



# Business weekly

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## STORYLINE

### not publishable

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Yanky Schwartz was a regular writer for a noted Jewish magazine. One day, the feature editor, Sam, contacted him.

"We're running a series on Jewish communal issues," Sam said. "I'd like you to write an article about violence in Jewish day schools."

"You're kidding," said Yanky. "Is this really an issue?"

"Unfortunately, the phenomenon is more common than you think," said Sam. "Sometimes the best way to raise communal awareness is through an article on the subject."

Yanky worked for a month on the article: researching the topic, interviewing principles and students, collating the material, drafting the article, editing and proofing it. He emailed the finished article to Sam, who made some minor revisions and forwarded

the article to the senior editor for approval. The senior editor, however, returned the article with the following comment: "The article is well-written well and 100% correct. However, due to the broad-ranging readership of our magazine and the reputation of the relevant schools, the issue is too sensitive to be addressed in our magazine. Therefore, the article is not publishable."

Sam forwarded the response to Yanky, apologizing for the inconvenience he caused. When Yanky received the response, he became irate. "What do you mean?" he wrote back to the senior editor. "I spent a month working on this article, which Sam asked me to write, and now you decide that the topic can't be published?!"

"Sam can only suggest topics for articles," the senior editor replied. "However, he is not

authorized to make final decisions about what is included for publication."

"All the same, he is my direct contact," said Yanky. "I invested lots of time in that article. Whether you choose to publish it or not is your business, but you owe me for the article."

"I'm sorry for the mistake," replied the editor, "but you know that our policy is to pay only for articles that are published."

"But your feature editor was the one who told me to write about this topic," argued Yanky. "Could we speak with Rabbi Dayan?"

"Sure, great idea," answered the editor. The two met with Rabbi Dayan, who said, "There are two general models for work. One is the employee model (po'el or kaban), in which the worker is paid for doing the work, whether by the hour or by the job. The other is the customer model, such as one who or-

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## FROM THE BHI HOTLINE

Submitted by  
R. H.

### to have or to halve

My friend and I jointly bought an apartment house for investment. We planned to manage it until the real estate market picks up and then sell it to split the profit. We have since gotten into numerous disagreements, and I wish to dissolve the partnership. I would like to buy his share of the business, as it doesn't make business sense to split the management.

**Q: Can I demand that we end our partnership in this fashion?**

**A:** Regarding jointly owned property that can be divided into parts, with each partner receiving a usable portion, halacha rules that one partner can force the other to split the property. If the property cannot be split in a manner that provides each partner with a usable portion, neither partner can force a division of that property (C.M. 171:1). If your investment cannot be split without a considerable loss, it is considered an item that cannot be divided (see Chasam Sofer C.M. 12,

quoted in Pis'chei Teshuvah 171:3). If the partnership cannot be split, one partner may not demand that the property be sold and that the proceeds be divided. However, either partner may demand that one buy out the other (gud oh agud – "either you buy my share or allow me to buy your share") under certain conditions. This means that if one partner wishes to dissolve the partnership, he may to sell his portion to the other, explaining that if the other does not wish to purchase it, then

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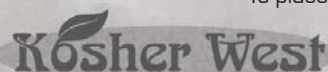
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## STORYLINE CONTINUED

ders from a baker or carpenter, whereby the customer buys the final product from the worker.”

“What would a journalist who gets paid for his articles be considered?” asked the editor.

“A regular columnist would presumably be similar to an employee, even if he is not paid a regular salary with a W-4, but by the article or word with a 1099-Misc,” answered Rabbi Dayan. “A freelance journalist who submits an occasional article might follow the second model.”

“What is the halacha in these cases?” asked Yanky.

“Halacha addresses both examples,” continued Rabbi Dayan. “If an employer instructs a worker to do something, and the worker does the work, the employer owes him pay even if he gained no benefit from it. For example, if he told the worker to plow a certain field, which turned out to be someone else’s or unowned (hefker) property, the employer is still responsible to ensure the wages (C.M. 335:3; 336:1-3).

“Similarly, if a customer instructs a professional to make something and then refuses to buy

it, if the professional is unable to sell it to others, the customer must pay for having caused him damage. Some indicate that this is the full value of work (333:8; SM”A 333:29).

“Therefore, if the feature editor is authorized to request articles from the writers,” concluded Rabbi Dayan, “the magazine would seem responsible to pay for the article, even if the magazine could not benefit from it.”

“But what about the policy of paying for articles only when they are published?” asked the senior editor.

“That would be relevant if the journalist wrote the article of his own accord or did not do a satisfactory job,” responded Rabbi Dayan. “However, if he was instructed to write a certain article and did a satisfactory job, the magazine cannot avoid payment by choosing not to print the article. In the particular instance of journalism, though, there is a fairly accepted minhag hamedina (common commercial practice) to pay a ‘kill fee’ of approximately 50% for solicited articles that remain unpublished.”

## FROM THE BHI HOTLINE CONTINUED

he will purchase the other’s half. In this way, neither partner can force the other to buy him out; he must be willing and able to buy out his partner’s share, or he will have no leverage. Also, this prevents either one from demanding to purchase the other’s share for less than its value. The halacha is that gud oh agud can be offered only if the property’s genuine value is offered. Otherwise, a wealthier partner could take advantage of his poor partner, forcing him to accept a price less than its value (C.M. 171:6).

In addition, some Rishonim maintain that the principle of gud oh agud only applies to heirs or recipients of a gift who did not join the partnership by their own free will, and thus may force the dissolution of the involuntary partnership. In a voluntary partnership, the partners committed themselves to this joint venture, so one cannot force the other to buy or sell out

(Tur 171:33, Shach 171:1). Nevertheless, most Rishonim extend this halacha to any partnership, since the partners couldn’t predict that they would not be able to maintain a manageable relationship (see Mishpat Shalom 176:15, Chasam Sofer C.M. 12, Doveiv Meisharim 1:138; however, see Minchas Pitim 171). Accordingly, if all of the above conditions are met, you should be able to demand the dissolution of the partnership in accordance with the principle of gud oh agud.

In this case, however, since you formed a business venture for a specific purpose pending on a business cycle, it is considered a partnership that was formed for a specific period of time where neither partner has the unilateral right to dissolve the partnership. By extension, you may not demand gud oh agud (see C.M. 176:15; Nesivos 176:32 and Mishpat Shalom 176:15).

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## MONEY MATTERS

### laws of interest week #17

**Q: Under what circumstances are merchandise loans permitted?**

**A:** We mentioned last week that Chazal prohibited merchandise loans unless they are based on the cash value, lest the price of the merchandise rise before repaying the merchandise. This is called se’ah b’s’e’ah (a measure for a measure). Nonetheless, Chazal allowed three exceptions to this prohibition,

which cover many common cases:

1. Yesh lo (he has): If the borrower has even a small amount of the merchandise in stock, he may borrow more of that merchandise. It is even permissible for the lender to give or sell the borrower a little bit of the merchandise, in order to allow borrowing a large quantity (Y.D. 162:2).

2. Yatza ha’shaar (there is a stable price in the market): If the item is readily available

at a fixed, stable price, it is permissible to borrow, e.g. postage stamps or, possibly, produce after the season is well under way (162:3; The Laws of Ribbis 14:11).

3. Davar mu’at (small amount): It is permissible to borrow a small amount of food from neighbors, since the potential price discrepancy is generally insignificant and neighbors do not care (Rama 162:1; Mishna Berurah 450:2).

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