



### Parashat Hashavua Tazria Metzora, Iyar 5, 5785

Harav Shaul Israeli zt"l  
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#### More Mila than Brit?

Rabbi Daniel Mann

Our *parshiyot* continue the theme of purity and impurity in living things. In the midst of the transition from discussion of impurity of the animal world (in *Shemini*) to impurity that comes from the human body (*Tazria & Metzora*), it discusses purity and impurity stemming from birth. In that context, the Torah mentions, in the only time post-*matan Torah*, the *mitzva* to circumcise baby boys on the eighth day from birth (Vayikra 12:3). The context seems surprising.

The first presentation of the *mitzva* of *mila*, to Avraham, mentions repeatedly a *brit* (covenant) and an *ot* (a sign) of the connection between Hashem and His devotees (Bereishit 17:9-14). The idea of *brit* is then a focus of the acceptance of the Torah at Sinai (Shemot 24:7-8; see also Bamidbar 10:33 regarding the *luchot* that memorialize that great event) and a covenant is made before entering the Land (Devarim 28:69). *Brit mila* was required to get to this point, as the "blood" of *mila* and *Korban Pesach* provided the virtue that made possible the Exodus, nationhood, Sinai, and ultimately entering the Land (Mehilta D'Rabi Yishmael, Bo 5).

After the time of Avraham, the Torah no longer uses the term *brit* regarding *mila*, but refers to it as a way to remove the undesired *orla* (foreskin; see also Yehoshua 5). Besides being a physical sign of covenant, *mila* removes the *orla*, which is biological tissue that represents negative spiritual forces; it needs to be removed for the boy to grow into a holy man (see Sefer Hachinuch #2). Whether an *orla* creates the equivalent of *tumah*, as Rabbi Akiva posits (see Yevamot 72b), or something else, if one does not remove the *orla*, even if it is not his fault, he may not eat the *Korban Pesach*, *teruma*, or *ma'aser sheni*. Arguably, the sanctification resulting from removing the *orla* is a *brit mila*'s major element, as opposed to the former need to symbolize the covenant.

In at least one realm of Judaism, the *brit* element of *mila* remains in full force. One who was born not Jewish was not included in the covenant that Hashem forged with the Jewish people. If such a man wants to convert, i.e., join the covenant with Hashem as a new member of Bnei Yisrael, he must perform a *brit mila* (Yevamot 45a).

If it is so, that the covenantal element of *brit mila* is not as central to the *mitzva* as it originally was, why does it find so much expression in the terminology, lore, and even the *berachot* (*l'hachniso b'vruto, zocher habrit*) of a *brit mila*? The answer may be as follows. Indeed, we have inherited *britot* from our forefathers (and our *neshamot*) who were at Sinai, but we yearn to actively, in our generation, with our own sons, do what we can do to affirm our excitement in being part of that covenant. We want a sign on our bodies to proclaim, as do our homes, our clothes, our arms and head, that we are connected to Hashem throughout our lives. Hashem enabled us to create this sign with the same act we use to make ourselves fit to take part in holy matters – by removing the *orla*.

May the merit of embracing our connection to Hashem give Him further reason to shine His countenance upon us and protect us from our enemies, with continued and increasing miracles.

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# Ask the Rabbi

by Rav Daniel Mann

## Scratching Improperly Parked Cars

**Question:** When I ride my bicycle, I often come across illegally parked cars that make it challenging to get through. While I am careful, I might accidentally scratch a car. Would I be responsible to pay damages if I did?

**Answer:** If Reuven left his property in a place/manner it has no right to be, and Shimon's animal went by and purposely kicked it, Shimon must pay damages, but Shimon is exempt from the animal's inadvertent damage while walking by (Bava Kama 32a; Shulchan Aruch, Choshen Mishpat 389:20). You might compare your bicycle to Shimon's animal. However, the exemption of inadvertent damage to improperly positioned objects applies to damage done by one's animal, not done by a person (Tosafot, Bava Kama 27b; the person powering/steering the bicycle is considered a direct damager).

The *mishna* (Bava Kama 27a) says that if Reuven left his vessel in the public domain and Shimon tripped over it and broke it, he is exempt. The *gemara* (ibid. 27b) wonders why we cannot expect Shimon to be careful, and cites four answers. The most accepted one (Shulchan Aruch, CM 412:1) is that people are not expected to inspect their walking path. You might claim that, similarly, you cannot be expected to lead your bike through a tight place without possibly scratching an obstructing car. However, *poskim* (Nimukei Yosef to *gemara* ibid., Yam Shel Shlomo, Bava Kama 5:9) say that the leniency is limited to cases where the damager was unaware that the object was present, but when he knows there is something to avoid damaging, we expect him to succeed. The fact that the object is not supposed to be there and the damager's lack of intent to damage do not seem to exempt.

A stronger ground for exemption, although not for too many cases, is based on Rav's explanation to the *gemara*'s exemption – in the *mishna*'s case, Reuven's vessels made the public path impassable. This is based on the concept that in certain cases, a person can take the law into his own hands to protect his interests (Shulchan Aruch, CM 4:1). So, if the situation warrants it, a person may purposely break the vessels in order to get by, and he certainly is exempt if when trying to squeeze by, he accidentally did damage (Bava Kama 28a; Shulchan Aruch, CM 412:2).

Regarding your question, each case can be different and can be unclear. How crucial is it to squeeze by (i.e., is there no reasonable detour?)? How likely is it that you will damage the car, and does it make a difference? What is the *halacha* if you could have gotten by without damage, but you did a poor job? The Aruch Hashulchan (CM 412:4) seems to take a measured, practical approach to this matter, understanding the passerby's predicament, but gives few details. I saw an approach that gives great leeway to the passerby (Mishpetei Hatorah, Bava Kama 53), but it was low on sources and proofs.

There is a third reason not to have to pay in certain cases. The damage a slow-moving bicycle might make to a car is likely to be minor. Damage payment is either to fix the object or to pay for its depreciation. (There will not be a need to replace the car.) In *Living the Halachic Process* (I, J-6) we pointed out that only when the normal thing is to fix such damage can the owner demand it to be fixed. This might depend not only on the extent of the scratch but also how nice the car looks other than the new scratch. When repairs are not called for, one needs to determine depreciation, and depreciation is also affected by the above factors. For an old, beat-up looking car, the amount due could thus be 0 NIS.

It is indeed a good idea to be very careful, not only to be nice (even if you resent illegal parking), but to avoid the need to deal with a likely need to pay something. (Leaving a note for the car owner sometimes opens a "Pandora's box" to unreasonable demands.) If you did scratch such a car but in a way that your conviction (which will often call for specific rabbinic advice) is that you owe nothing, you are not required to present yourself to the car owner (see *Living the Halachic Process* III, I-5).

### "Behind the Scenes" Zoom shiur

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# Igrot HaRe'aya - Letters of Rav Kook

## Reassuring His Parents – #314 – part I

**Date and Place:** 23 Sivan 5670 (1910), Yafo

**Recipient and Background:** Rav Kook's parents, who were still in Europe. The main topic is to calm his parents' upset at the criticism Rav Kook was receiving from respected rabbis regarding his stance on *Shemitta*.

**Body:** [The letter, of course, starts with warm greetings full of respect.]

I very much request of my respected, beloved parents that they should not have any emotional pain from all the matters of dispute, which, because of the interest of the *moshavot* (Rav Kook was the rabbi of many of them), I am compelled to be involved in. There is nothing to be upset about.

Thank G-d, our Holy Land is increasingly being built before our eyes. This fulfills the word of Hashem as given down by His servants, the prophets, about the return to Zion and the flowering of the horn of salvation for the House of Israel on holy soil, which is increasingly becoming filled in His great kindness. Those returning from exile are increasingly coming with enthusiasm to the cities of Judea, which have begun to shake off the dirt of desolation. Our eyes see and are happy!

Thank G-d, we are being filled with historic joy and hope, as Hashem's hand, full of kindness for His afflicted nation and His Land, which has been desolate for so many centuries, comes to their aid. We are so blessed by Hashem to be able to be involved, whether in a more or a less recognizable manner. This is the greatest, loftiest joy. It provides enough to counteract a measure of criticism or slight pain from an unpleasant feeling, which appears for a moment when a person sees that this person or that person acts in a manner that is undesirable to one who loves and pampers himself too much (i.e., Rav Kook).

I am thankful to Hashem Who made my life and Who arranged in His lofty manner that I should be able to do my work, with my limited strength, on the mountains of Israel, at this auspicious time, when the flow of the life of Hashem's nation is increasingly gathering [to the Land]. Hashem has raised me above the little things (i.e., reacting to harsh criticism), which do not affect my spirit and heart. It does not cloud over the glow of my clear goal to help people in religious matters and to be one of those who orchestrates the holy work of founding in Zion a strong and beautiful cornerstone, to be the basis of generations of the fearful nation who have been subjugated by the nations.

I am full of hope that just as the steps of broadening the physical Yishuv will continue, with Hashem's help, so will there be parallel progress in spiritual matters. In the physical sphere, we have relied on well-grounded leniency as we make the difficult transition to a more developed community for the holy nation in its natural homeland. We look forward to, in the spiritual realm, desirable steps to accompany the desire for the honor and splendor of spirituality, which are deeply embedded in the holy nation's soul. This spirituality finds expression in the love of the sanctity of the Land and all of the *mitzvot* connected to it, especially the lofty *mitzva* of *Shemitta*. I am not bothered at all by those who seek this goal of maintaining the sanctity of the Land and dedication to the sanctity of related *mitzvot* in a naïve way, without becoming familiar with the depths of life of the beam of light that come from the mountains of Israel, which raise a holy voice foretelling salvation. This is as Judah is told, "Your salvation has come." (Rav Kook is referring to those who believe in the *mitvot* of the Land but do not believe in developing the Land in practice, even when the time for it appears to be coming.) They believe they can get to the goal on a shorter path (not to make spiritual compromises to promote development of the Yishuv). Actually, it is longer and full of thorns, as they cause resentment in the heart of sons who are full of holy splendor for that which is sacred to Hashem, which will be presented to them in a pleasant manner that is full of Hashem's charm and kindness.

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

Itamar Chaim ben Tzipora

Nir Rephael ben Rachel Bracha

Arye Yitzchak ben Geula Miriam

Tal Shaul ben Yaffa

Ori Leah bat Chaya Temima

Neta bat Malka

Meira bat Esther

Together with all *cholei* Yisrael

# P'ninat Mishpat

## Rental of an Apartment that Was Not Quite Ready – part II

(based on ruling 82031 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiffs (=pl) rented out an apartment in a *yishuv* to the defendants (=def) just as its building was being completed. Def entered it in Aug. 2021, before there was a *tofes 4* (certificate of occupancy); the permanent electric system was not hooked up, and there were no air conditioners. The contract states that the price is 5,000 NIS a month. Orally, def agreed to install air conditioners, for which they would be compensated. The circumstances of the apartment's state at the beginning of the rental spawned various disputes. [We will deal with them in installments.] Pl claim that the rental fee is 6,250 NIS per month and that 5,000 NIS was written to reflect pl's reimbursement for def's spending 11,900 NIS on air conditioners, so that def now owe 3,000 NIS for the first year. Def claim that the rental price was indeed 5,000 NIS, and since nothing was deducted to compensate for the air conditioners they bought, pl must reimburse for them. Def counterclaim against pl for launching into a verbal tirade in front of def's children, as embarrassment and *lashon hara*.

**Ruling: Rental rate:** When questions arise about how to understand a contract, the one who needs the document to extract money has to prove his contention (Shulchan Aruch, Choshen Mishpat 42:5). That is said in the case of doubt, all the more so here where the contract is clear that it is 5,000 NIS, and def is claiming there is an oral stipulation which essentially contradicts that which is written. That requires a strong indication to be believed (Nachal Yitzchak, CM 61:16). Furthermore, the amounts given would not even work out exactly if they were to correspond to the expenditure of the air conditioners.

**Reimbursement for the air conditioners:** Since we have determined that the rental rate was unrelated to reimbursement for the air conditioners, there is no argument that there was supposed to be reimbursement, and that no other form was used, pl must pay def 11,900 NIS.

**Lashon hara:** According to the basic Halacha, embarrassment from words is not payable, but *beit din* has authority to obligate exceptional payment when they see fit (Shulchan Aruch, CM 420:38). In this case, the majority of *dayanim* did not consider it appropriate to obligate payment for a few related reasons: Pl did not premeditate to insult or discredit def, but pl reacted (albeit, poorly) to a tense situation of mutual recriminations. The Shulchan Aruch and Rama (ibid. 39) say that intention is significant in these matters. Also, there are indications that def may have pushed pl, in which case we can apply the Rama's (CM 421:13) ruling: "One who hits his counterpart, and the counterpart called him a *mamzer*, he is exempt ..." The majority did not want to apply the Israeli "Law of Lashon Hara" because while negative things were said to others (in this case, def's children), the things that were said were not intended for that "audience," who just happened to be there.

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