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HEMDAT YAMIM

PARASHAT HASHAVUA

Masei, 28 Tamuz 5774

Abnormal Normality

Rabbi Daniel Mann

As part and parcel of the division of *Eretz Yisrael* between the tribes and within them, the tribes were supposed to give from their portions 48 cities for the Levi'im, who did not have their own portion in the Land (Bamidbar 35:1-8). They were to be split up throughout the length and breadth of the Land in a fair and strategic manner. The Netziv (ad loc. 8) infers from the *p'sukim* that before the tribal sections were divided between the families of the tribe, the tribe head already had to assign cities for the Levi'im.

The basic purpose of the assignment of the cities was so there should be somewhere for the Levi'im to live. In some ways it would have made sense for them to receive cities (without the need for much agricultural land, as they were sustained by their brethren) close to Yerushalayim. However, there were reasons for them to be dispersed throughout the Land, as Yaakov had already foreseen (Bereishit 49:7). Rashi (ad loc.) cites one reason – the need to receive their share of *ma'aser* where the produce grew. After all, it was not feasible to bring a tenth of all the Land's produce to Yerushalayim throughout the year.

There was an additional need to create a partnership between the Levi'im, whose main purpose was to be occupied with service of Hashem, Torah, and spirituality, and the rest of the nation, who were involved mainly in agriculture and other material professions. While part of their job was focused around the *Beit Hamikdash* in Yerushalayim, the element of teaching Torah (see Devarim 33:10 and Rambam, Shemitta V'yovel 13:12) made it important for them to be spread out among the nation, within reasonable range of all their brethren.

If integration was an important consideration, though, we could have hoped that the Levi'im would be found in each city, not in separate regional cities. However, in this matter, it seems that the model found in the encampment in the desert was preserved. There, the *Levi'im* were indeed all together in the section of the encampment that surrounded the *Mishkan*. While for the reasons we mentioned and/or others they were spread out, it was still important to maintain a situation of living among their own tribe. Indeed, in order to maintain their function of serving as Levi'im, it was proper for them to remain somewhat insular.

Arguably, people are generally more spiritually successful when they live among those of their own type. It is important for qualified spiritual leaders to be available to help even or especially those parts of the nation who have strong spiritual challenges. However, it requires a special person to live full-time among those who are quite different and still succeed in influencing rather than being influenced (This is the classic model of a rabbi of a community which is quite different from him). The Levi'im were allowed and expected to live as a tribe of their own in such a way that they would still have some impact on those around them. (This is along the more recent models of *garin Torani* or community kollel). Indeed, there are many ways to serve Hashem and in the process have a fruitful symbiotic relationship with others, with or without giving up the normal desire to remain with one's tribe, literally or figuratively. One should know his strengths and weaknesses and act for the sake of Heaven.

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Ask the Rabbi

by Rav Daniel Mann

Is a Professional Believed About the Time He Put In?

Question: I sent my computer to a technician to repair serious problems. He was unwilling to tell me his charge in advance, claiming it depended on how long it would take him, to which he would not commit. After fixing the computer, he charged me what I consider an exorbitant price. I am not sure I trust him on how much work he put in. Must I pay without making an issue of it?

Answer: In all questions of this nature, we warn the querier that we cannot say anything conclusive after hearing only one side, as even two honest people can have different viewpoints of the same events. This is all the more so in this case in which you yourself are in the dark about what happened. While we often say that the two sides have to be heard in *beit din* or another permitted arbitral setting, we cannot ignore your question – whether you should make an issue at all. Therefore, we will briefly discuss general sources and factors.

The client has the advantage. In a disagreement between a client and a worker over the amount that was set for payment due to the rule that one who wants to extract payment requires proof (Shulchan Aruch, Choshen Mishpat 89:4). However, if the client is uncertain how much he owes, he should have to pay because he is unable to take the serious oath in which he is obligated (see *ibid.* 75:13). If he is incapable of knowing how much he has to pay, this logic does not apply (Shach, CM 75:54).

In work such as this, where it is clear that one is going to know how much time he put in and the other will not, the rules are somewhat different. *Mishnayot* regarding a particular agent who claims he made expenditures on behalf of another (Sh'vuot 45a) and a husband who made improvements in his wife's field before divorce (Ketubot 79b) say that the plaintiff swears how much he spent and is reimbursed. The Mordechai (Ketubot 209), Maharik (10), and Rama (CM 91:3) understand this as a broad rule regarding claimants who know about the expenditures and defendants who do not – the claimant is believed to receive payment with an oath.

The above appears contradicted by the halacha that one who seeks reimbursement for expenditures due to unreasonable steps taken by his counterpart in litigation must prove how much he spent (Rama, CM 14:5). The S'ma (91:16) distinguishes between cases where the claimant worked for the benefit of the other side and where he acted against his will. The Shach (*ibid.* 23) distinguishes between cases where the defendant requested of the claimant to make the outlays and cases where he acted on his own accord. Part of the logic is that when Reuven asks Shimon to do something that deserves reimbursement without demanding proof from the outset, he in effect grants trust in the veracity of Shimon's charge.

The obligation to pay wages is equivalent to that to pay expenses. In your case, the S'ma and Schach should agree that you should believe the person whom you authorized to work and bill you. Certain cases could arguably be exceptions. One is when you have strong grounds to believe he is lying (see Pitchei Teshuva, CM 91:4). Another is where the technician should have informed you when he figured out the extent of the cost, enabling you to decide whether it is worthwhile to have it fixed. (Often, he will not know until well into the process, when informing you is irrelevant. Furthermore, he can claim that you should have requested an update. Such matters change from case to case.)

It is generally best to research a professional's reliability before you hire him and if you heard favorable reports, to trust him. While it is your prerogative to not use him in the future, refusing to pay in full is drastic. Some situations may lend themselves to expressing (in a *mentchslach* way) your displeasure and suggesting that your willingness to use him again depends on a reduction in price. There are so many unclear factors that it is hard to give firm advice as to what to do, and without hearing the other side, it is certainly wrong to attempt to tell you who is right.



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Ein Ayah

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

The Precedence of Applied Torah

(condensed from Ein Ayah, Shabbat 1:8)

Gemara: Rav Ami and Rav Asi used to sit in between the pillars of the study hall and regularly would bang on the threshold and say: "If anyone has a case that needs adjudication, he should come in."

Ein Ayah: The value of judgment based on Torah law is very great because specifically it provides the Torah with its special stamp of a Torah of life. In other words, the Torah must relate to practical life in a manner that it shines light on the path of life, and it should not be viewed as only a lofty theoretical wisdom.

The judicial element of the Torah has a very major impact on life because social life cannot exist without the authority of judgment overseeing and guiding it. When the Torah is that which guides this judicial element of social activity, the resulting impact is that the Torah will govern all elements of people's lives.

For this reason, Rav Ami and Rav Asi were very careful that their intense yet theoretical study of Torah would not impede the process of having the Torah rule over daily life and imprint its seal upon it. Being careful to avoid this impediment was a crucial part of Torah reaching its goal of extending to all elements of life.

The fact that they learned between the pillars and there they were careful to be available for litigants was a part of their diligence and dedication to the in-depth study of Torah. Perhaps it also reminded them about the pillars of the world – truth, justice, and peace – all of which are related to jurisprudence and which together support the world (Avot 1:18). As Chazal said: "Once judgment is done properly, truth and peace follow" (Yerushalmi, Ta'anit 4:2). The Rabbis would bang on the threshold to demonstrate that the "gateways of Torah" open up directly to the path of life. This is to differentiate their approach from those who may think that it is enough to study Torah on a theoretical basis alone and do not attempt to increase its influence on practical life. In contrast, these complete men, as central to their lives as Torah study was, would announce that anyone who needed adjudication should come in and not be concerned that they are taking away these great rabbis from lofty Torah study. The reason is that the foundation of Torah and its preservation in the role for which it was intended are accomplished when one demonstrates how it can be implemented in practice in a world of activity and human interaction.

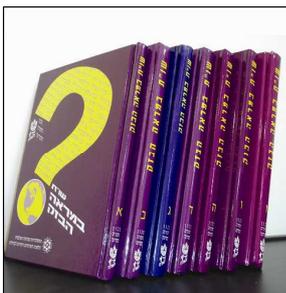
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Disqualifying the Sale of Public Property

(based on Beit Yitzchak (Shmelkes), Choshen Mishpat 61)

[Reuven bought a piece of land on the outskirts of the Jewish cemetery of Butchatch that was owned by the chevra kadisha. The sale was authorized at a meeting of the chevra kadisha that was attended by only around half of its members and without the head of the community. When word of the sale got out, the head of the community and many in town protested, and now the sellers want to back out. Several grounds were raised for cancelling the sale. We will discuss only those which the Beit Yitzchak agreed disqualified the sale.]

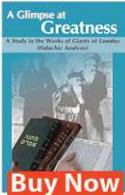
There are times when decisions have to be made by a majority of the assemblage of all those authorized to vote (see Beit Yosef, Yoreh Deah 228). This is true in regard to the outlay of money, because regarding money there is generally a need for a majority that one can count as part of the whole, with the voting of the full *Sanhedrin* being a precedent. Regarding rulings on religious matters, where we follow majority rule more broadly, a simple majority is sufficient. Regarding matters dealing with land, the K'tzot Hachoshen (280) says that a simple majority suffices, whereas the Netivot Hamishpat (46:8) says that as with any other money, a special majority is needed. *[The Beit Yitzchak continued by bringing a difficult technical proof that the Netivot Hamishpat is correct that a special majority is needed.]*

Reuven claimed that it is considered as if all the members of the *chevra kadisha* took place in the vote because they were all invited to the meeting, and thus whoever did not come is considered to have authorized those in attendance to represent them. However the Knesset Hagedola (Choshen Mishpat 23:32) said that this is true only when those who did not come explicitly authorized those who attended. In this case, not only did people not authorize others but they did not even know what was on the meeting's agenda.

The requirement that the head of the community be involved is also a binding requirement according to the law of the land that the person in charge has to agree to land transfer. Money is also not a sufficient form of *kinyan* in a case where the transaction was not recorded in the land registry.

Contrary to Reuven's claim, the requirement of a *kinyan* is not waived due to the fact the public is involved. That concept exists regarding decisions on taxes and the hiring of workers, not regarding the transfer of land. An exception is when the seven leaders of the community decide to invoke their power to uproot individual ownership within the community, not when other members of the community sell community property.

It is also correct that one is not allowed to sell land that belongs to a cemetery (see Magen Avraham 153:12) so that there should not be a shortage of burial ground. The cemetery owners may sell it to someone else so that the buyers can bury there, but it cannot be sold for another purpose unless the seven leaders of the community are involved.



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