

ISSUE 228: SPACE SAVING I AND II: RAV CHAIM YISROEL BELSKY ZT”L & DAYAN CHAIM KOHN SHLITA

SPACE SAVERS II

❖ *May you park in between two spots to save one for your married children?*

1 THE ANSWER

As long as doing so does not run counter to local civic law or custom and the Space Saver does not cause a Chillul Hashem by his/her behavior, doing so is permissible.

We will arrive at this ruling through four different approaches.

(According to one approach though, it is better if B would pay A to do so.)

DETAILED EXPLANATION

SPACE SAVERS II invokes the following Halachos.

OUTLINE:

I [A – C follows the approach that we took in the previous issues when we discussed saving a spot you dug out for yourself from the snow and would follow an understanding based on a Responsum from **Rav Chaim Yisroel Belsky zt”l** which is included in this issue.]

A- **A** may acquire an object available for anyone to take – a *davar shel hefker* - on **B**’s behalf, even if by doing so it will prevent others from gaining.

B- **Sha”ch** and **Ketzos** permit Creditor **A** to grab for a Creditor **B** even beyond **A**’s rightful share - from a debtor with limited funds even at the expense of fellow creditors. [Though Nesivos forbids it.]

C- **Sha”ch** and **Korban Nesanel** permit **A** to grab for Creditor **B** at the expense of other creditors even if **A** is not a creditor in his/her own right, if **B** hires **A** to work on **B**’s behalf.

II Dayan Chaim Kohn Shlita

D- In a modern city structure, no other car owner is considered a creditor who can interfere with your ability to use the spot and save it for someone else in accordance with civic law [Dayan Chaim Kohn].

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BACKGROUND

We will first highlight some differences between

I a *shliach* (an unpaid agent)

II a paid employee (*po’el*)

III a self-declared volunteer (*tofes*)

Then, we will raise numerous dilemmas and identify circumstances under which the three can function to benefit one person at the expense of someone else.

I SHLIACH

A may generally *appoint B as an “unpaid agent” or shliach* to perform a legal act whereby its *result* will be attributed to **A** [Choshen Mishpat 182].

Note: Agency is affected by **A** *appointing B* to execute the task. **A** may choose to *appoint B* to affect a beneficial result or a detrimental result on **A**’s behalf.

Limitations:

To affect agency; both **A** and **B** must have the requisite legal mental capacity (usually beginning at the Halachic age of an adult: 12 for females, 13 for males) [Choshen Mishpat 188: 2].

Generally, albeit with exceptions, if **A** appoints **B** as an agent to perform an act which is a *sin* for **B** to do, the result is not legally attributed to **A** [Choshen Mishpat 182].

II PO’EL

Let’s Contrast an *unpaid agent* with an *employee*:

A may *hire B* to perform a legal act whereby its result will be attributed to **A**.

In addition to the *result*; the *actions* of an employee or like the *actions* of the employer.

As such, according to Nesivos HaMishpat, an employee may perform an act of acquisition, like *lifting* an object (*hagba’ha*) or *using* the object (*chazaka*), *even* if the employee does *not* have the requisite legal mental capacity to generally perform legal actions.

However, the *domain* of an employee is *not* like the *domain* of the employer.

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Thus, an employee (**B**) who does not have the requisite legal mental capacity to perform legal actions, cannot perform means of acquisition like pulling the object into (**B**)’s domain (*meshicha*) on **A**’s behalf [Nesivos HaMishpat 188: 1].

Page | If **A** hires **B** to perform an act which is a *sin* for **B** to do, is the result is legally attributed to **A**?

3 No [Choshen Mishpat Pischei Teshuva 182: 2, Maharshal 182: 2]

III SELF- DECLARED VOLUNTEER – תופס לבעל חוב

Even without having been expressly appointed as an agent, generally, **A** may decide to become a **SELF- DECLARED VOLUNTEER** and unilaterally benefit **B** by acquiring an ownerless object on **B**’s behalf [Choshen Mishpat 269: 1] see exceptions below.

Examples include

- 1) If **A** finds an ownerless object – *that is an object which anyone has a right to take for himself/herself*, - **A** can unilaterally decide to pick it up on behalf of **B** [Choshen Mishpat 269: 1] .
- 2) **A** owes \$100 to **B**. Were a phenomenon to exist where **A** is at risk of losing his/her money soon whereby **B** is at jeopardy of never getting paid, **B** may grab \$100 from **A** for himself/herself (provided that **A** agrees that he/she owes **B**). Similarly, **C** may unilaterally decide to grab \$100 from **A** for **B**, even without **B** appointing **C** to do so [Choshen Mishpat 105: 4].

Exceptions:

The ability to voluntarily acquire an ownerless object on behalf of another becomes severely limited if doing so directly causes others a loss. This happens when others have an otherwise legitimate claim to the object as well.

When the **SELF- DECLARED VOLUNTEER** has the ability to acquire the ownerless object himself/herself the **SELF- DECLARED VOLUNTEER** can do so on behalf of his/her fellow even when doing so directly causes others a loss.

Otherwise, the **SELF- DECLARED VOLUNTEER cannot** act with “vigilantism” and acquire the object for his/her friend while directly causing others a loss [Pischei Teshuva C.M. 105: 3].

Examples:

A owes **B, C, D, E, & F** \$100 each. **A** has \$200 presently available. First come first serve. Since **B** may claim \$100 for himself/herself he/she may choose to claim \$100 for either **C, D, E, or F**.

However, “**G**” who has no claim to any \$100 may not choose to act on behalf of **B, C, D, E, or F**; as benefiting one causes the others a loss.

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Moreover; **B, C, D, E, or F**; may not even appoint **G** as an unpaid agent, a *shliach* to grab \$100 on any one of their behalf, whereby doing so would directly cause the other creditors a loss.

(Merely *preventing others from gaining*, like when **A** picks up an ownerless find on **B**'s behalf is very different than **A** causing another creditor a *loss* by being a vigilante and grabbing the entire \$100 for **B**, at **C**'s expense).

Dilemma 1

What if **A** owes **B** \$100 and owes **C** \$200. May **B** take \$200 for **C**?

On one hand B has a right to act, on the other hand, isn't his right limited to \$100?

Sm"a, Nesivos: No. **B** may only "gift" to **C** up to the \$100 that **A** owes **B** [Choshen Mishpat 105: 3].

Shach, Ketzos HaChoshen: Yes. Since **B** has a right to grab for himself/herself, **B** can act on **C**'s behalf even beyond **B**'s own stake in the pie [Choshen Mishpat 105: 2].

One Creditor grabbing more than his/her share for a fellow Creditor

Yes	No
Sha"ch	Sm"a
Ketzos	Nesivos

Dilemma 2: A Paid Vigilante at the Expense of other Creditors

May, **B, C, D, E, or F**; hire **G** to grab \$100 on any one of their behalf, if doing so would directly cause the other creditors a loss?

Sha"ch maintains yes. A *po'el* functions like an extension of the boss [Choshen Mishpat 105: 1].

Korban Nesanel maintains yes. **G** now has sufficient stake in the game to allow him/her to act on the remaining creditors expense.

Nesivos [Choshen Mishpat 105: 2], **Tumim** maintain no. Only one who has a right to grab for himself can act on behalf of one on the remaining creditors expense].

A Paid Vigilante at the Expense of other Creditors

Yes	No
Sha"ch	Tumim
Korban Nesanel	Nesivos

(All agree though, that **A** may enlist **G** to acquire \$100 for **B, C, D, E, or F**) [Ketzos HaChoshen 105: 3].



APPROACH D

A can prohibit **B** from benefitting from **A**'s property.

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Similarly, **A** can prohibit **B** from benefitting from **A**'s partnership in a property.

Examples theoretically include the shared space in condominiums, planned neighborhoods or gated communities. In Talmudic times, many small towns were run like gated communities whereby each citizen owned a significant percentage of the shared municipal property.

Then there were properties that were completely public; belonging to everyone – yet no-one specifically can claim anything significant; like the Temple Mt., water wells dug along the roads leading to Jerusalem which provided drinking water for the pilgrims en route to the Temple.

A's degree of ownership thereof is so minute that **A** has no ability to “forbid **B**” to benefit from **A**'s “portion” of the public well [Rambam Peirush Hamishnayos Nedarim 5:4].

Dayan Chaim Kohn Shlita rules that our modern cities are similar to the public wells of yore. Barring local law and custom, one citizen cannot forbid others from benefitting from a specific area of the city.

Ramifications of this ruling include but are not limited to:

1) *Ani Hamenakef b'rosh Hazayis*

Normally, if **A** extends significant effort, puts his/her life in somewhat of a danger or spends significant resources to obtain an article, position, or usage of a property, **B** is forbidden to interfere with **A**'s efforts and take the article, position or property for himself/herself as long as **A** is still interested in it.

According to my **Rebbi Dayan Kohn Shlita**, while **A** can lay claim on ownerless property, **A cannot** lay such claim on modern city property. Dayan Kohn maintains that the theorem of *Ani Hamenakef b'rosh Hazayis* would not support a claim to a spot you worked hard to dig out from the snow.

Note: In Issue 227, we argued that the theorem of *Ani Hamenakef b'rosh Hazayis* would support a claim to a spot you worked hard to dig out from the snow. This is in accordance with a Responsum from my **Rebbi Rav Chaim Yisroel Belsky, Zt”l**.

2) *tofes leba'al chov b'makom shechav le'acherim*

Normally, **A**'s ability to reserve an opportunity of which **B** has a right towards, has limitations, if reserving it for **B** would be at **C**'s expense. In other words, **C**'s right towards the article **poses** limitations on **A**'s abilities to acquire it.

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According to **Dayan Kohn**, when the article/land of contention is of modern city property, meaning that it belongs to everyone and no-one, **C's** right to use it is not a significant enough degree of "right of usage/ownership" to pose limitations on **A's** ability to reserve the spot for **B**.

Page | **As such, as long as there is no local law or accepted custom against such activity and doing so will not cause**
6 **a Chillul Hashem, A may reserve a spot for B by taking up two spots.**

APPLICATION:

How do we view the right to park in a free municipal parking zone?

If we view it as though the space were like a "find" available to anyone who wishes to take it for his/her use, then just like A may pick up a find for B, A may save B a spot even if by doing so, A will be preventing others from attaining it. A is not causing the other car owners a loss. A is preventing them from gaining.

If we view it as though every car owner has a claim to a spot, similar to numerous creditors against a debtor with limited funds, A may obviously park his/her own car in a spot for himself/herself.

As **A** has a right to a spot, according to **Sha"ch** and **Ketzos**, **A** would be permitted to save a spot for **B** as well as saving for himself/herself, at the expense of others, even though by doing so, A is grabbing more than his/share.

And if **B** would even pay **A** for the service, we would have additional premise (**Sh"ach** and **Korban Nesanel**) to permit it.

Now, if someone were to argue that the Nesivos might still forbid **A** to save an additional spot for **B** at the expense of other car owners who have a legitimate claim to the spots, and according to the Nesivos, B paying A for doing so does not improve the situation, Dayan Kohn would still permit saving a spot for your married children by "parking in two spots" because in truth, the availability to use parking spots is not considered a *davar shel hefker*, it is owned by everyone but no-one and no car owner is considered the City's creditor whereby he/she could interfere with any other driver grabbing a spot for a friend as long as such behavior complies with local municipal law and custom.

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In terms of earning claim to a spot for working hard to dig it out from the snow, my Rabbi Rav Belsky zt"l maintains that the efforts earn you a claim, while my Rabbi Dayan Chaim Kohn maintains that the efforts do not earn you a claim to the spot.

Page | Nevertheless, Dayan Kohn, like Rav Belsky writes that in a locale like in Chicago where the public expects you
7 to respect people's efforts, it would be a Chillul Hashem to ignore the digger's efforts.

Of course, all of this is true only if such behavior complies with local accepted custom and does not create a Chillul Hashem.

Space Saving I and II invokes some fascinating Halachos. Let us explore two approaches of two of my Rebbes, Mori V'Rabi Rav Chaim Yisroel Belsky zt"l and yblch"t Mori V'Rabi Dayan Chaim Kohn Shlita.

Both conclude that as long as Space Saving I and II does not run counter to local civic law or custom and the Space Saver does not cause a Chillul Hashem by his/her behavior, doing so is permissible. However, as will become clear, there are sweeping Halachic ramifications between the two approaches of my Rebbes.

מורי ורבי הגאון האדיר הרב חיים ישראל בעלסקי זצ"ל

לכבוד מוהר"י בעלסקי שליט"א:

There is a widely accepted practice in Chicago (and other cities) that following a heavy snowfall, after a person digs out his car from the side of the street (next to the curb - not in a driveway) and clears a snow-free parking spot for himself, he places a crate or lawn chair etc. in the parking spot to "claim" the spot so that no one else should park there until the major snow melts and more spots are available on the street. This practice is so widely accepted that there were articles in the two major Chicago newspapers this week quoting the mayor (and other city officials) that the city will absolutely not crack down on this practice (other cities have outlawed it and will remove the items from the spots) as it is a long standing Chicago "tradition" (the mayor himself said he used to do this when he had to) and unless it gets "out of hand" it will be allowed to continue, as anyway, it actually leads to *less* fighting over parking spots and fewer problems. Most people absolutely respect the "chair" and would not park in a spot with a chair. Others, even if they do not respect the practice *בבטח*, are too afraid to remove a chair and park there as one can get beaten up or worse for "stealing" the wrong type of person's spot.

The שאלות are:

1 - Is there any halachic validity to this - in other words, is it perhaps **אסור** to take another Jew's spot?

אורז משום עני הנקף בראש הוית, לפי המהריק שרית חתים חר"מ סי' ע"ג, שכל זה
 שהשקיע אחר טירחה מרובה בדבר של הפקר (ולכא"י י"ל דזה דומה להפקר) אסור ח"ל "לנלו"ל דבר זה
 ממנו. It could take at times 45 minutes to an hour of intense physical labor to fully clean
 a spot. Would it depend on how much time it takes?

Or perhaps it is אסור because the accepted מנהג המקום is to honor this system (although it is *certainly* not illegal to remove someone else's chair and take their spot).]

2 - If it is not אסור for a Jew to take another Jew's spot, is it then *wrong* for a Jew to put a chair there and "claim" a spot if he has no halachic "right" to that spot? Is that perhaps גזל הרבים?

3 - Based on all הנ"ל what is the most ישרות way for בני תורה to deal with this situation?

Thank you very much,
Moshe Rosenstein

[illegible]

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Rav Belsky zt"l viewed the ability to use City Property as though it was a *davar shel hefker*, open for all to take. As such, a free city parking space is subject to the laws of *ani hamenakef* whereby the "hard worker" can earn a right to reserve one for himself/herself; as well as being subject to the guidelines of *tofes leba'al chov b'makom shechav le'acherim* whereby, reserving a spot for someone else could theoretically be subject to various limitations.

מורי ורבי דיין חיים כהן שליט"א

רשות הרבים בזמנינו הוא נכסי ציבור שאינו שותפות של אנשים פרטיים ולא שייך בזה תופס לבע"ח. ואמנם בודאי אינו נכון להתנהג כך וגם מותר לפנות למשטרה שיפנו אותו משם, אבל איסור גזילה וכו' אין כאן. אם נחוץ אבאר לך את גדרי הדין בזה.

נכסי ציבור אין להם בעלים פרטיים, יסוד זה ידוע באחרונים ומוכח מהראשונים על המשנה וגמרא נדרים בבור של עולי רגלים שהם הפקר לכל ישראל, וזאינו הפקר שאפשר ליחיד לזכות בו אלא הפקר במובן שהיחיד אין לו זכות בו, ולכן היחיד אינו יכול לאסור חלקו עלך אחרים, ועיי"ש בפירוש המשניות של הרמב"ם, וממילא לא שייך בזה תופס לבע"ח כמובן, וזה לעומת דברים ששייכים לציבור כשותפים כמו כבית הכנסת של כפרים ואז יכול לאסור על אחרים, עכ"פ רה"ר בערים שלנו הבעלות דומה לשל נכסי ציבור ולא של שותפים, הדברים בזה ארוכים ומסתעף לכמה נושאים בש"ס ושו"ע.

מצד הדין ודאי מותר ולא שייך עני המנקף בדבר שא"ל לזכות בו, וכן בנ"ד לא שייך גזול את הרבים דזה שייך בחופר בור לעצמו ברה"ר שעומד לשימוש הרבים וכעת מונע זאת מהרבים אבל במקום חנייה יש לו הזכות כמו של אחר (גם מה שכתב הרב בעלסקי מהגמ' יבמות לא הבנתי הדמיון). אכן גם נכון שאין זה ממידת היושר ואצל ת"ח יש לחוש משום חילול השם.

שולחן ערוך יור"ד רכ"ד: א'

הריני עליך חרם ואֶתֶּה עָלִי, שְׁנִיָּהֶם אֶסְוֶיִן לְהַנֹּת זֶה מִזֶּה, וּמִתְרִים בְּדָבָרִים שֶׁהֵם בְּשִׁתְּפוּת לְכָל יִשְׂרָאֵל, כְּמוֹ הַר הַבַּיִת וְהָעֶזְרוֹת, וְאֶסְוֶיִן בְּדָבָרִים שֶׁהֵם בְּשִׁתְּפוּת לְבְנֵי אוֹתָהּ הָעִיר.

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