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Founder and President

# HEMDAT YAMIM

חיים תמיד

## PARASHAT HASHAVUAH

Lech Lecha, Cheshvan 11, 5773

### If and How to Go Out to a Dangerous Battle

Harav Yosef Carmel

The first case of *pidyon shvuyim* (freeing captives) in our national history is Avraham's extrication of Lot from the Four Kings. Avraham did so with a quick and daring military operation with the help of 318 underlings. The Torah describes the way he enlisted them for the task with the unusual word "*vayarek*" (Bereishit 14:14). What does this mean?

Rashi, based on Unkelus' translation, says that it means that he encouraged them to be diligent in the matter. He did not do this just with words but stood at the front of the unit. The *midrash* (Bereishit Rabba 43) cites several approaches which help us analyze what the proper solution to the situation is, what the price was, and what factors played a role in the decision.

Rabbi Yehuda said that Avraham's associates spoke strongly before him by asking the following question: "If the Five Kings (whom the Four Kings defeated) could not stand up to them, how can we stand up to them?" Rabbi Nechemia said that Avraham spoke strongly before them, saying: "I will go and fall in the sanctification of Hashem's Name." Abba bar Zavda said that it is referring to preparing weapons for the fighters. Reish Lakish says that Avraham presented them with precious stones for their participation in the battle. Rabbi Levi said that he discussed with them the Torah's rules about who is sent away from battle. Let us briefly analyze each opinion.

According to Rabbi Yehuda, Avraham did not accept the claim that they were no match for the Four Kings, although we do not know how he countered their concerns. Apparently he relied upon his abilities, along with prayers and Divine Assistance, and was thankfully successful in his calculated risk. According to Rabbi Nechemia, Avraham decided to go out to war even though he, as its leader, could pay with his life for it. He figured that even if he would die, it would at least be as an act of sanctification of Hashem's Name. This is certainly a response from which we can learn, even though we do not know what price would have been too much for Avraham to pay.

According to Abba bar Zavda we do not see any moral response to the question of whether or not to go out to battle. However, we do see that even one who relies upon Divine Assistance should be certain to go out properly prepared for battle. According to Reish Lakish, we see that Avraham was willing to expend great sums of money to finance the *pidyon shvuyim*. Finally, according to Rabbi Levi, Avraham was careful to make proper spiritual preparations for the battle. Indeed the Torah puts great stress on making sure that only those who are fit for battle, from the perspectives it sets out, should participate. This needs to be done in the proper spirit of one who understands that Hashem's involvement in battle is the one that will ultimately seal the fate of its participants.

Let us pray that if we are ever again put in a situation where we will have to deal with such serious steps, we will have learned the various lessons that our patriarch Avraham taught us.

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# Ask the Rabbi

## How to Name the Child of a Gentile Father

by Rav Daniel Mann

**Question:** As a *mohel*, I sometimes perform a *brit* for a baby whose mother is Jewish but whose father is not Jewish. When giving the baby's name, what should be said as his being son of (*ben ...*)?

**Answer:** In the case of intermarriage, not only does the mother determine the child's religion (Kiddushin 68b), but the child is considered related only to her, not his father (ibid. 66b). The question of how to refer to someone whose biological father cannot be used for Jewish identification arises in several cases and contexts from which we can extrapolate.

Regarding the writing of a *get* for a convert (who loses his halachic relationship to his parents) and one whose father's identity is unknown (a *shtuki*), the Shulchan Aruch (Even Haezer 129:9) says to write just the person's given name without mentioning a parent. Elsewhere the Shulchan Aruch (ibid. 20) writes that for a convert we write that he is "the son of Avraham Avinu," who is a catchall father for Jews of any lineage. The Levush (EH 129:9) says that we can also mention Avraham for a *shtuki*. However, the Get Pashut (129:48) says that this is not accurate as it makes the *shtuki* seem as if he is a convert, which is false (such an inaccuracy can invalidate a *get*).

The Rama regarding calling up for *aliyot* (Orach Chayim 139:3) says that for a *shtuki* we would refer to the person as the son of his maternal grandfather. The Taz (139:1) objects because it is inaccurate, and if he will follow this lead of self-identification, a *get* he might someday give would be invalid. He suggests calling him the son of Avraham (it is not clear whether he intends to say "Avraham Avinu" or just "Avraham"- see Pri Megadim ad loc.). Others do not understand why being called "the son" of his grandfather is less accurate than "the son" of Avraham. (For a convert, the description of "son of Avraham Avinu" is a special, positive designation- see Beit Yosef, OC 47, but we do not find this for other people).

The *gemara* unobtrusively raises an attractive possibility. Rachel, the daughter of the *Amora* Shmuel was captured by non-Jews and raped by one of them. She had a son from that event, by the name of Mari, and he actually became a *talmid chacham* (see Bava Batra 149a and Rashbam ad loc.). The *gemara* consistently calls him Mari bar Rachel, identifying him as the son of his mother. The Dagul Meirevava (to Even Haezer 129:9) suggests doing the same for a *shtuki*, but decides that a *shtuki*, who has a halachic father, just that he is unknown, cannot be compared to Mari bar Rachel. He argues that when there is a halachic father, one cannot use the mother's name in a halachic context (certainly, regarding a *get*), whereas when one has no halachic father, it is appropriate to identify him by means of his mother. The Get Pashut (129:51) and Chatam Sofer (IV:41) take as a given that one should use the mother's name when she is Jewish and the father is not and claim that using the mother's name is even appropriate for a *shtuki*. The Igrot Moshe (Yoreh Deah III:106.3), in the context of a *ketuba*, says not to write the mother's name for a *shtuki* because that is the system to use for a case where the mother is Jewish and the father is not. He argues that it is important not to confuse between the two because the two categories have different halachic statuses (see Kiddushin 69a).

To summarize, the most accurate way to identify a child of a Jewish mother and non-Jewish biological father is as the mother's child. In regard to being called for *aliyot*, which is not very formal or halachic, the factor of embarrassment plays a major role (see Rama, OC 139:3). However, regarding such a *brit*, not only is the matter more formal, but usually whoever is present is aware of the child's lineage. There need not be problematic sensitivities of acknowledging that his Jewish identity is through his mother. (Obviously, the union itself is highly problematic). Therefore, using the mother's name is the correct approach. (You can ask again regarding exceptional cases, e.g., if the father converted after conception, *brit* for an adult, etc.)

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# Ein Ayah

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

## The Proper Focus of a Vibrant Life

(condensed from Ein Ayah, Berachot 9:182)

**Gemara:** One is required to bless Hashem for the bad just as he blesses for the good, as we derive from “You shall love Hashem your G-d, with all your heart(s)” – with your two inclinations, the good inclination and the evil inclination – “and with all your soul” – even if He takes your soul – “and with all your means (*meodecha*)” – with all your money; another approach is: with every measure (*mida*) that he measures out for you, thank him (*modeh*) very very much (*m’od m’od*).

**Ein Ayah:** When a person is focused on his private issues and physical enjoyment, his conception of good and bad is limited to how things affect him. When one’s connection to Hashem is elevated based on his intellectual/spiritual realm and he appreciates absolute truth, he will view that which is good based on that which is beneficial to the collective. Regarding the collective, Hashem does nothing that can be viewed as bad, as Hashem ensures that everything is done in an appropriate manner according to the time and situation. That which appears bad in regard to the individual may cause great goodness to the interests of the collective. When one who is on a high level suffers a personal tragedy, he is able to find satisfaction in his personal tragedy due to the benefit that it causes the collective, which to him is the crucial matter. It makes little difference to this great person if the recipients of the resulting good are close to or far from him in relationship, location, or time. He can make the blessing on the apparent bad with the same love as the blessing on the good. In fact the whole concept of good and bad divine decrees applies only to people with a more limited outlook.

One who elevated his ways of service of Hashem to the level described above is able to serve Hashem with all his inclinations, for he is interested in the broadest level of good and justice. If that includes the need for him to give his life, then he will eagerly volunteer to do so because he cares about the ultimate good of the collective. His own interests in relation to those of the community appear to him like the light of a candle in relation to a large torch.

There are people who minimize their interest in life due to impatience and unawareness of the value of life and of expanding their life experience. They do not show greatness when they sacrifice their life or the means of expanding it. The proper approach is to want as vibrant a life as possible despite the fact that he is fully prepared to give up his life for Hashem because of the understanding of the great need and value of the situation that would require it.

This approach to life also finds expression in being able to be thankful to Hashem in an extreme (*m’od m’od*) way. A soul that has diminished aspirations will not feel the need to thank Hashem in a full way because good or bad, pleasure or affliction, are not of as great interest to him. The greater one’s involvement in the world, the greater the dedication toward that which is just and good in the most ideal and all-encompassing manner. When such people connect to the welfare of the collective, they will find their greatest enjoyment there, and they will help add on to it just as the rivers and streams lead to and fill the seas. Therefore, in every element of benefit that one is exposed to in life, he should feel the good that comes from it and thank Hashem who runs the world, who created all for His glory, and whose glory fills the world.

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## Payment for Court Expenses –part I

(condensed from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) had given the defendant (=def) a check in relation to a now disputed stock deal. An arbitrator ruled that def must return the check, but he instead cashed it with the help of *hotza'ah l'poal* (the arm of the court that enforces debt payments). Pl demands not only return of the value of the check but also that def pay their legal expenses.

**Ruling:** There are two mechanisms that might obligate a litigant in legal expenses: *garmi* (payment for semi-direct damages) and agreement.

In the Israeli secular courts (the U.S., for example, does not have this practice), it is standard procedure for the losing side to be charged with the winning side's legal fees. Part of the interest is to reduce the volume of litigation. The Torah approach is that when there is a reasonable legal/halachic disagreement, litigation is legitimate and not 'damaging' to one's counterpart, and it need not be artificially limited. *Beit din* does consider charging the losing party expenses when a claim or a denial is frivolous or when expenses were caused by a side's unreasonable refusal to submit to litigation or carry out a court ruling.

Following are the basic sources for these determinations. There is a disagreement in the *gemara* (Sanhedrin 31b) whether one litigant can force another to take their dispute to a distant, expert *beit din*. Rabbi Elazar says that it does not make sense to force someone to spend 100 zuz to win a case of 100 zuz. The Rosh (Sanhedrin 3:40) proves from here that the other side would not compensate for the traveling expenses, but he says that this is on condition that the litigant did not refuse to adjudicate. The Rosh provides a source for paying the expenses in the case of refusal. The *gemara* (Bava Kama 112:2) says that a messenger of the court is generally believed that he presented a subpoena to the defendant but not in regard to writing a *peticha* document because he will have to pay the price of the writing of the document. This shows that for an expense that comes from refusal to adjudicate, he is responsible. The Rashba (1:940) says that the defendant is obligated to pay for the *peticha* only because *beit din* levied the payment, whereas if the plaintiff paid the costs of secular court, the defendant is exempt because his causing of those expenses is *gerama* (indirect). The Rama (Choshen Mishpat 14:5) obligates even for the cost of the secular litigation that arose from the refusal as long as the plaintiff gained *beit din*'s approval to act in that way. The Yeshuot Yaakov compares the expenses of frivolous claims to a case where Reuven told Shimon to follow him to a distant place and Shimon went but Reuven did not.

These guidelines to expenses were promoted with a long explanation in a ruling by Rav Ovadia Yosef, Rav Mordechai Eliyahu, and our mentor, Rav Shaul Yisraeli. Rav Eliyahu argued that it is worthwhile for rabbinic authorities to join together to institute broader ability to charge expenses.

In this case, it was illegitimate to cash a check against the arbitrator's decision and therefore payment for related expenses is appropriate. However, other expenses related to litigation are too indirect to charge for.

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