



HEMDAT YAMIM

חֵמְדָּה יָמִימִים

Parashat Hashavua

Pinchas, Tamuz 21 5784

Harav Shaul Israeli zt"l
Founder and President

One Book for a United Nation

Harav Yosef Carmel

Tzlofchad, the father of his famous five daughters, appears multiple times in the second half of *Sefer Bamidbar*, including in our *parasha* (Bamidbar 27:1-3). The Torah quotes his daughters as saying that he died, without sons, for his sin, not along with the congregation of Korach (ibid.).

We will start by pointing out that *Tanach* was received from the Heavens, on three "levels," over a period of approximately a thousand years. Moshe Rabbeinu first received himself the Five Books of Moses (Torah), starting from at Mt. Sinai and ending with his death, on the eve of entering the Land. Subsequently, the prophets received the books of The Prophets (Navi). In an overlapping period of time, Ketuvim (Writings) were received through divine spirit.

The Men of the Great Assembly, some of whom were prophets and some had divine spirit, were involved in canonizing *Tanach*, over hundreds of years, starting from the time of Yeshayahu and Be'eri, the father of Hoshea. Once this was complete, *Tanach* became one organic work, where books are interrelated. One of the important projects is to connect "all the pieces of the puzzle" that are spread throughout *Tanach*. Only when all the references and hints on a certain topic, from throughout *Tanach*, are elucidated, can one get a complete picture. One of the best ways to do this is to connect seemingly unrelated sections, by means of the use of the same word or phrase in each (*g'zeira shava*). This follows the Rabbis' rule that "scripture is not coming to keep matters sealed but to explain matters" (Seder Olam Rabba 1). This means that *Tanach* explains itself by interconnecting different sources and applying a lesson in one to another.

This phenomenon plays out with Tzlofchad, in trying to determine his sin. One opinion in the *gemara* (Shabbat 96a) reasons that he was the one who gathered wood on Shabbat, because each section surprisingly stresses that it occurred in the desert. The Zohar uses the same basic methodology to derive that Tzlofchad was one of those who complained about the paucity of food in the desert and used this to question Moshe's leadership. According to the Zohar, there was a hidden criticism of Moshe's leadership because Yaakov (Bereishit 49:26) had ostensibly given political prominence to the tribes coming from Yosef. (Tzlofchad was a descendant of Yosef's firstborn, Menashe).

In short, national unity is at the heart of Jewish belief. One G-d gave the Torah to one nation, which stood as one man at Sinai, to receive the Torah. We received one book from Hashem, the united *Tanach*. In order to fulfill the Torah properly, we must act as a united people. Only under those circumstances can we survive as a political entity over time. Our enemies hope to harm our unity, which would also be a blow to the One G-d.

In times when our army unites its soldiers, serving side-by-side against murderers, we must transcend petty disagreements. We send condolences and blessings to the families of those who have fallen *al Kiddush Hashem* and pray for a speedy recovery for the injured. We must find that which we can agree upon and fix what we can, while thanking Hashem for what we have, as we patiently wait for our national project to continue expanding and improving.

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Ask the Rabbi

by Rav Daniel Mann

Basketball Swap?

Question: Two members of my community asked me a **no-tension**, monetary Halacha question. Reuven Cohen lent Shimon Levi (both under bar mitzva = *katan*) his basketball. Shimon lost it, and the Levis offered to pay for a new one. The Cohens ordered the exact ball on-line and charged the Levis. Later, the Cohens found the ball in the neighborhood. Who should get the two balls?

Answer: While these agreeable people, who have gone beyond halachic requirements (see below), can do whatever they agree on, it is an honor to discuss relevant **general halachot**.

A *katan*, who is not expected to be proficient at watching objects, and his parents, are exempt from payment for his deficiencies as a *shomer* (see Bava Kama 87a). However, our communities seem happier when children are encouraged to be careful and when their parents often pay for their failings.

It is common that when one damages or loses another's item, he buys or pays for a new replacement. This is not always required, as the obligation is to pay the value of the lost object. Used items, including basketballs, are often worth less than their new replacement. (Paying more than one is required is not a problem of *ribbit*, as *ribbit* is forbidden when it is for **delaying** paying a loan or sometimes other obligations, not for paying more than obligated.)

Now, we get to your question about what to do with the balls. The *mishna* (Bava Metzia 33b) says that if a *shomer* pays for the theft of the object he was watching and later the thief was caught and has to pay double (*kefel*), the *shomer* gets the *kefel*. The *gemara* posits that since the *shomer* is nice enough to agree to pay, the owner transfers him rights to the *kefel*. In response to technical problems about the ability to transfer such a potential, amorphous asset, the *gemara* answers that an implied, earlier, conditional (should he pay) transfer of **the object** makes it possible for the *shomer* to get the *kefel*. The *gemara* continues that this transfer applies to a variety of external gains from the object (not just *kefel*), but not to an animal's physical products, e.g., wool and offspring.

Tosafot (ad loc.) understands that the *gemara* refers to a literal transfer of the lost/stolen object, so that the *shomer* owns the object he paid for. According to this approach, once the Levis paid, the Cohens ceded ownership rights to the old basketball. If Reuven Cohen wants his old ball back, he would have to request a favor of the Levis (the reciprocation should be return of the money the Levis paid).

The Rambam (Sh'eila 8:1) describes how when an animal stolen from a *shomer* is found, it returns to the original owner with its wool and offspring. According to the standard explanation of the Rambam (see Maggid Mishneh, ad loc.; K'tzot Hachoshen 295:4) wool and offspring are not exceptions to the rule but are indicative of the fact that all stolen and lost objects remain owned by the original owner even after the *shomer* pays for their loss. According to this approach, Reuven Cohen keeps his basketball, and the payment is returned when it turns out there is no loss.

We generally assume like Tosafot's approach (Pitchei Choshen, Pikadon 8:13). The Shach (CM 295:11) suggests that the Rambam agrees that the *shomer* keeps the object if he wants it, just that the Rambam discussed a case that he did not want it.

It appears that since the whole idea of getting rights in the animal is in appreciation for the *shomer's* cooperation, Tosafot agrees that he can turn down receiving the object when it is found and can thereby be eligible to receive the money he gave. (See also Shulchan Aruch, CM 103:11 for a precedent of undoing a forced payment after the lost object was found.) In our case, that would seem to mean the Cohens would have two basketballs. However, it is very possible here that since, conceptually, the Levis gave a basketball (just that for technical reasons, the Cohens ordered it), the Cohens would give the Levis the new basketball.

We cannot address every permutation, but trust the friendly parties to "have a ball" continuing to cooperate.

"Behind the Scenes" Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.



Igrot HaRe'aya - Letters of Rav Kook

An Eiruv for Nascent Tel Aviv – #242

Date and Place: 9 Kislev 5670 (1909), Yafo

Recipient: The homeowners of “Achuzat Bayit,” the brand new suburb of Yafo, which became the beginning of Tel Aviv.

Body: It will be for me a pleasant obligation to awaken your dear spirits to take part in the *mitzva* of erecting an *eiruv* in your dear *moshav*, which we are joyously looking forward to see built, adorned and equipped with all good things.

The erection of an *eiruv* is positive for two reasons: A. It will prevent the outbreak of a wave of desecration of Shabbat from spreading in your respected, beloved *moshav*. Besides the inherent holy cause that is included in this, it also impacts the general honor of the *moshav*. B. It is a great improvement regarding all the needs of life on the holy day in a community that is made up of our Jewish brethren. This reduces dependency on non-Jews.

The expense of building a high-quality, strong *eiruv* in part of the *moshav* is, by a good estimation, 32 Napoleonic gold coins. Of this, the general assembly of the city (Yafo) will provide 16 coins, through the efforts of Betzalel Lopian. Concerning the second half, 16 Napoleonic gold coins, I beseech of you, respected people, that you will take part, to provide you both spiritual and material benefit, as shall be an honor for such beloved people.

Approbation Rather than Hashgacha – #244

Date and Place: 11 Kislev 5670 (1909), Yafo

Recipient: Mr. Lupo, the head administrator of Mikveh Yisrael (one of the first agricultural settlements, located on the outskirts of present-day Holon).

Body: I received your very respected letter, and I am responding with my thanks to your honor, for completing the steps needed to take off tithes [from the produce] as the Torah requires.

Regarding the *kashrut* accreditation for the wine, I ask your forgiveness that I cannot write a certificate, which I can do only when something is done under my supervision. Last year, I only attested to the signatures of the rabbis who give the certification. I will not hold this back now, as well. However, how can I give my certificate of *kashrut*, which indicates my specific knowledge in the matter? The following is always the practice. The rabbi who actually supervises the product gives his certificate, and those who need to affirm matters externally assert to the veracity of his signature.

I hope that, in the future as well, you will not cease to fulfill your religious obligations regarding the fruit of Mikveh Yisrael and all its produce. I await your respected response.

We daven for a complete and speedy refuah for:

**Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima**

**Arye Yitzchak ben Geula Miriam
Tal Shaul ben Yaffa**

**Neta bat Malka
Meira bat Esther**

Together with all *cholei* Yisrael

P'ninat Mishpat

Mutual Repairs Agreement – part I

(based on ruling 82031 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) owns and operates an auto-repair shop. Pl and the defendant (=def) agreed (everything was oral) to an arrangement whereby def would use pl's facilities and tools to fix cars for his customers and rent storage area from pl. Def was to pay pl 15% of this income to pl. Due to technical pressures, pl received all of def's fees and paid def a monthly "salary," representative of def's earnings. [We will deal with various points of dispute in installments.] It had been agreed that a wall would be put up in the property to hermetically seal the area where def stored his property. For various reasons, it took quite a while for the wall to be erected, and therefore def claims that he is exempt from paying rent for the storage area.

Ruling: Rent for storage area due to late placement of a wall – While all agree there was agreement to erect a wall, the sides disagree whether it was a condition for payment of rent. It is also unclear if the purpose was to give def privacy or to protect valuable items that def might want to put there. *Beit din* rules that def must pay rent. An oral agreement to rent an area can be made binding based on *chazaka*, i.e., the renter's use of the area for his purposes (see Machaneh Ephrayim, Sechirut 1; Netivot Mishpat 192:6). This was done, making the agreement binding. For a condition to nullify the transaction if it is unmet, the condition must be mentioned explicitly at the time of the *kinyan* (Shulchan Aruch, Choshen Mishpat 207:4). In a case like this, where the *kinyan* was definite and the existence of a condition is questionable, the definite existence of a *kinyan* gives the one who wants to uphold it against nullification the upper hand.

Def claims that the storage area he received is flawed due to the lack of the wall. Pl claims that the rent was for the space, whereas the promise of the wall was an additional agreement that does not take away from the first one. According to the majority of *dayanim*, the above logic applies – the agreement is definite, the condition is unclear, and therefore def should pay in full. According to the minority opinion, since the question is not whether to uphold the agreement, but how much def should pay, after the fact, the amount should be adjusted to reflect the lower value of the area as a storage room without a wall (for many months).

Payment for eventual building of a wall – Def had promised to pay 4,000 NIS for the building of the above wall but refuses to pay it, because it was built at such a great delay that it is irrelevant and because it was not built in a hermetic enough manner. *Beit din* rejects both claims. There was no time set for the building of the wall, and, in fact, def was originally supposed to be in charge of arranging it. When it was built, def was still using pl's property, and def did not set a deadline for pl, after which point, he would not pay for it. There is no indication that def had raised a specific description of the wall, and a retroactive complaint that came up first only in the summation of claims before *beit din's* writing the ruling is not to be accepted in such a matter.

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