(1) provided that food, beverages and entertainment expenses were subject to an 80% limitation. Various exceptions to the application of the 50% limitation are explained below. Also, see 15 below for the special rule concerning conference, convention and seminar expenses.

14. IRS Publication 463

As discussed above, entertainment expenses are generally nondeductible. However, you may continue to deduct 50% of the cost of business meals if you (or an employee) is present and the food or beverages are not considered lavish or extravagant. The meals may be provided to a current or potential business customer, client, consultant, or similar business contact. Food and beverages that are provided during entertainment events are not considered entertainment if purchased separately from the entertainment, or if the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. However, the entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages.
Other rules for meals and entertainment expenses.
Any allowed expense must be ordinary and necessary. An ordinary expense is one that is common and accepted in your trade or business. A necessary expense is one that is helpful and appropriate for your business. An expense doesn't have to be required to be considered necessary. Expenses must not be lavish or extravagant. An expense isn't considered lavish or extravagant if it is reasonable based on the facts and circumstances.

15. Internal Revenue Bulletin 2018-42

Section 274(k) generally provides that no deduction is allowed for the expense of any food or beverages unless (A) such expense is not lavish or extravagant under the circumstances, and (B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages. Section 274(n)(1) generally provides that the amount allowable as a deduction for any expense for food or beverages shall not exceed 50 percent of the amount of the expense that otherwise would be allowable.

16. Gov.uk, Expenses and Benefits: Entertainment (modified for space purposes)

Entertainment can involve eating, drinking and other hospitality. Types of entertainment include:
-'business entertainment' of clients - eg discussing a particular business project or forming or maintaining a business connection
-'non-business entertainment' of clients - eg entertaining a business acquaintance for social reasons
What to report and pay depends on the type of entertainment and who arranges and pays for it. For "business entertainment of clients…You must report the cost on form P11D. You don't have to deduct or pay any tax or National Insurance… For non-business entertainment:

you arrange and pay	employee arranges, you pay	employee arranges and pays, you reimburse
-report the cost on form P11D	-report the cost on form P11D	-add it to your employee's other earnings
-pay Class 1A National Insurance on the value of the benefit	-add the full cost to the employee's earnings and deduct Class 1 National Insurance (but not PAYE tax) through payroll	-deduct and pay PAYE tax and Class 1 National Insurance through payroll

17. Rabbi Moshe Isserles, Mapah, Choshen Mishpat 331:1

לא היה מנהג בעיר אבל רוב אנשי העיר באו ממקום שיש שם מנהג אזלינן בתר מנהג העיר שבאו משם. הלך ממקום שנהגו להשכים ולהעריב למקום שנהגו שלא להשכים ולהעריב או איפכא אזלינן בתר המקום ששכר שם הפועלים. ואינו קרוי מנהג אלא דבר השכיח ונעשה הרבה פעמים אבל דבר שאינו נעשה רק פעם אחת או שני פעמים אינו קרוי מנהג:

If there was no [set] practice in the city, but most of the people of the city came from a place where there was [a defined] practice, we follow the practice of the city they came from. If one went from a place where [a practice was kept] to a place where [it was not kept], or the reverse, we follow the place where the workers were hired. It is only considered a [binding] practice when it is common and happens many times, but something that just happened once or twice would not be considered a [binding] practice.

18. Workplace Halacha, Chapter 17 – On the House? Personal Use of Office Supplies

-In the absence of any prior agreement or discussion, halachah recognizes two standards: the preferences of the individual employer, and the industry norm. Because there are different opinions among the poskim concerning an employer who is more particular than the industry standard, it is preferable in such cases to abide by the stricter approach, and go along with the wishes of the employer.
-If an employer is more generous than the industry standard, his personal policy governs.
-Practically speaking, it is very difficult to establish an "industry standard" for many benefits. Some companies supply cell phones and allow personal use; others do not. Some provide chocolates, coffee, medical benefits, and car allowances; others do not. Some allow five vacation days, others, ten days, and others still, fifteen or twenty. Some permit carrying over vacation days; others do not. The employee's position within the organization is a very relevant issue.
-The higher his level, the more benefits he will usually receive.
-In the absence of an agreement between the parties, and in the absence of an industry standard which requires the employer to supply certain benefits or extras, the employer is not required to supply them, and the employee should not take them on his own without first obtaining the employer's consent.
-"The employer's consent" need not be consent from the owner of the company himself. Permission from someone who is authorized to make such decisions, usually the employee's direct boss, is sufficient.
-According to some poskim, if an employee is unsure about the industry standard or his employer's policy, he can fall back on the following assessment: would he feel comfortable making personal use of company property or equipment in front of his employer? If he would, he may do so without first asking permission. However, if the employee would not feel comfortable about it, he should not use company property without the employer's explicit permission (see Mishpatei HaTorah by Rav Tzvi Spitz, vol. I, 49:4).