



HEMDAT YAMIM

Parashat Hashavua

Vayeishev, 23 Kislev 5782

Harav Shaul Israeli zt"l
Founder and President

May a *Tzaddik* Request Tranquility? Rav Daniel Mann

Rashi explains the origin of Yaakov's problems with the enmity of his sons toward Yosef with the idea that Yaakov "requested to live in tranquility (*shalva*)." He says that Hashem complains about it and wonders why *tzaddikim* are not satisfied with having a wonderful lot in the World to Come. Therefore, He initiated the lack of tranquility that surrounded Yosef and his brothers.

Many commentators, including the Alshich are bothered: Could it be wrong for a *tzaddik* to ask for tranquility and must he suffice only with reward in the World to Come? We would point out that Avraham was promised wealth and Bnei Yisrael were promised great riches upon leaving slavery, and those are certainly pleasures of This World. The Alshich answers that the problem was not wanting such things but asking for them. We can point out, though, that our prayers, presumably recited by *tzaddikim* as well, including the *Yehi Ratzon* for Rosh Chodesh and *Tefillat HaShelah* include requests that seem more "This Worldly" than *shalva*. Maybe it is a problem only if one initiates his own fervent request for such elements specifically and it is fine to recite general requests made for the masses. Whatever we will explain, let us clarify that this is only an expectation of great *tzaddikim*, with whom Hashem is very exacting (see Yevamot 121b).

The *midrash* (Bereishit Rabba 84:3) from which Rashi apparently took this idea is somewhat more "lenient" than Rashi. For one, it attributes the complaint not to Hashem, but to the *Satan*, as something to instigate about (making it farther from an actual sin). Additionally, it says that it applies to *tzaddikim* who live in tranquility and ask to live in tranquility. In other words, if one is undergoing difficult times, it is understandable, even for a *tzaddik*, to ask for a respite. If he is already enjoying such times and it is still on his mind, then there could be some divine dissatisfaction. Indeed, at the time Yosef was sold, Yaakov had been back with his father for close to ten years. So according to the *midrash*, at that time, the balance of his focus should have been somewhat different.

One of the commentaries of Midrash Rabba, Y'dei Moshe, presents a fascinating idea about the negative element of wanting *shalva*, which relates to the next passage in the *midrash*. After finding sources that not only Avraham but also Yaakov converted people, it looks for a source that Yitzchak converted people as well. It learns from our opening *pasuk*, "*Vayeishev Yaakov b'erezt megurei aviv*" (Yaakov lived in the land in which his father lived) that *megurei* refers to the *meguyarei* (those who his father converted). The Y'dei Moshe goes on that since one is not to convert people when things are too good for the Jews (as it raises the possibility of ulterior motives), if Yaakov had too much tranquility, he would not be able to convert people anymore.

Let us broaden the message of the Y'dei Moshe. Hashem wants his *tzaddikim* on close to a single-minded, if broad, mission – to spread Torah values as widely as possible. While a certain amount of *shalva* and even wherewithal could be helpful, a *tzaddik* should best concern himself only with things that promote success in that realm. Other *berachot* can wait for the World to Come.

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Ask the Rabbi

by Rav Daniel Mann

Challenge with Monetary Prize

Question: As fun motivation, several friends are pooling 180 NIS each, which we will give to the one who raises the most money for our *shul*. Is this forbidden gambling?

Answer: The *gemara* (Sanhedrin 24b) gives two reasons why a *mesachek b'kubia* (= *mbk* – gambler) is *pasul l'eidut* (unfit to be a witness): 1) Rami Bar Chama – Because of *asmachta* (the loser of a bet did not plan to lose/pay), a gambler is a thief; 2) Rav Sheshet – A *mbk's* life is unproductive, making him untrustworthy. The *gemara* says the practical difference is if the gambler also has productive activity. According to most, Rav Sheshet considers a *mbk's* obligation valid.

The Rambam (Eidut 10:4; Gezeila 6:10) and Shulchan Aruch (Choshen Mishpat 370:1-2) mix between the approaches – *mbk* violates (each time) Rabbinic-level thievery even though he is *pasul l'eidut* only if he is a full-time *mbk*. The losing party's agreement to pay is insufficient because it is likely to not be whole-hearted (S'ma 370:3). The Rama (CM 370:2) rules that part-time *mbk* is permitted. Therefore, Rav Ovadia Yosef (Yabia Omer VII, CM 6), regarding buying lottery tickets, which he equates to *mbk*, forbids it for Sephardim and permits it for Ashkenazim. Other *poskim* (see Rav A. Shapira in Techumin V; Teshuvot V'hanhagot IV, 311) argue that the Shulchan Aruch would permit lotteries because one expects to lose, he receives a lottery ticket with value, the rival gamblers do not interact, and/or because the money is taken by the lottery authority, not any specific counterpart.

Your case lacks one of the Rama's (CM 207:13) conditions – *mbk* involves no skill, giving him less room for irrational optimism. In this case, any friend might think that he has a great chance to win, and therefore lack full intent to surrender money. There may also be technical problems, such as whether the money is found in a place in which a *kinyan* can take effect when the winner is determined (Rama *ibid.*). Therefore, we will look for other grounds to permit it.

The Shulchan Aruch (Yoreh Deah 258:10) rules that one who made a conditional obligation to *tzedaka* cannot exempt himself due to *asmachta*. Arguably, since your motivation is noble (funds for a *shul*), this might apply. However, that will not suffice here because the question is about intent that one's money will end up by his counterpart, and the *shul* is just background.

There may be a way of dealing with the limitations of *asmachta*, by strengthening the agreement by doing an act of *kinyan* (like a *chatan* does at the wedding) and having it take effect *mei'achshav* (immediately) and/or doing it in front of a distinguished *beit din*, or writing that it was done in front of such a *beit din* (see Shulchan Aruch, CM 207:14-15). This would apparently make it permitted according to the Rama but not the Shulchan Aruch (Bemareh Habazak (new edition) VI:95). To avoid *machloket*, because the details are not simple, and to avoid halachic ploys to remove moral issues (see Aruch Hashulchan, CM 207:35), we should look for a natural way to remove the stain of *mbk*.

A likely claim is that no one's intent is to make money, but to create motivation and/or to make things fun. This is reminiscent of the practice of many good Jews to play *dreidel* on Chanuka for money. On the other hand, some require modifications or allow it only on Chanuka (see opinions and a compromise in Nitei Gavriel, Chanuka, p. 307-308; see also Shulchan Aruch, Orach Chayim 322:6). Also, you are not talking about small coins. Without knowing the group, we would not preclude the possibility someone could start off with a nonchalant attitude but could end up competitive and resentful over such things.

Therefore, while you might not have a problem and/or might be able to use the *beit din chashuv* system, we recommend the following (or equivalent) "*mehadrin*" modification. The pot is given to someone who will use the money for the *shul*, a get-together, etc. At his discretion, he will use some of the money for a modest prize object (not money) for the winner (based on Yabia Omer *ibid.*).

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



Igrot HaRe'aya - Letters of Rav Kook

Spread the *Tzaddik's* Teachings, Not His Asceticism - #73 – part II

Date and Place: Iyar 5667, Yafo

Recipient: Rabbi Yaakov Moshe Charlop, the illustrious *talmid chacham*, and a close confidante of Rav Kook, later to be rabbi of Sha'arei Chesed and Rosh Yeshiva of Merkaz Harav. Rav Charlop was one of the closest disciples of the *tzaddik*, Rav Tzvi Michal Shapira, a saintly scholar and ascetic. Rav Charlop was involved in the posthumous publishing of letters and teachings of Rav Shapira.

Body: [Last time we saw Rav Kook praise Rav Charlop for the decision to help publish the works of Rav Shapira, as well as extolling the great *tzaddik* and ascetic and the spiritual brilliance of his teachings.]

All of this [praise] is despite the fact that I am skeptical whether we can find in our times, when the body and the soul are both weak, many people, even among the spiritual elite, who can choose for themselves the path of asceticism and modest self-affliction. This is a worthy approach only to the extent that the person has true enjoyment from being in contact with the divine light, the glow of lofty wisdom, and the special love of spiritual indulgence that comes with true fear of Hashem. It must come with the proper awe of Hashem's greatness, which comes together with wisdom and humility, Torah study with proper intentions, along with following practices that facilitate acquiring greatness in Torah, as Chazal set out (see Avot, ch. 6). This great light, which fills the soul with vigor, a life glow, and joy for truth, pushes off all worries and the demands for lowly physical life that most people desire. Such truly rare, holy *tzaddikim* protect their generation with their merit and provide light for all. The goal of Rav Tzvi Michal was apparently to be such a person.

However, one who is not able to increase his sanctity to such a lofty level, who did not sufficiently toil in wisdom of fear or acquire love of Hashem and all of the good attributes that draw one close to Hashem, must not seek out a life of asceticism. If they will do such things as frequent fasts and self-affliction, then their heart will be empty, and they will regret the suffering they experience. In that way, they will not accomplish anything for themselves or their generation.

The following is what the Kuzari (III:1) says about such a person: "If one is missing necessary acquired wisdom and natural wisdom and anyway brought himself to a state of self-depravation, then he brought upon himself torment and spiritual and physical sickness. The weakness of disease will be seen on him, and people will think it is the weakness of surrender and lowliness. He will then despise his life, because he is disgusted by incarceration and pain, and he will be on his own but not due to the love of solitude. How can it not be so if he does not cling to the divine light, to which prophets cling, and he did not reach wisdom to a degree that delving into them brings pleasant feelings?"

A rare *tzaddik* like your sainted rebbe, especially because he lived in the Holy Land and in the Holy City which is the seat of prophecy, was able to walk on the "altars of clouds," like the saintly people of early periods, who were lighter than eagles and fiercer than lions to do the will of their Master and the desire of their Maker. He reached the highest level of sanctity and purity and felt the pleasure and sweetness of service of Hashem. With all of his many fasts and self-afflictions, which he chose in his sacred heart to include in his truly extraordinary service of Hashem, he still kept his strength intact. He was able to reach great heights in studying Halacha in depth (which requires great concentration and innovation), with wonderful sharpness and mental depth. This is because the spirit of Hashem was with him, and he enjoyed Divine Assistance to increase strength with brave sanctity. This is because his whole course of action was planned according to the strength and pleasantness that he had internally, made possible by daily study of divinity, ethics, and the study of Kabbala and other works of the wisdom of truth. These all broadened his thinking and sanctified his soul, so that he was adorned most beautifully.

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

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Yisrael ben Rivka

Rivka Reena bat Gruna Natna
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Together with all *cholei* Yisrael

Neta bat Malka
Meira bat Esther

P'ninat Mishpat

Judging Someone who Refuses to Appear before Court

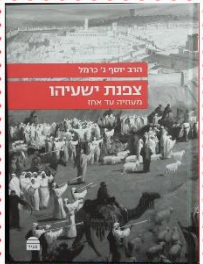
(based on preliminary decision in case 76084 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) claims that he bought a property from the defendants (=def), four brothers who inherited it. Def were supposed to have taken the steps necessary (somewhat more complicated than regarding most properties) to transfer ownership, but they failed to do so, even though a few years have gone by. The contract between them has an arbitration clause, which sets Eretz Hemdah as the place of adjudication and states that it will be done according to Torah law. *Beit din* sent the claim sheet to *def*, according to their official addresses. A person called *beit din*, identifying himself as one of *def* and asked for certain materials related to the case. Subsequently, none of *def* responded to *beit din's* calls. *Beit din* set a time for a hearing and informed the sides by letter and tried to get hold of *def*. A final letter informed the sides that if necessary, a hearing would be held even if only one side came. A courier said that this letter was accepted at *def's* main address by a woman who gave her first name. Some of the secretary's calls were answered by *def's* daughter and another, by his wife. They were requested to tell him to contact *beit din*. On the day of the hearing, one of *def* called. He claimed that he did not receive *beit din's* notices and that he was not going to take part because he was unaware of the contract's arbitration clause. *Pl* came to the hearing; none of *def* came. *Pl* requested a ruling in abstentia plus expenses.

Ruling: When *beit din* is presented with a contract with an arbitration clause that appoints them, they have a right to assume that it is authentic. If there is a claim that it is not authentic or binding, legally, the decision can only be made by the government's regional court. *Def* has a right to appeal to them.

If they do not and do not appear, may *beit din* judge in abstentia? According to the Bach, K'tzot Hachoshen, and Tumim (all in Choshen Mishpat, *siman* 13), there are times when a person can be judged in abstentia. According to the S'ma, Shach, and Netivot Hamishpat (ad loc.) this can never be done. The remedy for one who does not comply with a subpoena is to put him in *niduy* (a form of excommunication) (Shulchan Aruch, CM 11:1). However, it is not legally possible to do that nowadays in Israel. Rav Z.N. Goldberg has ruled that under these conditions, all agree that one can adjudicate in abstentia (based on Rama, CM 28:16, regarding testimony against a person). This is also included in the arbitration agreement's clause of ruling according to Torah law, which nowadays includes compromise (see Rav Goldberg, in *Dinei Borerut* p. 264).

Because *pl*, his lawyer, and the *dayanim* came to *beit din* and waited for *def*, we are charging *def* 2,000 NIS in expenses, to be paid within 45 days. If *def* appear before *beit din* and can explain their absence, it is possible to rescind this charge, as is the case if they can show that they turned to the regional court. Otherwise, *beit din* expects to rule in abstentia based on the material *pl* has presented.



**Tzofnat Yeshayahu-
Rabbi Yosef Carmel**

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