



Harav Shaul Israeli zt"l
Founder and President

Those Who Go Out to the Army

Harav Yosef Carmel

To be one who "goes out to the army" (*yotzei tzava*) in Israel is a clear obligation appearing without conditions in the beginning of Bamidbar. After the giving of the Torah, which is ideally fulfilled only *Eretz Yisrael*, the nation begins its journey toward it.

A necessary condition for going out to war is a census: "From twenty years old and up, all that go out to the army (*tzava*) in Israel; you and Aaron shall count them by their *tzava*" (Bamidbar 1:3). Notably, all censuses in Tanach relate to military service and preparation for war. The Netziv (head of the famous Volozhin Yeshiva) explains:

"They were likened at that time to a king going at the head of his army... no king goes by himself... but in a camp of honor and dignity... so was it required for the dwelling of the Divine Presence ... since they were counted only for those who go out to the army, we were worthy to be counted in the King's legion for the war... and the Kingdom of Heaven is like the kingdom of the earth" (Ha'emek Davar, Bamidbar 1:1).

His words teach two important things: the entire nation is considered an army; the number of soldiers is what ensures the dwelling of the *Shechina*.

Military service occupies a central place in the beginning of Bamidbar. In the tribal counts, the expression "all that go out to the army" appears over ten times, and "every man by his camp and... his banner" appears over twenty times.

In *B'ha'alotcha*, the nation sets out as an organized army. Immediately following this are the *p'sukim* we say when opening the *aron hakodesh*: "And it was when the ark traveled, and Moshe said: Arise, Hashem, and let Your enemies be scattered..." (Bamidbar 10:35-36). The *aron* is the symbol of the *Shechina*; it accompanies Israel into battle. Thus, we have a source for the Netziv's teaching of connecting army and *Shechina*.

The section on the *chatzotzrot* (trumpets) describes several of their uses. In addition to use to organize the journey, the Torah commands their use both during war against an oppressor and on "days of happiness," holidays, and new months (see *ibid.* 10:9-10). What is the connection between their use for war and for holidays?

Ibn Ezra explains that the days of happiness are when the army returned victorious and the people established a holiday (e.g., Purim and Chanuka). According to his view, we should establish festivals to mark victories.

In Ibn Ezra's times, these words referred to a future redemption. In our generation, this dream has become a reality. The necessary condition was the establishment, with Hashem's mercy, of an independent Jewish state in our ancestral land. Only a strong Israeli army, with participation from all sectors of the public, can ensure these miracles continue.

We will continue to thank Hashem on the established days of gratitude for the immense miracles of our generation. We call on all our brothers to join the Israel Defense Forces to ensure the continuation of the ingathering of exiles and victory over our enemies.

We call for everyone to "recognize the good" and join those thanking Hashem for the State and the liberation of the Land from foreign occupiers. We pray for unity, safety, the healing of the wounded, and comfort for the bereaved families. We will sound the trumpets in both gratitude and prayer.

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Ask the Rabbi

by Rav Daniel Mann

Returning Unclaimed Items

Question: Balls and other items land in our yard. I am happy to return them, but I do not know from which of five surrounding properties, from multiple buildings, each came. Sometimes objects remain in our yard for months, and get damaged by the elements. Am I responsible to track down the owner, some of whom I do not know? Does the fact that they do not care enough to retrieve their items absolve me of the responsibility to store them somewhere safe and proactively return them?

Answer: There are two questions – about returning and about protecting the objects. They are, though, quite related.

In the past (Living the Halachic Process, V, I-6), we have brought the question that *Acharonim* have discussed – whether it is enough for one to inform the owner that his item is available by you, or whether you must actively return it. Regarding the *mitzva* to return that which he stole, it suffices to tell the victim that he can come get his object (Shulchan Aruch, Choshen Mishpat 367:1). It is unclear whether this is the standard *halacha* regarding *mitzvot* of returning or a special dispensation to promote *teshuva* (see Shach ad loc. 2). There are different possible ways to read the *p'sukim* (Devarim 22:1-3) in this regard. The more accepted approach is that informing suffices (Pitchei Choshen, Aveida 7:(2)).

Along with the obligation to return, there is an obligation to protect the object until you have succeeded to return it (see Devarim 22:2 and Shulchan Aruch, CM 267:17). If informing him counts as returning, it should also remove the requirement to guard them (see Torat Ha'aveida (Tzabari) 12:11). The main point is that at this point, the item is no longer lost, and therefore its welfare is the owner's responsibility.

This is in line with the Rama's opinion (CM 261:4) on *aveida mida'at* (one who knowingly leaves his object in a precarious situation). Even though he holds that this does not make the object *hefker* (ownerless), the finder does not have to care for it. Also, one could argue that your yard is not considered a precarious place, as you would not take someone's property. However, it is still likely in a precarious position regarding protection from the elements.

Nevertheless, in this case, it does not appear clear that all of the items' owners are aware where their object is. Sometimes the owner did not know the object "flew" over a fence. Especially if we can assume that for example, parents own the family's balls, if a child kicks the ball over the fence and does not tell them, from the owners' perspective, it is an *aveida*. Another scenario is that they originally knew where the item is but procrastinated about getting it until they forgot its whereabouts. Once they forget, it is an *aveida* (see Bava Metzia 25b).

The *gemara* (ibid. 26b) says that the positive *mitzva* begins from the time the finder takes the object. Could it be that if the things are where they fell, you have no obligation? Halachically, in many ways, things that are in one's property are as if they are in his hand (ibid. 10b). The Ra'avad (Aveida 7:14) says that the fact that the lost item is in the finder's property creates an obligation of *hashavat aveida* (in his context, it prevents the finder from claiming it after the owner's subsequent *yeiush*). Even Haezel (ad loc.) clarifies that this obligation without moving the object begins only from the time the property owner knows it is in his domain. But from that point, which you are already at, the obligation exists until the loser receives it or finds out about it and can get it.

Therefore, we suggest the following. Be in touch with the neighbors who could own things in your yard. Come to an agreement about their expectations of you. If they all agree, you can leave them where they are, or set them aside in a convenient place for them to claim. Only if (common these days) the people trust each other not to take that which is not theirs (Bava Metzia 27b), we have modern arrangements to more easily share with a group of people what is missing so they can come and claim their lost items.

“Behind the Scenes” Zoom shiur

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

Overview of the Rambam's Approach

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 633

The defining characteristic of the Rambam was his extraordinary multi-faceted nature. As a commentator, we have his commentary on the *mishnayot*; as a decisor, the Mishneh Torah; as a philosopher, Moreh Nevuchim (Guide to the Perplexed); as a simple, believing Jew, Iggeret Teiman (Letter to the Yemenite community). What is the interrelationship of all of these facets of one such person? Was there a contradiction [between the philosopher and the possessor of simple faith]? Did he just alter his approach according to the audience? Or perhaps was this a rare mixture of Torah and general knowledge, of intellectuality and unquestioning faith, of belief and investigation?

Some posit that the Rambam's philosophical side was only a surface-level response, and only to give answers that people with questions could accept. They point out the Rambam's statement (Me'ila 8:8) strongly advocating fulfilling the *mitzvot* with simplistic compliance. However, even there, he started true to his approach by noting the need for an individual to contemplate matters. He also began Mishneh Torah with the *mitzva* to **know** Hashem (Yesodei Hatorah 1:1), which undeniably indicates [intellectual investigation].

We cannot view the absolute conclusions of Moreh Nevuchim regarding practical *mitzvot* and regarding the [statements of] *Chazal*, as being addressed to "external people." That which he says that the wisdom of philosophy was lost to the Jewish people because of persecution (Moreh Nevuchim 2:11) is also telling. This would be a blemish in the pursuit of truth, something that he stresses in relation to Hashem and service of Him. Actually, just as the Rambam mandated philosophical inquiry for those who are fit for it, so he rejected it for those who are not fit, calling it "destructive gazing" (based on Shemot 19:21). (He used *p'sukim* figuratively here, as in Moreh Nevuchim.)

The Rambam's versatility stems from his understanding of the multi-faceted nature of Hashem's Oneness, and from his perception of the world as a stone hewn from the "*tzur*" (Rock) that testifies on its source (Moreh Nevuchim 1:16). Seeing Hashem as the source of knowledge and wisdom dictates to man that he is to walk in His path. He saw intellect as the divine part of man (Introduction to his commentary to Seder Zeraim). In Mishneh Torah (Yesodei Hatorah 8:1), regarding the Revelation at Sinai, he rejects the attempt to base Judaism on the pillar of miracles, but establishes it on spiritual seeing. His reference to eyes seeing and ears hearing must be taken figuratively. In that context (and in Iggeret Teiman), he mentions the inherited element of faith which guarantees eternal trust in Hashem, Moshe, and Jewish continuity. Iggeret Teiman also speaks about Torah as providing people according to merit.

The Rambam set forward that the World to Come is for the delight of perceiving the Divine (Introduction to Sanhedrin 10). This contains the central point of human aspiration. However, intellectual understanding of Hashem's essence must go hand-in-hand with the 13 Attributes, which comprise Hashem's moral elements (Moreh Nevuchim 1:54). The demand for accurate understanding is important in ethics as well (see Commentary to Berachot regarding "study brings to action" – Megilla 27a).

The demand for perfect ethics exists, but it should not become a tool for society. If we did, it would enslave everyone in pursuit of material success. It is also not the focal point of man's service, as it is supposed to be attained naturally. Rather, it is a natural, practical expression of man focusing his life around intellect.

The Rambam's approach (Introduction to Zeraim) to the masses of simple people is interesting and consistent with the concept of *am ha'aretz* (literally, the people of the land). He does not negate their existence, but acknowledges the complementary relationship between simple and complete man, and delineates roles for each.

This leads into his approach to the Days of Mashiach. He does see a need for altered rules of nature in those times – the world acts in the manner it was accustomed to (Melachim 12:1), just that this will happen in an ideal way. This impacts on our daily lives. We work in partnership and divide jobs. We concentrate on our connection to people of stature and co-opt mundane life for lofty goals.

We daven for a complete and speedy refuah for:

Itamar Chaim ben Tzipora
Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Neta bat Malka

Avraham ben Gitel
Tal Shaul ben Yaffa
Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

A Mess of Loans, Repayments and Grievances – part III

(based on ruling 83033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl), a lawyer, worked for and had intricate financial connections with the defendant (=def). There are two loans contracts of pl lending 250,000 NIS to def, which seem basically confirmed by bank transfers. Def made several significant payments to pl, but the sides dispute the nature of several of them, with possibilities including payment of salary. Def also has claims on rental fees at his offices from which pl continued to work after his employment ended, as well as deductions for various grievances about pl's flawed work.

Ruling: Damage from work #1: Def claims without proof that during pl's work for him, pl used 6,000 NIS from an escrow account of a client for himself, and that to avoid a scandal, def put his own money back into the account. While pl admits to owing the money to the account, he claims that the money def paid for him was to cover a non-documented loan that pl gave def.

Ruling: The claim of a payment going for an undocumented loan is called *sitra'i*. *Sitra'i* on an undocumented payment is believed only in a case where the other person is trying to extract payment. Since here, def is only trying to reduce the money he owes, pl cannot use a *sitra'i* claim.

Damage from work #2: Def claims that pl did a poor job representing a client who had paid a 26,000 NIS fee, forcing def to return that fee to the client.

Ruling: Since def brought no proof whatsoever, he cannot demand payment from pl. Although def is only trying to pay less money, so that he is ostensibly the *muchzak*, since the counter claim is unrelated to pl's claim, they should have been dealt with separately. Therefore, def cannot be credited when he brings no proof, and the claim is rejected.

Damage from work #3: Def claims that he expects that pl's negligence at work will cause suits by clients against def and demands compensation in advance.

Ruling: Without getting into a decision as to under what circumstances pl could be held responsible for such a suit, as long as the suits have not yet taken place, there is no damage for pl to pay now, and therefore this claim is rejected.

Rent: Def claims that after pl finished his stint working as a member's of def's law practice, he continued working there physically for approximately 14 months, and that they agreed that pl would pay 4,000 NIS a month. Pl admits to working for only four months and that in any case, the whole time he paid the rent to the owner of the property as per def's request. Pl claims that there had been one copy of the rental contract and that it had been given to a lawyer to safeguard, and he gave it to pl.

Ruling: One way or the other, pl wants to reduce the payment of a definite loan through a reduction due to an unproven rental fee. Therefore, we will not reduce the amount due based on this.

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