HEMDAT YAMIM חמדת ימים

Parashat Hashavua

Vayishlach, Kislev 18, 5787

Harav Shaul Israeli zt"l
Founder and President

"… And I Kept 613 *Mitzvot*"

Based on Siach Shaul al HaTorah (Rav Shaul Yisraeli), p. 108

Yaakov sent Eisav messengers, who said in Yaakov's name: "I lived (*garti*) with Lavan" (Bereishit 32:5). *Chazal* famously used (by rearranging the order of the letters) the word "*garti"* to hint at "*taryag*" (the 613 *mitzvot* of the Torah), which Yaakov kept while living with Lavan (see Rashi ad loc.). What was Yaakov trying to convey with this message, and what was its full purpose?

The Torah says that when Yaakov had just returned to *Eretz Yisrael*, "A man struggled with him" (Bereishit 32:25). *Chazal* (Chulin 91a) differed as to the nature of Yaakov's opponent. Some thought that he acted like an idol worshipper, and some posited that he is to be likened to a Torah scholar.

These possibilities represent two types of battles that the angel of Eisav used to fight Yaakov as he returned to the Land. The angel acting like an idol worshipper means that he was justifying the use of force to prevent the redemption of Israel violently. This struggle injured Yaakov's leg. This approach to fighting Yaakov is known to us today, nationally.

The second strategy is no less dangerous – like a Torah scholar. Here too there are voices that agree with Eisav's angel. They say: "I also learned Torah; I was in yeshiva. But in the big world out there, the Torah approach will not work. In the world, you need fists. There are elbows, and there is a war for survival, place, and status. There, all of the Torah of ethical values, of values of the spirit, do not have a place. 'A pure man' (see Bereishit 25:27) is good, but that was in the tent of study. When we get to the big world, you will see that all of this will not be able to exist. When you need to build a state, you will have to live in a more realistic world." For this claim, there is still an echo, as there are even descendants of our forefather Yaakov who still believe that *Eretz Yisrael* cannot be built based on the Torah.

But Yaakov taught a different approach. "I lived with Lavan, and I kept the 613 *mitzvot*." Yaakov then continued: "I had an ox and a donkey, flock, servants, and maids" (ibid. 32:6). I was able to succeed materially, even though I kept every single *mitzva*. I was vigilant about every minute detail of the Torah, and it did not hinder my success. All the words about Yaakov's possessions are written in singular, because even though Yaakov had a lot of each, they did not take up more room in his worldview than a single ox and a single donkey.

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Vayishlach

Ask the Rabbi

by Rav Daniel Mann

Parent's Responsibility for Child's Accident

Question: Parents in the neighborhood let their 11-year-old child operate a somewhat powerful drone by himself. It ended up smashing through my large window, which costs a couple of thousand NIS to replace. I would like compensation, and the parents want to react "responsibly," but we all want an idea of the halachic outlook on the case before working out an agreement on payment. They agreed that I approach you but did not commit to follow an exact ruling. What are your thoughts?

Answer: I am happy with a non-binding discussion with the parents' blessing. I will therefore not investigate all the details and do enough research to arrive at a conclusive decision. However, the general analysis can hopefully help facilitate mutual agreement.

The *mishna* (Bava Kama 87a) states that if a minor (under bar mitzva) damages someone, the damaged party has no legal recourse. There are opinions that there is some level of recommendation to the child to make monetary amends when he grows up as *teshuva* (see Pitchei Choshen, Nezikin 10:(115)). However, that is not our issue at hand.

In many communities there is an expectation that parents take responsibility for their children's damages. It is difficult to claim that this is a binding norm, but it serves as encouragement for parents to pay much if not all of the damages, beyond the letter of the law. (My limited research indicates that Israeli jurisprudence, which sometimes plays a role in applying monetary Halacha, judges parents situationally rather than assigning automatic responsibility.)

The plot thickens halachically in cases where a parent's negligence allowed or even enabled their child to do something dangerous that resulted in damage. The *mishna* (Bava Kama 59b) rules: "One who sends a burning object with a minor is exempt from payment by human law (i.e., *beit din* cannot extract payment) and obligated in Heavenly law." The Shulchan Aruch (Choshen Mishpat 418:7, based on the *gemara* ad loc.) rules that the above is true if the adult gave the child a glowing ember, which often goes out before damaging, whereas if he gave him a flame, even *beit din* will obligate the adult. Looking at the case from a distance, a drone seems analogous to the coal – a device that isn't inherently destructive but poses a significant danger when placed in untrained hands (see government safety regulations).

The Ritva (Bava Metzia 10b) says that the reason the adult who sent the coals with the child does not have a full obligation is that the he did not instruct the minor to damage. The *mishna*'s moral obligation is thus for the adult's negligence in entrusting the child with something dangerous (as implied in Bava Kama 9b). This is likely analogous to our case. Others (including Machaneh Ephrayim, Nizkei Mamon 7) see in another *gemara* (Kiddushin 42b) a proof that the *mishna*'s case is where the adult sent the child to damage (and the exemption in *beit din* is on formalistic grounds). According to this approach, the moral obligation that applies to a purposeful indirect damager likely does not apply to the merely negligent. The Meiri (Bava Kama 59b) says the *mishna* refers both to intentional and negligence. The Shulchan Aruch (CM 418:7) and main commentators do not discuss this distinction, but the Aruch Hashulchan (CM 418:38) learns like the Ritva.

There are also different opinions on how to view an obligation of Heavenly law, generally and/or in this context. The Meiri (Bava Kama 56a) says that an obligation by Heavenly law is enough of a real obligation that until he pays, he is disqualified as a witness, like a thief. The Yam Shel Shlomo (Bava Kama 6:6) views most such cases as a lower-level, moral obligation – one of the ramifications is that if the potential recipient seizes payment (*tefisa*), we take it back from him.

In short, there is a halachic basis to expect parents to pay for damage their child caused, particularly when the parents share some blame for his actions. However, since there is not a clear halachic obligation, it is logical for the damaged party to not expect full payment.

"Behind the Scenes" Zoom shiur

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

Yavneh and its Scholars

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 803 (address to students)

It is not by chance that R. Yochanan ben Zakai chose Yavneh and its scholars [to ask the Romans to spare] (Gittin 56b). We find a beautiful statement in the name of these scholars. "I am a creation, and my friend is a creation. My work is in the city, and his work is in the field. I wake up early to tend to my work, and he wakes up early to tend to his work. Just like he is not encroaching on my work, so I am not encroaching on his work. Maybe you will say that I accomplish a lot and he accomplishes little? We have learned: It is the same whether one accomplishes a lot or a little, as long as his heart is focused on the Heaven" (Berachot 17a).

This is the approach of a scholar who meshes himself within the nation as a whole, and does not see himself as one whose role provides him with greater rights. Rather it obligates him to act on behalf of the community in the realms in which he is uniquely qualified.

This idea contrasts with what we saw in *Chazal*'s account of the destruction of the Temple. It discussed the timidness of Zecharia ben Avkilas [who did not intervene when one Jew publicly shamed another]. His silence was the cause of the horrible dispute between brethren. It was probably due to an assumption that whatever happens in the world does not concern a scholar. "We are men of Torah and have a special standing. Our only concern is our success in ensuring that our personal space is not broached."

The scholars of Yavneh were great in Torah, but they also knew that their learning was not for their own sake (see Sanhedrin 99b). They knew that "I am a creation, and my friend is a creation." In other words, everyone has a role, and every role is important. While "fortunate is one whose profession deals with fragrances" (Pesachim 65a), on the other hand, "the world cannot exist without tanners" (ibid.). From this perspective, we cannot estimate who is more important, as each is needed.

This might be the intention of the first blessing on Torah reading, which stresses the choice of Israel and the giving of the Torah to it. This means that there is something above the choice in every Jew – the power of being special. The role of being involved in Torah is not of creating something out of nothing, but revealing that which exists under the pile of emptiness. If so, normal living comes before display of being Israeli, of self-sacrifice for the nation, of a desire for a pure life full of holy seriousness. Yet, there is an important rule that there can be no success without striving for "eternal life." The expressions of justice and rectitude do not on their own give power to eternal life – their power is only in the realm of normal life.

This combination is not simple. It costs a lot of life blood. One has to think a lot and exert himself even more in order to not get ensnared in the trap of extremism. Some see this as spiritual ambiguity – not here and not there. Some see it as feebleness, from a desire to make due with what exists rather than fight. This is not the case. Hillel's characteristic of not getting angry at people (Shabbat 31a) was not a convenient strategy. His calmness sometimes caused others to complain, but Hillel kept to it anyway. It was not convenience, but belief in the path.

Our community's approach is not because it is more comfortable. Often, perhaps usually, it is more difficult. It is not a compromise; it is an act of combining the good found in everyone. It is putting stress on eternal life, yet not forgetting that normal life is not bereft of content. Rather, everything comes from a source of sanctity and returns to that source.

I understand that all of you who have sat together in class will disperse and that every single one of you will have challenges. We learned in Mesillat Yesharim that it is an illusion to think there can be life without challenges. They will appear in the more natural life and the more spiritual life. Your job is to hold the line!

We *daven* for a complete and speedy *refuah* for:

Itamar Chaim ben Tzippora
Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima
Arye Yitzchak ben Geula Miriam
Neta bat Malka
Tal Shaul ben Yaffa
Avraham ben Gitel
Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

Does the "Seller" Have Standing? – part III

(based on ruling 84141 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=*pl*) obtained partial rights in a property in 2009, as a trustee for a silent investor (=*si*), giving ownership and control over any future building on its roof. *Pl* sold the rights for *si* to the defendant (=*def*) for 310,000 NIS. *Def* paid only 160,000 NIS and later claimed that there was misrepresentation of the property, and sued in a *beit din* (=*bd1*) to nullify the sale. *Beit din* ruled in favor of *def*, but *pl*/*si* never returned the money. The rights in the Tabu remained in *pl*'s name. In 2022, *def* arranged for *pl* to sell the rights to the roof to a buyer (=*byr*), officially for 300,000 NIS, and he lied to *pl* about the amount he sold it for and thereby signed an agreement with *pl* that they would conclude the matter with *def* paying 140,000 NIS. In actuality, *byr* paid *def* 400,000 NIS. *Pl* wants to receive the difference between the actual sales price and the 160,000 NIS *def* already paid. *Def* claims that by not returning the 160,000 NIS, *pl* did not carry out the nullification of the sale and therefore *def* is the owner, who therefore keeps the 400,000 NIS. *Def* further claims that *pl* has no standing in *beit din* because he is only a trustee and *si* did not choose to sue. *Pl* responds that he has documents that show that due to *si*'s debts to him, *si* transferred his rights to *pl*, making *pl* the owner. The most important document in this debate is a contract between *pl* and *si* stating that *pl* has the option to acquire the property for himself or sell it to someone else, in lieu of payment of *si*'s debt to *pl*.

Ruling: *We have seen that the options contract could not by itself make pl the owner of the roof, and now turn to see if the agreement was halachically activated.*

Payment meeting: *Pl* claimed that he met with *si* and they decided and shook hands on the transfer of the rights to the roof to *pl* as of that point. The Netivot Hamishpat (344:1) posits that when a debtor and creditor agree that one of the debtor's properties is to become the creditor's as payment, the matter does not require an act of *kinyan.* Other *Acharonim* ask difficult questions against this opinion. Furthermore, it is unclear that the Netivot would apply here because *pl* admits that they did not discuss which debts were being paid by such a transfer and because *pl* already viewed himself as possessing the rights beforehand (they were in his name).

Regarding the handshake, it is true that many authorities considering that as *situmta* (an action which is accepted by convention to finalize agreements). However, monetary *minhag* is very affected by the law of the land, and in Israel, the law requires real estate transactions to be written.

Admission of *si*: *Si* sent an affidavit to *beit din* saying that as of the meeting, he had transferred ownership to *pl. Si*'s admission does not have special status (*hoda'at ba'al din*) for a few reasons. First, after the sale to *byr*, *si* definitely could not own the property today, whereas admission of the owner must come from an owner at the time of the admission. Secondly, admission of an owner is accepted strongly only to the extent that it affects him and not to cause detriment to the legal claim of another person (*chav l'acharini*).

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