

# BUSINESS WEEKLY

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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

Postdated

"I saw an advertisement for group swimming lessons during the summer," Mr. Leiner said to his wife. "I think it would be good for our Pinchas."

Mrs. Leiner called the swim instructor, Boruch, and asked how much the lessons were.

"It's \$600 for a series of twelve lessons," he said.

"Can I break it into two payments?" asked Mrs. Leiner.

"You can give me two checks," replied Boruch, "one for this month and one for next."

Pinchas returned from the first two lessons in good spirits. On the morning of the third lesson, Pinchas fell off his bicycle and twisted his ankle. An X-ray confirmed that the leg was fractured; the doctor put a cast on the leg.

Mr. Leiner called Boruch and notified him that Pinchas would not attend the swimming lessons anymore.

"He had a bicycle accident and broke his leg," said Mr. Leiner. "He'll be wearing a cast for the remainder of the lessons."

"Obviously, if he has a cast he can't come," said Boruch. "Refuah sheleima!"

"About the payment..." asked Mr. Leiner. "We paid for the whole series, but he participated in only a few lessons."

"I don't charge by the lesson," said the instructor. "Payment is for the entire series, and I'm continuing to teach."

"But if Pinchas is not attending, I shouldn't have to pay," said Mr. Leiner. "If I have to, I'll stop the second check."

"I don't think that's right of you," replied Boruch.

"I don't think it's right of you not to refund

payment for all the remaining lessons," retorted Mr. Leiner.

"I suggest we pose the issue to Rabbi Dayan," Boruch said. "Whatever he says – I'll do."

Mr. Leiner arranged to meet with Rabbi Dayan and asked: "Does Boruch have to refund the money for the remaining lessons? What about the second check?"

"If an employer is forced to retract for medical reasons, he has to pay only for the work done," explained Rabbi Dayan. "Thus, Mr. Leiner does not have to pay for the remaining lessons, unless stipulated otherwise or there is a common practice in this regard (C.M. 334:4)."

"So does Boruch have to refund the money for all the remaining lessons?" asked Mr. Leiner.

"No, because the rule is different where the

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## Carpool Query

I drive a carpool to work five days a week. I have three passengers, each of whom I charge \$100 a month; this money goes toward parking, tolls and gas. I cover the balance of the costs. Occasionally, one of the passengers does not come.

**Q: My question is: Who has the right to fill the empty seat in the car? Does a passenger have control over his seat and may he allow his friend to use the seat, or do I**

**have veto power if for some reason I don't want to drive that particular person?**

**A:** You did not specify if you charge a flat fee monthly regardless of whether the passenger takes each ride, or whether it is prorated for each trip that a passenger does not take. If payment is adjusted for each ride that a passenger does not take, there is no question that a passenger may not fill his spot with someone else without your acquiescence.

The reason is that the passenger did not acquire rights to a seat; he merely pays for the service of being transported to and from work.

A question arises if you do not refund money to your passengers for trips that they do not take. At first glance, the relationship between you and your passengers is that of a lessor and lessee. You have leased to them a seat in your car, and the halacha would follow the principles that apply when one leases a

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money was prepaid,” continued Rabbi Dayan. “In this case, so long as the worker is able to continue providing the service, he does not have to refund the money, even if the employer was forced to cancel the service for medical reasons.

“Tosafos (B.M. 79b, s.v. “e atoh”) explains that by paying up front, the employer undertook the risk that something might happen and gave the worker the money even if he will cancel his service. Thus, Boruch does not have to refund the money from the first check (see Pischei Teshuvah 334:2). It would be meritorious — lifnim mishuras hadin, though, to refund the money if he didn’t

have to turn away others because of limited space.”

“What about the second check?” asked Mr. Leiner.

“Technically, a check is not payment, but rather instructions to the bank to pay to the bearer,” replied Rabbi Dayan. “Even if we consider a check like payment – since this is a common form of payment nowadays – Tosafos’ logic does not apply to a postdated check. The fact that it was postdated indicates that the employer is not willing to risk giving all the money up front. Thus, Mr. Leiner can stop the postdated check or demand it back for the unused lessons (Rabbi Zvi Spitz, Minchas Zvi, vol. II, p. 61-62, 76).”

house. In such a case, if the lessee cannot or chooses not to exercise his right to live in the house, he can sublease the house to another tenant and, barring a condition to the contrary, the owner generally does not have the right to protest unless, for example, the subtenant has a larger family (C.M. 316:1).

In your case, the passengers would have the right to sublease their spot and would even be able to charge the sublessee for that spot. The only recourse you may have is taarumos – the right to bear a grudge against your passenger for compelling you to have to drive someone whom you do not know (C.M. 311:6). Alternatively, the relationship between you and your passengers might be that of an employer/employee. The halacha in that case is identical to the previous case (335:1) and it would therefore seem that you

cannot stop him from transferring his seat to a friend.

On further consideration, it is clear that the relationship that you have with your passengers is not based on the model of a lessor/lessee or employer/employee. If someone made arrangements with a car service driver to drive him to and from work, the customer may have the right to give his spot to someone else. In your case, you did not hire yourself as a car service driver; your agreement is much less formal. You are driving to work anyway, so it costs you next to nothing to drive them as well – and obviously it will save them money for you to drive them. The proof that this was the understanding is that all you expect from the passengers is to share some of the expenses involved in driving your car to work.

Therefore, they do not own any rights that they can share with another person.

*For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM*

## Damages #33

**Q: I installed an automatic sprinkling system to water my lawn. After using it for a month, my neighbor claimed that the water was wetting his property and demanded that I move some of the sprinklers. Must I move them?**

**A:** Although you are required to distance something potentially damaging from your neighbor’s property, if you placed it with his

consent you established a chazaka, and the neighbor can no longer demand that you remove it (C.M. 155:35).

Many authorities maintain that you do not need to purchase the right explicitly, nor wait three years. Even tacit acquiescence of the other person, by assisting you or by watching you place it and remaining silent in a manner indicating agreement, usually suffices to establish a chazaka immediately. Thus, after the

month of silence, the neighbor cannot protest (Pischei Choshen, Nezikin 13:25[54]). Certain nuisances are considered so severe, though, that even if the neighbor remained silent for many years, he can force you to remove it. These include: consistent smoke, bathroom odor, heavy dust, and certainly, potential hazards. Still, if you explicitly acquired the right, the neighbor cannot renege (C.M. 155:36; Be’er Heiteiv 155:48; Nesivos 155:20).

## MONEY MATTERS

### PLEASE BE AWARE

Using your friend’s credit card for purchases or taking advantage of his special finance offers can involve serious ribbis (interest) issues.

*For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at: phone: 718-233-3845 x41 · email: ask@businesshalacha.com*

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