



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat HaShavua

Chukat, 3 Tamuz 5776

Yehoshua – the Advantage of the Student

Harav Shaul Yisraeli – based on Siach Shaul, p. 420-421

Moshe did not merit to enter and capture *Eretz Yisrael* on behalf of the nation. His disciple, Yehoshua, about whom it is said, “the lad did not abandon the tent” (Shemot 33:11) did so instead. While Moshe’s sin caused this outcome, certainly it was set from beforehand that it would be Yehoshua who would bring the people in. (We will not get into the solution to the paradox of *bechira* and *yediah* (human choice and divine foreknowledge)).

Moshe’s failing is explained as follows: “Since you did not believe in Me to sanctify Me” (Bamidbar 20:12). The stated reason, a lack of belief which caused a lack of sanctification of Hashem’s Name is hard to understand in its simple meaning. After all, Moshe spoke to Hashem “face to face” on a level never before or after matched. What does it mean that he did not believe?

The Sabba MiNovordok (Madreigat Ha’adam, Birur Hamidot 6) explains that Moshe made a calculation stemming from his desire to sanctify Hashem’s Name. [He did not want to speak to the stone that Hashem selected out of fear that the people would say that it was a stone that had the natural powers to give water.] The mistake was that one never obtains sanctification of His Name by violating His word. The mistake stems from a person’s willingness to base his actions on his own reasoning. The spies made a similar mistake. They were afraid that the fulfillment of the *mitzvot* in the Land could not be done in the way it was in the desert.

Yehoshua, on the other hand, had a different position. He accepted matters with a “simple belief” without bringing into consideration the prospect of the divine word contradicting his intellectual calculations. This approach uses the strengths of being student-like. By this we mean being like a student who does not ask or investigate what he is told but accepts it with simple belief so that no possible idea can prevent him from carrying out the instructions without question. Yehoshua reached this level by being the “lad who did not abandon the tent.”

The *gemara* says that the word “*emunat* (the belief of)” (Yeshaya 33:6) refers to the Talmudic Order of Zeraim (dealing with agricultural halacha). Conquest of the Land is related to Zeraim. This is where one requires belief, specifically simple belief without questioning. Therefore, if someone has any lacking in the correct type of belief even in the most subtle of ways, it is still a lacking that disqualifies him from conquering the Land.

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Ask the Rabbi

by Rav Daniel Mann

Returning Another Person's Theft

Question: I was at a coffee shop, and an ostensibly religious Jew (Reuven) left intentionally without paying. I heard the angry reaction of the proprietor (Shimon) and decided to pay instead of Reuven, hoping to reduce the *chillul Hashem*. Did my payment exempt Reuven? What about paying *kefel* (double payment for covert theft)? How did it affect Reuven's *teshuva* process? Also, were the *berachot* Reuven made on the food *l'vatata* when it turns out retroactively the food was stolen?


Answer: Your actions and questions show noble concern for both your fellow man and the honor of Hashem, and it is a pleasure to analyze halachic elements you raise. There are troubling educational and societal issues in this scenario, as you understand it, but we will suffice with what you asked.

The *gemara* (Nedarim 33a) says that one who pays his friend's debt is not considered giving his friend positive benefit but removing an obstacle (this makes a difference regarding *nedarim* and whether he can demand compensation from the debtor (see Ketubot 107b)). However, it is a given that the debt is considered paid, precluding the creditor's further demands on the debtor. How payment by a person other than the debtor or his agent works is an important question. One possibility is a concept known as *eved k'naani* (Kiddushin 7a) –when Levi gives something to Yehuda on behalf of Naftali, it counts as if Naftali gave it (Chazon Ish, Even Haezer 36, p. 237). Another possibility is that there is an implied stipulation that the creditor is receiving money on condition that he waives the debtor's debt (Mishneh Lamelech, Malveh 5:14).

Your question on *kefel* assumes there was theft, which is apparently not the case. The coffee shop willingly gave Reuven the food, and therefore Reuven did not steal. Rather, upon receiving the food, Reuven became obligated to pay for it, and he (purposely) did not fulfill this obligation. While it is an *aveira* not to pay a debt (see Tehillim 37:21), such a person does not incur *kefel*. One could argue that it was theft because had Shimon known Reuven's plan (assuming the "eat and run" move was planned in advance), he would not have given the food. That is a fascinating outlook which has several related applications (see Pitchei Choshen, Halva'ah 2:(26) for one), to which we cannot do justice in this forum. On at least technical grounds, had Shimon read Reuven's mind at the moment Reuven would have been stealing, i.e., when receiving/eating the food, Shimon likely would have forced him take the food and pay, rather than take the food back. In any case, *kefel* is predicated on *beit din's* ruling, and since we have lost the uninterrupted chain of *semicha* from Moshe Rabbeinu, we now lack the authority to obligate penalty payments such as *kefel* (Bava Kama 84b).

If we view the food as stolen, then indeed the *berachot* were themselves an *aveira* (Bava Kama 94a). However, if we are correct, the food is permitted, and the fact that the situation will likely lead to do a future *aveira* (not paying) does not preclude a *beracha* (compare to *poskim* on Shulchan Aruch, Orach Chayim 196:1). Certainly, the food cannot become stolen retroactively.

Whatever the *aveira* violated, Reuven certainly requires *teshuva*. There are several elements to *teshuva*. Confessing sin, having remorse, and changing one's future behavior are obviously not affected by your noble actions. However, there is also a matter of practically rectifying one's actions vis a vis the person whom he wronged. The Rambam (Teshuva 2:9) refers to taking care of any money due and appeasing the victim for the accompanying affront. Your payment removes the ongoing requirement to pay his debt. This helps Reuven if he would otherwise ignore his duty to pay Shimon (although, to a great extent, reducing the positive value of paying if he had a change of heart). The matter of appeasement would still apply. Perhaps you removed some of the sting from Shimon, which probably helps Reuven, and we hope you succeeded in lessening the *chillul Hashem*.



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Critical to Start the Emotional Basis Correctly

(condensed from Ein Ayah, Shabbat 2:214)

Gemara: Rabbi said: Due to sins of not keeping oaths, one's children die when they are minors, as the *pasuk* says: "Do not allow your mouth to cause evil to your flesh ... why should Hashem be angry at you over your voice [Rashi- the oath you uttered] and destroy the work of your hands [i.e., your children]? (Kohelet 5:5).

Ein Ayah: The foundation of good *chinuch* (education) is to make secure the natural emotional tendency toward goodness, justice, sanctity, and honesty. In that way, when the child grows up, he will find the path of life prepared before him, and he will only need to learn life lessons and sharpen his intellect to elevate himself.

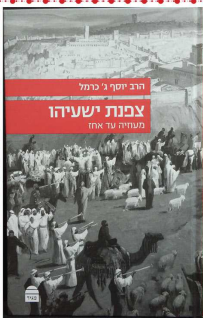
Therefore, the cardinal lacking of *chinuch* is when the teacher does not recognize the great value of good emotions, but rather just looks for things' cold intellectual side. In that way, he lacks the coal of holy fire within the heart that enables one to feel life and the pleasantness of Hashem's light in good characteristics and all the sanctity of the Torah and pure service of Hashem. Such an approach destroys the spirit, for man is not simply an intellectual being, so that he could be completed by cold, dry intellectuality. Rather, he is a combination of intellectual and emotional powers which have to be positively integrated. No intellectual perception will properly complete the spirit, without many proper actions that are capable of developing the emotional side.

With the ethical expansion of a great spirit and its emotions, there is a need for many actions to support the many different emotions. A great and holy nation, like Hashem's nation, has a great national spirit which appears within the spirit of every individual Jew, and this requires the maintaining of the varied emotions. Therefore, there need to be *mitzva* actions, each of which is able to strengthen people's character and make their broad ethical element correspond to the broadness of their spirit. "Hashem wanted to bring merit to Israel, and therefore He gave them a lot of Torah and *mitzvo*" (Makkot 23b).

Clearly, refining emotion is a constant work in action that is impactful for adults. However, it is inestimably more important for the education of minors. The entire early development of a person depends solely on the level of success at rooting natural emotions. These merge with the essential spirit and are the basis for all his emotional success in life.

One of the main ways to show respect for the emotions and realize that it is a present of Hashem for one who leads his life properly is to be scrupulous in fulfilling one's *neder* obligations. A *neder* results from a decision one makes in an elevated spiritual state. A parent who is sensitive to the importance of that state is more likely to be able to educate his children well, so that they will grow up to be righteous people who act with kindness and are a credit to society and, especially, Israel. This makes it worthwhile for them to live.

In contrast, when one does not respect that which he accepted upon himself while emotionally elevated, he is not able to properly educate his poor children toward a positive life. While his sons and daughters were supposed to be "the works of his hands," this requires someone to prepare them for emotional success with sanctity. When this preparation is lacking during the stage of childhood, there is the possibility that they will grow to be destructive members of society. Then Divine Providence may decide that it is proper to have these children die during childhood in one of the many paths through which tragedy can come due to human shortcomings. [Obviously, this is just one course that can bring about such tragedy to young children. One cannot know from a child's death if his parents were lacking regarding oaths or any other specific sin.]



Tzofnat Yeshayahu- Rabbi Yosef Carmel

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P'ninat Mishpat

Lawyer's Rights to Full Fees from Reluctant Client – part IV

(ruling 72060 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) is a lawyer (/owner of a law firm) who represented the defendant (=def), a wealthy businessman (/businesses he owned) in many matters, including several multimillion-shekel (attempted) purchases. Def paid pl more than 1.6 million shekels over 4 years, but pl claims that he is still owed more than 2 million shekels. Issue #5: During the first year of the relationship, pl oversaw a very large and successful court victory (case #2), and there is a major dispute as to how much money he was due (the payment made was in installments). A few months later there was an undisputed obligation (case #4). Major payments were made over a period of time that could have related to either obligation. Pl claims that all of it related to case #2, and there is still a balance for case #4 (as the first payment relating to #4 was in 5/2007). Def suggests that some of the money given during that time was for case #4 (which fits with his claim that pl's demand for case #2 is exaggerated).

Ruling: Issue #5: If def would admit the total amount owed for #2 as well as #4, then pl would be entitled to determine to which obligation to relate each payment, based on the following. The Shulchan Aruch (Choshen Mishpat 83:2) says that if there are two obligations of Reuven to Shimon and payment made does not cover both, the creditor gets to decide to which debt to relate the payment whether the payment was unspecified or the two sides disagreed as to how to relate it. (The difference to the sides can be, for example, if there is a co-signer for one of the debts and not the other.) However, when there is only one known debt and the creditor says he accepted the money for another debt for which he has no proof, the debtor is believed as long as he has witnesses that he made the payment (Shulchan Aruch, CM 58:1-2).

How does our case compare? When payments are made by bank transfer (as was done between pl and def), it is considered like witnesses, because the payment cannot be effectively denied. Def can then argue that some of the payments are like cases where we do not know if there was a second obligation, since obligation #2 may have been finished by the time some of the payments were made. However, since at one time there was an obligation, the creditor is sure he is still owed, and the debtor effectively is unsure whether he paid, we assume that debtor is still obligated (see Shulchan Aruch, CM 75:9).

In the final analysis, beit din relates all payments until Jan. 2007 to case #2. This conclusion is strengthened by the following point. Pl claims that the payment promised for case #2 was \$250,000 plus \$100,000 if he won the case. The claim presented by def's attorney is 35,000 shekel, which is not logical for a case of the magnitude involved. In his interrogation, def admitted to have owed \$150,000 for it, and this is supported by a key testimony (albeit of a biased witness). While there is insufficient evidence for beit din to obligate \$350,000 for case #2, we conclude that at least unspecified payments at that period of time should all be related to that case.

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