



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## PARASHAT HASHAVUA

Toldot, 29 Cheshvan 5775

### No Chance or Disqualified?

Harav Yosef Carmel

The end of Chayei Sarah deals with the less illustrious of Avraham's children, the children of the concubines. Avraham gave them "presents" and sent them away from Yitzchak (Bereishit 25:5-6). This action is reminiscent of the fact that Avraham, at Sarah's demand and with Hashem's agreement, sent away Yishmael, as it was Yitzchak alone who was to continue Avraham's legacy (ibid. 21:10-14). In order to not leave any doubt, our *parasha* begins with an introduction of the life of "Yitzchak, the son of Avraham; Avraham begot Yitzchak" (ibid. 25:19), which again teaches that it is Yitzchak who continues the legacy.

Yet this *pasuk* sets the stage for the epic conflict between Yitzchak's sons, Yaakov and Eisav, over their father's blessing. This struggle includes a complex process, but it ends with a clear conclusion: Yitzchak gave Yaakov the "blessing of Avraham" and Yaakov received confirmation of all the blessings he received ("I blessed him; indeed he will be blessed" – ibid. 27:33). This conclusion, which was arrived at without a cognitive decision based on Yitzchak's logic, is what turned the descendants of Yaakov into the chosen nation.

It is appropriate at this time to stress that the advantage given to Bnei Yisrael is not referring to the level of the individual. Being a Jew does not mean that one has an advantage over being a non-Jew. The fact that Yaakov's family was chosen does not allow a Jew to take away the personal rights of someone else on the face of the earth. The huge difference is on the national level, where our special characteristics find expression. We did not simply receive rights; we acquired responsibilities, as most of the *mitzvot* are exclusively our obligation. The level of ethics that we expect of ourselves should likewise be higher.

Let us clarify certain matters, as we were taught by the great Rav Shlomo Fisher, in his comments on the *pasuk*, "Go to the flock and take for me from there two good goats" (ibid. 27:9). The *midrash* (Bereishit Rabba 65) says that they were good in that they were responsible for Yaakov receiving the blessings and they are good for his sons because they are used for atonement on Yom Kippur. Rav Fisher refers to the lots cast to decide which goat will be sacrificed to Hashem and which will be the scapegoat. The two goats are similar, yet one is chosen for one holy task and one is relegated to another. Every year the process with the two apparently identical goats is a reconfirmation that Yaakov was chosen and Eisav was rejected. Using halachic terminology, Rav Fisher compares Eisav to a sacrifice which was once fit yet lost its status as being fitting, whereas Yishmael is compared to one which from the outset was unfit to serve as a holy object. It is because of this complex element that history has shown that the spiritual struggle with Christianity, the spiritual offshoot of Eisav, has been much fiercer than that with Islam.

Let us seize the opportunity to reiterate that the establishment of the State of Israel knocked the nail in the coffin on the claim of the Christians about the lost status of the Jews and reconfirms that indeed Yaakov is the one who received the blessings of Avraham and Yitzchak. Let us pray that we will live up to our chosen status through our actions, not just through our special lineage.

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by Rav Daniel Mann

## A Teacher's Responsibility for Theft of Phones

**Question:** In my son's class, a teacher forced the children to put their smartphones in the front of the classroom. On the first day of the policy, one of the phones was stolen. Apparently, the parents are considering demanding that the teacher to pay, and the kids are talking about it. What does halacha say?

**Answer:** In my school days, such discussions focused on baseball cards. School distractions are now more expensive ... and addictive. Our answer cannot be applied to a case whose specifics have not been presented by both sides, but we can discuss halachic indications.

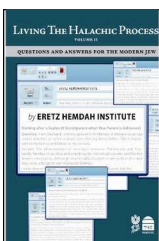
*Tannaim* disagree whether one who suggests to another to put an object in his proximity without clearly accepting responsibility is obligated as a watchman (see Bava Kama 47b, Bava Metzia 81b). The halacha is generally that he is not obligated (Shulchan Aruch, Choshen Mishpat 291:2). Sometimes circumstances dictate that he accepts responsibility without stipulation (*ibid.*). In this case, on one hand, the fact that the teacher commands the students to put the phones in a certain place increases the chances he accepts responsibility. On the other hand, if the phones were in a place where the whole class could keep "one eye" on them while the teacher taught, this decreases the chances he intended to be responsible.

If the teacher accepted responsibility, it seems he was a *shomer chinam* (unpaid watchman), who is exempt in cases of theft. One could claim he is a *shomer sachar* since this happened as part of his job. However, since watching cellphones is not (yet) considered part of a teacher's obligation, the connection to teaching is incidental, and he is a *shomer chinam*.

Even a *shomer chinam* is obligated to pay when an object is stolen due to his negligence (*ibid.* 1 with commentaries). We thus must address the question (see below, as well) whether the setup (phones visible to all but otherwise not guarded) is valid or negligent. Our general feeling is that, unless the school is crime-ridden, this is quite an innocuous, standard situation. (Kids playing ball often leave bags on the side in the open. Airlines assume people won't try to slip out with another's luggage.)

Assume that the teacher is not obligated as a watchman for one of the above reasons. Does forcing a situation of lower supervision of another's object, which led to theft, obligate him as one who damages? Let's view related cases. Regarding one who breaks a wall, enabling an animal to escape (Bava Kama 56b), there is a *machloket* whether he must or at least has a moral obligation to pay for the animal (see Rama, CM 396:4; Gra ad loc.; S'ma ad loc. 8). However, there it is very common that breaking the wall will cause the animal's disappearance, unlike in our case. The *gemara* (Bava Kama 56a) also says that if one maneuvers someone's stalks so that they are burnt by an existing fire, he must pay if it was expected for the fire to reach it, and there is a moral obligation if only an unusually strong wind would cause the fire to get there.

These sources indicate that here there would be no more than a moral obligation. Even a moral obligation does not apply here for a few reasons. In the latter case, the person had in mind to harm the object (see Shulchan Aruch, CM 418:11, Meiri Bava Kama 56a). Also, the list of cases of moral obligations is apparently a primarily closed one, and it applies where the nature of the act is considered damaging, even if indirectly. In contrast, here, while the confiscation of phones might have upset the children, it likely was not considered damaging to the phones. Finally, we find that teachers are exempt from damages caused in the course of necessary educational discipline (see Pitchei Teshuva 424:4). (On the other hand, we do not want to give teachers too much leeway. The teacher probably should have warned the children/parents of this policy and have them decide whether to bring phones. Still, trying to obligate a teacher to pay dearly for dealing in a way that many educators are finding unavoidable is wrong and educationally problematic.



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# Ein Ayah

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

## Dealing with Adversity on Shabbat

(condensed from Ein Ayah, Shabbat 1:48)

**Gemara:** Rabbi Chanina said: It is with reluctance that they permitted to console the bereaved and visit the sick on Shabbat.

**Ein Ayah:** Shabbat is a day of rest that is a harbinger of a day that is totally Shabbat (the Days to Come), about which it says, "It is good to thank Hashem" and "For You, Hashem, have made me happy with that which You do" (Tehillim 92: 2, 5).

When one looks at present-day life, which is full of many bad things – anguish, disease, death, and all that relate to them – he may come to the conclusion that it would have been better for man to not have been born than to have been born (see Eiruvim 13b). With such an outlook, it is hard to think of thanking Hashem and being happy with His actions. However, one should view life as a crossing area to a good, happy future life, where evil disappears like a cloud and man's abuse of his fellow man ceases, and people's views, characteristics, and actions will be purified. Then, he will see things in a more positive light. The natural hardships, which came into the world to make man "surrender" to Hashem and stop acting wantonly, will cease at that time, and there will not be a need to make man surrender.

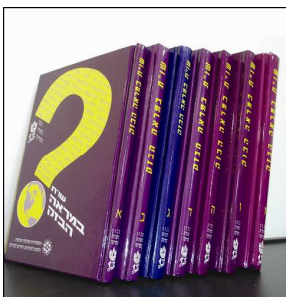
One who views the world as a passageway to a world of peace and comfort will be happy with what Hashem did and realize that it is good to thank Hashem for it all. When a person is able to reach this higher spiritual/intellectual mode, he will find himself beyond the world's hardships and dwelling in a lofty place. One who has such wisdom is like one in whose time the *Beit Hamikdash* was built (see Berachot 33a). The future will appear to him as if it is already the present. This is because when one sees something good as coming without a doubt and all ready, he is happy about it even before it comes.

Therefore, on the holy day of Shabbat, a person should look at creation in a way that he sees that which is positive. He should contemplate the tranquility, comfort, and pleasure, as well as the sanctity and blessing. These are things that will exist eternally and only increase over time, while bad things – both in the physical and spiritual realm – will disappear.

Man is not capable of viewing the world in this true and positive manner when his human eyes see before him very painful situations. When he sees the worst part of existence, disease and death, his spirit will be polluted to the point that it will be difficult to lift himself beyond the present and the influences that his senses have over him. He will miss out on the great treasures of sacred images that are fitting for the holy day of Shabbat. He will not be focused, as he should, on the wonder of creation and the love of Hashem that it can bring, by looking to the future and thanking Hashem who brings those good things.

For this reason, it was only reluctantly that they allowed consoling the bereaved and visiting the sick. It is possible but difficult for a person to not allow his spirit to be dampened by the pain of our life of transition but, rather, to see the good that is waiting on the "other side of the wall." This is the situation when he witnesses the bitterness of death, and the mourning that comes with it, and the pain of disease, and this is what happens to one who visits the bereaved and the infirmed. These sufferers, who are in a difficult state due to the problems of the present-day world, represent the antithesis of the state of mind that we are seeking to achieve on Shabbat. Therefore, it is only reluctantly that it was permitted to visit them.

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# P'ninat Mishpat

## Rights of Bar Metzra (Neighbor)

(based on Shoel U'meishiv II:l:83)

[Reuven and Shimon owned a house jointly. Reuven was contemplating selling his share to someone with whom Shimon got along poorly. Shimon asked Levi to help finance Shimon's buying of Reuven's share, in return for Levi receiving certain specific rooms in the house. In the meantime, Reuven sold his share to the other person. Shimon wants to use the rights of a bar metzra (neighbor) to make the buyer transfer to him the property at sales price.]

The main reason for the halacha of *bar metzra* is to allow the neighbor to maximize the potential of his property, by making use of the proximity or expand boundaries. It is therefore not clear that this rule should apply if the neighbor is planning to sell it to someone else. [Ed. note – this idea is slightly surprising, given that halacha recognizes the importance of having neighbors with whom one can get along.] On the other hand, Shimon still has elements of *bar metzra*, as Reuven and Shimon had only theoretical rights in half the property and now Levi will get specific rooms. This leaves Shimon to receive full control over other rooms, from which he will receive benefit as a result of the law of *bar metzra*.

Assuming we have a doubt whether the rules of *bar metzra* apply in this case, we say that the sale to the other person was certainly halachically valid, and there is a question whether the Rabbis' special *takana* (Rabbinic institution) to require going beyond the letter of the law applies. In that case of doubt, we should not apply the *takana*. The Rambam (Gezeila 4:7) takes that approach regarding a different *takana*, and it seems to be all the more clear in a case in which the *bar metzra* is trying to extract the property from a buyer who has *muchzakut* (status quo ownership) over it.

There is another option that Shimon is contemplating using to finance the purchase – to borrow money from a relative to buy Reuven's rights, in such a way that the lender will live for a period of time in the house in exchange for a reduction in the principal due. On one hand, initially, the arrangement between Shimon and the relative is of a loan, and it is Shimon who seeks to actually buy Reuven's share. On the other hand, it is likely that Shimon plans to eventually sell the property to the lender, in which case the *takana* should not apply. Therefore the buyer can make Shimon swear that he does not plan to sell it to the relative. Again, in the case of doubt, the buyer has the benefit of the doubt.

One can counter that Shimon should have more than usual rights of *bar metzra*, as a partner is more connected to the other part of the rights to the property than a simple neighbor is. This might compensate for some of the weaknesses mentioned in the claim of *bar metzra*. Still, though, it seems that the reasons to not apply the rules of *bar metzra* apply even when the *bar metzra* is a partner. Therefore, Shimon cannot force the buyer to sell him Reuven's sold rights.



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