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# HEMDAT YAMIM

## Parashat HaShavua

Pinchas, 17 Tammuz 5779

### Proper and Improper Zealotry

Harav Shaul Yisraeli – based on Siach Shaul, p. 447-448

There is a type of zealotry that comes from limited perspective – one sees only himself, due to egoism. Such a person cannot recognize that others have the ability to think logically and yet arrive at a different conclusion from his own. Such a zealot is offended when someone thinks differently than he, for he assumes that he alone is capable. This is what the people who criticized Pinchas for his zealotry accused him of: “Did you see the son of one who brought fat calves for idolatry?” (Sanhedrin 82b).

However, there is also a totally different type of zealotry, which is focused on the community. He does not react to damage done to him but looks at the negative act's full effect on a larger community of which both the zealot and the one to whose actions he objects are just passing episodes. When the Heavenly Name is desecrated by an immoral action done publicly, it lowers the whole community from its spiritual state. Those who were inspired with love of Hashem are cooled off, cynicism penetrates. When poison is inserted into the Jewish nation, the individual loses value.

Pinchas endangered himself to be killed (Sanhedrin 82a) as an attempted murderer, and he could have had the stigma of having blood on his hands when he succeeded. He could have been unpopular and ostracized (see Yerushalmi, Sanhedrin 9:7). It is impossible to know for sure that an act of zealotry was idealistic unless he is ready to be ostracized. In the case of Pinchas, his action saved the nation.

However, zealotry is dangerous. There are halachic guidelines. It is permitted only if the action actually removes *chillul Hashem*. It is only if the reaction will return the honor of Hashem by hitting evil at its root and causing others to open their eyes. However, if the immoral activity continues after the zealotry, then the zealotry itself will just increase the desecration of Hashem's Name. If the criticism of Pinchas had remained, then his action would have had a negative effect instead of opening the eyes of all to the disgusting things being done. Had it been misunderstood, it would have caused negative criticism.

Pinchas is Eliyahu (Pirkei D'Rabbi Eliezer 46). Nevertheless, some of Eliyahu's ways were not appreciated by Hashem. Hashem told Eliyahu: “Hashem is not in the loud noise...” or “the fire,” ... (Melachim I, 19:11-12). Zealotry can work against a one-time desecration, as it can serve to “clean the air.” However, when there is a systematic deterioration, it is possible to rectify the matter only with a step-by-step clarification. Even an effective one-time event, such as Eliyahu carried out on Mt. Carmel, causing the people to call out enthusiastically, “Hashem is the Lord,” did not ensure success. After all, Izevel forced him and others to run for their lives. The voices were silenced. The noise and the fire had to be internalized and be replaced by a voice of a gentle silence. If the inspirer takes measured steps and acts pleasantly, he can sanctify Hashem's name by example. It may not seem as effective, and there will not be a crowd of people cheering, but the impact will be more certain, fundamental, and effective.

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# Ask the Rabbi

by Rav Daniel Mann

## Accidentally Staying on the Bus Longer than Envisioned

**Question:** What is the Halacha in the following scenario? I am on an intercity bus, in which the price depends on how far you go. I fall asleep and miss my stop. Should I go to the driver to pay for the additional distance I will end up going?

**Answer:** Since you present this as a theoretical question (although it can happen) and, certainly it will not be adjudicated, we can discuss this and begin with the fundamental level.

In general, there are three halachic constructs by which to obligate someone to pay another who provided a service for him. One is by means of agreement. On a bus, one who gets on a bus agrees to pay according to the set price list of the company. Usually, one pays already before the bus moves, so the question is settled. In a taxi, for example, where one pays at the end, they implicitly agree (unless they begin negotiations) that the amount to pay is what the meter will show at the destination. However, in this case, you agreed to pay only for the closer, planned location, as you indicated when telling the driver where you were going, paying the lower fare, and receiving a receipt for that trip.

The second issue is that of damage. Consider the following true story I heard. Someone entered a taxi in Jerusalem, asked to go to Petach Tikvah, and fell asleep. He was woken in the city of Petach Tikvah and told the driver he meant Petach Tikvah Street (in Romema, Jerusalem). The passenger cannot argue that he only agreed to a short ride because he irresponsibly (by not saying "Street" and by falling asleep) made the driver waste work time and gas driving to a distant location. (Whether there should be any discount is beyond our scope, as is the question as to what factors (e.g., extenuating circumstances) determine when there is an obligation to pay in such a case of semi-direct "damage" – see P'sak Din 73082 of Eretz Hemdah-Gazit.) This element also does not apply here because the driver and the company presumably lose nothing by the passenger staying on somewhat longer.

Another reason to obligate someone is the benefit he received from the service, even if he never agreed to pay for it (see Rama, Choshen Mishpat 264:4). In this case, it would seem that you would not normally benefit from going farther when you wanted to go to somewhere else closer. Therefore, this would not be grounds for payment either. It would be different if when you woke up after missing your stop and realized that getting off a few stops later would be better than getting off at the very next stop. Then, the additional stop(s) would be considered benefit, under the circumstances that developed, and there would be reason to pay.

Practically, one would have to consider other factors. It is very possible that staying on longer than you told the driver could be a problem of *chillul Hashem* or "*Vehiyitem nekiyim*" (not causing people to suspect you of sin – see an example in Rambam, Shekalim 2:10). This can happen either if an inspector comes on or if the driver happens to remember where you said you were getting off and where you actually did. It is also possible that the bus company has a set, perhaps even written, policy for cases of staying on accidentally longer than expected. While it sounds random, it makes sense for the company to have a policy so that people not be able to lie and claim that it was accidental. Anyone who gets on a bus accepts the legal policies of the bus company. This is different from a simple agreement between two people, where neither has an advantage over the other. A company prepares a service with rules (sometimes approved by a government agency); the passenger decides to use the bus – on their terms. On the other hand, the driver might inform you that he believes you and it is not necessary to pay. He probably has authority to forgive (*mechila*) a small payment of this sort.

In summary, on fundamental grounds, you would not be obligated to pay based on any of the constructs for payment for services. Any obligation would be based on more technical grounds.

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# Ein Ayah

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

## Overlapping or Parallel Powers

(condensed from Ein Ayah, Shabbat 9:50)

**Gemara:** [The gemara is trying to prove whether the Torah was given on the 6<sup>th</sup> or the 7<sup>th</sup> of Sivan]. The baraita says: "The sixth" – it was the sixth [day] of the month and the sixth [day] of the week. This is difficult according to the Rabbanan, (who said the Torah was given on the 6<sup>th</sup> of Sivan because the Torah was given on Shabbat). This baraita goes according to R. Yossi (who says the Torah was given on the 7<sup>th</sup> of Sivan).

**Ein Ayah:** The way that Hashem impacts on the unseen powers of the world can be broken into two general categories, with each having a unique spiritual flow. These are the spiritual elements of Shabbat and of the month. Shabbat is the "beginning of the days of holy convocation," and the month represents the beginning of the branching out into different special days of sanctity throughout the calendar.

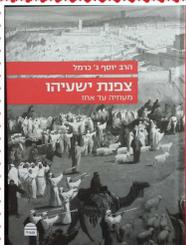
Shabbat possesses the idea of the light of existence as it was beginning and serves as a testament to the world coming into existence by the word of Hashem. This is what makes Shabbat holier than any other time.

The next level of special time has to do with the way in which Hashem looks after and leads the world, and how everything in the world is arranged according to His will. Quantitatively, the way the days of the year are arranged creates many different forms of special days, each having its own unique, deep concepts. However qualitatively, the sanctity of time all stems from the lofty "lightning bolt" that came from the original creation of the world as Hashem decreed that Shabbat should be holy in a manner that surpasses anything that can be spoken.

There are also two ways in which the sacred connects to people and influences their thoughts. Sometimes they can penetrate the Jewish soul more effectively when there is a balance between the archetypes of the sanctity of Shabbat and of the month. This approach sees the providence in how matters develop as a new creation along the lines of the original creation. According to this approach, it makes sense that the same number would be attributed, in regard to the great events at hand, both to the day of the week and to the day of the month.

However, this approach is not in concert with Rabbanan's thesis, as they posited that these elements remain separate from each other so that each can have its full impact in the broadest possible manner within man's essence. The appearance of the new month is of a lower level but it is also ancient. It represents the light of spiritual life that comes from the aura of the order of the world. It beats in the soul that elevates itself to sanctification with all its strength. The sanctity of Shabbat is deep and rises up to the Heavens. It is loftier than anything that can be described and is revealed in the purity of the soul that gazes onto the pleasantness of Hashem, in a hidden, internal recognition. Due to these differences, Rabbanan believed that these holy elements do not connect to each other.

On the other hand, Rabbi Yossi raised the outlook on the way the world is run to the highest rung, to the point that it is part of the foundation of existence and is thus connected directly to the Torah. Therefore, he says that at the foundational moment of the giving of the Torah, the element of month and the element of Shabbat were connected. This is in line with Tehillim 19, which starts by describing the connection of the celestial bodies to Hashem, and how they proclaim His greatness, and then it moves on to the beauty of the Torah. In the End of Days, the light of the month (the moon) will be as great as the light of Shabbat, represented by the sun (based on Yeshayahu 30:26). "There will be one day – it will be known to Hashem; it will not be day or night, and towards evening there will be light" (Zecharia 14:7).



### 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

## A Disappointing Partnership – part I

(based on ruling 70052 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) was a consultant for the owner (=def3) of a company (=def2). They and two more partners decided to form a new LLC company (=def1), in America, providing the services def2 provides in Israel. The partners divided responsibilities; pl was responsible for financial planning. The principals first all worked from Israel, hiring workers for their Manhattan office. Because business was slower than expected, pl was sent with pay to run the company on site. Sales improved, but def1 remained unprofitable. Disagreements over how to proceed grew, and the other partners agreed to buy out pl's share in def1 for \$68,000. A few months later, they made def1's operations off limits to pl; now, def1 is being closed. Pl demands to receive the \$68,000 plus expenses, arguing that he worked harder than he should have (the others, especially def3, did not do their fair share) and almost succeeded in saving def1. The defendants respond that pl exaggerated his qualifications and was not capable of doing the job properly, did not work with the necessary diligence, and did not meet the earning targets. The internet site was unprofessional; he did not do the proper bookkeeping; he did not report records to the IRS, which caused a \$7,000 fine. He also damaged relationships with some clients of def2. The partners excluded pl from def1 when pl threatened to join a competitor of def2. The \$68,000 offer was never signed and was contingent on a signed agreement with a non-competition clause, which pl refused to sign. They also learned later about further damages done by pl. The defendants demand the return of \$304,140 of salary and expenses.

**Ruling:** A clear oral agreement is considered binding in society, and so there might be grounds for the buyout offer to serve as a kinyan based on *situmta* (a kinyan based on common practice) despite the lack of contract. The Radbaz (I,380) says that *situmta* works even orally. On the other hand, the Rosh (Shut 12:3) rules that *situmta* can create a new act of kinyan but cannot work without a physical action that can be considered a kinyan. In any case, pl has not demonstrated that there was a full oral agreement. The matter of non-competition was never sufficiently decided. Also, communications indicate that both sides viewed that the agreement would not be complete until signing. Therefore, pl is not entitled to the \$68,000.

Is pl responsible for the failures? In general, a worker is obligated for damages caused by his lack of sufficient action (see Bava Kama 99b). However, he is not liable for understandable mistakes. Three factors impact whether a worker is legally culpable: Whether he: 1) did not do what he was instructed (ibid. 101a). 2) did things in a way that society considers unreasonable (Rama, Choshen Mishpat 306:8). 3) was unqualified for the job. In this case, while there are some reasonable complaints about pl's work, most of them are unproved. The other partners also share responsibility for their own failings in def1 and for not correcting pl's mistakes, to the extent that they existed. Def3 had worked with pl and knew his capabilities. Therefore, the countersuit is primarily rejected.

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