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# HEMDAT YAMIM

## ה'מ'ת'מ'ח

### Parashat HaShavua

Mishpatim, 25 Shevet 5778

### The Halachic Status of a Corporation

Harav Yosef Carmel

As we customarily do on *Parashat Mishpatim*, we will discuss an element of our approach to the challenges of jurisprudence at the Eretz Hemdah-Gazit rabbinical courts. This time: what is the halachic status of a corporation, and how do our *batei din* handle the matter?

One of the important principles of the modern financial world is finding a balance between the factors regarding risk-taking in various types of investors. When people are convinced to invest money, the financial world expands, causing an increase in businesses, jobs, and profits. On the one hand, there is a need to protect investors from over-liability. Therefore, the law recognizes a corporation as a financial entity in which a person can invest like an owner of a company without putting at risk funds he does not want to include. On the other hand, in order to prevent abuse of this separation, the law allows the courts to, when appropriate, "lift the corporate veil" that covers the key players in the company. This is done when there is a possibility of illegal or immoral behavior, for example, when an officer obtains an exaggerated salary at the expense of shareholders.

Fundamentally, there is no halachic separation between a person and his property. Anything that has financial significance for an individual carries with it personal responsibility to pay and the potential to extract payment from his property. When a person borrows money, he has a responsibility to return the loan, and payment can be taken from his property even if, in the meantime, the property was sold to someone else. If there were two borrowers for one loan, this lien applies to the property of each. Thus, there is an apparent contradiction between the law, which separates between a person and his property, and Halacha, which does not.

*Poskim* suggested different delineations of a corporation according to Halacha: Rav Vozner viewed it as fundamentally a regular partnership with special conditions. Rav Simcha Meiron viewed it as something with the appearance of a separate legal being, divorced from its owners. Rav Daichovsky said that it is actually a separate legal entity.

Each one of these suggestions raises many halachic problems. However, if we were to not halachically accept the basic rules of corporations, it would doom any attempt to enable *batei din* to operate in a modern economic setting. We cannot allow Halacha to be viewed by society as irrelevant. In order to be able to adjudicate when one or more litigants is a corporation without needing to decide the correct delineation, our mentor, Rav Zalman Nechemia Goldberg urged us to have the sides accept, by means of our arbitration agreement, a corporation's special status. They do so with the following stipulations.

1. The sides recognize the principle that a legal corporation has rights and obligations and can sue or be sued. 2. The sides recognize the principle of limited liability; therefore, claims are made on the corporation's assets, not those of its workers or stockholders unless *beit din* view them as personally responsible. 3. Based on the above, the sides relinquish their rights to make claims on property beyond that of the corporation.

May we merit to present monetary Halacha before ever growing parts of the nation in a manner that will sanctify Hashem's Name.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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# Ask the Rabbi

by Rav Daniel Mann

## Leaving Money for Tzedaka in a Will

**Question:** How much could or should one leave in a will for *tzedaka* before dividing the rest among the children?

**Answer:** First, realize that there is absolutely no requirement to leave anything in a will for *tzedaka*. The obligation to give *tzedaka* applies during and throughout one's lifetime. When he dies (may it be at 120), he is exempt from it like other *mitzvot* and does not have to make provisions before his death. It becomes the inheritors' obligation to give *tzedaka* from the money they inherit (Tzedaka U'mishpat 5:4).

The question the *poskim* deal with is whether it is permitted to leave money for *tzedaka*. *Chazal* frowned upon (at least; perhaps, forbade!) giving money slated for his inheritors to others or giving the share of one inheritor to another (Bava Batra 133b). This is called *avurei achsanta* (= *av ach*). This is even if there is a logical reason, e.g., one child is more "deserving" than another (*ibid.*). This certainly applies when it is done or takes effect at the end of his life, when the laws of inheritance were to apply. The *gemara* (Ketubot 53a) says that one who gives an exaggerated dowry for his daughter is considered *av ach*. This indicates that giving at least an amount of money that is appropriate to serve as an inheritance can be considered *av ach* even during his lifetime.

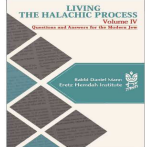
The *gemara* in Bava Batra (*ibid.*) indicates that giving money as a *mitzva* (e.g., *hekdesh*) can still be forbidden as *av ach*. It is thus hard to know where to draw the line. Could it be prohibited to give a nice present to anyone, including *tzedaka* (beyond the recommended amount)?! On the one hand, the *gemara* (Ketubot 50a) says that one may not give more than 20% of his property/earnings to *tzedaka*. However, the reason is concern that he might need the money, not because it deprives his inheritors, and it is permitted to give it "after he dies" and thus will not be needing the money (Ketubot 67b). We will present some of the distinctions raised to reconcile the sources.

Several *poskim* posit that if one leaves significant amounts of money for his inheritors, then he can give major *tzedaka* donations (see Pitchei Teshuva, Choshen Mishpat 282:1; Yabia Omer VIII:9). In fact, the *gemara* (*ibid.*) tells that Mar Ukva donated half of his assets to *tzedaka* soon before his death, after declaring it is prudent considering his insufficient merits (he was an *Amora*!!) for his judgment in Heaven. Some claim that since Mar Ukva was wealthy, his inheritors were anyway well provided for (see Pitchei Choshen, Yerusha 4:(9)).

Let us move to the related question of when it is appropriate to leave money to *tzedaka*. The Chatam Sofer (CM 151) discussed one who was dying without children and wanted to leave huge amounts of money to *tzedaka*. He posits that while it is problematic to give to others (even *tzedaka*) so that his inheritor not receive much, there is justification to give to *tzedaka* if he feels, especially without the merit of leaving children, that he is in need of the merit of *tzedaka*. One should consider a few more things. Often one's children are very worthy recipients of all of the inheritance money by virtue of their needs (which can verge on *tzedaka*) and the good things they can do with it (e.g., pay day school tuition, afford to live in a religious neighborhood). Not only may *tzedaka* be given to the needy in the family, but they have precedence (Shulchan Aruch, Yoreh Deah 251:3). Also consider that while when the money one earned and saved through hard work goes to *tzedaka*, it is a significant posthumous merit, leaving it in a will is not the full mitzva of *tzedaka* (Tzedaka U'mishpat 1:(7)). After all, a major part of the *mitzva* is to give to others rather than spend on oneself. Here, giving away to others money slated for one's children, when he cannot use it himself, does not have the full effect. Fortunate is one who can trust his children to use an appropriate amount of the money they inherit for *tzedaka* and *mitzvot*. One can seek the right balance for his situation with the help of a sensitive *rav* who knows the family.

**Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.**



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# Ein Ayah

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

## Using the Stronger Power Correctly

(condensed from Ein Ayah, Shabbat 6:15)

**Gemara:** When one puts on his shoes, he puts on the right shoe first and then the left shoe. When one takes off his shoes, he takes off the left shoe first and then the right shoe.

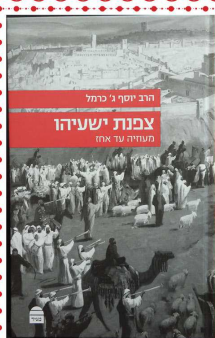
**Ein Ayah:** One should, on a regular basis, raise the realization that there is a difference in levels among matters of his daily life. This is a means to enable us to understand the difference between that which is lofty and that which is lowly. One should come to realize the advantage of that which is of a high level and is connected to true honor over lowly and despicable things in the world of external matters. That in turn will train us to choose good over evil and greatness over pettiness.

It is not that only matters of prominence must exist in our world; we need all different sorts of tools in our lives. However, we should internalize that there is a difference between one and the other. It is true that our physical side is not as important as our spiritual one, but our body is also the setting in which spiritual things find outward expression. Therefore, in the physical realm, as well, we should prefer powers of more prominence to those of lesser prominence and efficacy.

Hashem created man in a proper manner, and, therefore, it is for good reason that he granted greater strength to his right side. Actually, it is because the right side is more fit for the useful inclination toward the goals of life that he needs to accomplish. This shows that life is not formed by disjoint unfocused parts. Rather life is set according to the divine foundation for a lofty and specific purpose. The powers in a person's life are more recognizable in his right side.

When one prepares himself to act, including by putting on shoes, which allows him to walk powerfully and freely, it is proper for the right foot to be ready for action first. Since there will be a need for other parts of his being to take part in his activities, as is regularly the case, the left foot should then be prepared as well to enable him to function. This should not be done not in an uncontrolled, unplanned set of actions without a clear purpose and decision-making process, where there is no difference between big and small. Rather, it should be done in a wonderfully thought out process and with the desire for holiness, which stems from a divine idea that realizes that there is a correct way to go about life. This includes giving precedence to the honorable and powerful right side.

The time comes when one has to limit his ability to act. This is when he needs to cease activity to enable the replenishment of his strength. This, in turn, is needed when the prominence of the left side, which represents weakness, has spread too much and has weakened the right side. Because of man's tendency toward exaggeration and dangerous actions, he needs breaks in his activity, as both a respite for the spirit and for the body. Therefore, while the preparation for action, represented by putting on one's shoes, begins with the right side, the ceasing of activities, represented by their removal, begins with the left and then continues with the right. The break returns the strength of spirituality to its place by withholding the tumult of the system of activity. Then his spirit is able to elevate itself back to its potential and to a connection to the divine light. He then becomes a healed person and a new being. "New in the mornings, Your trustworthiness is great" (Eicha 3:23).



### Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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# P'ninat Mishpat

## Responsibility of a Mefakeiach for Contractors' Flaws – part II

(based on ruling 76052 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) was doing major renovations and hired the defendant (=def) as a *mefakeiach* (private building inspector) for 30,000 shekels. Pl then signed a contract with two Palestinian contractors for 420,000 shekels. Def, who had been consulted regarding the choice of the contractors, also signed on that contract, although he was not referred to in it. Pl discovered several flaws in the contractors' work and fired them and def before the work was completed, after the latter had received 20,000 shekels. Pl is suing def for 544,242 shekels for the flaws, claiming that def is responsible for them for a few reasons: def was, in effect, the general contractor; def recommended hiring the contractors without seeing their past work; after starting, def took on another job and stopped coming enough; specific mistakes were made that def should have caught. Def denies being the general contractor, saying he was no more than a *mefakeiach*. He suggested hiring the contractors because they were much cheaper than other options, and while he spoke with them and found them apparently professionally qualified, it was pl's informed decision. A *mefakeiach* does not have to visit every day, and after taking a part-time job, he was still present enough. Most of the flaws that he did not catch were trivial, and the bigger flaws would have been fixed by the contractors for free had they not been fired.

**Ruling:** [Last time we explained why none of the arguments that def had the obligations of a general contractor are correct. Now we look at other grounds for def to pay.]

There is a halachic concept that when Reuven has Shimon rely upon him and his failure to keep his word causes a loss of money, Reuven has to pay because of *histamchut* (reliance). See the Shulchan Aruch's (Choshen Mishpat 306:6) example of one who accepted coins based on an expert's claim that they were valid and they were not. That case, though, does not apply to the choice of contractors because it is only when Shimon informs Reuven that he is relying upon his word. In this case, def explained the advantages and disadvantages of each candidate for contractor. He did not say that the Arab contractors were risk-free but that he thought the risk was likely worth the large savings.

The claim that def gave instructions that caused damage are not reason to obligate him because the contractors did not implement the instructions properly. The claim that, as *mefakeiach*, he should have made sure that the contractors brought more workers is not valid because a *mefakeiach* does not have authority to dictate to them how many workers to bring.

Regarding the claim that def accepted another job and therefore did not come often enough, *beit din's* expert reported that a *mefakeiach* is not required to come every day. He must come from time to time and at certain crucial times, and pl did not present clear indications that def failed to do that.

In summary, def did not have overall responsibility for the contractors' bad job, and specific evidence of failure in his own work was not yet provided. *Beit din* gives pl 14 days to bring such evidence, and if he does not succeed to do so, def will not be held responsible, and *beit din* will rule on how much pay he is due.

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We daven for a complete and speedy *refuah* for:

Rivka Reena bat Gruna Natna  
David Chaim ben Rassa  
Lillian bat Fortune  
Yafa bat Rachel Yente  
Eliezer Yosef ben Chana Liba  
Yehoshafat Yechezkel ben Milka  
Ro'i Moshe Elchanan ben Gina Devra  
Together with all *cholei* Yisrael

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