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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

Rabbi Meir Orlan
Writer for the Business Halacha Institute



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לע"נ הרב אהרן בן הרב גדליהו ע"ה

Submitted by the Beis Hora'ah

FIRST RIGHTS

After years of dreaming, Mr. Landman and his wife finally decided to move to Eretz Yisroel.

The decision brought excitement, but also an endless list of things to arrange. Near the top of the list was selling their apartment.

After showing the apartment to several interested buyers, Mr. Landman finally found a serious prospect. After multiple meetings, inspections, and negotiations, the two sides were ironing out the final details.

"We're almost there," the buyer said during one meeting. "I'd like to move forward as soon as possible."

"So would I," replied Mr. Landman. "The sooner this is settled, the sooner we can finalize our plans for Israel."

Word of the impending sale quickly spread through the neighborhood. One evening, Mr. Landman's next-door neighbor knocked on his door.

"I heard you're selling," the neighbor said.

"Yes," replied Mr. Landman. "We're hoping to move to Israel in the coming months."

"In that case I want to exercise my rights as *bar metzra*," said the neighbor, "Since my property borders yours, I have first rights to purchase your apartment."

Mr. Landman was taken aback.

"We're already in the final stages with another buyer," he replied. "Starting over now could complicate everything and delay our move."

The prospective buyer was equally unhappy when he learned of the development, after investing considerable time and expense.

However, the neighbor remained firm. "Chazal granted the *bar metzra* priority," he claimed. "I am prepared to match the deal and arrange payment promptly."

Unable to resolve the matter, the three appeared before Rabbi Dayan.

"Is the *bar metzra* entitled to demand first rights here?"

"Chazal granted first rights to the *bar metzra* based on '*v'asiso hayashar v'hatov*,' which requires us to act in a fair and beneficial manner," replied Rabbi Dayan. "However, there are several limitations to this halacha, when granting priority to the *bar metzra* could adversely affect the seller" (B.M. 108a-b).

For example, if a person sells a field far from the city in order to purchase a closer one, or sells a low-quality field to purchase a better one, *bar metzra* does not apply. Delaying the sale to accommodate the *bar metzra* could adversely affect the seller, since the closer or better field might be sold meanwhile to someone else (C.M. 175:42).

Shach (175:38) derives from this that *bar metzra* does not apply to one who sells his property to move to another city, as we find elsewhere that selling property to move to another city is like selling a low-quality property, since the seller no longer wants to live here (see C.M. 190:12).

Noda B'Yehuda (C.M. 1:24) questions this analogy, though, since regarding *bar metzra* the focus is on the seller's intention to buy the closer or better field, whereas when selling a low-quality field without intent to purchase a better field – *bar metzra* applies.

Therefore, he limits the Shach's ruling to a case where the seller has limited opportunity to buy a house or take a job in the new city, so that delaying the sale could adversely affect his prospective option. However,

NO FREE RIDES? PART II

Q. A bochur in my yeshiva was getting married, and his father rented a bus to transport his friends to the wedding in Lakewood. I don't really know the *chassan* and did not plan to attend the wedding, but

I had to be in Lakewood that night, so I jumped on the bus along with his friends.

Do I have to pay for the ride? And if I'm not obligated to pay now, *bedi'eved*, was it permissible for me to ride along with them *lechat'chilah*, or would it have been considered theft?

A. In the previous column, we explained that a person must pay for riding public transportation under three halachic frameworks — *sechiras po'el*, *neheneh*, and *yoreid* — all of which override the possible consideration of *zeh neheneh v'zeh lo chaseir pattur*.

In your case, the *chassan's* father hired the bus company to provide service for his guests exclusively, so any benefit you derived is from the *chassan's* father, who is not working for *you* (in contrast to *sechirus po'el* in public transportation, where each passenger is retaining the services of the bus company). The *chassan's* father is also not considered a *yoreid*, because he is not intending to provide service to you, only for his guests. The only question is whether you are obligated to pay as a *neheneh* in a case in which the *chassan's* father did not specifically state that he does not allow passengers to ride free (as opposed to the case of public transportation, in which the owner does insist on payment).

Whether a person may use someone else's property without permission depends on whether the owner suffers a loss due to this use.

If the property is meant to earn money — such as if the owner generally rents it out — then a person who uses it is obligated to pay because he prevented the owner from being able to rent it out during the time he used it, which makes it a case of *zeh neheneh v'zeh chaseir*.

But if the owner does not generally rent it out, then the user is not obligated to pay even if he would otherwise have had to rent from someone else — i.e., he was

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CASE FILE

if the seller does not have a limited or defined option in the new location – the laws of *bar metzra* apply.

However, several Acharonim uphold the Shach's ruling. Sha'ar Mishpat (175:3) cites from the Rosh (B.M. 9:27) that when a person sold all his property to a single buyer, which is hard to come by, even if the *bar metzra* is later willing to match the purchase, Chazal did not grant him priority. If we would require notifying the *bar metzra* initially, the rare potential buyer might back out meanwhile, adversely affecting the seller.

Similarly, when the seller wants to leave the area, if we would require notifying the *bar metzra* initially the prospective buyer might retract meanwhile and delay the move, adversely affecting the seller, even if he did not have a defined prospective option. Therefore, Chazal did not apply the rule of *bar metzra*, even if he is now willing to match the deal (see Pischei Teshuva 175:16; Mishpat Shalom 175:42).

"Therefore," concluded Rabbi Dayan, "since requiring the involvement of the *bar metzra* initially could have delayed Mr. Landman's plan to move to Israel, Chazal did not grant him priority rights."

Verdict: If a person sells a property to buy a better property elsewhere there is no rule of *bar metzra*, since during the delay the other property may be sold. Shach applies this also to one who wants to move elsewhere, if there is concern that delaying might adversely impact his move.



MONEY MATTERS

MONEY MATTERS
Onaas Devarim, Falsehood
and Geneivas Daas #9
Degrees of Falsehood

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר'
שמואל חיים ע"ה

Q: Can I tell a false story about my travels to impress someone if it causes no harm?

A: The prohibition of falsehood is based on several verses. The explicit verse, "Do not lie" (Vayikra 19:11) is generally understood as referring primarily to lying with financial implications (see Rashi; Sha'arei Teshuva 3:178).

Similarly, the prohibition, "Distance yourself from falsehood" (Shemos 23:7) is understood by some as referring to legal contexts or circumstances that can lead to loss or damage to others (Sefer Hayere'im #235).

However, Tashbetz (*Zohar Harakia* #59) maintains that this verse refers to all lies; he takes for granted that it is not possible that there is no mitzvah that our speech be truthful.

Furthermore, even if there is no absolute prohibition, honesty is an essential character trait, and untruthfulness is a contemptible trait.

Moreover, Rabbeinu Yonah writes that telling false stories trains you to lie, as the prophet Yirmayahu rebuked: "They trained their tongues to speak falsehood" (9:4) especially if one does so frequently, and you will likely come to lie even in monetary issues (Mishei 11:1; Sha'arei Teshuva 3:181).

Based on this, *Tzitz Eliezer* (15:12) prohibits a doctor from altering details of a case study to make an article interesting and more likely to be chosen for publication.

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neheneh — because the owner did not incur a loss; it was a case of *zeh lo chaseir* (*Shulchan Aruch, Choshen Mishpat* 363:6).

If, however, the use caused the owner some sort of loss — such as if the walls of a house became dirty from use — then even if the damage is insignificant in value, the user must pay the full amount of the rent (ibid. 7). Regarding a case in which the damage is worth less than a *prutah*, see *Shaar Hamelech, Hilchos Gezeilah* 3:9; *Chochmas Shlomo* 363:6; *Shu"t Divrei Chaim, Hashmatos* 29; *Minchas Pittim* 363:7).

According to many *poskim*, if the owner will not suffer *any* loss, then it is permissible to use the property even *lechat'chilah*, because we may presume that a Jew is not bothered when someone else benefits from him when he suffers no loss, as such behavior is the trait of *Sedom* (*Shu"t Chasam Sofer, Choshen Mishpat* 79, s.v. *Venirah li*; *Nesivos* 146:9 & 250:16; *Shu"t Beis Ephraim, Choshen Mishpat* 49). Some *poskim* argue that it is not permissible if the user does not know for certain that the owner is amenable to his using it (*Yam shel Shlomo, Bava Kamma* 2:16; see *Mishpat Haneheneh* 4:2).

In your case, if the bus was full, and your boarding it will cause other passengers to cram together, then it is certainly forbidden for you to ride along, because the *chassan's* father intended to provide a comfortable ride for his guests, not to cause them to feel cramped. Your riding the bus causes him to be *chaseir*, so even if you already rode, you should compensate the *chassan's* father for the value of the ride.

But if there are empty seats on the bus, then this is a case of *zeh neheneh v'zeh lo chaseir*. The *chassan's* father was not seeking people to pay to fill the empty seats, and he loses nothing from your having joined the ride. According to many *poskim*, you were even allowed to join the ride *lechat'chilah*, but according to others you would have had to know for certain that he doesn't mind.

[Although the bus owner also suffered a slight loss from the extra gas your presence required, that loss was already included in the price he charged the *chassan's* father to transport all the *chassan's* friends, who could potentially have filled every seat.]

We have assumed that the *chassan's* father paid a flat rate for the bus rental. If, however, he agreed to pay per passenger, then you certainly caused him a loss, and you are required to compensate him for your ride (*Choshen Mishpat* 264:4).

On the other hand, if he agreed to pay per hour for the bus rental plus gas and tolls, so you could, theoretically, have caused him a loss, you are likely not required to repay him, because had the bus driver told him that there was some gas left in the tank he filled for this trip, the *chassan's* father would probably not have demanded that he repay that, so he does not suffer a loss from your having used some of the extra gas (see *Meishiv Behalachah* 19).

In summation, then, if there were empty seats, you are not obligated to pay (and according to some *poskim* you may even have joined such a ride *lechat'chilah*), but if there were no empty seats, you are required to repay the *chassan's* father for the value of the ride.



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