



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

MISSING FIFTY

Sasson V'simcha Day Camp was planning an overnight trip. The director turned to Shaya, one of the counselors. "We want three extra counselors to help supervise," he said. "We already have two. If you have a friend who wants to come as a counselor, we will pay him \$200 for the trip."

"I have a friend, Dovi, who I think would be interested," said Shaya. "I'll ask him when I get home."

That evening Shaya called Dovi. "My day camp is looking for extra supervision for an overnight trip," he said. "Would you like to come? They're paying \$250 for the trip."

"OK, that's fine with me," Dovi said.

At the end of the trip, when the three additional counselors were paid, Dovi received a check for \$200. He looked at the director quizzically. "Shaya told me that I would get \$250!" Dovi said.

"Absolutely not," the director replied. "We said \$200. That's what we gave the other two counselors also."

"But Shaya told me \$250," he said. "You asked him to procure my services, so that's what you have to pay."

The director announced over the loud speaker: "Shaya, please come the office now."

"How much did you tell Dovi we would give him?" asked the director.

"I told him \$250," Shaya said. "I forgot what you said."

"We never agreed to that," the director said to Dovi. "We asked Shaya to find a friend, but never authorized him to decide the salary."

Dovi then turned to Shaya. "If they pay me only \$200," he said, "then you owe me the remaining \$50!"

"I never accepted any responsibility for payment," argued Shaya. "You knew that you would get paid by the camp. You should have confirmed the salary with the director."

"We've got a problem" said the director. "We said \$200, but Shaya told Dovi \$250, which he was not authorized to do."

"Why don't we call Rabbi Dayan," suggested Shaya. "Let him decide what we should do!"

The director dialed Rabbi Dayan. "We asked a counselor to hire a friend for \$200, but he told him it was \$250. How much do we owe? Does the counselor owe him anything?"



BHI HOTLINE

DIVISION OF OUTSTANDING LOANS IN A PARTNERSHIP

Last year a friend and I ran the canteen in camp. When camp was over a number of people still

owed us money. My partner and I decided to divide the list of debtors. We succeeded in collecting most of the money but one of the debts on my list cannot be collected.

Q: Can I retract the agreement with my partner so that he should have to share the loss of this debt with me?

A: You may retract the agreement you made with your partner. Had you made a kinyan (proprietary act) with your partner when you divided the debts and decided which debts you would collect and which debts your partner would collect, that division would be binding and you would have to suffer the loss of an uncollected debt. Since you did not make such a kinyan, the debts remain in the domain of the partnership and the two of you share the loss.

When partners dissolve a partnership which includes outstanding debts (C.M. 66:41), either partner can exact payment from one of their debtors by himself, but ownership of that debt is not transferred to one of the partners unless that partner makes a kinyan on the note. If there are documented loans still due the partnership, a kinyan involving kesivah u'mesirah (lit. "writing and transferring") is necessary (Shach 66:18).

Others (Nesivos 66:11 and Pischei Teshuvah 66:26) cite earlier authorities who maintain that partners can simply

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"You owe the friend the going rate for the job," replied Rabbi Dayan. "The counselor, who misled him, does not owe him anything, but the friend has rightful complaints against him.

"The Gemara (B.M. 76a)," he explained, "teaches that when an agent overstated the salary terms to the employee, the employer pays the going market rate, because the agent, who had no authority to negotiate the terms and misrepresented the employer, loses his status as an agent. Since you only agreed to pay \$200, whereas the friend accepted the job with the understanding of \$250, there was no valid contractual agreement between you. Thus, the employee gets paid as a worker who did not make any arrangement with the employer, which is the going market rate" (C.M. 332:1).

"What if the worker, who expected to get paid a higher salary, did a better job?" asked the director. "For example, a contractor who used higher quality materials or put more effort into the finishing. It's not fair that he should get the going rate of a standard quality job."

"That is true," replied Rabbi Dayan. "If the quality of his job is clearly worth more, then the employer — who received the benefit of superior quality — would have to pay the value of such work" (Shach 332:8).

"Why does the counselor not owe anything?" asked the director? "And what did you say about 'rightful complaints?'"

"The counselor does not owe anything, since he clearly indicated that he takes no personal responsibility for the salary," concluded Rabbi Dayan. "However, the friend has a rightful complaint against him, since he could have sought a better-paying job had he known the true salary" (Sma 332:4).



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divide the outstanding debts owed to them and it is not necessary to make a kinyan to take exclusive possession of the debts. Although many authorities (Beis Shlomo, C.M. 74; Tehillah L'Dovid 24) hold that a kinyan is required; nevertheless, once each partner takes his share of the debts, there exists doubt whether each partner is now the exclusive owner of those debts (Avnei Hachoshen 66:9).

It is essential to note that even those who maintain that partners can divide debts without a kinyan limit that position to documented debts. In contrast, undocumented loans, which cannot be transferred with a kinyan, are not subject to division between partners since even after a division either partner can forgo the debt, neither having acquired exclusive rights to the debt. Dividing the debts under the auspices of beis din could possibly be a binding division of debts (see Shach 101:3 and Nesivos 101:2, 176:40). Others maintain that it is necessary to make a kinyan even if the division is done under the auspices of beis din and that undocumented loans cannot be divided between partners.

In your case, since the division was not done under the auspices of beis din and the debts are not notes that can be transferred, all authorities agree that you can insist that your former partner share in the loss of that debt. (Regarding kinyan situmta on a debt, see Nesivos 201:1.)

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MONEY MATTERS

COPYRIGHTS AND PATENTS # 7

Q: When a journalist writes a weekly column for a newspaper, who has rights to the content of the column — the author or the publisher?

A: In general, when a worker creates something for his employer, the copyright and patent rights belong to the employer. He hired the worker to create intellectual property and "owns" the worker's creative capacity utilized at work.

However, a journalist who writes a weekly column is often not a regular employee who invested his creative output during work to the employer. The newspaper contracts him to deliver a written article and he only gives the newspaper publishing rights. Thus, the article remains the intellectual property of the author.

Even if the writer is a regular employee of the newspaper, the accepted practice seems to be that should the author want to collect his articles into a printed work, he has that right. Halachah places a great emphasis on the common commercial practice as binding in monetary law: "...the [common] practice uproots the [default] halachah" (C.M. 232:19).

Regardless, in most cases, the journalist's contract will define who has rights to the intellectual property created. (See Emek Hamishpat, Zechuyos Yotzrim 16:176; 34:167.)

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