The gemara (Shabbat 88a) learns from the pasuk, “They stood at the bottom of the mountain” (Shemot 19:17) that He held the mountain over them like a tub, threatening them that if they did not accept the Torah, “There would be your grave.” So it turns out that after Bnei Yisrael willingly accepted upon themselves, before the Torah was given, to keep all the words of the Torah, they still needed to be threatened. Many commentators wonder about the need for this, and several answers have been given.

The following explanation may be close to the truth. Man has the power to desire something strongly, and man has the power to carry it out. On a theoretical basis, the two are directly connected to each other. When a person wants something, he will carry through on it. However, in practice there is a big difference between desire and actualization. There are many things that we know are good and worthwhile and yet they remain within the realm of plans that one would like to do … but does not do them. This is because carrying out things requires effort, giving up on conveniences, and overcoming obstacles. To overcome these, good will is insufficient.

We remember well the days of struggle against the British Mandate before the establishment of the State. The struggle was very, very difficult and included a lot of “inconvenience.” Yet, the Jewish inhabitants of Eretz Yisrael stood up to the challenge nobly. They were willing to pay the price, whatever was necessary to reach the goal. In contrast, from the time of the establishment of the State, we have often seen a relaxation of the tension, a weakening of resolve, and a lack of carrying out of that which needs to be done. It is not that there is no possible way to succeed but is due to a lack of stubbornness to get the job done at any price. What caused the difference? It is because at the time of the establishment of the State, the question was raised in the sharpest manner, as people felt that there was no alternative. It was clearly a make or break situation. As people used to say: “We have a secret weapon, whose name is aleph bet: ein bereira (there is no choice).” As they would say in the Navardok Yeshiva: “When there is a possibility to pass, it is necessary to pass; and when it is necessary, then it is possible.”

The same attitude is true regarding the acceptance of the Torah. Certainly, Bnei Yisrael’s unanimous response of na’aseh v’nishma (we will do and hear) was sincere and expressed the people’s good will. However, Hashem knew the characteristic of the people and that not much later they would dance around the Golden Calf. After all, there is a great distance between the theoretical and the practical. It is easy and pleasant to dance around the calf, and it is difficult to “kill oneself in the tent of Torah.” Therefore, there is a need for Divine Assistance, help which comes to one who is sincere in his desire to follow the straight path. This is what Chazal described as holding the mountain over their head. In other words, Hashem was telling them that not just good will would get them to accept the Torah, but that actually there is no choice. Israel’s existence depends on the extent to which they accept the Torah. The feeling of ein bereira gives the good will the ability to carry out their desire in practice.
Kaddish Rights – According to the Deceased or Mourners?

Question: I am in the midst of the year of Kaddish/chazanut for a parent. Two brothers have been davening due to shloshim. After they finish shloshim, should we have a rotation of three or, considering that our recitations are to bring merit for the deceased, should I be chazan half the time? (We will not fight over it but would like to do the correct thing.)

Answer: Indeed, the most important principle is to avoid machloket on such matters, as quarreling is antithetical to the merit one is trying to bring to the deceased (P’nei Baruch 34:48).

The Rama (YD 376:4) rules that it is proper for sons of the deceased to bring parents merit by saying Kaddish and being chazan during the 11 months after death. Yet, the Shulchan Aruch (OC 53:20) says that the congregation may choose another chazan over a mourner if they so desire. A mourner’s absolute right applies only to the Kaddishim designed for them (Mishna Berura 53:60). However, the congregation has a mitzva to allow the mourner to be chazan under normal circumstances.

Those who are not able to be chazan were allotted Kaddishim to aid them in bringing merit to their parents. Halachically preferably and originally practiced, one mourner alone recites each Kaddish. To deal with cases of too many mourners, the Acharonim arrived at detailed rules of kedimut (prioritization). Over the last few hundred years, to ward off quarreling, the minhag has spread almost universally to allow multiple people to say Kaddish together. Thus, the rules of kedimut are limited now to choice of chazan, about which you are asking.

The earliest source on your question is the Maharam Mintz (Shut 80), accepted by the Rama (ibid.), written as part of guidelines to nip potential disputes in the bud. He posits that each mourner has equal rights in receiving turns, even if his parent is “represented” in the shul by multiple siblings. The Maharam Mintz is clear about the reason. The rights of reciting Kaddish relate to the avel, who is acting in fulfillment of the mitzva of kibbud av va’em. Although ultimately it benefits the parent, the rights relate to the live son(s).

This approach has many ramifications. One brother can demand of another to share chazanut equitably, allowing each to honor their parent, even if there is no net gain for the deceased. Much of the discussion on the matter relates to the minhag of some communities to give precedence to an avel who is a local and/or a dues payer over a guest. In such a place, how do we view an avel who is a visitor in the deceased’s shul? The Maharam Mintz (ibid.) and the Shach (YD 376:12) say that the son’s own status is the deciding factor, i.e., he is a visitor, and not treated as the “agent” of the newly deceased community member.

The Avodat Hagershuni (63) says that while everyone agrees that each brother has full, not shared, rights, there is another opinion regarding the reason. He cites the Maharil as saying that the parent is the determinant, but that a deceased with multiple sons has been merited by Hashem with having the advantage of multiple “Kaddish reciters.” This extra privilege should not be taken away from him by having it evened out with other deceased.

While it seems strange to attribute extra rights to one deceased over another, consider the following perspective. If five brothers lived separately, a fellow mourner could not tell any of them: “I am an only child; you should let me be chazan any day that any of your brothers is chazan in his community.” Rather, on many days, that parent would be getting multiple tefilla merits. Why, then, should the deceased be deprived of that just because his sons daven in the same shul? Rabbi Akiva Eiger (Shut II:4) says that the Maharam Mintz and Maharil’s reasons are both true, and therefore one can have rights as a local either through the parent or through the son. If there is a conflict between an avel with one “right” and one with both, the one with both should daven two thirds of the time.

In your case, though, all agree that you should be chazan one third of the time.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.
Lower Wisdom Decrees Constructive Destruction
(condensed from Ein Ayah, Shabbat 9:33)

**Gemara:** [One of the bold steps that Moshe decided to take without explicit divine instruction was:] Moshe shattered the Tablets.

**Ein Ayah:** From the perspective of the Divine Wisdom, there is no need for there to be any type of undoing and destruction in the world. When there is something that is totally good, which has the ability to spread out without end, “no bad can occur to it.” However, the Divine Wisdom lowers itself until it reaches a point that makes it ready to complement human wisdom. In that way, it can properly impact on limited worlds and creations that have desires and have limited power in comparison to the unending desire of divine goodness, which is both unlimited and unparalleled.

This meeting of the minds found that which Moshe decided, in a way that corresponded to what Hashem wanted. Moshe thought that there was significance in breaking in order to repair. The greater the qualitative significance of the breaking, the greater the much more improved state that follows will be repaired. This can be illustrated with the idea of how investment into a commercial product can be worthwhile because of the possibility of great profit.

It was specifically Moshe’s idea, which Hashem agreed to, to break the Tablets. When these awesome stones were broken, they could be reattached one to another in a manner that provided complete, eternal salvation.

Uncovering the Unspoken Divine Intention
(condensed from Ein Ayah, Shabbat 9:34)

**Gemara:** Moshe added on an extra day of separation from wives – how did he arrive at this conclusion [from Hashem’s instructions that are recorded in the Torah]?

**Ein Ayah:** [Several commentators deal with the following apparent contradiction: If Moshe decided on the matter himself, then we should not expect for it to be included in the Torah/Hashem’s instructions. If he saw it in Hashem’s words, then it is not Moshe’s own idea. Rav Kook’s comments below are focused on this tension as well.]

Obviously, when sacred and mundane, in their lofty sense, reach the high level of each influencing the other, so that the upper and the lower wisdom becoming unified, then the human, lower wisdom rises up to the recognition that the basis of its existence is the upper wisdom, the wisdom of his Creator. The addition that Moshe’s human wisdom decided to add finds its source imbedded deep in the upper wisdom of the Torah, after the idea was revealed.

Thus, while he added a day of his own volition, to fulfill the idyllic situation that the soul of the one who thought up the idea and the “soul” of the divine influence will be unified in their fullest sense, we need a source for the content of the addition in Hashem’s wisdom, which finds expression in the Torah. That is the reason that we ask where Moshe derived the addition.
Firing a Contractor – part I
(based on ruling 75104.1 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** Plaintiff 2 (=pl2) was the contractor for major renovations of the defendant’s (=def) home; plaintiff 1 (=pl1) was the supervisor. The contract stated that pl2 would finish the job in 120 work days within approximately six months. After over eight months, with the job not close to complete, def fired them, with the claim that pl2 was working only sporadically because he took on another job. Pl2 claims that he took the other job only after def fell behind in payments and that he had already worked 140 days because def made additions to the original plans. Pl2 claims that def fired them when she received a bill for the additional work. Def says that she wrote a letter to fire them before she received that bill, that she paid less than spelled out because she bought some of the materials that pl2 was required to, and because the work was behind schedule. She claims that pl1 approved the amount she paid and that pl2 did not protest.

**Ruling:** [The first partial decision of beit din was on whether def had grounds to fire pl1 and pl2, which impacts on the deliberations on other parts of the dispute.]

[Without going into detail,] the content of SMS messages between def and pl1 at the time between when def said she fired pl1 and pl2 and when pl2 claimed it occurred does not make sense if def had already carried out the firing. Therefore, we assume that def indeed fired them after she received the bill for additional work.

Nevertheless, def did have grounds for firing pl2 based on the fact that he was well behind schedule. Although there were additions, they were not significant enough to have changed the schedule by that much. Pl1, whom the contract states would be believed to report accurately on pl2’s work, says that pl2’s work log is accurate. Of the 26 days that the log has pl2 not working, 20 days come with excuses (whose validity it is hard to appraise) and 6 with no excuse. More significantly, pl1 stated (and pl2 did not deny) that the level of work (e.g., the number of workers he brought) went down significantly after pl2 took the other job, without permission from def, and according to pl1, this was done purposely. Thus the question is whether pl2 was justified to slow his work based on lack of pay.

Pl2 claims that pl1 told him that def was paying less than expected because she lacked funds. But pl2 also says that he trusts pl1, and pl1 agrees that he approved the amount that def paid pl2, based on her purchases and incomplete work. Pl1 might have told pl2 that def might be having liquidity problems but that he should not be concerned about her paying eventually. In any case, pl2 did not explicitly protest about the payment and therefore had no right to not keep to the agreement on the pace of work. Therefore, since the contract states that def can fire pl2 if he is 15 days behind schedule, in this case she had the right to do so.

*Next time we will begin to look into the matter of monetary compensation.*