Employee Injury: From Carpal Tunnel to Ransomware

R' Mordechai Torczyner – torczyner@torontotorah.com

YESHIVA UNIVERSITY
TORAH MITZION
BEIT MIDRASH

The Employer-Employee Relationship

1. Veronique Morin, Facts of Hunt v. Sutton Group Incentive Realty Inc. (2001)
   http://www.lavery.ca/DATA/PUBLICATION/335_en~v~an-ontario-employer-is-held-liable-for-an-employee-s-intoxication.pdf

On December 16, 1994, Ms. Hunt attended an office party held on the premises of her employer, Sutton Group Incentive Realty Inc. The party started at around 1:00 p.m. and ended at 6:30 p.m. During the party, the employer's business activities continued without interruption. While participating in the festivities, Ms. Hunt attended her usual duties as telephone receptionist and was expected to clean up the premises after the party. Around 4:00 p.m., a representative of the employer, noting that Ms. Hunt was inebriated, suggested that she phone her husband to come and take her home. Thereafter, the representative kept an eye on her until she left the office.

Around 6:30 p.m., Ms. Hunt left her employer's premises with some co-workers and went on to another bar, less than a kilometer away. Around 9:45 p.m., Ms. Hunt was involved in a car accident 12.2 kilometers from the bar. She suffered multiple fractures and severe brain injury, some of which was permanent…

Carpal Tunnel: Personal Harm

2. Office of the Employer Adviser (Ontario), *The Employer's Guide to Workplace Safety and Insurance*, pg. 9
http://www.employeradviser.ca/en2/documents/report/nonconstruction_em_guide.pdf

As an employer, it is not only in your best interest to maintain a healthy and safe workplace and to prevent workplace injuries and occupational diseases, it is also your legal obligation under the OHSA.

a) How the WSIB (Workplace Safety and Insurance Board) defines "accident"

According to the WSIA (Workplace Safety and Insurance Act), accidents include

- a chance event caused by a physical or natural incident, i.e., falling off a ladder or frostbite
- a wilful and intentional act, but not an act of the worker, i.e., being assaulted by a co-worker, and
- a disablement, which may be a condition that
  - has emerged gradually over time, and cannot be attributed to a clearly defined time or place, i.e., carpal tunnel syndrome, or
  - is an "unexpected result" of the worker's duties, wherein an accident that was originally believed to be minor resulted in disablement at a later date, i.e., a back injury from bending over to pick up equipment.

3. Talmud, Bava Metzia 80b

תנו רבנן, "קב לכתף..." אם איתא דלא מצי ביה, בר דעת הוא, לשדיה! אמר אביי בשחבטו לאלתר. רבא אמר אפילו תימא בשלא חבטו לאלתר, לא צריכא אלא לאגרא יתירא. רב אשי אמר הוא סבור חולשא הוא דנקיט ליה.

Our sages taught, "A *kav* is the volume [of addition] for a porter…"

But if one cannot carry more, he is intelligent, let him throw it down!

- Abbaye said: The employer is liable where the load knocked him down immediately.
- Rava said: Even if he is not knocked down immediately [and there is no liability], this measure is relevant in permitting the porter to charge more.
- Rav Ashi said: The porter thinks that he has been gripped by weakness.

4. Rambam (12th century Egypt), Mishneh Torah, Hilchot Sechirut 4:7

הכתף שהוסיף על משאו קב אחד הוזק במשא זה חייב בנזקיו, שאע"פ שהוא בן דעת והרי הוא מרגיש בכובד המשא יעלה על לבו שמא מחמת חוליו הוא זה הכובד.

If one added a *kav* to a porter's burden and he was hurt by the burden, one must pay for his damage. Although he is intelligent, and he senses the weight of the burden, he thinks the weight may be due to his illness.

5. Rabbi Yehoshua Falk (16th century Poland), Sefer Meirat Einayim to Choshen Mishpat 308:12

ומפורש שם בגמרא דחכמים שיערו בכל דבר דהיינו בכתף ובחמור ובגמל ובספינה... ומינה יש ללמוד לכל זמן וזמן דאם יוסיף השוכר חלק אחד מל' כפי המנהג להטעין שחייב באונסין

It is explicit there in the Talmud that the Sages gauged each situation individually – the porter, donkey, camel and boat… and from this one can learn for each occasion that there is liability if the employer adds 1/30 of the norm.

6. Ramban (13th century Spain), Commentary to Bava Metzia 80b

תמהני, וכי שומר הוא על גופו שישלם לו... ואם תאמר שנזקי אדם הן, תימא הוא, דהא לאו מכחו אתי ליה נזק ואפי' הטעינו הוא!

I am shocked, is the employer a guardian of the employee's body, such that he should pay him… And if you would say this is an act of harm, that would be shocking, for the harm did not come from the employer's act, even where he loaded the employee directly!

7. Ritva (13th century Spain), Commentary to Bava Metzia 80b

וא"ת מ"מ הוא הטעה את עצמו ולמה יהא חייב זה עליו, י"ל מפני שהוא גרם לו הטעות שהיה סבור שאמר לו אמת, וכיון שעל פיו ועל סמך שלו ניזוק הרי זה גיריה כמראה דינר לשלחני ואמר לו שהוא יפה...

You may ask: He fooled himself, so why should the employer be liable? Perhaps it is because the employer caused the error, for the employee trusted him to tell the truth. Since he was harmed due to the word of the employer and his authority, this is the employer's "arrow", like when one shows a *dinar* to a moneychanger and he says it is good…

8. Rabbi Moshe haKohen, cited in Tur Choshen Mishpat 308

ומסתברא דלא יהיב ליה אלא נזק בלבד אבל ארבעה דברים לא מיחייב אלא היכא דאזקיה בידים

Logically, he should only pay for depreciation; he would only be liable for the other four payments where he harmed directly.

<u>Ransomware</u>

9. Evolving American law

- Civil Remedies for the Victims of Computer Viruses http://repository.jmls.edu/cgi/viewcontent.cgi?article=1411&context=jitpl
- The Tort of Negligent Enablement of Cybercrime https://www.suffolk.edu/documents/Law%20Faculty/tortnegligentmrustad.pdf
- The Legislative Response to the Evolution of Computer Viruses http://jolt.richmond.edu/v8i3/article18.html

10. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch Choshen Mishpat 188:6

מי שהגיע לו היזק בממונו מחמת שליחות שולחו, או שהעלילו עליו מחמת השליחות והפסידוהו ממון, אין המשלח חייב לשלם לו נזקו.

If a person's property is damaged because of a task he performed for someone, or because they accused him due to his task and cost him money, the sender is not obligated to pay his damages.

11. Rambam (12th century Egypt), Mishneh Torah, Hilchot Nizkei Mammon 14:15

אש שעברה והזיקה את האדם וחבלה בו הרי המבעיר חייב בנזקיו ובשבתו וברפויו ובצערו ובבשתו כאילו הזיקו בידו, שאע"פ שאשו ממונו הוא הרי הוא כמי שהזיק בחציו...

If fire travels and harms a person and wounds him, the one who kindled it is liable for his depreciation, time lost from work, healing, pain and shame, as though he had harmed the victim directly. Even though his fire is like his property, it is as though he had harmed via his arrow.

12. Rabbi Shlomo Daichovsky (21st century Israel), Internet in Halachah, Techumin 22

http://www.zomet.org.il/?CategoryID=257&ArticleID=233, http://www.yeshiva.co/midrash/shiur.asp?cat=211&id=983

יש לראות כאן את כל הוירוסים הנולדים במחשבים של הנמנעים האחרים, כממונו שהוליד ממון. כולם נבראו ונוצרו מכוחו ומכוח כוחו של הוירוס הראשון, שנוצר ע"י המזיק. העובדה שהם נוצרו במחשבים אחרים אינה מפקיעה את "בעלותו" של היוצר המקורי, על הוירוסים שנולדו מכוחו.

[I]t is more accurate to view all of the viruses that were born in the computers of receivers, as "property born of property." All of them were created and formed by virtue of the impetus of the first virus, that which was created by the original damager. The fact that they were born in separate computers does not free the original creator of ownership, for the viruses were all born by virtue of his impetus.

<u>A third model: Kindness</u>

13. Rambam (12th century Egypt), Commentary to Avot 1:5

ויהיו עניים בני ביתך - יאמר, שראוי שיהיו משמשיך הדלים והעניים...

"Paupers should be members of your household" – Your servants should come from the poor and indigent…