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HEMDAT YAMIM

Parashat HaShavua

Vayeishev, 23 Kislev 5776

Don't Lower Your Guard

Harav Shaul Yisraeli – based on Siach Shaul, p. 118-120

After completing last *parasha* with a quick rundown of the genealogy and early history of Eisav's family/kingdom, the Torah embarks on a much longer discussion of the emergence of Yaakov's family into nationhood. Rashi (Bereishit 37:1) says that the discrepancy in length is due to Hashem's special regard for our nation. Actually, it is not just the length of the discussion that is different but the fact that Eisav gets settled in his land and seems to effortlessly have a large, structured family with a leadership hierarchy, whereas Yaakov and family undergo many difficulties before becoming settled in their land.

Our *parasha* starts innocuously, with Yaakov back in his father's land, and, as Rashi (bid. 2) points out, he desired to live in tranquility. Yaakov had gone through enough: fleeing his brother, hard work for and trickery from his father-in-law, danger from the abductors of his daughter. With these external threats over, he hoped for a smooth life. However, rest was not the lot of Yaakov, who, more than any other person, symbolizes the nation that bears his name. At this time, an episode of discord between his sons began to unfold, revealing great difficulties until the end of *Sefer Bereishit*. This would end with the fulfillment of the prophecy to Avraham: "Your offspring will be strangers in a land not theirs, and they will subjugate and afflict them for 400 years" (ibid. 15:13). *Chazal* (Bereishit Rabba 4:3) poignantly attached the following *pasuk* to this idea: "I did not have tranquility, and was not quiet, and I did not rest, and agitation came" (Iyov 3:26). The lack of: tranquility – refers to problems with Eisav; quiet – Lavan; rest – Dina; agitation – Yosef.

Certainly the Divine Hand that decreed exile in Egypt was the deciding factor, but the mechanism through which this all happened is "blamed" by *Chazal* on Yaakov, for the shortcoming of asking to live in tranquility. People tend to notice the dangers from the outside and ignore those from within, which is a dangerous mistake. *Chazal* (Bereishit Rabba 4:6) tell us that there were great similarities between the experiences of Yaakov and Yosef, especially that they were both hated by a brother. This teaches us the great danger of hatred, even if one is not an evil person like Eisav but an upstanding one like Yosef's brothers, who nevertheless had enmity towards their own brother. Had Yaakov been as vigilant with the matter as he was with Lavan, he could have "put out the fire" before it grew out of proportion. The exile decreed upon Avraham needed to transpire somehow, but not in the tragic way it did. It was because Yaakov, hoping for tranquility, lowered his guard.

This is a lesson for all generations. We want a respite from our difficulties and are less vigilant when independent in our own Land. After all that our nation has undergone, in the exile and in Israel, we crave for rest. We have to remember, though, that not only Eisav and Lavan are dangerous. The destructive forces from within are also dangerous. The best chance to merit tranquility is to not ask to for tranquility. We must remain careful and make sure that the independence we merited is used to raise our ethical and spiritual level. Then we can enjoy the fruits of the labor of generations.

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Ask the Rabbi

by Rav Daniel Mann

How Fast Does a Guarantor Have to Pay?

Question: Does an *arev kablán* (strong form of loan guarantor) have to pay immediately upon being asked to? If not, how much time does he have?

Answer: Let us first make sure we understand each other's terminology. There are different forms of *arevim*, with the two main ones being: a regular *arev* and an *arev kablán*, literally, a receiving *arev*. An *arev kablán*, either by explicit agreement, language and/or circumstances, is treated like a direct recipient of the loan, even though the ultimate beneficiary is someone else. As a result, while usually a lender can approach the *arev* only after it is apparent that the borrower will not pay (Shulchan Aruch, Choshen Mishpat 129:8), he can approach an *arev kablán* before trying the borrower (ibid. 15).


Now to your question. The Rambam (Malveh 26:2) says that an *arev* does not have to pay until 30 days have passed from the time he became obligated, just as a borrower gets 30 days. The Bach (CM 129) understands that the *arev* is exactly like the borrower for whom he is covering. Therefore, just as the 30-day grace period is only if the borrower does not have money to pay immediately (Shulchan Aruch, CM 100:1), so too the *arev's* 30 days is only under those circumstances. The Shach (CM 129:23) argues cogently that it is evident from the Rambam, that the *arev* has the following advantage. Even if the borrower's time to pay has already passed, the *arev's* 30-day clock starts ticking only at the point the payment of the debt becomes his responsibility. Even if he has money, he has time to figure out how to best handle the payment. The 30 days is based on the concept that when one takes a loan for an unspecified length of time, its duration is normally assumed to be 30 days (see Shulchan Aruch, CM 73:1).

However, the Shach's ruling is not so relevant to an *arev kablán*. Since the *arev kablán* accepts the responsibilities of a borrower, he does not deserve extra time beyond the borrower's. On the practical realm, since the borrower can extract payment without first trying the lender, he should not be surprised if the payment falls on him and should have his payment plan worked out.

However, the question is: even if an *arev kablán* is like the borrower, does the borrower have to pay immediately? The *gemara* (Bava Metzia 118a) says that "the time of *beit din* is 30 days." This means that from the time that *beit din* makes an award or gives instructions, the standard time for carrying it out is 30 days. Thus, if one admits to *beit din* that he owes money but requests time to raise it, *beit din* gives him 30 days (Shulchan Aruch, CM 100:1). The Rama (ad loc.) says that this is only an average of time. If they understand he needs either more or less time, they should adjust it accordingly, including immediate payment for those with the wherewithal (ibid.).

The same is true of your *arev kablán*. While in theory he should pay right away, in practice, his request to push it off for around 30 days will be accepted when based on legitimate need. The Shulchan Aruch (ibid. 2) cites two opinions on whether a borrower can request a 30-day grace period for payment when the target date of payment was set in advance. The rationale of the stricter opinion is that he had the time to prepare the payment, which should have been complete by the stated time. There is strong logic to argue that in the case of an *arev kablán*, all might agree to give him the 30 days upon a reasonable request. This is because even though the lender can come to the *arev* before the borrower, it is not usually clear that he will do so. Thus, the *arev kablán* can legitimately say that he needs the normal amount of time to prepare.

In summary, an *arev kablán* should pay the debt as soon as he reasonably can after the lender's request, which may often be immediate. If there are difficulties, the average grace-period is 30 days from the time he is told to pay, just as it is for the borrower. It is possible that our assumption about the speed of the payment may be slightly different for an *arev kablán* than for a borrower.



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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

The Feasibility of Fixing Folly

(condensed from Ein Ayah, Shabbat 2:105)

Gemara: What are examples of contradictions within Mishlei? It says, Do not answer a fool according to his folly" (Mishlei 26:4) and it says, "Answer a fool according to his folly" (ibid. 5). It is not a problem, as one is talking about matters of Torah (one answers) and one is talking about general matters (one does not answer).

Ein Ayah: People can make mistakes in judgment either because of intellectual shortcomings or due to problematic desires. Indeed many times people stray from the truth because their intellect confuses them. Some people diverge from the truth because their desires push them in the direction of mistake. In other words, if they adopt the mistake, they will be able to follow a path for which they have a desire. Instead of the decision remaining a matter of desire, it becomes entrenched in them as a matter of the intellect.

Mistakes of the first type (the intellectual) can be rectified by clarifying the matter based on intellect. Since the mistaken person only has a mistake of perception and he does not acquire the mistake as part of his nature, when he hears arguments that clarify the matter, he can leave behind his folly and embrace the truth.

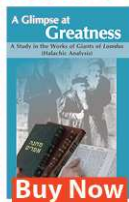
The situation is very different for one whose departure from the truth is based on desires that have gone as far as to lead him on a path of lack of control and throwing off the yoke of Torah and ethics. Logical arguments will not have the desired effect on him because he will feel in his soul that if he embraces the path of truth that is contrary to his inclinations and wayward lifestyle to which he has become fully accustomed, he will turn out to be totally wrong.

The *gemara* gives these two paths to mistakes broad names that represent their dichotomy. The intellectual mistakes are called matters of Torah because the Torah's purpose is to make one have the understanding of the ways of Hashem and His truths. It is true that mistakes of the intellect often cause one to stray in matters that are not under the heading of Torah per se. However, the basic foundation of the problem is under the category of Torah and decisions about ethics, belief, and wisdom.

The mistakes that are based on desires are called general matters because the inclinations that are likely to cause these desires are on matters that are connected to the body and not the intellect. It is true that eventually these desires affect and cause great damage in classic areas of Torah and the foundations of the holy religion. However, it is still called general matters because that is the root of the problem. Therefore, in these desire-based problems, the *pasuk* says to not answer the fool because it is not an intellectual mistake that he will fix when confronted with reason. Rather, it is something at the base of his evil heart that takes him to spiritually desolate places. Such fools can only be impacted by afflictions which subdue his haughty spirit (see Mishlei 19:29). These afflictions can remove the ashes of imagination from his eyes and let him see the corruption of his inclinations and the falsehood of his approach. For such people, speech is not worthwhile.

The above explains the difference between words of Torah and general matters.

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P'ninat Mishpat

The Price of a Practical Joke

(based on Shut Chatam Sofer, Choshen Mishpat 176)

Case: Reuven, a *shochet* in a certain town, purposely made Shimon, a respected man from a different town, look foolish. Reuven's wife gave birth to a girl. Reuven, who knew that Shimon is very excited about serving as a *mohel*, invited Shimon to perform a *mila* for "his son who wasn't." Shimon travelled four hours to perform the *mila*, and when he showed up in *shul* to do so, he was the laughing stock of the community. The rabbi of Shimon's town suggests that Reuven should be removed from his post of *shochet* over this behavior.

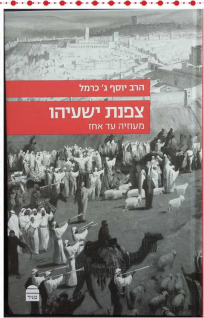
Ruling: There are two questions: what principles did Reuven violate with his trick? What financial circumstances, if any, should there be for his behavior?

Reuven violated the prohibition of "*lo tonu*," not to abuse another with one's speech. This is parallel to the *gemara's* (Bava Metzia 58b) case of one who wanted to buy wheat and someone told him to go to Ploni to buy, even though he knew that Ploni does not sell. The *gemara* says the misinformer violates *lo tonu* (see Shulchan Aruch, Choshen Mishpat 228:4). The clear implication is that the violation takes place even when the misinformed did not suffer a loss due to the false information, but just because the trick is upsetting. In our case, Reuven transgressed this prohibition, which *Chazal* (Bava Metzia 59a) equated to idol worship (in some ways).

We proceed to the monetary realm. The *halachot* of hiring someone to do a job that turns out to not be feasible (see Shulchan Aruch, CM 333:1) refer to one who did so accidentally (the *gemara* does not usually bring such *halachot* in the context of evil people). If one hired a person to do a *mitzva*-related job, e.g., to teach his son Torah, and it turns out it cannot be performed, he who made the request has to pay the worker a full salary. We do not take off for the fact that he did not have to perform the action because one would rather perform a *mitzva* than sit idle.

The value given for the *mitzva* of *mila* [albeit in a quite different context of one who was slated to do an actual *mila*, even for free, and they did not allow him to do so] is 10 gold coins. Some opinions say that each *beit din* should estimate the matter according to its context (ibid. 382:1). I don't know how to factor into this case the price of travelling the four hours.

It is true that we do not make people pay the 10-gold-coin penalty in our days, as we lack *batei din* with full authority. The Shulchan Aruch (CM 1:5) says that even so, we can put the guilty party in *cherem* until he reasonably appeases the other side. Included in the classical *cherem* is not allowing him into *shul* and not performing a *brit mila* for his son (see Rama, Yoreh Deah 334:6). However, the government does not allow us to put people in *cherem*. When one factors in the severity of Reuven's practical joke against Shimon, one can certainly remove him from his post as a *shochet* until he appeases Shimon monetarily and repents for his chutzpa. This is on condition that *beit din* investigated the facts of the case and concludes that the situation was as it has been described.



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