

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

STALLED CAR

The Kurzes were sitting around the Shabbos table. "Do you have a review sheet of what you learned in school this week?" Mrs. Kurz asked her 9-year son, Shlomo.

"Yes," replied Shlomo. He went to his room and brought

back the review sheet.

"What *parashah* are you learning?" asked Mr. Kurz.

"We're in the middle of *Parashas Mishpatim*," replied Shlomo. He gave the review sheet to his father.

"I see you learned about the *mitzvah* of *perika*," Mr. Kurz said. "Can you tell me what that *mitzvah* is?"

"If you see someone's donkey carrying a heavy load, and it falls and cannot get up," answered Shlomo, "you can't just walk by and leave the person in trouble; you have to help him!"

"Excellent!" exclaimed Mr. Kurz. "I see that you learned well!"

"But people don't carry loads on donkeys anymore," commented their daughter, Shira.

"There are still horse and buggies," argued 12-year old David. "What happens if something happens to the buggy and the horse is stuck and can't pull it?"

"Very few people use horse and buggies," insisted Shira. "Almost everybody uses cars, nowadays. So how is this *mitzvah* relevant?"

"Well, sometimes you're driving along," said Mr. Kurz, "and you see someone stuck on the side of the road."

"I once got a flat tire," added Mrs. Kurz. "Someone was nice enough to stop and help me change the tire. Perhaps that could be a modern application of the *mitzvah*."

"If so, every time I pass a stopped car on the highway I would have to stop," contemplated Mr. Kurz.

At shul, Mr. Kurz asked Rabbi Dayan:

"Am I required to stop and assist?"

"If we see the animal of a fellow Jew failing under his load," replied Rabbi Dayan, "the Torah (*Shemos* 23:5; *Devarim* 22:4) requires us to assist him unload the animal (*perika*) and then help him reload the animal (*te'ina*) (C.M. 272:1).

"Some explain this *mitzvah* as rooted in the need to spare the animal suffering; others explain it as rooted in the need to help a fellow Jew in distress. Presumably, it depends on the dispute (B.M. 32a; Shabbos 128b) whether the prohibition of *tza'ar ba'alei chayim* — causing an animal suffering — is *d'Oraysa* or not (*Gra* 271:1).

"*Achronim* extend the *mitzvah* from an animal



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

ADAR AMBIGUITY

Q: Last year, I had to take a \$5,000 loan to pay for some *simchah*-related expenses. We wrote in the contract that the

loan is due on Rosh Chodesh Adar 5784.

When I recently received a calendar for 5784 and flipped through it, I realized that there are two Adars this year.

Is the loan due on Rosh Chodesh of the first Adar or the second?

Also, there are two days of Rosh Chodesh in each Adar. On which day of Rosh Chodesh is the loan due?

A: The *Gemara* (*Nedarim* 63a) records a dispute between *Tanna'im* regarding a person who made a *neder* (vow) not to drink wine until the beginning of Adar, in a year that had two Adars. Rabi Yehudah says that when someone says "Adar" without specifying which (*stam*), he is referring to the first Adar, so it is forbidden for him to drink wine only until the first Adar. Rabi Meir says that if the person did not know, when he made the *neder*, that there would be two Adars, then we assume that his intention was until the first Adar. But if he did know, then we assume his intention was until the second Adar.

The majority of *Poskim* rule according to Rabi Yehudah, but the Rambam (*Nedarim* 10:6) rules according to Rabi Meir (*Shulchan Aruch Yoreh De'ah* 220:8). Some *Poskim* say that it remains a *safeik* (uncertainty), which is why it is imperative for a person to express clearly, in any such case, whether he is referring to the first or the second Adar (*Shach* *ibid.* 17; see *Shulchan Aruch, Choshen Mishpat* 43:28).

The Rema (*Even Ha'ezer* 126:7) writes, in regard to a *get* (divorce document) written in the first *Adar*, that if the document says Adar without specifying which one, it is nevertheless valid. Other *Poskim* rule stringently in accordance with the Rambam who rules that *stam Adar* is the second one, which (assuming the *get* was actually written in the first Adar) makes it a *get me'uchar*

EXCITING NEWS:

Weekly Wednesday Shiur

On subjects and principles of
Choshen Mishpat

By: Harav Chaim Kohn Shlita

Dean, Business Halacha Institute

Subject: Hasogas Gevul

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CASE FILE

carrying a load to an animal pulling a load, even if the problem is with the wagon or its wheel, so that the horse is not under the load (*Aruch Hashulchan C.M. 272:8*).

“Contemporary *Poskim* address the question of whether these *mitzvos* apply to a car, in which there is no animal, just the fellow Jew in distress. Of course, offering help is included in the general *mitzvah* of *chessed*, which is an aspect of the *mitzvah* of *v'ahavta l'reiacha kamocho* (*Rambam, Hil. Avel 14:1*).

“Some *Poskim* maintain that according to the rationale that focuses on the distress and potential danger to the Jewish owner, there is no difference between an animal failing under a load and a car with mechanical difficulties, so that *perika* and *te'ina* require someone who can assist mechanically to do so (*Yechaveh Da'as 5:64/65*).

“Others maintain that even if *perika* and *te'ina* is extended to an animal pulling a wagon, it cannot be extrapolated to a car; this reverts to the general *mitzvah* of *gemilus chassadim*, which is much more flexible.

“On the practical level,” concluded Rabbi Dayan, “one can consider further that often passersby cannot help with mechanical failure; most drivers have roadside assistance included in their insurance; there are volunteer organizations that specialize in roadside assistance; that for *te'ina* (which seems more relevant to a car), the helper is entitled to full pay for his services; and that stopping in the shoulder on a highway can be potentially dangerous (*C.M. 372:6*).”

Verdict: Some *Poskim* apply *perika* and *te'ina* also to a car experiencing mechanical difficulties, and there is certainly a *mitzvah* of *gemilus chessed*, when possible, to assist without causing potential danger.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Property #16
Abandoned Properties

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

Q: Someone left the country for an extended time, neglecting his properties. If someone enhanced the properties in his absence, is that person entitled to compensation? How much?

A: Although *beis din* generally does not appoint a guardian for cogent adults, when a person is forced to flee due to danger and abandons his properties, *beis din* is supposed to appoint a guardian to tend to the properties. If the guardian or his agents enhance the property, they are considered as enhancing with authorization, and are entitled to the going rate (*C.M. 285:2*).

However, when a person leaves of his own accord and neglects his properties, *beis din* is not required to appoint a guardian for them (*C.M. 285:4*).

Even so, some *Rishonim* write that if someone enhanced the properties of his own accord, he is entitled to compensation like any other enhancer, depending on whether the property is fit for such an enhancement, etc. (*Rivash* #515, cited by *Beis Yosef C.M. 375:2*).



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(delayed-date *get*), which is not valid (*Bach* *ibid.* and *Shach* cited above). Some *Poskim* explain that the Rema doesn't cite this stringent view because a *get me'uchar* is invalid only *mi'derabbanan*, and we take the stringent opinion into account only in regard to vows, which are *d'Oraisa* (*Beis Shmuel* *ibid.* 19).

Applying these principles to your *she'eilah*, according to most *Poskim* who rule in accordance with Rabi Yehudah, you are obligated to pay in the first Adar. Even according to the Rambam, since you didn't know, when you set the deadline, that there were two Adars, you would be obligated to pay in the first Adar. Had you known when you set the deadline that there were two Adars, then according to the Shach's view, it would have been incumbent upon the lender to specify that he meant the first Adar, and since he failed to do so, he cannot force you to pay in the first Adar. (See *Ketzos 42:2* and *Nesivos 42:10* who explain that you, the borrower, are considered the *muchzak*, and when there is a halachic uncertainty, the lender is considered the *motzi* and has the burden of proof.)

Some *Poskim* write that nowadays, you would be obligated to pay in the first Adar regardless, because the Rambam ruled that *stam Adar* means the second month only if the parties knew that there were two Adars. Nowadays, since there is a well-known dispute among the *Rishonim* whether *stam Adar* refers to the first or the second, then when we know there are two Adars, we specify which one we are referring to. Therefore, if a contract was written without specification, then we assume that the parties did not know that there were two, in which case even the Rambam would agree that *stam Adar* means the first (*Get Pashut 126:32*).

Regarding on which day of Rosh Chodesh you must pay, there is a *halachah* (*Choshen Mishpat 73:9*) that if someone swears that he will pay someone on Rosh Chodesh, he must pay *on* the first day of Rosh Chodesh. But some *Poskim* say that the reason for this ruling is that the oath makes the obligation a *d'Oraisa*, but without that he would be allowed to pay on the second day. Others argue that the *halachah* would be the same even without the oath, because when people say “Rosh Chodesh” they mean the first day (see *ibid.*, *Shach 32*). Ultimately, because we are not sure, you are not obligated to pay on the first day (*cf. Shaar Mishpat* *ibid.* 11 who leans toward ruling that you *are* obligated to pay on the first day).

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

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