**Young Man, May I Sit Here?**

In many shuls, people have assigned or fixed seats, and seats are even “sold” for an annual or monthly fee in some communities. In places where seats are not sold, people nonetheless have a “*Makom Kavua*” where they have a *Chazaka*. The arrangements are usually organized and maintained by the Shul *Gabai* or another designated individual. Even where seats are sold, the *Gabai* may occasionally find difficulty in arranging the seating. This essay will examine one such instance:

*Reuven and Shimon Daven in the same Shul and each has a Makom Kavua. Reuven sits near the entrance to the Shul but Shimon, who is an elderly gentleman, sits in the middle of the Shul. Over the years Shimon grew weaker and began using a wheelchair and found it difficult to walk. He asked the Gabai to switch his seat with Reuven’s, claiming that this was the only way that he could attend the Shul as Reuven’s seat was the only place in which a wheelchair could be parked. Reuven (who is a young, healthy man) could easily move to Shimon’s place, but he likes his place and has sat there for many years. Reuven and Shimon came to the Rav to ask whether Reuven was obligated to give up his place or he could be forced to do so.*

We will first consider whether Reuven has an obligation to give Shimon his place. If Shimon would merely be disabled but not elderly, Reuven would not be obligated *me’Ikar haDin* – it would only be a matter of *Gemilas Chasadim*. However, given that Shimon is elderly, we must determine whether Reuven is obligated by the Halacha of honoring the elderly to give him his seat.

The Torah commands, “*Mipnei Seiva Takum v’Hadarta Pnei Zaken*” - “*You shall rise in the presence of an elderly person and honor the presence of a sage*” (*Vayikra* 19:32). The Halacha is that one is obligated to stand in the presence of an elderly person (*Shulchan Aruch,* *Y.D.* 244:1).[[1]](#footnote-1) One should remain standing all the while that he is standing (*ibid*. 2). The *Har Tzvi* (*O.C.* 97) and many other Poskim (cited by the *Yechaveh Da’as*, 3:71) hold that this obligation also includes vacating one’s seat for a *Zaken* (such as on a bus). Since one is obligated to stand all the time that the *Zaken* is standing, if there is nowhere for the *Zaken* to sit, one must offer him a seat.

In fact, even according to those that hold that to fulfill the Mitzva of “*Mipnei Seiva* ***Takum***” a person need only stand momentarily, he would still need to vacate his seat for a *Zaken* to fulfil the condition of “***v’Hadarta*** *Pnei Zaken*” (*Shevet haLevi*, 2:114).

The *Acharonim* adduce proof to this ruling from the comments of the *Moshav Zekenim* *miBa’alei haTosfos* (*Vayikra* 19:32):

*R’ Elazar m’Germaiza explained: When you see a very elderly person [who] is in great discomfort from standing and you are sitting, you should stand before him and say, “Sit in my place”. This is a matter of Midas Chasidus. “v’Hadarta Pnei Zaken” – but somebody who is not so elderly and he is able to stand – you should [nevertheless] honor him and say, “Would you like to sit in my place?”*

The question of honoring the elderly is also discussed in the context of the seating arrangements in Shul. The *Rosh* (*Shu”t* 5:3) was asked to rule on a case of an honored and wise man who had a *Makom* *Kavua* in Shul. When he died, he left a delinquent son who did not deserve to sit in such an honorable seat. One of the other honored members of the congregation claimed that the seat should go to him since “*Zaken Yoshev b’Rosh*” – an elderly person (as he was) should be seated at the front (where the deceased man’s *Makom Kavua* was).[[2]](#footnote-2)

The *Rosh* responded that the son could not be asked to vacate his father’s seat. Though he did not deserve such an honorable place, he did not have to hand it over to a person for whom it was appropriate as he had inherited it legitimately from his father. The same should apply to somebody who bought a *Makom Kavua –* since he took possession of it legitimately, he need not vacate it for somebody else, even if that person is a *Chacham*.

However, the *Rosh’s* case is not entirely comparable to our case. In the *Rosh’s* case, the man demanding the honorable seat already had a place to sit, but he claimed that the son did not have a right to the seat because of the rule of “*Zaken Yoshev b’Rosh*”. However, the Rosh maintained that the son did have the right to his father’s seat, thus the other man did not have any claim whatsoever, as he had a place to sit. In our case, by contrast, Shimon could only sit in Reuven’s seat, not elsewhere. Therefore, perhaps the Halacha of honoring a *Zaken* would require Reuven to vacate his place for him.

The *Mahari bei Rav (*50) discusses a similar question:

*Reuven died and left a son. [Reuven] had a seat in the Shul that he had inherited from his father and had sat in for more than 60 years. The son came to lay claim to his father’s seat… Levi, however, claimed that the son should not sit in that seat for Levi was older and it was not right that the son should sit in a place above him.*

In his response, the *Mahari bei Rav* dismisses Levi’s claim entirely, based on an important principle relating to honoring a *Zaken*: A person is not obligated to incur a loss in order to honor a *Zaken*. The Gemara derives this from the Pasuk quoted above, “*Mipnei Seiva Takum v’Hadarta P’nei Zaken*” - “*You shall rise in the presence of an elderly person and honor the presence of a sage*”: “*Just as rising for a Zaken does not entail any loss so does the Mitzva of honoring him not obligate a person to incur a loss*” (*Kidushin* 32b). On the basis of this *Drasha*, the Gemara (*ibid*. 33a) and *Shulchan Aruch* (*ibid*. 5) rule that those who are busy working are not obligated to stand for a *Zaken* as it would take time away from their work.

Therefore, the *Mahari bei Rav* ruled that the son was not obligated to vacate his seat for the *Zaken*. Since the seat has monetary value and he had inherited the possession from his father, giving it to somebody else would constitute a loss.

He also argues that although there is a principle of “*Zaken Yoshev b’Rosh*”, it may only apply to individual occasions, such as arranging the seating at a wedding or other event.[[3]](#footnote-3) However, there is no precedent for permanently vacating a seat in order to seat a *Zaken* in an honored position.

At first sight, the *Mahari bei Rav’s* argument contradicts the ruling of Rav Shmuel Wosner *zt”l* cited above that a person must give up his seat for an elderly person on a bus. Rav Wosner clearly states that this ruling even applies to somebody with a ticket that specifically grants him a place to sit. (There used to be two types of tickets: a more expensive one that granted a person a place to sit, and a cheaper one that only gave him the right to ride without a seat.) If a person had purchased the rights to a seat, why must he vacate his seat for a *Zaken*? Surely this would constitute a loss.

Rav Wosner addresses this issue in remarkable fashion:

*Regarding standing for a Zaken on the bus…The Halacha would appear to be as follows: The Mitzva of “Kima” is essentially fulfilled by standing momentarily and then sitting. This is clear from the Gemara in several places. However, since we hold that it must be a “Kima sheYesh Bo Hidur” (an act of standing that honors the Zaken), it is almost certain that if he does not vacate his place for the Zaken that there will be no Hidur. For it is certainly not honorable for the younger person to be sitting while the Zaken stands in front of him like a Talmid in front of a Rav.*

*However, this is only in a case where the payment for standing is the same as that for sitting. If the payment for sitting is more than for standing it [vacating his seat] will constitute a loss of money… However, we could suggest that [a “loss of money”] is only something akin to losing time from work, whereas in this case he is losing money for the purpose of a Mitzva. If so, it is just like any Mitzva for which a person is obligated to use his money.*

In other words, according to Rav Wosner, the Halacha that one need not incur a loss to stand before a *Zaken,* is only true when the loss is an indirect consequence of honoring the *Zaken.* Thus the Gemara states that a person is not obligated to lose time from work in order to stand. However, if the act of honor itself necessitates an expense, there is no reason to distinguish this Mitzva from any other and one is obligated to expend resources in order to fulfill it.

In spite of this, it would appear that the Halacha follows the *Mahari bei Rav.* Since giving up the seat he purchased would be a loss, he is not obligated to incur the loss. In addition, the *Mahari* *bei Rav’s* second argument also applies; namely, that it is not likely that a person is obligated to give up his *Makom Kavua* in order to honor a *Zaken*. (The *Mahari bei Rav* implies that this is reason alone, without needing to consider the question of whether this really constitutes a loss.)

Therefore, it would appear that Reuven, in our question, has no obligation to vacate his seat for the elderly Shimon who is now disabled. However, it is obviously the correct thing to do, both as an act of *Gemilas Chasadim* as well as the Mitzva of going *Lifnim m’Shuras haDin* (beyond the letter of the law). It would also be a *Kidush Hashem*, as stated by the *Acharonim*, who cite the following Gemara in *Yoma* in this regard (86a):

*And you shall love Hashem your God – so that the name of Heaven should be beloved through you. You should learn Mikra and Mishna and attend to Talmidei Chachamim, and your dealings shall be honest and your interactions with others shall be pleasant. What will others say of a person who acts this way? “Praiseworthy is his father who taught him Torah, praiseworthy is his Rebbi who taught him Torah. Woe to those who did not learn Torah. So-and-so who did learn Torah – witness how wonderful are his ways, how perfect are his acts.” In his regard, the Torah states, “And He said to me, you are my servant – you are Israel by means of which I am glorified.”*

All of the above applies to Reuven himself (who currently occupies the seat). He has no direct obligation to switch seats with Shimon, as explained above. However, when the *Gabai* enters the picture, he may well have the right to move Reuven from his place and give it to Shimon. This is because the *Gabai* has the authority to make decisions on all matters pertaining to the Shul (see the *Biur Halacha* 153) including the seating arrangement. He can force Reuven to switch places with Shimon, and they can agree on payment between themselves.[[4]](#footnote-4) We asked *HaGaon* Rav Asher Weiss *Shlit”a* and he agreed that the *Gabai* does indeed have the right to take this step.

1. The *Rema* rules that this applies even if the elderly person is an *Am ha’Aretz*, as long as he is not a *Rasha* (quoting the *Beis Yosef* in the name of *Tosfos* and other *Rishonim*). [↑](#footnote-ref-1)
2. See the *Shulchan Aruch, Y.D*. 244:18. [↑](#footnote-ref-2)
3. The *Mahari bei Rav* attributes this to the *Rashbam*. [↑](#footnote-ref-3)
4. This is also implied by the *Rema*, *C.M*. 162:7. Further discussion is beyond the scope of this essay. See also the *Pischei Teshuva ibid*. 5. [↑](#footnote-ref-4)