



Parashat Hashavua

Pekudei, Adar 29, 5785

Harav Shaul Israeli zt"l
Founder and President

Counting and Soldiers – Then and Now

Harav Yosef Carmel

“These are the *pekudim* (countings) of the *Mishkan* that were counted by means of Moshe” (Shemot 38:21). While the root *pakod* here is definitely in the realm of counting, in other appearances in *Tanach* it means other things. Regarding Yosef in jail (Bereishit 39:4), it meant he was appointed. Regarding the promise to Bnei Yisrael in Egypt (ibid. 50:24-25), it meant that they would be remembered and liberated.

We will focus on the meaning of counting, which is found in our *parasha* and many other places in *Tanach*. We will see that the counting is also frequently connected to participation in the army, a setting in which even the mundane is holy, as people fight the battles of Hashem.

We start by noting that not all Jews were counted, but only men from the age of 20 (see Shemot 30:12-14). In Bamidbar, the Torah explains the significance of the age of 20 – “... all those who go out to the army in Israel shall you count” (Bamidbar 1:1-3). The counting comes up again later in the book, and there the “*pekudim*” are those who went to fight the Midianites (ibid. 31:48-49). The *pekudim* in *Nach* are also consistently related to going out to battle. Yehoshua counted them as he prepared to go to battle with the city of Ay (Yehoshua 8:10-11). The same is true of the men of the Tribe of Binyamin, as they prepared for battle (Shoftim 20:15). We find the same root arising when Shaul prepared to fight to save the people of Yavesh Gilad (Shmuel I, 11:8). It appears again as Shaul was preparing his army to fight Amalek (ibid. 15:4). There are multiple examples in this vein in Divrei Hayamim.

One of the most impactful counts uses the root *pakod* and focuses on soldiers. David pressured his head general, Yoav, to do a count of the men of war who brandished swords, in a way that violated Halacha (Shmuel II, 24:2-4). In the aftermath of the punishment that befell the people, the place where the *Beit Hamikdash* was to be built was revealed. It turned out that those counted soldiers would later take part in the building of the *Beit Hamikdash*.

Enlistment in the IDF is intimately related to the goals of the Exodus from Egypt – the acceptance of the Torah and the establishment of a Jewish state whose capital is Yerushalayim and whose center is the House of Hashem (see Yeshayahu 2). This state is to serve as a light unto the nations, in which the values and ideals of the Torah will be realized. It is impossible to separate these goals. It is specifically those who learn Torah who should be the backbone of the IDF (they need not be afraid of their sins (see Devarim 20:8)). Torah and *Eretz Yisrael* go together. The *gemara* (Chagiga 5b) refers to learning Torah outside *Eretz Yisrael* as relatively ineffective. Those yeshiva students who found the way to combine the two values are the “men of valor” – the giants of Torah of our generation, as they unite around them all of the factions of *Klal Yisrael*.

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Ask the Rabbi

by Rav Daniel Mann

Taking a Different Object than Lost

Question: I think I lost “air pods” on an Israeli bus, so I went to their lost and found to try to find them. They showed me a stash of dozens of them, but I did not find mine. They offered me to take an equivalent set, which is their policy because there are enough to go around for everyone who lost and comes for them. May I take someone else’s lost air pods?

Answer: While it is not simple to apply the *gemara*’s rules on when one is required to do *hashavat aveida* (returning lost objects, =*hshav*) to modern cases, it appears the Jewish bus company is obligated. Between the brand of air pods, the bus (or possibilities of buses) it was left on, and the date, there is enough of a *siman*.

Presumably, a clear majority of air pods in the stash were lost quite a while ago, and if their owners did not come to claim them yet, most of them are after *yei’ush*. This alone does not erase the bus company’s obligation to return them because *yei’ush* must precede the finder’s taking them (Bava Metzia 21b). However, Tosafot (Bava Kama 66a) posits that *yei’ush* has taken hold, just that the finder cannot remove the existing obligation of *hshav*. According to the simple understanding of Tosafot, that obligation is not transferred to you if you received them after *yei’ush* (see Kehillot Yaakov, Bava Metzia 25). While you should not facilitate the company’s abrogation of *hshav*, it should suffice for you if they have legitimate grounds (see below) to believe they have done all they need to.

However, there is another approach to the matter of *yei’ush* after the finder finds it. The Ramban (to ibid. 26a) and Ritva (to ibid. 21b) explain that the obligation of *hshav* makes the finder a *shomer* for the loser. Consequently, the object is considered in the loser’s possession, in which case we say that *yei’ush* has no impact. Accordingly, the *yei’ush* will not help regarding you either. Without bringing further analysis (see K’tzot Hachoshen 259:1; Imrei Moshe 37), it is difficult to justify taking the air pods based on the standard rules of *yei’ush*. We now look for other ideas.

We have discussed (see Living the Halachic Process III, I-12 & IV, I-4) that operators of venues who are concerned about being overburdened with lost objects can stipulate to those who frequent them how long they will hold onto them. This probably works based on *mechila* (relinquishing) of the right to *hshav*. It is proper to stipulate in an explicit manner so the losers will accept the provision. However, it is plausible that those who use a large transportation system realize that they have lost and found policies and implicitly accept them.

This idea is augmented by other plausible grounds for leniency. While one is expected to exert himself to do *hshav*, he is not required to outlay money that will not be returned for it (Shulchan Aruch, Choshen Mishpat 265:1). Large bus companies often provide lost and found services that cost money (labor and space) as part of their customer service, and it is likely they are not required to do so (at least, for free). Therefore, if they agree to do so voluntarily, they should be able to set their own reasonable policies, even if their policy would not be halachically valid if they were fully obligated in *hshav*.

Finally, the idea of allowing people to **essentially swap** air pods (you can take Reuven’s and if Reuven asks for his, he can take Shimon’s) could possibly conform with the *halacha* for a case where it is not feasible or required (based on sheer volume) for the company to keep lost items forever. In some cases, it is permitted for the finder to sell the object and be prepared to give the proceeds to the loser (Shulchan Aruch, CM 267:23-25). While the policy you describe is different from that *halacha*, it seems primarily equivalent (i.e., there is a plan by which the loser will be compensated, likely to his satisfaction).

Therefore, for a combination of the grounds mentioned, we can justify the company’s policy as a win-win situation for almost all and allow you to take someone else’s lost object.

“Behind the Scenes” Zoom shiur

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Igrot HaRe'aya - Letters of Rav Kook

Refuting Criticism by the Ridbaz – #311 – part II

Date and Place: 19 Sivan 5670 (1910), Yafo

Recipient and Background: Rav Yaakov David Wilovsky (Ridbaz), a leading rabbi who moved to *Eretz Yisrael* and was known, among other things, as a strong opponent of leniencies on *Shemitta*. The main topic of the first installment was the damage of not allowing the *Shemitta* leniency.

Body: I now respond to your distinction between those who devised the leniency of selling the land, who did not fight for its implementation, and me. This claim does not make sense to me. What reason did he have to fight for it? He (perhaps, Rav Shmuel Mohaliver or Rav Yitzchak Elchanan Spektor) lived in the Diaspora. He did not see the poverty and the pressure upon the farmers, who set their eyes [on the rabbis] to sustain them and their families from their produce, while they were under the pressure of various taxes. Additionally, they have the expense of the *Shemitta* process, which is cumbersome even after the leniency of the sale of the land. He also did not see the general danger to Judaism that would stem from the proclamation of a prohibition on this matter that people could not uphold.

Those who were here did not need to fight because until this *Shemitta* year, things proceeded smoothly. Whoever wanted to be stringent for himself did so, but there was no disturbance to people's ability to sell the produce on which their livelihood depended nor aspersions placed on those who followed the leniency. Similarly, people do not cast aspersions on the many [Diaspora] Jews with large estates, who use non-Jews to work the fields with their animals on Shabbat and holidays, based on a legal fiction of selling the fields to the non-Jews, due to the great loss [if they do not do so]. Only recently have the stringent assembled to publicly criticize and to say that which we should never have to hear; this causes immeasurable problems. How can it be that I, who am positioned in the midst of the Yishuv, would not stand by them?

You also wonder why sinners support me and those who fear Hashem oppose me. Why should it be a wonder? Everyone can see that being stringent will have a negative material impact on the Holy Land's Jewish community. Therefore, when I act to protect from such danger, they recognize the benefit. Those who fear Hashem only look at the spiritual side, from whose perspective it is better to be stringent. However, there are G-d fearers who have a clear outlook and do not deceive themselves or others. They see my noble intentions and support me.

There is precedent from the time of Ezra, when some great and good people did not want to rebuild the Jewish community of *Eretz Yisrael*. Ezra took the people with poor lineage and ugly actions, who did not merit blessing, and they desecrated Shabbat even in *Eretz Yisrael*. Even so, salvation grew from their arrival. The Second Temple was built; we received the publicizing of the Oral Law, the expansion of Rabbinical legislation, and the dissemination of Torah in the Jewish world. (It says in *Heichalot* that the Torah's main glory was in the Second Temple period.)

The same thing will happen with Hashem's help in our times. As we strengthen the developing Yishuv and more brethren will come to settle here, the light of liberation will grow. At the end, all the sinners will repent fully with love and joy, with the help of the light of the Holy Land's sanctity. This will be aided by Torah scholars who truly serve Hashem and love the Jewish Nation. They will go with them with love and patience, and the whole world will see that the righteous are concerned for the sinners' welfare. This shall awaken the sleeping spark of Israel's deeply hidden sanctity, even in the hearts of those who appear bereft [of *mitzvo*]. All of them together will be a vessel that holds sanctity for Hashem's nation on His holy soil, which He chose from all the lands.

If only my words will penetrate your heart, and you will join me on this holy path, to help raise the stature of the Yishuv. We will thereby sanctify His Name in the world, and the banner of Torah and the honor of Torah scholars will be elevated on the holy soil.

We daven for a complete and speedy refuah for:

Itamar Chaim ben Tzipora

Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Tal Shaul ben Yaffa

Neta bat Malka
Meira bat Esther

Together with all *cholei Yisrael*

Unsuccessful Transfer of Yeshiva – part II

(based on ruling 82138 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def), a non-profit run by the *rosh yeshiva* (=rydf) had run a yeshiva for years and did not want to continue due to financial and educational difficulties. They negotiated with the plaintiff (=pl), another educational non-profit, to have them take over the yeshiva at its location and pay rent to def. A written agreement was signed in June 2022. After starting to enter the educational sphere and preparing, physically and educationally at the end of the 5782 “academic year,” pl informed the students’ parents soon before the 5783 academic year that pl would be closing the yeshiva. [We will deal with different elements of the dispute in installments.] Pl demands reimbursement for the outlay of money to prepare the yeshiva, only to be undermined by def’s breaches of contract, claiming they prevented pl from continuing to operate the yeshiva. These include def’s refusal to do sufficient repairs/renovations.

Ruling: Was there histamchut? [We pointed out last time that the contract need not have been legally binding if def caused pl to rely upon def’s commitment to go through with the deal, and this caused loss.] If, as def claims, pl was aware that the second signatory (=ssgn) did not plan to sign, they did not have the necessary level of assurance that investment in the transfer of the yeshiva was safe. Ssgn testified in *beit din* that he informed pl, and def presented a letter from ssgn to pl to this effect. However, this letter was undated, and we do not know if it was ever given; rydf and def’s lawyer contradicted themselves as to whether it was delivered by hand or by email (which they have not presented). Pl’s former director testified convincingly that pl was led to believe that ssgn would sign. There is also strong circumstantial evidence of the same. Def made a large gathering to announce pl’s role and sent word to the press, which only makes sense if there was a final decision. It is also agreed that rydf is the dominant force in def’s operation and decision making. It is standard practice to assume that when such a person gives his word and certainly signs on an agreement, the decision is approved by the institution.

Was there breach of contract? Repairs/renovation: The contract states that the sides “will come to an agreement on the extent of minimum repair needed for reasonable use by the students, which def will do, as is proper for a rented property.” While small repairs were done, pl claims they did not reach a reasonable standard for the yeshiva’s needs. *Beit din* rejects this claim. A witness testified that there were long negotiations on the extent of repairs, and the contract’s language indicates that def is not required to provide more than the minimum. Although the Rama (Choshen Mishpat 314:1) says that even if the renter came into a property and did not complain about problems that would make it objectively unlivable, the landlord must raise the situation to livable, but that does not apply here. A student testified that the conditions were livable, and if pl required more, it should have found clearer expression in the agreement.

We will continue with other alleged breaches and other matters.

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