

HEMDAT YAMIM

PARASHAT YITRO

20 SHEVAT 5769

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Hakarat Hatov

Harav Yosef Carmel

A deep bond was forged between Yitro and his son-in-law, Moshe, which was the basis for the ties between Yitro's descendants and Bnei Yisrael. This connection is the result of mutual *hakarat hatov*, recognition of the good that one has for what another has done for him. This is a form of following in Hashem's path, as One who responds to people and their actions in kind.

The first thing that Yitro did which deserved Bnei Yisrael's appreciation was his refusal to take part in the meeting that Paroh held to discuss the "Jewish problem." The *gemara* (Sota 11a) says: "There were three who were involved in Paroh's plan: Bilam, who gave the advice, was killed. Iyov, who was silent, was judged with afflictions. Yitro, who ran away, merited having descendants sitting in the seat of the Sanhedrin.

Moshe ended up helping Yitro by saving the latter's daughters from the shepherds. Yitro returned the favor by offering Moshe a place to stay ... and his daughter, Tzipora, as a wife. Hashem recognized Yitro's generosity, as the *midrash* tells: "From here we learn that whoever accepted upon himself to do a *mitzva*, that *mitzva* does not leave his house. Yitro accepted a redeemer (Moshe) in his house who ran away from an enemy (Paroh). There arose in his house one (Yael) who accepted an enemy (Sisra) who ran away from a redeemer (Barak) and killed him" (Shemot Rabba 4).

After the Exodus from Egypt, Yitro renewed the relationship and at that time taught Bnei Yisrael another lesson in *hakarat hatov*. This time he recognized Hashem, saying: "Blessed is (*baruch*) Hashem, who saved you from the hand of Egypt and the hand of Paroh" (Shemot 18:10). *Chazal* even criticized Bnei Yisrael for not noticing the appropriateness of using *baruch* in thanking Hashem for the miracles (Sanhedrin 94a).

The mutual *hakarat hatov* between Bnei Yisrael and Yitro's family found expression after Bnei Yisrael settled in Eretz Yisrael, as well. The *Beit Hamikdash* was eventually built on a tract of land that belonged partially to the tribe of Yehuda and partially to that of Binyamin. This land was swapped with an area around Yericho, which was given for safekeeping to Yitro's descendants. 1,000 years later, on the eve of the exile, Yirmiyah praised the family for this and said that they would always have members sitting of the Sanhedrin (Mechilta D'Rabbi Shimon Bar Yochai 18:27).

It is important for us to remember that those non-Jews who show us friendship and act with honesty toward us deserve commensurate appreciation. It is wrong when we do not return the favors or complain that they are not even more helpful than they already are.

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Question: I understand that Ashkenazim may borrow religious articles from each other without permission but Sephardim may not. May an Ashkenazi borrow a Sephardi's religious article?

Answer: Your assumption is overstated, as we will explain, but your question is fascinating to explore regarding cases where the assumptions apply.

It is forbidden (as theft) to borrow other people's objects without permission. Where we believe the owner would want the borrower to take it, the matter is complicated (see Ask the Rabbi, Pinchas 5765). Regarding an object that people usually are happy for others to use, they may do so. *Rishonim* (see Beit Yosef, Orach Chayim 14) say that people are happy to let others borrow an object to use for a *mitzva* (based on Pesachim 4b). The Shulchan Aruch (OC 14:4), following this assumption, allows one to borrow a *tallit* that he finds in shul. The Rama (ad loc.) adds that one can do the same with *tefillin* and elsewhere (OC 649:5) says the same for a *lulav*. Indications (from the Beit Yosef and commentators) are that the Shulchan Aruch and Sephardi *poskim* agree.

The question of borrowing religious articles has a complex answer. The Shulchan Aruch (ibid.) makes a condition that one returns the *tallit* folded if he found it that way. The Magen Avraham (14:7) permits it only on occasion and requires that the object remain in the building it was found. The Rama (ibid.) says that one may not similarly borrow *sefarim* to learn from. There is a concern that the *sefarim* will get ripped, and this makes it unclear if the owner would want to lend them.

The Pri Megadim (Mishbetzot Zahav 14:7) claims that the *minhag* is to borrow *siddurim* in shul without permission. He opposes the *minhag* based on the Rama's and others' rulings. The Aruch Hashulchan, a more recent leading *posek*, who tends to be very *minhag*-oriented, turns everything upside down. Regarding a *tallit*, he not only interprets the classical leniency narrowly but observes that people are now more particular about others borrowing their *tallitot* (OC 14:11). On the other hand, he says that people are no longer disturbed by others borrowing their *siddurim* and *sefarim* and, therefore, that should now be permitted (ibid.:13). Actually, even classically, when one asked a *talmid chacham* to watch *sefarim* for him, the latter could use them because of an assumption that the owner who said nothing would let (Rama, Choshen Mishpat 292:20). So, we find fluidity based on the circumstances and we do not find explicit, major differences between Ashkenazi and Sephardi *poskim* (see Kaf Hachayim, OC 14:31). In practice, the matter is disputed, and different places (especially *yeshivot*) have different practices. However, regarding using *sefarim* at their place, considering their relative low cost and high durability, few mind.

We will now re-ask your question. If one received a *p'sak* that he can borrow, can he borrow from one who has a *p'sak* not to borrow or vice versa? Presumably, the *machloket* arises because owners' intentions are borderline and/or depend on how much to adapt classical rulings when recent observers sense that the situation has changed somewhat. These questions are for the borrower('s rabbi) to determine and do not depend on the specific owner/lender. If a ruling became very famous among a group, we might say that the *p'sak* became a self-fulfilling prophecy, creating a *minhag* to allow or forbid others' use. As far as we are aware, neither Ashkenazim nor Sephardim have broad, well-known practices on the matter. However, one who enters a *yeshiva* or *shul* where there is a stated policy can assume that the *sefarim* owners there conform to the local standard, and we would follow the lender's presumed position. (One should look at a *sefer's* inside cover to see if the owner left contrary instructions).

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Ein Ayah

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

The Two Elements of Geula (Liberation)

(based on Berachot 1:112-113)

Gemara: All agree that Bnei Yisrael were liberated from Egypt at night, as the *pasuk* says: “Hashem took you out of Egypt at night” (Devarim 16:1) and left specifically during the day, as the *pasuk* says: “On the day after the bringing of the Pesach, Bnei Yisrael left with a strong hand” (Bamidbar 33:3). What they did argue about is the time of haste. Rabbi Elazar ben Azarya says it refers to the haste of Egypt, and Rabbi Akiva says that it refers to the haste of Israel.

Ein Ayah: The redemption from slavery to freedom, in general, has the following two effects on a nation. The first is that there is an internal sense of freedom, which gives the spirit a feeling of uplifting, having left the lowliness of slavery and becoming a free man and a master of one’s own destiny. The second is in regard to the activity that is visible to the whole world, as the nation becomes free and vibrant. Regarding Israel, these two matters are especially powerful because the internal freedom is the beginning of the process of self-perfection in regard to the sanctity of one’s characteristics in Torah, *mitzvot*, and wisdom. Israel’s externally visible freedom exists to enable them to be a light unto the nations. A major part of that project has already been achieved. It will be completed when Hashem will have compassion on His nation and the Torah will emanate from Zion with nations looking forward to the Torah of Israel.

Therefore, the elements of liberation were broken up into two parts. Internal liberation from Egyptian control was accomplished at night. This relates not to the main publicizing of the matter for all to see but to the good feeling that accompanies the internal freedom. The exodus was in the daytime, with a strong hand, open for all of the world to see. This demonstrated their activity in the world, to educate and do good for all of mankind, who are created in Hashem’s image, to give light in Hashem’s light, as the *pasuk* says: “Nations will walk in your light and kings to the glow of your shining” (Yeshaya 60:3).

[The disagreement is whether to stress the haste of Egypt or of Israel.] The internal freedom depends on nullifying slavery, which had to come from the Egyptians, the slave masters. In their haste and their realization that Israel should not be their slaves, the cessation of the slavery began and the internal freedom began to blossom.

Rabbi Akiva said that Israel’s haste was the key factor, as it was a sign of the external freedom, allowing them to walk upright and do major things to improve the world. This required the actions of Israel and their own recognition of their advantages and their calling to act, which exceeds that of the rest of the world. The completeness of the goal of liberation was not just ending slavery but creating actual liberty and the broadening of life under the flag of Torah in the world.

Therefore, that which it says that Hashem took us out of Egypt at night means that the liberation began at night. The nightly liberation is a mere beginning in relation to the lofty goal of complete liberation in a manner that shows the nations of the world that Hashem, the G-d of Israel, is the Lord.

In truth, there are two parts to the liberation: that of day and that of night. This is important because eventually the nation would return to subjugation. Therefore, it was important to teach the nation that the future enslavement would impede only their influence over others. The uplifting of the spirit and the innate advantage that was secured with the Egyptian liberation of the night will remain forever, as “for Me are Israel slaves” (Vayikra 25:55). Therefore, the main obligation to tell the story of the Exodus from Egypt is at night to demonstrate that the impact of the liberation of the night is permanent as the *pasuk* hints: “Hashem took you out of Egypt at night.”

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P'ninat Mishpat

Signs of Mechilla (Relinquishing of Rights)

(based on Halacha Psuka, vol. 52 - A Condensation of a Psak by Beit Din Gazit of Kfar Sava)

Case: The plaintiff (=pl) worked as a gardener for the defendant (=def). He was originally supposed to do a certain set of tasks for 30,000 *shekels*, for which he was given five checks (dated for different times) of 6,000 *shekels*. Later it was decided that he would carry out fewer jobs and receive 23,800 *shekels*. Pl cashed three checks and received 2,000 *shekels* in cash (a total of 20,000 *shekels*). Pl claims that he returned two checks for a total of 12,000 *shekels*, much of which was to be given to him as he finished certain jobs that def felt were incomplete. He claims that even after several requests, def did not provide lists of things to be fixed. He also claims that he did additional services for which he was yet to be paid, which he wants along with the outstanding 3,800 *shekels*. Def responds that he has no problems with the work that was done, but that the returning of the checks (after all the work was done) is evidence that pl was *mochel* (relinquished rights to) the outstanding pay for the original and additional work.

Ruling: The Shulchan Aruch (CM 12:8) rules that *mechilla* does not require a *kinyan* in order to be binding. The K'tzot Hachoshen (12:1) discusses whether the *mechilla* has to be explicit and sides with the Maharit that if the circumstances are such that it is clear to all that there was implicit *mechilla*, it is binding.

Regarding pay for the additional work done, there was effective *mechilla* for two reasons: 1) When the sides agreed to the revised price of 23,800 *shekels* it implied that this would represent full payment for any related work pl would perform unless there would be agreement on further pay. [Ed. note- one could take issue with this line of reasoning.] 2) When, after the additional work was completed, pl returned the two checks pending payment of the balance for fixing up the job, it was clear that he would not be demanding more than 23,800 *shekels*. Pl did not succeed in explaining why he returned a second check, as one check would have brought the amount to 24,000 *shekels*. Apparently, then, he had intended that the total pay would be less than 24,000 *shekels* and was *mochel* on his right for pay for the additional work.

The *mechilla* was done at a time when relations between pl and def were good; they have since soured. One cannot subsequently demand money that was waived out of good feelings because *mechilla*, when done, is a permanent act, not a conditional one (see Shoel V'nishal II, CM 15).

It is not clear that, regarding the work that was already done, there was *mechilla*, as pl's claim that he agreed to suspend receiving payment until he fixed matters regarding the previous work is plausible. A possibility of *mechilla* does not excuse one who was originally obligated from payment. Therefore, def must pay pl 3,800 *shekels*.

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Baba Kama 42-48

Guidelines to Determine Liability for Damages

We learned a few weeks ago, in the Daf Hayomi (26a), that "a person is always liable for damages, whether done intentionally or unintentionally." From this rule it appears that one is liable for any damages he causes. However, we see from many statements in the Gemarah, that this rule is not always applicable and there are cases for which one is not liable. In a section from this week's Daf Hayomi (48a-b), the Gemarah lays out the guidelines regarding this issue. The Gemarah distinguishes between three situations:

1. The damager was without permission and the damaged with permission.
2. Both were with permission or both without permission.
3. The damager was with permission and the damaged without permission.

If the damager was acting without permission and the damaged was present with permission then the rule of "a person is always liable" is in force. A classic example of this is when the damager entered one's property without permission and caused damage there. Furthermore, even when both are in a public domain, if the damager did not act in accordance with the normal behavior there, for example, he ran instead of walked; he is liable even for damages that were done unintentionally.

If both were with permission, for example, if both were walking in a public domain, or both were without permission, for example, if both were running in a public domain, the Gemarah distinguishes between different circumstances. According to Rashi, the distinction is whether the damage was done in an active manner or a passive manner. If the damager ran into someone and caused damage, he is liable. However, if the person who was damaged ran into him, he is exempt. If both were active and ran into each other, it is considered as damage done passively, and he is exempt. According to the Rambam (Nizkei Mamon 6, 1-3) the distinction is regarding the intent of the damager. If he did the damage intentionally, he is liable, while if it was done unintentionally, he is exempt. However, it appears from the Rambam (ibid 8, and other places) that any case of negligence is also considered damage done intentionally. If the damager was with permission and the one damaged was without, for example, if the one damaged entered the property of the damager without permission, according to Rashi, the damager is exempt even if the damage was done actively, since he was not aware of the presence of the one who was damaged. Only if he was aware of his presence would he be liable for damage done actively. According to the Rambam, here too the distinction is between whether the damage was done intentionally or unintentionally.

These guidelines may be implemented, even today, in all cases. For example, regarding car accidents, which unfortunately are very common, we would utilize these guidelines to determine who is liable for the damages.

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