

# 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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## BHI HOTLINE

לע"נ הרב אהרן בן הרב גדליהו ע"ה

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## PART OF BARTER

Between Pesach and Shavuot, Congregation Tiferes Banim distributed *Gedolim* cards to the children who attended Avos Ubanim (father-son learning).

David amassed almost a complete set and was missing only the card of the Chofetz Chaim. He had doubles of many other *Gedolim*.

The final evening of the special program was on Shavuot night. David asked who might have a double of the Chofetz Chaim and found out that Boaz had.

After Shavuot, David approached Boaz. "I heard that you have a double of the Chofetz Chaim," he said.

"Yes, I do," replied Boaz. "I'm missing two other *Gedolim*, though, to fill in my set." He told David which cards he was missing.

"I have doubles of both," offered David. "I'm happy to trade them for your extra Chofetz Chaim!"

"Deal!" exclaimed Boaz. "This way we can both have complete sets."

"I have one of the two cards with me," David said. "I'll give it to you now. Later tonight I'll stop by with the other card, and you'll give me your Chofetz Chaim."

Boaz went home; he prepared the extra Chofetz Chaim card on his dresser.

When David came by that evening, Boaz was shocked to discover that his 2-year old brother had somehow clambered onto the dresser. He had colored all over the card and even partially tore it.

"I'm sorry," Boaz apologized to David, "but my baby brother ruined the Chofetz Chaim card..."

"Then give me back the card I gave you," David said dejectedly.

"You already gave it to me," replied Boaz. "It's not my fault that the Chofetz Chaim card was ruined; it's your loss! I'm willing, though, to give you another card from my doubles."

"No," said David. "Either give me your intact Chofetz Chaim card or give me back my card!"

The two approached Rabbi Dayan and asked:

**"Did Boaz already acquire the *Gedolim* card he received from David?"**

"*Chazal* derive *kinyan chalipin* (exchange) from a verse in *Megillas Rus*," replied Rabbi Dayan. "It says: 'Formerly this was done in Israel for redemption (*ge'ulah*) and exchange (*temurah*), to validate any matter (!*kayeim kol davar*): A person would take off his shoe and give to his fellow' (4:7).

"*Rabbeinu Tam* explains that this verse refers to three forms of *kinyan*: '*ge'ulah*' is buying with payment; '*temurah*' is barter of similarly valued items; '*kayeim kol davar*' is *kinyan sudar*, a formal act of *chalipin* by handing a clothing item or other utensil (*Tosafos B.M. 47a s.v. ge'ulah*).

"The *Mishnah* (*Kiddushin* 28a) teaches that when bartering items, such as a donkey for a cow, when the first party takes possession of the cow, the second party correspondingly acquires the donkey, without need to make a separate *kinyan* on it, even if the donkey were to die immediately afterward (*C.M.* 203:1).

"However, the *Gemara* (*B.M. 47a*) teaches that if people barter a donkey for a cow and lamb, and the first party takes the cow, because this is only part of the barter, the other party does not thereby acquire the donkey. Moreover, the first party does not yet acquire the cow, even though he pulled it, so that if the donkey would die before the transaction was concluded, he must return the cow (*C.M.* 203:2; *Prisha* 203:2).

## HATZOLAH'S HARM

**Q:** I am a Hatzolah member, and I recently responded to a call in which someone's life was in danger. Since my car wasn't available, I asked my neighbor if I could borrow his

car, and he agreed. As I was pulling out of his parking spot, I hit a different car.

Am I liable for the damage caused to either (or both) of the cars?

**A:** The *Gemara* (*Bava Kamma* 60b & 117b) states that a person may not save his own life by inflicting damage on someone else's property, and if he did so, he is obligated to pay for the damages. The *Rishonim* (*Tosafos* *ibid.* 60b, s.v. *Mahu*) write that this obviously does not mean that the person must die rather than cause damage, because *pikuach nefesh* clearly overrides the prohibition of damaging someone else's property. Rather, this means that he may use someone else's possessions to save himself only if he intends to compensate him for any damage he may cause in the process.

The *Gemara* (*ibid.* 117b) states, however, that this compensation requirement applies only to the *nirdaf* (person whose life is threatened), but if someone else was trying to save the *nirdaf's* life, and he caused damage to someone else's property in the process, he is not liable to pay — regardless of whether the damages were caused to something belonging to the *rodef* (person threatening to harm the *nirdaf*) or to a third party (*Shulchan Aruch, Choshen Mishpat* 380:3).

Now, according to basic principles of *halachah*, the rescuer *should* have to pay for the damages he caused, but the *chachamim* waived his liability out of concern that people would refrain from saving other people's lives for fear of having to pay for damages caused in the process (*Gemara* *ibid.*).

Some commentaries suggest that even if someone *deliberately* damages someone's property in order to save a *nirdaf's* life, he is still not liable (*Pilpula Charifta, Bava Kamma* ch. 6, 12:8).

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## CASE FILE

"Nonetheless, several *Rishonim* maintain that if the barter was for something that can easily be divided proportionally, the transaction is valid proportionally. For example, if the cow and lamb were exchanged for 30 bushels of wheat, when the first party took the cow, 20 bushels of wheat would correspondingly be transferred even if acquisition of the lamb was negated, unless the owner of the animals had indicated that he needed the entire quantity of wheat as a whole unit (C.M. 203:2; Rema 200:7; Pischei Choshen, Kinyanim 7:19).

"Thus, because the Chofetz Chaim card was bartered for two cards and Boaz took only one of them, the barter was not consummated," concluded Rabbi Dayan. "The loss is not David's, and Boaz must return the card that he already took. It would be *mentchlich*, though, to let Boaz keep it, in lieu of another card."

**Verdict:** In barter, when one party takes what is forthcoming to him, the other party thereby acquires the corresponding item. However, taking only part of what is forthcoming does not consummate the barter, even for what was already taken.



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

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

### MONEY MATTERS

Shabbos and Yom Tov

#4

**Non-Jewish Partner (Cont.)**

**Q:** I share an accounting office with a non-Jewish partner. The office is officially closed on Shabbos, but my partner often

comes in anyway to do work for priority clients. Is this allowed? Can I share in the fees we receive from this work?

**A:** Rema (O.C. 245:1) writes that a second way in which it is permissible to allow a non-Jewish partner to work on Shabbos is when the Jew and non-Jew do not alternate days but rather work side by side all week. In this case, the partners are not working on behalf of each other, and clearly there is no expectation that the Jew should work on Shabbos.

Therefore, if the non-Jew chooses to work also on Shabbos for his personal gain, he is not considered the Jew's agent but rather as working for himself. The Jew is even permitted to benefit incidentally from the profits.

Here, too, where the office is closed on Shabbos, if the non-Jew chooses to work on Shabbos, it is permissible, even if he knows that this pleases you. You may not stipulate, though, that he work on Shabbos (*Igros Moshe* O.C. 1:90).

However, if the business hours include Shabbos, it is not permitted, even if you work side by side the remainder of the week.

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## BHI HOTLINE

These *halachos* apply not only to someone saving a potential murder victim but also to someone rescuing a person experiencing a medical emergency (*Shevet HaLevi* 9:293; [see, however, *Aruch Hashulchan* 378:19]).

The *poskim* debate, however, whether this exemption applies to someone who borrowed equipment (such as a car) in order to rush to save a life and damaged it in the process.

Some *poskim* rule that this exemption applies not only to an object the rescuer borrowed from its own but also to something he took without permission (*shoel shelo midaas*; *Nesivos* 72:17 & 340:6; *Pnei Yehoshua* Bava Kamma 60b).

According to other *poskim*, the *takanas chachamim* was established to absolve a person from damage caused to objects that were in his way and were preventing him from saving a life, out of fear that if he would be required to pay, he might tarry in his efforts to save the life and the person would die in the interim. But there is no *takanas chachamim* permitting someone to take someone else's possessions and use them to save lives; he is not absolved from payment if he inflicts damage on such objects (*Meshovev* *Nesivos* 72; *Amudei Ohr* 116:10; *Shu"t Igros Moshe*, *Choshen Mishpat* 2:63).

In your case, in regard to the car you hit when you pulled out, because you damaged it in the course of saving a life, you are absolved from liability according to all *poskim*. And because liability for the car you borrowed is subject to the aforementioned dispute, neither can you be forced to pay for that, because you may claim *kim li* (see BHI #473) that you are exempt.

It is proper, however, for the person whose life you saved to compensate the owners of both cars (see *Mishpat Hamazik* 6:14).

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