

# 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

Rabbi Meir Orlian  
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

## INTERNATIONAL SHIDDUCH

Mrs. Simantov was not an official matchmaker, but she tried to make *shidduchim* between people she knew, with reasonable success. She owned an apartment in Yerushalayim and spent many holidays there, so that she

knew people on both sides of the ocean.

One day, Mrs. Simantov was talking with her neighbor, Mrs. Feiner. "How are your children?" Mrs. Simantov asked.

"Baruch Hashem, well," said Mrs. Feiner. "Our son, Moshe, is planning to learn in Israel after Pesach. I'm a little worried about his *shidduch* prospects."

"I know him as a tremendous *masmid* with excellent *middos!*" replied Mrs. Simantov. "Would he consider meeting someone from Israel?"

"Yes," answered Mrs. Feiner.

"I know the perfect girl for him..." Mrs. Simantov continued. "She's sweet, modest, with a head on her shoulders and from a fine family. I'll send you her information this evening, and, if relevant, contact them also."

Several months later, Mrs. Feiner called Mrs. Simantov from Israel. "*Mazal tov!*" she exclaimed. "Moshe got engaged tonight. The girl you suggested is lovely, and just right for him!"

"I'm sooo happy for you!" Mrs. Simantov replied. "They should be *zocheh* to a happy and healthy life together!"

"Mrs. Simantov doesn't have a set fee," Mrs. Feiner told her *mechutanim*. "But the going rate in America is several thousand dollars."

"Here the going rate is several thousand shekels," said the *mechutanim*, "The *shidduch* was concluded in Israel, so we should pay what is customary in Israel."

"Mrs. Simantov worked from across the ocean, though," noted Mrs. Feiner. She called Rabbi Dayan, and asked:

**"How much should we pay Mrs. Simantov?"**

"Panim Meiros (2:63) addressed a similar



## BHI HOTLINE

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

## A DEVOTED PARTNER

We have received several questions on similar topics. The following are two examples:

**Q1.** One of the partners in a business invested a great

deal of time into creating a website for the business. The website was wildly successful, and the business flourished from online sales. Is that partner entitled to payment for the time he invested into developing the website?

**Q2.** Two people opened a store together, under an agreement that each would work in the store from nine to five daily. Recently, one of the partners began to show up late, and the other had to work harder to open the store and deal with the customers until the other partner arrived. Is the punctual partner entitled to payment for his extra work?

**A.** If people own a field together, and one partner decides, on his own, to cultivate the field, the *halachah* is that he is entitled to payment like a sharecropper who received permission from a field owner to cultivate his field, which means that he is paid for both his outlay and a portion of the produce, as is customary to pay for a sharecropper, not like a worker who is paid only for his labor (*Shulchan Aruch Choshen Mishpat* 178:3; See *ibid.* 187:1 regarding brothers working in a shared estate).

This is true even if he planted trees in a field that was supposed to be used to grow wheat, because as a stakeholder, he is entitled to make decisions on how to use the field.

Some *poskim* cite this as proof that a partner is entitled to payment for anything he does to advance the business, even if it is easy work, and we do not assume that he did that work voluntarily (see *She'eilas Yaavetz* 1:6, *Minchas Pittim* 177 and *Miluei Mishpat* 177, note 80).

Other *poskim* differentiate between two types of work, which we can illustrate through the two cases we cited above.

In the first case, developing a website was not one of the obligations each partner had *vis-à-vis* the business. Therefore, the partner who developed it is entitled to payment for his work. The other partner cannot claim

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## CASE FILE

question,” replied Rabbi Dayan. “Someone brokered a *shidduch* between families from different cities, which had different practices regarding the *shadchan* fee.”

“Panim Meiros infers from the *Gemara* (B.M. 83b) that if a worker from one city went to another city to seek employment, the applicable *minhag hamedinah* is where he is employed. He cites *Talmud Yerushalmi* (B.M.7:1) that states so explicitly, regarding Beit Maon that had a longer workday than nearby Teveria, codified by the Rema (C.M. 331:1).

“Thus, if a *shadchan* from one place went and made a *shidduch* elsewhere, his default fee is according to the place where he made the *shidduch*.

“However, the Yerushalmi adds that if a resident of Teveria went to Beit Maon to hire workers, even if the work was done in Teveria, the employer can justly claim that he chose to hire workers from Beit Maon on account of the longer workday (or lower rate) that they provide.

“Panim Meiros understands that certainly if someone from Beit Maon hired a local employee, even to go work in Teveria, the worker works the longer day. *Igros Moshe* (C.M. 2:57) seemingly disputes this, and writes that the payment or terms are according to where he did the work.

“The *Yerushalmi* does not address the opposite case of a resident of Beit Maon who went to hire workers in Teveria. Panim Meiros understands that the Teverian worker can claim that he was hired according to the *minhag hamedinah* of his own locale, and insist on the shorter hours (or higher fee). Rivash rules so explicitly (#475).

“Based on this, Panim Meiros rules that if the *shadchan* lives in the locale with a higher fee, the families who sought his services are required to pay that amount. However, if he lives in the locale with the lower fee, the families can pay him only that amount; certainly if he didn’t travel to the locale with the higher fee, but just sent written messages there. *Igros Moshe* agrees with this, if the *shadchan* didn’t travel, but rather communicated through writing or telephone from where he lives.

“Thus,” concluded Rabbi Dayan, “you should pay Mrs. Simantov several thousand dollars, according to the fee where she lives and facilitated the *shidduch* from.”

**Verdict: Someone who went elsewhere to broker a *shidduch* without a specified fee is paid according to where she made the *shidduch*. However, if she made the *shidduch* from her home, she is paid according to where she lives.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

### Minhag Hamedinah

Common Commercial Practice #13

### Commuter Employee

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

### Q. If someone from one state works in another state, which minhag hamedinah do we follow?

A: Rema, based on the *Talmud Yerushalmi*, rules that if a worker from one place went to seek employment elsewhere, we follow the *minhag hamedinah* of the place of employment (C.M. 331:1).

However, if an employer hired someone local to go do work elsewhere, Panim Meiros (2:63) rules that we follow the *minhag hamedinah* of their place of residence. *Igros Moshe* (C.M. 2:57) seemingly disputes this and maintains that we follow the *minhag hamedinah* of where the work was done.

(See Casefile for elaboration on this.)

Nonetheless, if the employee worked in his own locale, and just communicated electronically with the other locale, *Igros Moshe* agrees that we follow the *minhag hamedinah* of the place where he performed the work.

Of course, this issue itself is subject to *minhag hamedinah*, so that if the practice is to pay and provide rights based on the official location of the employer, that is binding.



## BHI HOTLINE

that he should have informed him in advance that he wanted to be compensated, and had he done so, he, too, would have invested time into the website. Since neither one was obligated to develop a website, the partner who did so had no reason to inform his partner, because informing him would not have obligated him to join him in developing the website.

In the second case, however, since the latecomer was obligated to be there on time, he is entitled to claim that had the punctual partner told him that he would want to be paid for working harder during the opening hours, he would have begun to show up on time in order to avoid paying him.

If it was impossible for the latecomer partner to fulfill his obligations toward the partnership — for example, if he were ill or moved to a different city and couldn’t get there on time — then the punctual partner is entitled to payment even if he didn’t inform his partner that he wanted to be paid.

But if it *were* possible for the latecomer to be there on time, and he was showing up late without a valid reason, then the punctual partner was required to inform him that he would begin to charge him for the extra work he is doing. If he didn’t, we assume that he was *mochel* (waived) payment for that work (*Nesivos* 177:4 and 287:2; *Erech Shai* 177, and *Shu”t Maharsham* 4:95).

It is therefore better to express clearly that he is expecting compensation, so as to avoid any uncertainty due to that dispute among the *poskim*.

Some *poskim* say that it is enough to request that the latecomer start coming on time because the work is much harder when he isn’t there (*Pis’chei Teshuvah*, *Sechirus* 8, note 73), and if his request is ignored, then he is entitled to payment. Certainly, he warrants compensation if he specified that this is his intention (see *She’eilas Yaavetz* 1:6).

As we have written previously in several essays, if there are accepted business practices that govern partnerships in a locale, then those practices are binding in *halachah* (see *She’eilas Yaavetz*, *ibid.*, cited in *Chiddushei Chasam Sofer* 176:41, which deliberates whether there are scenarios in which it is obvious from the onset of the partnership that there would be no compensation for this type of extra

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# HALACHIC ESTATE PROTECTION

a project of the Business Halachah Institute

From the BHI Beis Horaah

## What is the purpose of a Tzavaah?

The Torah's order of inheritance is specific. Daughters do not inherit if there are sons and the deceased's siblings do not inherit if there are descendants. A man who wants his wife and daughters to benefit from his estate must utilize a valid halachic method to do so. His instructions, written or oral, cannot alter the Torah's order of inheritance. A properly prepared Tzavaah is necessary to halachically ensure the financial security of one's widow and daughters.

## Is a secular Will or trust halachically valid?

The general consensus of the Poskim is that a secular Will cannot alter the halachic order of inheritance. Some Poskim maintain that a father's secular Will imposes a mitzvah obligation on his heirs to follow the instructions recorded in his Will, but most Poskim disagree. Therefore, a secular Will is not a reliable method to assure the financial security of one's widow and daughters. Placing assets in a trust is also halachically questionable. The only reliable method is leaving a Tzavaah.

## How does the Tzavaah work?

The Tzavaah circumvents the inheritance process by the father's assumption of a financial obligation during his lifetime when all his assets are still in his possession. He obligates himself to pay a very large sum of money to his daughter(s), for instance, payable only when his death is imminent. During his lifetime, he has full and unrestricted control of his assets. The debt only goes into effect just prior to his death, and it must be repaid from the estate before there is any distribution to the heirs.

The debt, however, is conditional. If the sons grant the daughter a share of the estate, as specified by the father, the debt is retroactively null and void; the daughter receives her specified share and has no further claim to the estate. The sons will gladly give the daughter the specified share rather than risk losing their inheritance entirely.

## Is the Tzavaah traditional or a contemporary innovation?

The Tzavaah has been in use for many centuries. In earlier times, it was used to award daughters a half-share of the estate as part of her dowry. For instance, if a man had two sons and a daughter, each son would get forty percent of his estate and the daughter would receive twenty percent of the estate in the form of a post-death payment, not as inheritance, as explained above. Therefore, the tzavaah came to be known as shtar chatzi zachar, a certificate granting her half of what a male would receive. Later, it became customary to award daughters a full share.

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With profound gratitude to the Ribono Shel Olam we mark the 14th anniversary of our weekly newsletter joyously received by Shomrei Torah v'halacha.

We are especially excited to announce the publication of

## Issue #700

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