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Founder and President

# HEMDAT YAMIM

הֵמְדַת יָמִימִים

## PARASHAT HASHAVUAH

Ki Teitzei, Elul 14, 5772

### A Holy Soldier?


Harav Shaul Yisraeli – based on Siach Shaul, pg. 521  
[This was apparently written during World War II.]

“When you go out as a camp against your enemy, you shall be careful about all bad things” (Devarim 23:10). The Torah goes on to discuss regulations of purity and of hygiene and explains, “For Hashem, your G-d, is going in the midst of your camp to save you and to hand your enemy over to you, and your camp shall be holy, and He shall not see in you an unseemly thing and abandon you” (ibid. 15).

Judaism does not mandate any action that justifies the breaking of boundaries of basic order. To the contrary, the more important a course of action is the more care must be taken to do it in a way that it is not dirtied or spoiled. If the enemy’s army camps are a place where anything goes and semblances of humanity disappear, the Torah way is that our camp must be a holy one. “A soldier” and “holy”? In today’s mind-set, the sound of the two together is strange. However, that is only because the general mind-set is so far from the concepts of the Torah.

The whole concept of war is a different one for us. For the nations, it is a time of wholesale murder, without rules or a search to justify one’s actions. An outburst of the animal within a person, of the basest instincts, is considered a good thing for them. That way the wild soldier can act with greater cruelty and less thought. Judaism does not allow murder. For us, war is designed to fight those who have already lost human dignity, so that their destruction is a removal of evil. This *mitzva* must be done in a way that uses no less holiness and purity than any other *mitzva*.

“He who is afraid and is of a soft heart,” who is sent back from the camp (Devarim 20:8), is referring to one who is afraid due to sins of which he is guilty (Sota 8:5). It is possible that there is no such concept among the nations of the world. Perhaps it is to the contrary for them, one who breaks through boundaries may be stronger and braver than others. However, this is not the case for Israel. We are nourished by our connection to Hashem, and one who sins severs this connection, which causes him to be afraid. The apparent bravery that he might display comes from fear, and it can be the trigger to his subsequent fleeing from the battle. It is only the bravery of those who already have nothing to lose.



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# Ask the Rabbi

## The Fallout from Cancelled Checks

by Rav Daniel Mann

**Question:** A neighbor of mine (Reuven) was having problems providing for his family, and stores, including a grocery store (Shimon) were unwilling to sell him on credit. I gave him personal post-dated checks to solve the problem, so they could periodically draw on my account. Reuven would pay me the money by the time the check was to be drawn. When I saw that Reuven stopped paying me, I cancelled the remaining checks and told him not to use them. Shimon has called me, demanding that I reimburse him for cancelled checks. I told Shimon why I cancelled them and that, since Reuven received his products, he should demand payment of Reuven. Am I right?

**Answer:** The halachic status of checks is very complicated. There are three basic approaches: 1) A check is like cash (see Igrot Moshe, Choshen Mishpat II:15); 2) A check is like a promissory note (Minchat Yitzchak V:119); 3) A check is a request from the bank, until told otherwise, to give money to the one who holds it (Shevet Halevi VII:222).

These approaches can affect many legal questions. Within our general context, according to approach 3, one can cancel, for good reason, checks that he has already given, which is more difficult according to approaches 1 and 2. In your case, as you wrote the check which is held by Shimon, with whom you had no direct dealings, the ability to cancel the checks is crucial. If you can cancel it, he ostensibly has no claims against you, just against the person who gave him the checks. However, based on the way checks are used and the common practice and the legal systems we are aware of, we believe that a check should be treated like a promissory note (see Pitchei Choshen, Halva'ah 13:(21)). Therefore, one may not cancel a check, once it has been given for use, except to prevent its illegal use. You feel that your neighbor is in effect doing just that by not following the conditions you set out. We cannot investigate why he is not following your agreement, whether he still deserves your help (perhaps he needs more help), or whether you can be morally expected to provide that help. We will deal just with legality.

Regarding checks that Reuven gave to Shimon before you ended the arrangement, you are obligated to honor the checks. Firstly, it was, at the time, legal use of the checks and obligates you. Also, you apparently wrote the checks as a means of getting Shimon and others to give Reuven products on credit. In other words, your promise to pay his bills secured a loan for Reuven. This makes you into an *arev kablán* (see Bava Batra 174a), a strong type of guarantor (usually a guarantor pays only if the borrower defaults). While the Shulchan Aruch (CM 131:1) says that a guarantor can back out, that is only before the loan takes place (otherwise, it is not a guarantee at all).

In regard to checks that Reuven used after you told him to stop doing so, the matter is complicated. He, in effect, stole your checks to give them to an unsuspecting Shimon. The general rule is that if a buyer did not have reason to suspect he was buying a stolen object, when the owner comes to retrieve it, the owner has to reimburse the buyer for what he spent on the item (Bava Kama 115a; Shulchan Aruch 356:2). This practice was instituted to prevent uncertainty in the markets (*takanat hashuk*). Thus, at first glance, the *takana* would require you to pay Shimon for the money he lost by accepting your check. (If your check was used to pay past debts, the *takana* does not apply (ibid. 6).) The *takana* does not usually apply to stolen documents (Shach, CM 50:7), but it does apply to a *mamrani* (equivalent to an open check) (ibid.). On the other hand, the *takana* requires payment before one extracts his object from the buyer. It apparently does not stop you, the owner of a bank account, from preventing Shimon to extract money from you based on a stolen check (Pitchei Choshen, Geneva 3:(22); see Shach 356:4). Other legal and moral factors may play a role here, but we have set out the basic principles.

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# Ein Ayah

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

## Clouds and Stages Before *Mashiach*

(condensed from Ein Ayah, Berachot 9:152)

**Gemara:** Rabbi Shmuel bar Yitzchak said: The clouds of the morning have no essence to them, as the *pasuk* says: "Your kindness is like a morning cloud" (Hoshea 6:4). Rav Pappa asked Abayei: Don't people say that if when you open the door in the morning there is rain, you can tell the donkey driver to fold up his bag and sleep on it? It is not a question. It depends if the cloud is thick or flimsy.

**Ein Ayah:** If we connect the teachings of ethics to details in nature, we can learn a great lesson from this *gemara*.

Clouds are needed for the world, yet the clouds of the morning have no essence. The same is true of the spiritual 'clouds,' i.e., ethical ideas that cause people to act with fine qualities and to apply the teachings of the Torah throughout their lives with the highest levels of spirituality. The purpose of all these things is so that the Divine spiritual light will take hold in the hearts of man and pure and true ideas will be firmly entrenched in their souls.

Things, though, become more complicated when a new period in the history of our nation emerges. Divine Providence provides new energies that lead to a new and higher level of national life. However, in the beginning, before the light shines and there is still a need for the powers to strengthen, there is a problem of instability and spiritual deterioration. During *ikveta d'meshicha* (the 'heels' of, i.e., time prior to the coming of, *Mashiach*) there will be new powers that prepare us for the light of the scion of the House of David and of Hashem to shine upon us. However before everything is in working order there will be an abundance of *chutzpa*. This is what is referred to as the "birth pangs of *Mashiach*." People will look for new light that they have never experienced, and, as a result, many will stray from the conventional paths of good ethics and observance. This is metaphorically referred to by the clouds of morning: there is a new, glorious period in the making, but the positive elements are not yet reliable or of sufficient substance. Many will leave the proper path because the energies are present but the useable light has not appeared.

The *gemara* goes on to discuss rain's impact on the donkey driver, considering that rain is more directly beneficial than the clouds that bring rain. Indeed, there will be spiritual influences that can impact even on materially-oriented people who are not prepared to absorb more abstract spirituality. These people are represented metaphorically by the donkey driver. Due to the rain, the donkey will not run after things it sees, but will be at rest. The bag, which was prepared to be filled with all sorts of physical matters, will be folded up rather than used. Even the simple donkey driver, representing the person who is less initiated in the ways of intellectuality and spirituality, will be at rest due to the more direct spiritual impact. This represents the possibility of escaping the birth pangs of *Mashiach*.

Whether people will prosper or flounder spiritually depends on whether the spiritual leaders of the generation will prepare the people on an ongoing basis. Proper spiritual preparation is referred to by a sky full of thick clouds, which will withstand the challenges of the new period. If there will only be exposure to weak spiritual powers (represented by flimsy clouds), then they will dissipate and be of little value, and people will experience serious deterioration. Therefore the rabbis have to teach the people how to appreciate and make proper use of the time's spiritual opportunities. Then people will be able to increase their fear of Hashem until they will be ready to usher in the desired result of "the liberator will come to Zion" (Yeshaya 59:20).

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## Wrong Way Collision – part I

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

**Case:** The plaintiff (=pl) pulled out of his driveway and banged into the defendant's (=def) car, as the latter was driving in reverse on a one-way street, causing damage to both cars. Pl claims that since def drove against the traffic rules, def is responsible for the accident. Pl claims to have pulled out slowly and says that he had no reason to suspect a car would be coming from the wrong direction. Def counters that since pl anyway had to look in both directions due to pedestrians, he was at fault for not seeing and avoiding def's car.

**Ruling:** The damage that one causes with his car falls under the category of a man who damages with his body, where the rule is that one is obligated even if he did so by accident and even if there were somewhat extenuating circumstances (Bava Kama 26a). Classical sources (see Rosh, Shut 101:5 and Shulchan Aruch, Choshen Mishpat 378:9) discuss one who was riding an animal which damages, and a car is fundamentally the same idea. (The category of the damage done by one's animal, which has different rules than a person who damaged, applies when the animal moves around of its own volition).

Def is to be categorized as going somewhere 'without permission' or 'in an unusual way.' This case is governed by the halacha of Issi ben Yehuda (Bava Kama 32a, accepted by Shulchan Aruch, CM 378:8) that if one who was running in the public domain and one who was walking collide, the one who was running must pay because he was doing the abnormal thing. Despite def's claim, the majority of the *beit din* concluded that pl's backing out of the driveway was done normally. The fact that there was a collision does not prove that pl was negligent. In fact, def did not claim to have witnessed any negligence on pl's part, just that he reasons that had pl been careful about pedestrians there would not have been a collision. *Beit din* reasons that once pl passed the sidewalk, where pedestrians walk, he is not expected to concentrate on the direction where cars are not allowed to drive. It also appears that def was travelling quickly in reverse.

Therefore, since pl drove normally and def drove abnormally, only def has to pay pl. It can be demonstrated (beyond our present scope- see Chavot Yair 207) that even if it the one who acted normally could have avoided the damage with more care, he is not obligated to pay the one who acted abnormally because it is considered as if the latter entered someone else's property and was accidentally damaged by that property's owner. In this case, we do not even need to use that logic, as there is no indication that pl should have been expected to avoid the accident. [Next time we will deal with questions concerning payment for fixing the damage.]

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