

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

AUTOGRAPHED BOOK

of Mordechai Fried.

A friend, David, shared Avi's interest in Jewish music. He borrowed the book about Mordechai Fried.

"There is a concert tonight by M.F. in our neighborhood," David said to Avi. "I'm going! Do you want to come?"

"I would love to hear M.F. live, but can't go tonight," replied Avi. "Enjoy!"

David attended the concert; he took Avi's book with him to read along the way.

After the concert was over, David hung around a little longer after people left, hoping to catch Mordechai Fried backstage. He turned out fortunate, and was able to catch him briefly.

"Can I ask you to autograph this book?" David asked, taking out Avi's book.

"I don't often autograph," replied Mordechai Fried, "but since you asked, I'll do it for you!"

"I lucked out last night!" David told Avi the following day. "I was able to speak with M.F. briefly and even got him to autograph the book! I'll buy you a new one, instead."

"No, I want my book back with the autograph," replied Avi. "Thank you for getting it autographed for me!"

"The book is worth more with M.F.'s autograph," insisted David. "I got it autographed, so I should be able to keep the autographed copy! If you insist on getting your book back, at least pay me the added value of the book!"

"Why should I have to pay you?" argued Avi. "It's my book, and it didn't cost you anything to get the signature."

The two decided to approach Rabbi Dayan, and asked:

"Can David keep the autographed book? If not,

Avi was an avid Jewish music fan; his favorite singer was Mordechai Fried. Avi enjoyed not only listening to the music but also reading about the history of Jewish music and about Jewish singers. One book he owned was an autobiography



BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

FAIR SPLIT

Q. I invested, with a partner, in an apartment building, which we planned to renovate and then flip when the value increased and split the profit. We now realize

that we have severe differences of opinion as to how to go about dealing with the property, and I would like to buy out my partner, since we can't simply divide the management of the project in two.

May I compel my partner to sell me his portion?

A. The Chazon Ish (*Bava Basra* 8:1) explains that *Chazal* reasoned that it would be unfair to lock a person into an unwanted partnership, so there must be a set of *halachos* governing how to split up a partnership when the two parties are at odds with each other and one party cannot, or does not want to remain in the partnership.

Generally, the rules governing the dissolution are as follows:

If one of the partners is demanding to dissolve a partnership in a property, the correct approach will depend on the type of property they are invested in. If the nature of the property is such that, after the split, each partner will be left with a portion that can be used in the same manner as the original property, then we fulfill the wishes of the partner demanding to split. But if each portion will not be usable after the division, then one partner may not force the other to split the property (*Shulchan Aruch Choshen Mishpat* 171:1). If splitting the property will cause each portion to devalue a great deal (i.e., more than a fifth), it is considered tantamount to each portion not being usable (Rema, *ibid.* 5; see Chasam Sofer, *Choshen Mishpat* 12, cited in *Pis'chei Teshuvah* 171:3, who rules that heirs can insist on splitting an inherited property even if it will devalue more than a fifth).

In cases in which we do not allow a partner to force his counterpart to split the property, each partner may suggest a price for the value of half of the property, and say, "Either buy me out, or allow me to buy you out at that price" (*gud o eigud*; see BHI issue #468 where we addressed this concept at length). The price offered must be at least equal to the actual value of that portion

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CASE FILE

can he demand payment for the autograph?"

"When a person borrows a non-consumable item to use, with intent to return it," replied Rabbi Dayan, "he is termed a *sho'el* and the item remains in the possession of its owner. Only if the item is lost or ruined (not through regular use), the *sho'el* pays the lost value or a replacement item" (C.M. 340:1).

"Even if the *sho'el* were to intend to possess the item for himself, unlawfully, which is considered tantamount to theft, he does not acquire the item, unless it was changed in a significant manner, in which case he acquires it through *shinui* (C.M. 360:1; see *Pischei Choshen, Pikadon* 5:2[2-3]).

"In our case, the addition of an autograph is not considered a *shinui*, so that the book remains Avi's, and David is required to return it. He cannot return a different copy if Avi wants his original book (Sma 359:8).

"However, since David enhanced the book through the autograph, he is considered *yored lisdei chaveiro* – one who enhances another's property. The *Gemara* (B.M. 101a) teaches that the enhancer is usually entitled to compensation for his efforts, the amount depending on whether the property is fit for such enhancement (we recently concluded a series on this topic in Money Matters).

"A book is considered fit for the enhancement of the author's autograph, so that David is entitled to the going rate for such an enhancement, i.e., how much the average person would be willing to pay someone with 'connections' to procure this autograph (C.M. 375:1).

"Avi can refuse to pay David," concluded Rabbi Dayan, "only if he can genuinely claim that he has no interest whatsoever in the addition of the autograph, or if he can reasonably claim that he could have easily procured the autograph on his own, without any expenditure or effort (see Rema 264:4; 375:4-5; Nesivos 264:13; Chazon Ish, B.B. 2:3)."

Verdict: David cannot keep the autographed book if Avi wants his original copy back. However, Avi is required to pay him for enhancing the book, what the average person would be willing to pay someone to procure the signature.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #13
Rental Repairs

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'ל' בת ר' שמואל חיים ע"ה

Q. Which repairs are the landlord's responsibility and which are the tenant's?

A: Shulchan Aruch provides a rule of thumb: the landlord is responsible for anything that is significant for the house and requires professional labor (C.M. 314:1).

Nonetheless, this is dependent on *minhag hamedinah*, each place according to its common practice. Thus, for example, Aruch Hashulchan (314:4) writes that in his place (Eastern Poland/ Russia) the practice was to make double windows and insulate the walls in the winter and to fix the furnace. If they required repair, it was the landlord's responsibility, unless due to the negligence of the tenant.

Furthermore, Shulchan Aruch (C.M. 314:2) writes that if the tenant wants to erect a ladder to the roof, it is his responsibility; but Aruch Hashulchan (314:5) writes that the common practice was that the landlord provided a ladder for each house to go up to the roof and clean the chimney.

Similarly, regarding expenses such as utilities, taxes, etc., if not specified in the contract, we follow *minhag hamedinah* (*Pischei Choshen, Sechirus* 6:1[5]).



BHI HOTLINE

of the property; otherwise, if one partner is wealthy, he might offer an amount that is far less than the value of the property, if he knows that his partner cannot afford that amount, and force him to accept it (*Choshen Mishpat* 171:6).

A partner is not entitled to compel his counterpart to sell him his portion without making this offer, even if he owns the majority of the property.

According to some *Rishonim*, partners may declare *gud o eigud* only if the partnership was foisted upon them, such as in a case of an inheritance; if they entered in the partnership willfully, neither partner may declare *gud o eigud*, because they obligated themselves to the partnership and may not just decide to withdraw (Tur 171:33 and Shach 1). Others maintain that this *halachah* pertains to all partnerships, because there is no way for a person to know in advance whether he will be able to find common ground on all matters of the partnership.

The *Poskim* are ultimately divided on this matter (see Chasam Sofer, *Choshen Mishpat* 12, *Mishpat Shalom* 176:15; *Dovev Meisharim* 1:138; see also *Minchas Pittim* 171).

Returning to your case, if all of the prerequisites listed above are met, according to some of the aforementioned *Poskim*, you would theoretically be entitled to declare *gud o eigud*.

But since you agreed to renovate the property and sell it when it increases in value, it is considered as though you obligated yourself to remain in the partnership for a certain amount of time, in which case, even if it is possible to divide the asset, you are not entitled to demand a split (*Choshen Mishpat* 176:15), and if it is not possible to divide it, you cannot demand *gud o eigud* until the building is renovated (Nesivos, *ibid.* 32, and *Mishpat Shalom, ibid.*).

Obviously, if you had an earlier agreement as to how to dissolve the partnership if one of you wanted to split, or if there is a standard practice in your industry for how to split up a partnership, that becomes binding in *Halachah*.

It is therefore wise, whenever entering a partnership, to draw up a contract with all conditions of the partnership, including an exit plan of how to fairly dissolve it if one of the parties wants to split.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com



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