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Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Rear-End Collision

"Today we will learn something in Gemara that is relevant to modern traffic accidents," Rabbi Tzedek began. "The beauty of Halacha is the way we apply cases in the Gemara to modern situations.

"Imagine the following scenario," he continued. "Reuven is driving along the highway at a steady 60 mph. He brakes suddenly. Shimon, who was driving behind him, can't stop in time and crashes into Reuven, causing damage to both cars. Who is liable for the damage?"

Avi raised his hand. "I think that Reuven is liable," he said. "He braked suddenly, which caused the accident."

"I disagree," said Yitzi. "Shimon should have left a proper trailing distance. If he couldn't stop in time, he must have been too close." "But if Reuven slammed on the brakes," argued Avi, "Shimon might not have had time to stop."

Eli waved his hand. "Why did Reuven brake?" he asked Rabbi Tzedek. "Does that make a difference?"

"It could," replied Rabbi Tzedek. "What do you mean?"

"Maybe someone cut in front of him or an animal ran across the road, which isn't his fault," Eli said. "Or he might have hit the brakes by mistake, realized that he missed his exit, or got distracted by his kids fighting in the car, which would be considered his fault."

"We can talk about different situations," replied Rabbi Tzedek. "Let's look at the Gemara now; it discusses a similar case."

"The Mishnah (Bava Kamma 31b) talks about two people who are walking in the street, one carrying a wooden beam and the other carrying a barrel," said Rabbi Tzedek. "What happens if they collide and the barrel breaks on the beam?"

"Neat!" cried Avi. "I wonder if they had insurance then!"

"I doubt it," laughed Rabbi Tzedek. "But let's overlook the issue of insurance for today's discussion and focus on the damage liability. Who would like to summarize the mishnah?"

Yitzi read the mishnah and summarized: "If the owner of the beam was first, he is exempt, unless he stopped short without giving warning. If the owner was last he is liable, unless the owner of the barrel stopped short without giving warning."

"Excellent! The analogy to modern traffic accidents is quite clear," said Rabbi Tzedek. "The second driver is generally at fault for a rear-end collision. If he damaged the first car, he is liable; if he was damaged, the driver of the first car is exempt. However, if the first driver stopped unexpectedly, he is considered at fault, unless he gave proper

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## Animal Commodities

Submitted by  
C. B.

I earn my living by investing in animal commodities. This means that I purchase animals and sell them for profit; however, I never take physical possession of the animals. They remain with the cattle farmer who does the actual work of raising the animals.

**Q: I am concerned that some animals I own may give birth to a bechor; how can I avoid any halachic issues?**

**A:** When a kosher animal gives birth to a first-born male, that animal is offered as a bechor. Nowadays, in the absence of the Beis Hamikdash, it remains prohibited for benefit until it develops a permanent physical blemish. The only residual sanctity that remains is that it may not be worked and the shearing is prohibited (Y.D. 306-309). Due to the associated prohibitions, the custom for generations has been to sell partial ownership of the mother or fetus to a gentile, which exempts the first-

born male from acquiring bechor status (Y.D. 320:3, 6). As such, the suggested method of selling a partnership in the mother to a gentile is to employ at least two kinyanim (proprietary acts). One is for the gentile to give the Jew money toward the purchase and the second is for the gentile to take physical possession of the animal. Nevertheless, the method of creating this partnership is somewhat tricky due to a number of technicalities involved in the sale of the unborn animal or

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warning (C.M. 379:2-3; Pischei Choshen, Nezikin 1:[79]).

"Wouldn't the brake lights serve as warning?" asked Eli.

"Yes, if they were working properly," Rabbi Tzedek replied. "But the warning must allow sufficient time to stop. For a sudden, total stop, brake lights alone wouldn't be enough."

"The mishnah here does not seem to distinguish between possible reasons for stopping," Eli noted.

"In fact, the Gemara on the previous page differentiates between two cases," Rabbi Tzedek said. "If the owner of the beam stopped to straighten his load, he is exempt, even if he did not warn the person behind him. Similarly, in our case, if he needed to stop - say, an animal raced across the road - he would be exempt even if he stopped suddenly. He is at fault only if he stopped to rest (see Aruch Hashulchan 379:3-5)."

"What if the first car did not stop short, but slowed down significantly?" asked Avi.

"Rashi (31b, s.v. hayah) implies that the first person is liable in this case also, since he did not walk normally," replied Rabbi Tzedek. "But others rule that a person does not always go at the same pace, so the person behind should have left enough distance to stop (P.C., Nezikin 1:[78])."

"We see that Halacha gives credence to Shimon's claim of a sudden, unwarranted stop by Reuven, the first driver," continued Rabbi Tzedek. "But be aware that courts nowadays presume fault is the second driver's in almost all cases of rear-end collisions. The second driver is expected to leave sufficient distance to stop, regardless."

"How much trailing distance is necessary?" asked Yitzi.

"The 'two-second' rule is the minimum distance you should leave," concluded Rabbi Tzedek. "Safe driving often requires three, four, or even more seconds of trailing distance, depending on the speed and driving conditions."

the mother.

In your case, you could employ two preferred options. When you purchase animals, you should stipulate that you are leaving a small percentage of all the animals you purchase in the possession of the seller. As a purchaser, there is no need to be concerned about the correct proprietary act when selling animals to a gentile, since you would not be selling anything to a gentile, just leaving a small percentage of the animal in his possession. As partners, the firstborns will not be subject to the laws of bechor. Another option is drafting a contract that obligates you and the seller to close the purchase of the animals after the animals deliver their firstborn, or when you sell the animal to the next purchaser. As such, you will only become the owner of a female after it gives birth to a male firstborn, thereby avoiding owning a bechor.

Those options will you also

serve well if you invest in the purchase of donkeys. The Halacha in this case differs from the sale of a kosher animal. A firstborn donkey is redeemed with a sheep that will completely relieve its sanctity, as otherwise it must be decapitated. This is in contrast to the redeemed kosher bechor that remains with a residual sanctity. Therefore, although the sanctity of a kosher bechor should be avoided by creating a partnership with a gentile, it is prohibited to prevent the firstborn of a donkey from becoming a bechor, since the bechor can be redeemed or decapitated (Y.D. 321:20).

This restriction, however, applies to a donkey that you own already, but not if you purchase donkeys and leave partial ownership with the gentile seller, or if you enter a contract for sales to close the deal after the birth of the firstborn. In this case, you never sold the animal to the gentile.

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## Shomrim: Guardians #5

**Q: I collected \$500 for tzedakah and the money got lost. Must I pay this from my own pocket?**

**A:** The Gemara (B.M. 56a) derives that a guardian is not responsible for property consecrated to the Temple (hekdesh). But donations to a shul, Torah institution or other charity organization are not included in this exemption; a guardian of money

earmarked for these causes carries responsibility like any other guardian (C.M. 95:1; 301:1; Nesivos 301:6).

Therefore, if the money was lost through negligence, you are responsible. If you received payment for your efforts, such as a paid gabbai tzedakah or fundraiser, you could be responsible even for theft or loss in the mail (see Noda BiYehudah C.M. II:54; Ketzos 72:5).

However, if the money was not designated for a specific institution or organization, but was generic "tzedakah," it is considered as money that has no claimant. Therefore, you cannot be made to pay. However, you still have a personal, moral responsibility to pay if you were negligent and are in a financial position to cover the loss (301:6; Pischei Teshuvah 301:6; Tzedakah U'mishpat 10:[20]).

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