

## *This week.....*

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## **The Covenant of Peace – A Jew Does Not Kill a Jew**

Harav Yosef Carmel

Pinchas' actions, to kill Zimri for publicly engaging in relations with a foreign woman, were greatly rewarded. He received a "covenant of peace ... [and] an eternal covenant of priesthood" (Bamidbar 25: 12-13). On the other hand, *Chazal* tell us that he required special Divine protection in a few realms to avoid being harmed by his zealotry.

"Six miracles happened to Pinchas" (Sanhedrin 82b). Otherwise, Pinchas would have been guilty of a capital crime and executed by Moshe's court. "The angels wanted to shove him. Hashem said to them: 'Leave him. He is a zealot the son of a zealot, an anger-soother the son of an anger-soother'" (ibid.). Thus, we see that even the Heavenly Court gave serious thought to intervening against him. "The tribes began mocking him: 'Did you see the one whose maternal grandmother worshipped idols, and he kills the prince of a tribe in Israel?' That is why the *pasuk* relates him to Aharon" (ibid.). Indeed, from a public relations perspective, Pinchas needed great help in the form of Moshe's support according to Hashem's instructions. After all, Pinchas assumed the responsibilities of a court of 23, and ruled in lieu of witnesses and warning to the perpetrator. On the other hand, had Pinchas not acted against the "intermarriage" of a Jewish leader on the eve of the entry to the Land, it could have sent a message that assimilation is acceptable, which could have undermined the nation's future.

One lesson to learn is that one who dares to follow Pinchas' approach to solving problems, even very severe ones, should take into account that he has no promises of Divine intervention on his behalf. Even with the help, Pinchas' leadership suffered from the results of his zealotry. Pinchas was the nation's spiritual leader after the death of Yehoshua and Pinchas' father, Elazar. *Chazal* say that his leadership continued throughout most of the period of the Judges. He is mentioned in regard to the civil war that resulted from the rape of a concubine in Giva (Shoftim 20:28). Seder Olam says that he was still a leader hundreds of years later when Yiftach made an oath to sacrifice what turned out to be his daughter. Had either Yiftach or Pinchas approached the other the oath could have been nullified. However, each felt that it was inappropriate to sacrifice his status, and each was punished. In Pinchas' case it is hinted at by the *pasuk*, "In the past, Hashem was with him" (Divrei Hayamim I, 9:20 - see Tosafot, Ta'anit 4a).

What stood out in the two times mentioned is that there was horrible fratricide, which took the lives of tens of thousands. Unfortunately, the spiritual leader of the time was not able, based on his own personal history, to carry out a public campaign under the slogan, "A Jew does not kill a Jew." The results were tragic. Let us remember in times of crisis that the idea that a Jew does not kill a Jew is as crucial as ever.

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**Question:** I am an older man who recently underwent a series of health crises, including a heart attack. I usually take a cell phone with me outside the home in case I need to call for help. On Shabbat, I feel uneasy going out alone without a phone, as in my building's stairwell or late at night people may not be around. May I carry the cell phone in my pocket (we have an *eiruv*), or is it a problem of *muktzeh*? (My nervousness is not enough to be unhealthy itself, and I will not refrain from going out if your answer is "no.")

**Answer:** You imply that you do not feel that the cell phone is consistently needed on the level of *safek piku'ach nefesh* (the chance that it will save a life). You may be taking into account that where your live [the questioner included an address] many fine Jews would drop everything to help a person in distress and there is an active Hatzala organization. We begin with your assumptions.

A cell phone is generally *muktzeh* as a *kli shemelachto l'issur* (=kshml), as its main purpose is to make phone calls that are prohibited on Shabbat. A *kshml* can have a higher level of *muktzeh* (*muktzeh machmat chisaron kis*) if one is concerned enough about its safety to refrain from using it for other purposes. Nowadays people use cell phones for just about anything they desire.

A *kshml* may be moved for *tzorech gufo u'mekomo* (to use it for a physical use or remove it from a place one wants to use) (Shulchan Aruch, Orach Chayim 308:3). It may not be moved to be protected from damage (*ibid.*). You are not interested in protecting the phone, but rather want it for its possible permitted usage. Is it enough that you are not moving it to protect it, or do you need a positive *tzorech gufo u'mekomo*? If it must be positive, how exacting are we in determining utility?

There are discussions among the *Acharonim* that seem to revolve along these questions. For example, the Shemirat Shabbat K'hilchata (20:10) rules that the "need of the place" must be literally that the *muktzeh* object is occupying a place one wants to use. If it is only that the object is an embarrassment or is otherwise unwanted where it is, it may not be moved. In other words, there has to be a well-defined need of *mekomo*. Yet not all agree with him (see ad loc.:(20); Az Nidbaru VIII, 30), and all may permit it if due to the utensil's presence, one will not use the room (*ibid.*).

The Mishna Berura (308:12) says that one may not move a *kshml* to use it if a non-*muktzeh* object is available. Many *poskim* limit his stringency to cases where the non-*muktzeh* is easily useable (Igrot Moshe, OC V 21.12; Minchat Shlomo II, 34.30). Many feel that the Mishna Berura's reasoning is unanimously accepted (Shemirat Shabbat K'hilachata 20:29; B'er Moshe I, 21). However, our basic assumption is that *tzorech gufo u'mekomo* must meet significant standards.

Our case is special in two opposing ways. On one hand, the potential usage is the most important one possible (saving lives). On the other hand, the chances of needing to use it on Shabbat appear extremely small. The *gemara* (Shabbat 124a) says that placing sticks to separate the loaves of the *lechem hapanim* and prevent their spoilage is not considered *tzorech gufo* because it is unlikely that there will be spoilage in a short time. This implies that if the chance the object is needed is small, it is not considered a valid need.

Tying things together, we suggest as follows. If, after discussing the matter with the appropriate, sensitive health experts, it is felt that there is even a remote but normal chance that the cell phone will be needed to save a life (this will also make it *tzorech gufo*), it is permitted to take it. If it is felt that the chance of use does not reach even that low threshold, then not only would *piku'ach nefesh* not apply, but *muktzeh* would also be a problem.

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# Ein Ayah

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

## Kri'at Shema of Exile and Redemption

(from Berachot 2a – Ein Aya, Berachot 1:1)

[Let us briefly introduce the structure of Ein Aya and our presentation of it. The text begins with the Talmudic source (usually a gemara, but in this case, a mishna). Below is Rav Kook's passage from Ein Ayah, which elucidates the text. It is important, while reading the Ein Ayah, to remember the content and wording of the Talmudic text. The numbering system is as follows. The passages start from 1 at the beginning of each chapter of the Talmudic tractate.]

**Mishna:** From when do they recite *Shema* at night? From the time that the *kohanim* enter to eat their *teruma* (tithe portions).

**Ein Ayah:** *Kri'at Shema* at night and in the morning demonstrate that there are two different ways that Israel is responsible to call out in the Name of Hashem. We need to accept upon ourselves the yoke of the Heavenly kingdom and also act through our calling out in the name of the One G-d, so that eventually all of the world's inhabitants will recognize that Hashem, the G-d of Israel, is King and His kingdom has dominion over all.

In *galut* (exile), which is similar to darkness, our main activity is focused exclusively on ourselves, so that we will be able to withstand the waves that are washing over us with the strength of Hashem's Name. Therefore, at night, belief applies, and therefore "whoever did not recite [the blessing of] 'Emet Ve'emuna' (Truth and Belief) at night did not fulfill his obligation" (Berachot 12a). This is because for ourselves, the belief and the acceptance of the truth from our forefathers, who saw with their own eyes the light and the honor of Hashem, is sufficient.

However, at the time of the *geula* (redemption), when the stature of Israel will be elevated, then will arise the time to act in the manner of *Kri'at Shema* of the morning, [said in proximity of the *beracha*] of *Ahava Rabba* (Great Love), as all of the nations will say that the light of Israel will be an eternal light. Therefore, at that time the reasons behind the [laws of the] Torah will be revealed, [as the *pasuk* (Zechariah 14:6) says] "There will not be anymore a precious light and a frozen one (*ohr yekarot v'kipa'on*)," from which *Chazal* learn that the reasons of the Torah, which are illusive in this world will come to the surface in the World to Come. This is because in order to bring close those who are far away, it is proper to clarify the words of truth in a clear manner and to translate that according to the external conception of the nations. That is why the morning [*beracha* of] *Emmet V'yatziv* (It is True and Stands) can be translated into Aramaic.

Israel are the priests of Hashem in the world in that they are involved in their internal matters between themselves and have nothing to do with those "outside the clan," as *kohanim* act. This is not the case when they teach Torah or even at the time that they bring sacrifices, at which time they have a relationship with non-*kohanim*, as, after all, they act on the behalf of others. They are either our agents or Hashem's agents, but they are certainly agents. However, at the time that they enter to eat *teruma* [see *mishna* above] they enter a world of *kohanim* alone, and they are not allowed to include a non-*kohen* at all. A non-*kohen* has no part in this eating, and there is a need to be separated from him.

This idea of separation is generally true in regard to the time of *Kri'at Shema* at night, representing the time of *galut*. It causes Israel to be a nation alone to protect their holy acquisitions, eternal life in whose midst the Name of the Blessed One dwells. In this way then there is a connection between *Kri'at Shema* at night and the time that the *kohanim* enter to eat their *teruma*.

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# P'ninat Mishpat

## The Obligation of One Who Has Work Done by a Worker From a Temporary Employment Agency – part I (Harav Akiva Kahana)

(based on Halacha Psuka, vol. 44)

There is a law in Israel that is called “The Obligation of One Who Requests the Services of a Contractor for the Rights of Workers.” The law’s main idea is that the one who hires a worker through a temporary employment agency has the obligation to ensure that the worker receives the rights that are due to him by law. We will evaluate the law from a halachic basis. The main question is, assuming that a worker has certain rights that he can demand of an employer, is the one who receives a worker from a temporary employment agency (the *mazmin*) obligated to provide those rights. We will distinguish between an agency that actually pays the worker and one who arranges the employment, yet the *mazmin* pays the worker directly.

The *gemara* (Bava Metzia 76a) relates to a case where a middleman hires a worker on behalf of an employer. The *gemara* distinguishes between a case where the middleman tells the worker, “Your salary is the employer’s responsibility” and one where he says, “Your salary is my responsibility.” In the latter case, the *gemara* says that if details were not stipulated, the “employer” has to reimburse the middleman who pays the worker according to the benefit he received. The *gemara* does not discuss the matter of the relationship between the *mazmin* and the worker. To the contrary, in the case that the middleman says he will pay, it says that the *mazmin* does not directly pay the worker.

This idea also emerges from the following *gemara* (Bava Metzia 110b-111a): “If one tells his friend, ‘Go hire workers for me,’ the two of them do not violate *bal talin* (delayed payment of salary), one because he did not hire the worker and one because the salary is not his responsibility. What case is it referring to? If he said, ‘Your salary is my responsibility,’ the payment is his ... rather it must be talking about a case where he said, ‘Your pay is the employer’s responsibility.’” We see from the *gemara* that when the *mazmin* does not pay on time, he does not violate *bal talin*. From here Harav Uri Sadan (“The Employment of Workers of a Temporary Employment Agency,” *Techumin* XXVI, starting p. 394) concludes that there are no work relations between the *mazmin* and the worker, and therefore there are no related obligations. However, this is not a clear conclusion, as it is possible that there is a difference between the matter of *bal talin* and other legal responsibilities. Indeed we have found special limitations to the violation of *bal talin*. For example, the *gemara* (ibid.) says that merchants of the market in Sura are not bound by *bal talin* because it is known that they wait until the day of the market to pay. So we see that it is possible that one has a responsibility to pay even if there is no *bal talin* for failing to do so on time.

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