

Does Somebody Have to Pay for Regularly Sitting in Someone Else's Seat in Shul?

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Question: Reuven pays for two seats in his shul. He uses one for himself and the other one is meant for his son. However, his son prefers to daven elsewhere and rarely sits in his seat. Shimon notices the empty seat and begins to sit there every week. Eventually, Reuven tells him that since he is using the seat, he should pay for it. Is Reuven correct?

Answer: This would seem like a case of *zeh neheneh v'zeh lo chaseir*. Since Shimon is not causing Reuven a loss, it would seem that he should be *patur*. The Gemara says that two conditions must be met in order to make someone pay for a *hana'ah* that he receives. 1. The owner must be having a loss in the sense that he could rent out the property being used if the other person wasn't there. In this case, since Reuven cannot sell the other seat, he would not be able to charge for its use. 2. The person having *hana'ah* can only be obligated to pay for something that would otherwise pay for. In this case, that would mean that Shimon would have to be the type of person who would pay for another seat if this one wasn't available. Whereas, if he is the type of person who wouldn't pay for a seat and would just stand in the back if there was no free seat available, the Gemara implies that he could not be obligated to pay.

Going forward, if Reuven continues to pay for the seat and he wants to use it to put down his *talis* bag or his coat and hat, he may prevent Shimon from sitting there in the future because he needs the seat for himself. Still, because Shimon is not considered a *nehene* because he wouldn't pay for a seat in any case, he may not be able to charge him for sitting there.

However, practically speaking, although the Gemara implies to say that one can only charge the person having *hana'ah* if he is the type of person who would pay for such a benefit, the Poskim rule like the opinion of the Rif that this condition does not need to be met and one can charge someone for using something that is theirs and causing them a loss even if the person would not have been willing to pay for such *hana'ah*.