



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

PARASHAT HASHAVUA

Devarim, 6 Av 5773

Impartiality of Judges

Harav Yosef Carmel

In *Parashat Devarim*, Moshe repeats to the people the important matter of establishing a framework of rabbinical courts. He took the opportunity to teach *halachot* that were not mentioned in previous discussions of the judicial system. The Torah stresses steps *dayanim* must take to ensure absolute neutrality, including "listening amongst your brother," from which we learn not to hear one side when the other side is not before him (Sanhedrin 7b). The Torah also commands not to be afraid of either of the litigants (see Devarim 1:15-18).

As we have been known to do from time to time, we will take the opportunity to share with our readership some of the related goings on in our *batei din*, Eretz Hemdah-Gazit.

The Shulchan Aruch (Choshen Mishpat 9:5) rules very clearly: "Whoever takes pay to serve as a *dayan* ... his rulings are void." The Netivot Hamishpat (9:9) explains that the Rabbis uprooted from him the status of a *dayan*.

If a *dayan* cannot be paid, he ostensibly will need to have another livelihood, but then how will the community ensure that there will be *dayanim* available to hear their cases when there is a need? The Shulchan Aruch (ibid. 3) explains that there was a fund through which the *dayanim* were supported on a regular basis, which is appropriate because the broad Jewish community is obligated to support its judges and scholars. There is thereby no problem of either bribery or taking money to judge because the payment is divorced from a direct connection to a specific case.

We are careful about this in our *batei din*. The administration of the *beit din* collects a nominal fee for hearing a case. However, the payment that the *dayanim* receive for freeing up time to adjudicate is unrelated to the question of if and how much the sides did or did not pay.

A while ago we were approached with the request that we take under our auspices a "*zabla*" case, whereby each side chooses a *dayan* and the two *dayanim* jointly choose a third. The case at hand was a serious one with an interesting halachic element to it. However, one side agreed to the adjudication only under the condition that they would pay the *dayan* they chose directly and the two sides would jointly pay the third. The rationale for this major "leniency" is an inference from an Aruch Hashulchan (CM 13:4), who implies that if one receives money from the side that chooses him, regardless of the outcome, and can remain totally impartial, it is permitted. However, we followed the opinion of the Panim Meiros (II:159), who took strong issue on this position and refused to take part.

Let us hope that we will see the fulfillment of the prophecy, "I will return your judges as old and your counselors as previously; then you will be called a city of justice, a reliable town" (Yeshaya 1:26).

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Ask the Rabbi

by Rav Daniel Mann

A Buyer Not Admitting He Erred to His Own Benefit

Question: While pricing computers, a proprietor promised me he would beat any price I found. I told him a cheap quote I had received and he agreed to beat it. When I checked that quote, I realized it was for a cheaper computer. Do I need to tell the proprietor my mistake or can I go with the agreed price?

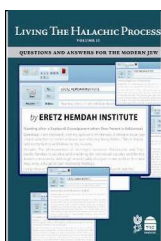
Answer: It is forbidden to deceive someone (Chulin 94a), as finds expression in several *p'sukim* (Bereishit 31:26; Vayikra 19:11; Vayikra 25:14). You are asking because of the convergence of mitigating circumstances. You cited the price with honest intentions; by the time you realized, he had already agreed to the price, i.e., it is apparently a reasonable, worthwhile one.

However, if one takes money due to an honest mistake, he must return it. The matter is clearer here because the deal is not yet complete, and going through with it based on false information given in the past is continuing the disinformation, by not correcting it, now intentionally. The *gemara* (Shvuot 31a) says that acting in a manner that just gives a false impression is considered a violation of the requirement to distance oneself from a lie even if he said nothing. Going through with the transaction is thus not much different than lying in the first place.

What if the transaction took place? There are rules of *ona'ah* (sales that took place at an unfair price), and the general rule is that if the difference between the sales price and the proper one is less than one sixth, one does not have to return the mispricing (see Bava Metzia 49b). If we could determine that in our case, the price was not off by that much from the range of normal prices, ostensibly there should be consequences to your questionable discount. Also, if the "victim" of the unfair price was told the proper price but still agreed to the "wrong" one, the agreement stands as is (Shulchan Aruch, CM 227:21). Arguably, the proprietor knows costs and prices, and this should be equivalent to one who was told the real price yet agreed. (See a discussion of whether it is enough for the party to know or whether there must be an explicit stipulation in Pitchei Choshen, Ona'ah 10:(30).)

However, there is a fundamental distinction between the regular rules of *ona'ah* and a factual mistake. The leeway of a sixth given for *ona'ah* is based on the inexact science of setting an exact price, making modestly differing prices marginally legitimate. However, if someone gives false information regarding something exact, such as measurements of size, weight, or number, *ona'ah* applies even for a difference of less than a sixth and even regarding objects that are excluded from the standard laws of *ona'ah* (Shulchan Aruch, CM 232:1; S'ma ad loc. 2). If the price was based on an exact fact, the price you were quoted by someone else, *ona'ah* applies even if off slightly. The fact that he agreed to a low price reflects a calculated concession on his part – but his buyers have to keep to the parameters of that concession.

An important distinction is crucial here. Sometimes a buyer or seller will try to make a deal look better by information he provides (e.g., "the going rate is X, but I am giving you a discount"). Even if he lies, there are not always grounds for employing *ona'ah* if other factors are missing (see Taz to CM 332:4). However, if people set the price based on, for example, the price he gives other customers, and he lied about what that price is, the laws of *ona'ah* apply even if the price is objectively reasonable (see Rama, CM 332:4). In such cases one has to analyze the language of the agreement: was there a set price set, with the other information just trying to convince? Or, was the price to others the basis for the price here (see Netivot 332:4). The way you worded it ("I will beat anyone's price") indicates direct linkage to the quote. Therefore, you would have to return any price difference (see harsh words of the Maharashdam CM 434, regarding an agreement to a certain price margin, where the seller gave the wrong information regarding the cost of supplies).



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Ein Ayah

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

Specific Power Among General Greatness

(condensed from Ein Ayah, Berachot 9:305)

Gemara: He expounded on the *pasuk* (Divrei Hayamim I 29:11): “To you, Hashem, are the greatness, the power, the grandeur, the eternity, and the glory.” “To you, Hashem, is ... the power” – this refers to the Exodus from Egypt, and so the *pasuk* says: “Israel saw the great Hand” (Shemot 14:31).

Ein Ayah: In contrast to greatness [discussed last time], which is a general illustration of all that Hashem made in the world, “power” comes to tell us that with all of the general greatness, there is also specific providence, so that every individual finds a place according to his specific characteristics. The special conditions that Hashem provides for every individual are an expression of the power that emerges from the general unlimited greatness, and it allows each one to have its own specific boundaries. It is this power that causes every nation to have its own borders and is what separates one nation from another, on various levels. The best demonstration of this phenomenon was the Exodus. Hashem elevated Bnei Yisrael, and formed them into a nation unto its own, with a unique providential relationship with Him. This showed the nations of the world that He has a special relationship with each of them, according to what it deserves. In order for all those who were created in the Divine Image to come together in general service of Hashem, they have to see the Hand of Hashem, with its specific imagery. A hand has five separate fingers; while each can and does perform its own specific task, they must also be united to promote the overall goal.

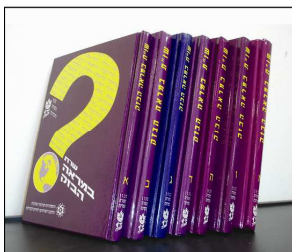
In overview, we may say that if all individuals were undifferentiated, there would still be greatness but there would not be power. Rather there would be weakness, since an individual would not realize the specific goal for which he was created. However, when we see individuality, starting with the unique national lives of each nation, both Hashem’s hand and His power are recognizable in the world.

Different Ways for Celestial Bodies to Cause Grandeur

(condensed from Ein Ayah, Berachot 9:306)

Gemara: He expounded on the *pasuk* (Divrei Hayamim I 29:11): “To you, Hashem, are the greatness, the power, the grandeur, the eternity, and the glory.” “To you, Hashem, is ... the grandeur” – this refers to the sun and the moon, which stood still for Yehoshua, as it says: “The sun was still and the moon stood” (Yehoshua 10:13).

Ein Ayah: As the great celestial bodies traverse the infinite expanse of space and interact in complex systems, the world displays great beauty and grandeur. Certainly, these grand interrelationships are based on strong natural rules of beauty and of value. By interrupting the natural course of ‘nature,’ by halting the sun and moon, Hashem proved that even such great systems are really in His Hands. Thus, while there is value to the grandeur of the heavens, it is overridden by the moral needs that Hashem identifies. It is more important to sanctify Hashem’s Name in the world and emphasize the value of true knowledge and actions. This happened in the days of Yehoshua, for the sake of a nation who knows His ways and a righteous man who fears Him, showing the grandeur of the internal life in the world, a life of truth.



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A Promise to Donate? – part II

(from rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=p) is a non-profit organization that provides an important service for certain Israeli communities. Def, an acquaintance of one of p's leaders, had a connection with a certain community that was serviced by p. Pl claims that the community did not meet their normal criteria, and p provided the service (costing \$30,750) only because def promised to raise (or donate) a large portion to cover the costs. Def claims that he did not ask p to provide the service to the community but that in response to p's request that he raise money for the project, he had promised to try. Def says that he has only limited contacts he could ask for donations for p, which he exhausted, and he never obligated himself to do more than that.

Ruling: [Last week we saw two possible halachic frameworks that would justify requiring def to pay if indeed he had promised to do so. This time we will discuss others and complete our treatment of the case.]

In a parallel case, Rav Yisraeli viewed the pledger's instructions to the recipient to act based on his pledge as *shelichut* (agency) on behalf of the pledger (Piskei Din Rabbanim VIII, p. 251). One could suggest that the pledge is like a promise to give *tzedaka*, which is binding even without an act of *kinyan* (Shulchan Aruch, Yoreh Deah 258:6). However, this will not be effective in our case since it applies only when one promises *tzedaka* from his own resources, not when one promises to raise money from others.

According to a minority opinion within *beit din*, even if p's story is accurate, def would still not be obligated according to the letter of the law to pay anything because his promise was only to make efforts, not to succeed or pay on his own. However, he agrees that in a case like ours, where it is apparent that def did not make proper efforts to raise the money, there is room for partial payment based on compromise.

According to the majority, def would theoretically have to swear that he did not promise getting or giving payment to p, and therefore in lieu of an oath there is room for a compromise of a payment of around a third (see Igrot Moshe, CM I:32). However, since the matter is up to the discretion of the *dayanim* on an individual basis, we must consider that in most of the gray area between the claims of the two sides, def is not required to pay. *Beit din* considered also that p did not claim that def promised to pay the whole amount, just a significant part of it, and no exact number was given. This amount was also to be affected by the amount of effort going into it, so that factors like the global economic downturn impacted how much it would be fair to demand. On the other hand, def admitted that he had made a moral commitment to do some fundraising for p, and it is hard to say that he fulfilled this pledge.

In considering all the factors, *beit din* obligates def to pay up to 16,000 shekels (out of a claim of \$30,750), and reminds def that he can bring the money from different sources: his own, donors, his own *ma'aser kesafim* accounts.



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