# BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita

BUSINESS HALACHA INSTITUTE

Restoring the Primacy of Choshen Mishpat

ISSUE **#124** / PARSHAS **NITZAVIM**
FRIDAY, **SEPTEMBER 14**, 2012
**27 ELUL** 5772




## STORY LINE

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### Take a Seat

Mr. Zahtz purchased seats for Rosh Hashanah in his regular shul. Exactly one week before Rosh Hashanah, though, his son Zevi had a boy.

"That means a Rosh Hashanah bris," Mr. Zahtz realized.

"Where will the bris be?" Mr. Zahtz asked his son a few days later.

"We'll be staying with my in-laws for Rosh Hashanah, so the bris will be there," said Zevi. "We hope you'll be able to come."

"Of course!" replied Mr. Zahtz. "We'll come if they can arrange a place for us to stay."

"They already have a place next door," Zevi said. "Seats are also still available in their shul, but will cost $100."

"We already paid $100 for seats, but we'll pay again," said Mr. Zahtz. "It's worth it for the occasion!"

On Rosh Hashanah, Mr. Zahtz's regular seat was empty. His neighbor, Mr. Spier, had a son visiting.

"This seat will be empty all Yom Tov," Mr. Spier said to his son. "Mr. Zahtz is away for his grandson's bris, so you can sit there."

When Mr. Zahtz returned, Mr. Spier greeted him.

"Mazel tov on your grandson's bris," he said. "I also want to thank you for use of your seat on Rosh Hashanah."

"What do you mean?" asked Mr. Zahtz.

"Our son was with us for Rosh Hashanah," Mr. Spier explained. "Since I knew you were away, I told him he could sit in your seat for all of Yom Tov."

"I normally wouldn't make a fuss," Mr. Zahtz said, "but I paid $100 for that seat and had to pay another $100 for seats at my son's in-laws' shul. If you used my seat, you should reimburse me."

"But you weren't using it anyway," argued Mr. Spier. "It would have remained vacant!"

"You still had no right to use it without my permission," said Mr. Zahtz emphatically. "Just as I paid for seats where I visited, you owe me $100 for my seat that your son used!"

Just then, Rabbi Tzedek walked by and overheard the two arguing.

"What's going on?" he asked politely. "We don't want unnecessary disputes during the days before Yom Kippur!"

Mr. Zahtz told Rabbi Tzedek what had happened. "Does Mr. Spier have to reimburse me $100 for my seat?" he asked.

"This case relates to a concept called 'zeh neheneh v'zeh lo chaser' (this one gained; that one did not lose)," replied Rabbi Tzedek. "If someone squats on another's property that is not for rent, without causing any

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## FROM THE BHI HOTLINE

### Complicated Compromise

*Submitted by H. H.*

Two of my employees have a claim regarding benefits. I would like to compromise with one of them - but not with the other. I am concerned that if I compromise with the first employee, the second one will use this as proof that I owe him as well.

**Q: Could the second employee use my willingness to compromise with the first employee against me?**

**A:** As a general principle, a benefactor has the option to benefit one person and not another. For example, the Gemara (Kesubos 66a-b) teaches that if one indebted himself to give a gift to his son-in-law who then died without children, he is not obligated to give this gift to his brother, who is now the yabam.

Based on this, Shulchan Aruch (C.M. 77:7) rules that a borrower may agree to compromise with one of the partners who lent him money, but not with the other. When the second partner claims that the compromise proves that the borrower owes money, the borrower can respond that he is willing to forgo monetary repayment from one partner, but not from the other.

There seems to be a contradictory ruling to this principle. Elsewhere, Shulchan Aruch (C.M. 176:31) rules that one who admits to

*continued on reverse side*

## STORYLINE CONTINUED

loss, he is not obligated to pay afterward for the benefit (C.M. 363:6). In this case, Mr. Zahtz had no intention of renting his seat, and Mr. Spier's benefit did not cause him any loss, so he does not have to pay."

"But I did lose, because I paid for the seat!" exclaimed Mr. Zahtz.

"So does anyone else who acquires a property," answered Rabbi Tzedek. "We are not discussing the initial outlay for the property, but whether the benefit of the second party caused an additional loss, which it did not."

"What if I simply don't want anyone sitting in my seat?" asked Mr. Zahtz. "If I'm not there - let it remain empty!"

"There is also a concept called 'kofin al middas Sedom,'" replied Rabbi Tzedek. "In Sedom, people refused to let others benefit from their property even when it did not entail any loss to them; this behavior is frowned upon.

"Sometimes, we even force people not to act this way," continued Rabbi Tzedek. "However, this applies only when the owner cannot gain from his property, yet wants to withhold benefit from others. Where he can gain, though - e.g. by renting - and does not want to, we cannot force him to allow others to use it (Rama 154:3; 363:6; Pischei Choshen, Geneivah 8:1-3)."

"Had Mr. Zahtz said, 'No,' and my son sat there anyway, would I still be exempt?" asked Mr. Spier.

"If Mr. Zahtz explicitly said not to sit there," answered Rabbi Tzedek, "you would have to pay for the use (363:6).

"I would add, though," concluded Rabbi Tzedek, "that, especially on Rosh Hashanah, it is a privilege and merit to have someone use your vacant seat for davening (prayer)."

## FROM THE BHI HOTLINE CONTINUED

or pays a debt to one partner is considered to have also admitted to the other partner and must pay him as well. Sma (176:73) notes the contradiction and suggests the following resolution. He explains that there is a fundamental difference between a compromise and a payment. A defendant may decide to reach a compromise with one partner and not the other. Such a compromise is essentially a gift, since the defendant was not obligated to pay anything. Since it is considered a gift, the defendant has the right to give a gift or reach a compromise with one partner and not the other.

If he pays the full claim to one of the partners, that payment is not seen as a gift; rather, it is seen as an admission that he owes money. Once the defendant admits that he owes money, he is obligated to pay the second partner the money that he owes him as well.

In your case, if you pay the full claim of one of the employees, the second employee may indeed use that payment as proof of your admission that you also owe him that benefit. If, however, you reach a compromise agreement with the first employee, you need not be concerned. That compromise is classified as a gift rather than an admission, and as such, you may choose to compromise with one rather than with the other (see Knesses Hagedolah 176; Hagahos B.Y. 161; Maharsham 3:261).

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## Shomrim: Guardians #24

# MONEY MATTERS

**Q: I rented a car from a Jewish-owned company. The rental contract specifies terms of liability that do not conform to the rules of shomrim. Are these terms halachically binding?**

**A:** The rules of shomer chinam, shomer sachar, socher, and sho'el are default rules. However, the owner and guardian can stipulate whatever terms of liability they wish, whether more stringent or more lenient than those prescribed by the Torah. This is based on the rule of "kol tenai she'b'mamon kayam" (any stipulation in monetary matters is binding). Thus, the terms explicit in the contract are halachically binding (C.M. 296:5).

When the liability terms are stipulated from the beginning, there is no need for a kinyan. However, once the rental begins, an agreed change in the liability terms requires a kinyan, unless the owner explicitly exempted the guardian from his responsibility, which is a form of mechilah (forgoing) (Rama 344:1; Pischei Choshen, Pikadon 2:16; 10:7).

Additionally, for items that are completely excluded from liability of shomrim (e.g. real estate and documents, or cases of be'alav imo - when the owner is in the service of the guardian) a stipulation to obligate the guardian requires a kinyan (301:4; P.C., 2:17).

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