

# 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

## RELATIVE'S ACCOUNT

Shimon was a priority client at his bank, and was entitled to receive interest rates above those available to most customers.

Shimon had a relative, Reuven, who – for various reasons – wanted to open an account under a relative's name.

"I have \$15,000 that I want to deposit under a relative's name," Reuven said to Shimon. "Are you willing to open such an account in your bank?"

"I could do that," said Shimon, "but I don't want to take responsibility for your money if something unexpected should happen."

"I don't expect any problem with the bank," replied Reuven. "Regardless, though, I won't hold you liable; whatever you earn in the bank I'll take. Rates now are close to 5%."

"The truth is, I am actually entitled to a rate of about 5.5%," replied Shimon.

"I'm willing to take 5% and let you keep the extra 0.5%," said Reuven.

"Thank you," laughed Shimon, "but I don't need the 0.5%. I'm happy to give you whatever the bank gives."

"So it's okay with you?" asked Reuven.

"I think so," said Shimon, "but I have to check whether there's any issue of *ribbis*."

"What do you mean?" asked Reuven.

"You want to hand me \$15,000, but the account will be in my name," explained Shimon. "The bank will be dealing only with me, and then I'll be returning to you more than you gave me, let's say \$17,000!"

"I hadn't thought of that," replied Reuven.

"Let's ask Rabbi Dayan."

**"Can Shimon open an account in his name and give the interest to Reuven?"**

"A Jew may not borrow money from another Jew at interest in order to lend it to a non-Jew at interest," replied Rabbi Dayan. "If Shimon (the middleman) bears responsibility to Reuven, there is a lender-borrower relationship between them, so that *ribbis* is prohibited."

"However, Shulchan Aruch (Y.D. 168/9:13) writes that if a non-Jew hands a collateral object to a Jew and asks him to take a loan from another Jew, and all the liability is on the collateral, so that the middleman bears no financial responsibility to the Jewish lender – it is permissible. In such a case, Shimon does not borrow from Reuven, but merely serves as his agent to grant the loan to the non-Jew.

COMING SOON

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## BHI HOTLINE

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

## FAST ASLEEP!

**Q:** I learn in a yeshivah in Monsey, and my sister was getting married in Brooklyn, where we live. I decided to go home the night before the wedding so I could get a

good night's sleep and be well-rested for the *simchah*. I boarded the bus at 9 p.m., which was scheduled to arrive at 11 p.m., and I must have been really exhausted, because I fell into a deep sleep. The bus reached Brooklyn, dropped off the passengers at their stops in Brooklyn, and then picked up new passengers and headed back to Monsey — with me still on board, oblivious to my surroundings. I finally woke up when we were back in Monsey, at 1 a.m. on the morning of the *chasunah*.

Am I required to pay for the trip back to Monsey? Or, perhaps the bus company is required to reimburse me for the trip to Brooklyn, since I did not benefit at all from their service?

**A.** In his youth, Harav Chaim Kanievsky, *zt"l*, was once traveling from Petach Tikvah to Bnei Brak, and he became so engrossed in the Torah topic he was pondering that he missed his stop and continued on for a few additional stops before realizing that he needed to disembark.

In those days, the price for a bus ride was set based on the number of stops the passenger traveled. When Rav Chaim reached Bnei Brak, he asked the Chazon Ish whether he was required to pay for those additional stops from which he had derived no benefit.

The Chazon Ish answered, "Does the bus driver have to suffer because you forgot (where you were)?" (*Maaseh Ish*, vol. 5., p. 30)

We would like to explain the Chazon Ish's ruling.

We might think that this case would fall under the rubric of *zeh neheneh v'zeh chaser* (one benefited, and the other suffered a loss), and since Rav Chaim was not *neheneh*, because he gained nothing by remaining on the bus, he should not have had to pay.

But in truth, there is an additional factor that affects the *halachah* in this case: *sechirus po'alim*. On a bus, an unstated business transaction takes place: By boarding



## CASE FILE

Although the *Gemara* (B.M. 71b) teaches that a non-Jew cannot appoint an agent, here Shimon serves as Reuven's agent.

"Shach (Y.D. 168/9:34) adds that even if the non-Jew does not hand Shimon a collateral, but Shimon makes clear that he does not bear any responsibility for the loan and the full liability is on the non-Jew, it is permissible.

"In our case, if Reuven knows where the money will be deposited, and merely gets whatever interest is received from the bank – Shimon is his agent to lend the bank, and it is permissible. "If Reuven does not know details where the money will be deposited, the parties must explicitly state that Shimon does not bear any liability (*Toras Ribbis* 17:18-20).

"Alternatively, when the borrower does not need or benefit from the loan, but rather the "loan" is only to benefit the lender, Rif writes that there is no violation of *ribbis*. Here, also, Shimon has no benefit from the money that he receives from Reuven, but rather, does him the favor of opening the account in his name, so it is permissible. This rationale, though, would not allow Shimon to take a "cut" and ask for some of the interest from the bank, since then he also benefits from receiving the money from Reuven (Rema Y.D. 166:3; *Bris Yehudah* 2:[48]).

"According to the first rationale, though," concluded Rabbi Dayan, "Shimon can stipulate that he retain part of the interest that is received from the bank, even though all the interest is due Reuven, since he is not a borrower from Reuven, only his agent."

**Verdict: A Jew can serve as an agent for another Jew to lend money to a non-Jew at interest, provided that the middleman does not bear responsibility for the money.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

### Minhag Hamedinah

Common Commercial Practice #11  
Division Between Creditors

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

**Q. If someone owes \$10,000 to one person and \$20,000 to another, and has only \$6,000 of assets, how should the assets be divided between the creditors?**

A: If the assets are movable property, there is no halachic precedence between the creditors, even if one lent before the other (*C.M.* 104:3).

Shulchan Aruch rules, based on the Rif, that the \$6,000 should be divided evenly between the two creditors, since both are entitled to the available \$6,000 (*C.M.* 104:10).

However, Sma (104:27) cites the opinion of Rabbeinu Channanel that the assets should be divided between the creditors proportional to the debt, \$2,000 / \$4,000. Erech Shai (104:10) also considers the opinion of Rabbeinu Chanel.

Maharsham (3:359) cites Shem Aryeh (*C.M.* 66) that the practice nowadays is to divide proportionally. Similarly, Shevus Yaakov (1:156) writes that the practice among merchants is to divide proportionally.

Therefore, since the *halachah* is not completely resolved, we should follow the common commercial practice and divide proportional to the debt (*Pischei Choshen, Halvaah* 4:[77]).



## BHI HOTLINE

the bus and paying for the ride, the passenger is effectively hiring the driver to drive him for the requisite number of stops.

This case is therefore similar to that of someone who hired a laborer to work in a specific field and later realized that he had sent him to a field that didn't belong to him. Now he does not want to pay the laborer because he derived no benefit from his work.

The *halachah* in such a case (as stated in *Tosefta, Bava Metzia* 7:7, according to the *Minchas Bikurim's* explanation) is that since the employer instructed the laborer to work in that specific field, he *is* obligated to pay his full wages, and he can then demand that the owner of that field pay him for whatever benefit he derived from the work done in his field (based on the *halachos* of *yored lischei chaveiro*; see *Shulchan Aruch Choshen Mishpat* 336:1).

Similarly, since Rav Chaim implicitly hired the driver to drive him until the stop at which he actually got off the bus, he was required to pay for that ride in full, even if he derived no benefit from the additional stops.

Applying this ruling to your case, it is obvious that you are not entitled to be reimbursed for the original trip from Monsey to Brooklyn, because you effectively hired the bus company to take you to Brooklyn, and they fulfilled that "contract."

But you never hired the company to take you back to Monsey. In contrast to the scenario above, in which a passenger who boarded the bus hired the driver for as long he remained on the bus, when you boarded the bus, the mutual understanding was that you hired the company for one way only. You merely remained on the bus as the result of an *oness* caused by your slumber, with no benefit to you. Therefore, you are not required to pay for that ride. (Cf. *Chasukei Chemed, Beitzah* 21a who records a similar case in which Rav Chaim Kanievsky ruled that the passenger must pay, but it is possible that it depends on the exact understanding in that specific locale, at that time, regarding passengers boarding a bus.)

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



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