



HaRav Shaul Israeli zt"l  
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# HEMDAT YAMIM

## Parashat HaShavua

Naso, 5 Sivan 5779

### With Desire and by Force

Harav Shaul Yisraeli – based on Siach Shaul p. 241-242 (an article written in 1958)

The *gemara* (Shabbat 88a) learns from the *pasuk*, "They stood at the bottom of the mountain" (Shemot 19:17) that He held the mountain over them like a tub, threatening them that if they did not accept the Torah, "There would be your grave." So it turns out that after Bnei Yisrael willingly accepted upon themselves, before the Torah was given, to keep all the words of the Torah, they still needed to be threatened. Many commentaries wonder about the need for this, and several answers have been given.

The following explanation may be close to the truth. Man has the power to desire something strongly, and man has the power to carry it out. On a theoretical basis, the two are directly connected to each other. When a person wants something, he will carry through on it. However, in practice there is a big difference between desire and actualization. There are many things that we know are good and worthwhile and yet they remain within the realm of plans that one would like to do ... but does not do them. This is because carrying out things requires effort, giving up on conveniences, and overcoming obstacles. To overcome these, good will is insufficient.

We remember well the days of struggle against the British Mandate before the establishment of the State. The struggle was very, very difficult and included a lot of "inconvenience." Yet, the Jewish inhabitants of *Eretz Yisrael* stood up to the challenge nobly. They were willing to pay the price, whatever was necessary to reach the goal. In contrast, from the time of the establishment of the State, we have often seen a relaxation of the tension, a weakening of resolve, and a lack of carrying out of that which needs to be done. It is not that there is no possible way to succeed but is due to a lack of stubbornness to get the job done at any price. What caused the difference? It is because at the time of the establishment of the State, the question was raised in the sharpest manner, as people felt that there was no alternative. It was clearly a make or break situation. As people used to say: "We have a secret weapon, whose name is *aleph bet: ein bereira* (there is no choice)." As they would say in the Navardok Yeshiva: "When there is a possibility to pass, it is necessary to pass; and when it is necessary, then it is possible."

The same attitude is true regarding the acceptance of the Torah. Certainly, Bnei Yisrael's unanimous response of *na'aseh v'nishma* (we will do and hear) was sincere and expressed the people's good will. However, Hashem knew the characteristic of the people and that not much later they would dance around the Golden Calf. After all, there is a great distance between the theoretical and the practical. It is easy and pleasant to dance around the calf, and it is difficult to "kill oneself in the tent of Torah." Therefore, there is a need for Divine Assistance, help which comes to one who is sincere in his desire to follow the straight path. This is what *Chazal* described as holding the mountain over their head. In other words, Hashem was telling them that not just good will would get them to accept the Torah, but that actually there is no choice. Israel's existence depends on the extent to which they accept the Torah. The feeling of *ein bereira* gives the good will the ability to carry out their desire in practice.

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# Ask the Rabbi

by Rav Daniel Mann

## Kaddish Rights – According to the Deceased or Mourners?

**Question:** I am in the midst of the year of *Kaddish/chazanut* for a parent. Two brothers have been *davening* due to *shloshim*. After they finish *shloshim*, should we have a rotation of three or, considering that our recitations are to bring merit for the deceased, should I be *chazan* half the time? (We will **not** fight over it but would like to do the correct thing.)

**Answer:** Indeed, the most important principle is to avoid *machloket* on such matters, as quarreling is antithetical to the merit one is trying to bring to the deceased (P'nei Baruch 34:48).

The Rama (YD 376:4) rules that it is proper for sons of the deceased to bring parents merit by saying *Kaddish* and being *chazan* during the 11 months after death. Yet, the Shulchan Aruch (OC 53:20) says that the congregation may choose another *chazan* over a mourner if they so desire. A mourner's absolute right applies only to the *Kaddeishim* designed for them (Mishna Berura 53:60). However, the congregation has a *mitzva* to allow the mourner to be *chazan* under normal circumstances.

Those who are not able to be *chazan* were allotted *Kaddeishim* to aid them in bringing merit to their parents. Halachically preferably and originally practiced, one mourner alone recites each *Kaddish*. To deal with cases of too many mourners, the *Acharonim* arrived at detailed rules of *kedimut* (prioritization). Over the last few hundred years, to ward off quarreling, the *minhag* has spread almost universally to allow multiple people to say *Kaddish* together. Thus, the rules of *kedimut* are limited now to choice of *chazan*, about which you are asking.

The earliest source on your question is the Maharam Mintz (*Shut* 80), accepted by the Rama (*ibid.*), written as part of guidelines to nip potential disputes in the bud. He posits that each mourner has equal rights in receiving turns, even if his parent is "represented" in the *shul* by multiple siblings. The Maharam Mintz is clear about the reason. The rights of reciting *Kaddish* relate to the *avel*, who is acting in fulfillment of the *mitzva* of *kibbud av va'em*. Although ultimately it benefits the parent, the rights relate to the live son(s).

This approach has many ramifications. One brother can demand of another to share *chazanut* equitably, allowing each to honor their parent, even if there is no net gain for the deceased. Much of the discussion on the matter relates to the *minhag* of some communities to give precedence to an *avel* who is a local and/or a dues payer over a guest. In such a place, how do we view an *avel* who is a visitor in the deceased's *shul*? The Maharam Mintz (*ibid.*) and the Shach (YD 376:12) say that the son's own status is the deciding factor, i.e., he is a visitor, and not treated as the "agent" of the newly deceased community member.

The Avodat Hagershuni (63) says that while everyone agrees that each brother has full, not shared, rights, there is another opinion regarding the reason. He cites the Maharil as saying that the parent is the determinant, but that a deceased with multiple sons has been merited by Hashem with having the advantage of multiple "Kaddish reciters." This extra privilege should not be taken away from him by having it evened out with other deceased.

While it seems strange to attribute extra rights to one deceased over another, consider the following perspective. If five brothers lived separately, a fellow mourner could not tell any of them: "I am an only child; you should let me be *chazan* any day that any of your brothers is *chazan* in his community." Rather, on many days, that parent would be getting multiple *tefilla* merits. Why, then, should the deceased be deprived of that just because his sons *daven* in the same *shul*? Rabbi Akiva Eiger (*Shut* II:4) says that the Maharam Mintz and Maharil's reasons are both true, and therefore one can have rights as a local either through the parent or through the son. If there is a conflict between an *avel* with one "right" and one with both, the one with both should *daven* two thirds of the time. In your case, though, all agree that you should be *chazan* one third of the time.

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# Ein Ayah

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

## Lower Wisdom Decrees Constructive Destruction

(condensed from Ein Ayah, Shabbat 9:33)

**Gemara:** [One of the bold steps that Moshe decided to take without explicit divine instruction was:] Moshe shattered the Tablets.

**Ein Ayah:** From the perspective of the Divine Wisdom, there is no need for there to be any type of undoing and destruction in the world. When there is something that is totally good, which has the ability to spread out without end, “no bad can occur to it.” However, the Divine Wisdom lowers itself until it reaches a point that makes it ready to complement human wisdom. In that way, it can properly impact on limited worlds and creations that have desires and have limited power in comparison to the unending desire of divine goodness, which is both unlimited and unparalleled.

This meeting of the minds found that which Moshe decided, in a way that corresponded to what Hashem wanted. Moshe thought that there was significance in breaking in order to repair. The greater the qualitative significance of the breaking, the greater the much more improved state that follows will be repaired. This can be illustrated with the idea of how investment into a commercial product can be worthwhile because of the possibility of great profit.

It was specifically Moshe’s idea, which Hashem agreed to, to break the Tablets. When these awesome stones were broken, they could be reattached one to another in a manner that provided complete, eternal salvation.

## Uncovering the Unspoken Divine Intention

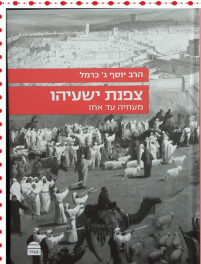
(condensed from Ein Ayah, Shabbat 9:34)

**Gemara:** Moshe added on an extra day of separation from wives – how did he arrive at this conclusion [from Hashem’s instructions that are recorded in the Torah]?

**Ein Ayah:** [Several commentators deal with the following apparent contradiction: If Moshe decided on the matter himself, then we should not expect for it to be included in the Torah/Hashem’s instructions. If he saw it in Hashem’s words, then it is not Moshe’s own idea. Rav Kook’s comments below are focused on this tension as well.]

Obviously, when sacred and mundane, in their lofty sense, reach the high level of each influencing the other, so that the upper and the lower wisdom becoming unified, then the human, lower wisdom rises up to the recognition that the basis of its existence is the upper wisdom, the wisdom of his Creator. The addition that Moshe’s human wisdom decided to add finds its source imbedded deep in the upper wisdom of the Torah, after the idea was revealed.

Thus, while he added a day of his own volition, to fulfill the idyllic situation that the soul of the one who thought up the idea and the “soul” of the divine influence will be unified in their fullest sense, we need a source for the content of the addition in Hashem’s wisdom, which finds expression in the Torah. That is the reason that we ask where Moshe derived the addition.



### Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation’s life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

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# P'ninat Mishpat

## Firing a Contractor – part I

(based on ruling 75104.1 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** Plaintiff 2 (=p/2) was the contractor for major renovations of the defendant's (=def) home; plaintiff 1 (=p/1) was the supervisor. The contract stated that p/2 would finish the job in 120 work days within approximately six months. After over eight months, with the job not close to complete, def fired them, with the claim that p/2 was working only sporadically because he took on another job. P/2 claims that he took the other job only after def fell behind in payments and that he had already worked 140 days because def made additions to the original plans. P/2 claims that def fired them when she received a bill for the additional work. Def says that she wrote a letter to fire them before she received that bill, that she paid less than spelled out because she bought some of the materials that p/2 was required to, and because the work was behind schedule. She claims that p/1 approved the amount she paid and that p/2 did not protest.

**Ruling:** [The first partial decision of beit din was on whether def had grounds to fire p/1 and p/2, which impacts on the deliberations on other parts of the dispute.]

[Without going into detail,] the content of SMS messages between def and p/1 at the time between when def said she fired p/1 and p/2 and when p/2 claimed it occurred do not make sense if def had already carried out the firing. Therefore, we assume that def indeed fired them after she received the bill for additional work.

Nevertheless, def did have grounds for firing p/2 based on the fact that he was well behind schedule. Although there were additions, they were not significant enough to have changed the schedule by that much. P/1, whom the contract states would be believed to report accurately on p/2's work, says that p/2's work log is accurate. Of the 26 days that the log has p/2 not working, 20 days come with excuses (whose validity it is hard to appraise) and 6 with no excuse. More significantly, p/1 stated (and p/2 did not deny) that the level of work (e.g., the number of workers he brought) went down significantly after p/2 took the other job, without permission from def, and according to p/1, this was done purposely. Thus the question is whether p/2 was justified to slow his work based on lack of pay.

P/2 claims that p/1 told him that def was paying less than expected because she lacked funds. But p/2 also says that he trusts p/1, and p/1 agrees that he approved the amount that def paid p/2, based on her purchases and incomplete work. P/1 might have told p/2 that def might be having liquidity problems but that he should not be concerned about her paying eventually. In any case, p/2 did not explicitly protest about the payment and therefore had no right to not keep to the agreement on the pace of work. Therefore, since the contract states that def can fire p/2 if he is 15 days behind schedule, in this case she had the right to do so.

Next time we will begin to look into the matter of monetary compensation.

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