



Harav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat Hashavua

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Leadership of Yosef – For How Long?

Harav Yosef Carmel

In the *beracha* of Yosef in last week's *parasha*, Yaakov calls Yosef the crowned head of his brothers (Bereishit 49:26). This clearly gives Yosef a position of leadership vis a vis his brothers. Let us notice three stresses in the *pasuk*:

1. Yaakov stresses that he is transferring the *berachot* that he received from his parents and that the *berachot* were being elevated (*gavru*).

2. Two words are used to describe Yosef's head (representing stature): *rosh* and *kodkod*.

3. The image of the crown of his brothers (*n'zir echav*) is invoked.

On the other hand, as we begin *Sefer Shemot*, the family/national leadership seems to be transferred to the Tribe of Levi (through Moshe), whose patriarch is actually castigated by Yaakov. To follow the process of leadership shifts, let us look at what happened after Yosef died and then after Moshe died.

We do not have a lot of information on the period between Yosef's death (which seals *Sefer Bereishit*) and the rise of the new king in Egypt who "did not know Yosef" (Shemot 1:8). There is pertinent information elsewhere in *Tanach* and in corresponding passages of *Chazal*. Tehillim (78:9) refers to the sons of Ephrayim (Yosef's son) as warriors, within a psalm that deals with the period of the exile in Egypt. *Chazal* send us to Divrei Hayamim (I, 7:20-22), which tells us of the death of sons of Ephrayim who were killed by the people of Gat when they went there with their cattle. P'sikta D'Rabbi Kahana (Beshalach 11) tell us that groups within Ephrayim made a mistake in calculating the end of the exile in Egypt, which caused a very large number of them to be killed.

The picture that we get is that as Ephrayim had been chosen by Yaakov to be leader of Yosef's family and thus of the emerging nation, he used his influence among Israel and Egypt to embark on an armed excursion to *Eretz Yisrael* in order to pave the way for an Israelite return. This premature effort to bring liberation, ending in great failure, caused Ephrayim's leadership to lapse, and the actual liberation to move to Moshe the Levite.

However, Yosef/Ephrayim's special status was not over. As Moshe was about to die, he passed on his leadership to Yehoshua bin Nun from the Tribe of Ephrayim. In his *beracha* for the Tribe of Yosef, Moshe again invoked the words "*rosh*, *kodkod*, and *n'zir echav*" (Devarim 33:16).

How long did Yosef's prominence last? In the same *perek* of Tehillim, the *Mishkan* in Shilo is referred to as "the tent of Yosef," and the *pasuk* concludes that Hashem "did not chose the Tribe of Ephrayim" (see Tehillim 78:60-67). While the *p'sukim* talk of the fall of Shilo, this took place only at the end of the period of the Judges. During this period, the majority of the judges were from the family of Yosef and/or the tribes connected to the matriarch Rachel. (In my upcoming *Tzofnat Shmuel*, you will be able to learn in depth about the reasons behind the assumption of the mantle of leadership by Yehuda, the son of Leah.)

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Giving Away Offensively Left Materials

Question: Contractors have been using an area in our building for deliveries during apartment renovations. Some materials have been left there for extended periods, creating an unsightly situation. Building management announced that materials must be removed within a specified timeframe, after which they would be declared *hefker* (ownerless) and available to anyone. Does management have the halachic authority to declare others' property *hefker*, even with warning?

Answer: We understand that you are asking only out of halachic "curiosity," which allows us to answer you. Nevertheless, since you have not relayed potentially impactful details that are likely difficult to determine, our answer is quite general. We will take a quick look at a few scenarios and halachic concepts.

Aveida mida'at: The *gemara*, in a few places excludes from the *mitzva* of *hashavat aveida* (returning lost objects) an object that is an *aveida mida'at* (when the object is in a precarious situation and its owner does not act to protect it). The Tur (Choshen Mishpat 261) says that in such a case, the object is presumed to be *hefker*, whereas the Rambam (Gezeila 11:11) says that while *hashavat aveida* does not apply, the owner still owns it, so that it is forbidden for others to take it. The Shulchan Aruch (CM 261:4) rules like the Rambam, and the Rama (ad loc.) cites the Tur. The fact that some *gemarot* imply one way and others the other way (see Bava Batra 87b and Bava Metzia 21a) provides impetus for *poskim* to make distinctions. Thus, each side in the *machloket* can agree with the other side in exceptional cases (see Encyclopedia Talmudit, s.v. *aveida mida'at*).

One of the *gemara*'s cases of *aveida mida'at* (Bava Metzia 31a) is similar to our case. Reuven's cow was grazing in a (non-Jewish) vineyard, and the vineyard owner warned Reuven that if this persisted, he would kill the cow. The *gemara* says that if Reuven ignored the warning, it is *aveida mida'at*, and it is likely that the *machloket* of the Rambam and Tur applies here (see Even Ha'ezer Gezeila 11:11). Most explain that whether it is *hefker* depends on the assumptions about the object owner's mindset (see Beit Yosef, CM 261), which would make it dependent on the specific case. In our case, too, contractors ignore the warning of having their materials confiscated, raising the question of what they are thinking when they leave them there.

Several *poskim* recommend putting up signs in *batei midrash* to tell people they will relinquish their rights to *sefarim* left for a long time (see Living the Halachic Process III, I-12). However, this will not work here, if the noncompliant contractors are not agreeable to management's dictates. Therefore, unless we can assume the contractors do not care about the remaining materials, *aveida mida'at* will probably not make them available to be claimed.

Authority to force removal: At times, one may take strong, unilateral steps to ensure their rights (see Bava Kama 27b-28a; Shulchan Aruch, CM 4). If Shimon's objects impede use of Reuven's property, Reuven can take steps that include breaking the objects to get by, but not to purposely break them. Factors that affect what Reuven can do include prominently how necessary it is to take the steps and how grievous Shimon's actions were (see Pitchei Choshen, Sh'eila 1:25). In one very grievous case (Bava Metzia 101b; Shulchan Aruch 319:1), Reuven can sell some of the objects to pay porters to remove the others.

However, this is an insufficient precedent regarding your question. Shimon's ownership can be overlooked only to the extent needed to move the objects, not to give away the offending objects. The contractors' objectionability is also not as severe as the one in the *gemara*'s case. If management is forbidden to confiscate, it also distinguishes our case from that of Bava Metzia 31a, where it is *aveida mida'at* because the non-Jew's threat will not be tempered by Halacha.

Therefore, without casting final judgment, one would be hard-pressed to allow people to claim the materials if the owners want to keep them.

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Addresses to Students at Kfar Haroeh (1942, 1944)

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 238

1. “Avraham returned with his youngsters’ (Bereishit 22:19). Where was Yitzchak? [Avraham] sent him to the study hall of Shem and Eiver” (Bereishit Rabba 56:11). We see from this that prior to his *akeida* (binding), Yitzchak was not ready to be sent to *yeshiva*. This demonstrates that *yeshiva* requires great, deep, personal preparation, up to and including such a great trial as Yitzchak’s binding.

The power of Torah is great only to the extent that we feel that it was given to us and that we can be not only continuers but also initiators. Avraham did not have to undergo a trial such as being bound before he went to learn. But Yitzchak was different, in that he came to *yeshiva* because his father sent him, as a result of always being in an atmosphere permeated with the Torah of Avraham. He could not have taken the critical value out of his study as long as he did not personally undergo the great trial of the *akeida*.

The first students who studied in the *yeshiva* have already moved on, so what connection is there between those who are here and those who used to be? Why would one mention the years one studied in the *yeshiva*? We can deduce that the earlier students left us something of value. What they created still exists – a tradition and a mold. It is a tradition of consistency, a mold of reliability and close friendship. You new students came to something that had been prepared, and you are charged with the task of continuing it. The continuation can live up to this distinction only if it contains some of the “fragrance” of the beginning. In other words, if the *yeshiva* did not already exist, you would have been capable of founding it.

The main thing that pushed the founding class was the recognition that something important was being created – whether it was them as people or the institution. That is why people were careful about the details and there was concern that there should not be anything improper or “unhealthy.” That is why there is a connection with those who followed, even after they left, and why they have concern about the “face of the *yeshiva*” even today. These are “the righteous within the city” (see Bereishit 18:24), whose activities are not limited to themselves but also their environs. It is not a chance get-together of friends, but an organic growth of a living thing, so that each part does its part. This is what we need in the future, as well, and you will be able to prove yourselves in this.

2. “The Torah taught us the proper practice – a person should not switch his innkeeper” (Rashi, Bereishit 13:3). One should show good manners toward an innkeeper even though he was only an innkeeper and even though the nature of the relationship is transient, until he moves on. It is even though the passerby does not leave an impact and others take his place. Sometimes, the visitor does not care what happens at the inn. It is still good manners to remember even one’s temporary abode, as he still received benefit from the inn and the innkeeper.

Perhaps the Torah was teaching that there is no experience in the world that is totally lost. Even if it was just in passing, you were there, and you probably left some “fragrance” of yourself there. Within those walls, something was received from the life that passed through. You left some part of your soul, and perhaps it is still “wandering there waiting to be fixed.” Maybe it is still “clinging to the walls,” making “fruit and fruit of fruit.”

It is possible that you recognize that you had a feeling, a flutter of the spirit before it took a firm form. Perhaps you dreamed a dream and you thought it was just a dream, but the dream came true. It is worthwhile to return and remember, to see and compare.

We daven for a complete and speedy refuah for:

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P'ninat Mishpat

Sharing in Plumbing Expenses – part I

(based on ruling 85013 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) own neighboring apartments in a building in which all the owners on one wing expanded their apartments. As a result of pl's renovations, pl's contractor changed the pipes draining the wing's waste, and they now service only pl and def. Ten years later, pl reported to def that there was a major clog and then fixed it with plumber A for 15,500 NIS. Weeks later, pl paid plumber B to do additional work for 14,000 NIS. Pl asked def to pay half of the cost of repairs. Def refuses to pay at least the great majority of the expense for several complementary reasons: 1. The problem stemmed from mistakes in the redone piping. 2. Research revealed that plumber A took an unreasonable amount of money, and the second repair was not needed. 3. Pl told def that plumbing needed to be done, but def had no idea it would cost so much. 4. Other people in the building share some of the pipes and should also be charged. 5. The receipts pl presented contain irregularities.

Ruling: [*Beit din almost succeeded in getting the sides to agree to a compromise, explaining that in order to find out the truth on some of the claims, which might not even be possible, would require several thousands of NIS and much effort from all sides. After agreeing to a compromise number, the sides squabbled over ancillary matters and pl withdrew his agreement.*]

The *gemara* (Bava Metzia 108a) says that when drainage that goes from field-to-field clogs up, the people in the higher fields must help pay for the blockage at the lower fields, which affect all of them. However, if the blockage is in the upper fields and does not affect the bottom ones, the latter do not have to pay for the needs of the former. According to that model, there is basis to make def reimburse pl so that they pay in equal parts. This is also binding based on common practice and local law.

In this case, def agreed to have pl act according to the needs of the two of them, which is binding without any further act of *kinyan* (Shulchan Aruch, Choshen Mishpat 182:1). It still needs to be determined whether the steps that pl took on behalf of both pl and def were within the realm of the acceptable, which is required for def to be required to chip in equally (see *ibid.* 176:10; Rama, CM 182:3). If the price of the job were low, it is possible that we would presume that the neighbors give the one representing them free rein, but not for cases like this which came to many thousands of NIS. This is one of the matters that *beit din* cannot determine just based on the pictures and descriptions provided.

The Rosh (Shut 107:6) is among those who rule that when it is the most reasonable thing to do, *beit din* can rule based on compromise even when the sides do not agree to it, and this is also specified in our arbitration agreement. The Shulchan Aruch (CM 12:5) mentions as one of the cases, when the ruling cannot be clarified. The same is true when it is not in the interest of the sides to try to clarify.

We will continue next time with analyzing the relative strength of the claims in order to arrive at a proper compromise

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