



# BUSINESS WEEKLY

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlan

**A MISSING 'HEI'** I'd like to get a nice piece of artwork as a gift for my nephew Yoni, who's getting married in two weeks," Mrs. Schwartz told Mrs. Glazer, who handcrafted artwork in her basement gallery.

"You're welcome to visit the gallery," replied Mrs. Glazer. "I can show you the various things that I make."

Mrs. Schwartz went over to the gallery. "I'd like a design painted on a crystal vase, with their names, Shoshana and Yehonasan, inscribed in the middle," she said to Mrs. Glazer. "He spells his name Yehonasan with a hei and is very particular about it!"

"Thank you for letting me know," said Mrs. Glazer. "I'll write it down. B'ezer Hashem, it will be ready by the end of next week."

The following week, Mrs. Glazer called. "Your artwork is ready," she said. "You can come pick it up."

"Thank you very much," said Mrs. Schwartz. "How did it come out?"

"Absolutely gorgeous," said Mrs. Glazer. "It will suit the new couple just perfectly!"

Mrs. Schwartz turned to her husband. "Could you please pick up the gift from Mrs. Glazer?" she asked him. "It's ready."

Mr. Schwartz went to the gallery. "It's beautiful," he said. He paid Mrs. Glazer and brought the gift home.

When he came home, Mr. Schwartz showed his wife the artwork. "What do you think of it?" he asked.

Mrs. Schwartz was breathless. "It's unbelievable!" she exclaimed. Suddenly she gasped. "Oh, no!" she cried out. "I don't believe it!"

"What's the matter?" Mr. Glazer asked with concern.

"I told her clearly that our nephew spells his name Yehonasan, with a hei," she said. "She wrote Yonasan, without a hei!"

Mrs. Schwartz took the gift back to Mrs. Glazer and showed her the problem. "You're right," Mrs. Glazer apologized. "I wrote it down, but somehow forgot when I inscribed their names. I really apologize."

"I'm sorry, but I can't give the gift with the name misspelled," said Mrs. Schwartz. "Can you somehow add the hei?"

Mrs. Glazer considered for a moment. "I'm afraid not," she said. "Hei is a big letter. I could squeeze a yud in, but a hei will ruin the whole effect."

"I simply cannot take it as it is," said Mrs. Schwartz. "Either make a new one or I'll have to get another gift."

"I already invested much time and effort," Mrs. Glazer tried to soothe her. "It's unbelievably beautiful. Most people won't even notice the misspelling!"

## DID YOU KNOW?

**If you enroll your child in a playgroup and subsequently pull out at a time when the teacher can no longer find a replacement for the spot, you may be required to pay the year's tuition.**

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## BHI HOTLINE

### PAYMENT FOR WORKERS - BAL TALIN

In the past two issues you addressed the question of how a camp owner lacking the necessary funds

should pay his creditors and employees.

**Q: Seemingly, the camp owner should be obligated to pay his employees before his other creditors due to the prohibition of bal talin — one should not pay an employee late. If this is correct why was this point not raised in your response?**

**A:** You raise an important point. After presenting some related halachos we will explain why bal talin was not mentioned.

In a circumstance in which one owes money to an employee and another creditor, some authorities rule that one must pay the employee first due to the Torah prohibition of bal talin (Ahavas Chessed 10:11). Others maintain that one does not violate bal talin as long as he divides his available funds to pay his creditors in accordance with Halachah even though that leaves him without the resources to pay his employees, since bal talin is violated only when one has the means to pay his employees but chooses not to (Gidulei Shmuel, B.M. 111a; Erech Shai 339). An employer of two employees who gave all the money to one of the employees instead of splitting it between them as Halachah requires violates the prohibition of bal talin (Ahavas Chessed 9:8; Erech Shai, op.cit.; cf. Minchas Tzvi 2 [33]).

In the circumstance about which the original writer asked there are many reasons why bal talin is not relevant. In the original question he mentioned that his employees have not asked to be paid, and the halachah is that an employer does



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"Yehonasan will, though," replied Mrs. Schwartz.

"I will have nothing to do with the inscribed vase if you don't take it," said Mrs. Glazer. "It was a custom order for you. I'm willing to refund 50 percent."

"I don't want it at all, not even for 10 percent," insisted Mrs. Schwartz. "I want the gift in perfect condition or my money back!"

"You realize it's a total loss for me," Mrs. Glazer said. "I'd like to consult with Rabbi Dayan."

"That's fine," said Mrs. Schwartz. "Go ahead."

Mrs. Glazer called Rabbi Dayan. "I crafted a custom wedding gift, but wrote Yonasan instead of Yehonasan," she said. "Personally, I don't think it's noticeable to the average person and I'm even willing to refund 50 percent, but the customer wants it redone completely or a full refund. What's the halachah?"

"The definition of defective merchandise depends on what is considered defective in that time and place," replied Rabbi Dayan. "Misspelling the chassan's name in an artwork meant for display would seem defective. The customer has the right to return the defective item for a full refund. You cannot insist that the sale be upheld and refund the difference in value" (C.M. 232:4, 6).

"What about the reverse case?" asked Mrs. Glazer. "Let's say the customer wanted to keep the gift but pay only half, whereas I wanted her to let me redo it or to pay full price?"

"The same halachah applies," answered Rabbi Dayan. "The customer cannot force the seller to reduce the amount. Her only legal recourse is to invalidate the sale if she wants to."

"If the item can be repaired fully, though," concluded Rabbi Dayan, "then the seller can repair the item without having the sale annulled" (Sma 232:14).



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not violate bal talin unless his employees ask to be paid (C.M. 339:10). There is a dispute whether there is an obligation or even a mitzvah to pay employees who have not asked for remuneration. Some maintain that the obligation applies only once the employee asks for payment (Nachal Yitzchak 9). Others contend that although the prohibition (mitzvas lo saaseh) does not apply, nevertheless, he violates a positive command (mitzvas asech — Divrei Chaim, Y.D. 11 and Ahavas Chessed 9:11).

Moreover, when an employee does not expect his employer to have funds to pay him until market day, the employer does not transgress bal talin if he does not pay the worker on the day he completes his job, even if the employer has the necessary funds. The reasoning is that the employee expected to have to wait until market day rather than receive remuneration upon completion of his job (C.M. 339:9).

Consequently, when a person takes a job with an employer who is not expected to be able to pay on time — e.g., he receives government funding — the employee realizes he will not be paid until funding comes through and thus the prohibition of bal talin does not apply. Since it is also common that camps do not have the funds to pay their employees until after camp is over, we did not discuss the issue of bal talin.

Additionally, the day after the job was completed, payment is no longer subject to bal talin (C.M. 339:8).

Finally, even when an employer does not violate bal talin, he may violate divrei kabbalah — the words of the Prophets — if he repeatedly tells his employees to come back another time for payment when he has the necessary funds to pay them (C.M. 339:7).

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## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 5

#### Q: Are civil and international copyright laws binding according to Halachah?

A: "Dina d'malchusa dina" — the law of the land is law (B.K. 113a). Although the Poskim curtail the application of this rule between Jews when Torah law contradicts civil law, Beis Yitzchak (Y.D. 2:75) applies dina d'malchusa to copyright protection, for three reasons:

- Civil law often forms a common commercial practice, which is halachically binding.
- A civil law that merely restrains others from gaining, but does not cause them a loss, might be followed even if not in consonance with Torah law.
- According to some authorities, copyright protection is in consonance with Torah law.

Others uphold copyright protection on the basis of what is logically "just and fair" (hayashar v'hatov), as indicated by the civil law.

Thus, even according to the halachic opinion that a person does not have ownership of "intellectual property," one may not copy with commercial intent, on the basis of dina d'malchusa.

It is questionable whether dina d'malchusa applies in Israel. However, if Israeli civil law generated a common commercial practice, it is binding on that account. (See Emek Hamishpat, Zechuyos Yotzrim 7:44-46, 34:171-176; C.M. 369:6; Pischei Choshen, Geneivah 1:[4].)

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