

HALOCHOSCOPE TOI

Someone made an appointment for a haircut and then realized that it was for *Rosh Chodesh*. He would like to follow the practice of refraining from cutting hair on Rosh Chodesh. However, cancelling the appointment for no reasonable excuse might show him in a bad light. He could be causing a loss of income to the barber. Does he have the right to cancel the appointment on this basis?

The issues:

(A) *Tzava'as Rabi Yehuda Hechasid*, the ethical will that ...

(B) restricts haircutting on *Rosh Chodesh*

(C) Unilaterally cancelling an agreement

(A) *Tzava'as R. Yehuda Hechasid*

Rav Yehudah Hechasid lived about eight hundred years ago in Southern Germany, the seat of scholarship of the communities of *Ashkenaz*, North-Western Europe, in those times. His family, together with Rashi and his family, formed the core of the *Baalei Hatosafos*, the major commentators on the Talmud. In communities under the rule of Islam (including the Spanish peninsula and North Africa) teachings emphasized transmitting rulings and Talmudic conclusions. Guidance came from the sages of *Bavel* or their spiritual heirs, who issued traditional rulings. In communities under the rule of the church, communication was restricted. Therefore, learning sources was emphasized. Commentaries on the Talmud's discussion was the framework for rulings. In addition, the traditions were not the same as those that were known in Bavel. Apart for short periods, communication between the two types of communities was too difficult to be practical. Accordingly they developed their own separate ways.

With the spread of the written works of scholars of different communities, they found it necessary to record and publicize their own practices and views. Thus, though the Ashkenazim had initially recorded mainly the commentaries of their teachers, they began recording rulings and conclusions as well. The main works (*Or Zarua* and *Semag*) that form the basis for these rulings are recorded by the disciples of R. Yehuda Hechasid. Thus, most of Ashkenazi Jewry are knowingly or unwittingly, considered his followers.

In addition, much of the known *Ashkenaz Siddur* (where it varies from the

Sefard) and other *Tefilos* (e.g., *Krias Shema Al Hamita, Anim Zemiros*) are attributed to R. Yehuda Hechasid or his forebears. The Ashkenazi way of writing the letters of *Sifrei Torah* is directly attributed to the teachings of R. Yehuda Hechasid.

R. Yehuda Hechasid's family were known as the Klonimus family. They are probably best known for their distinction as the *Mekubalim*, kabalists of Ashkenaz. They were in possession of secrets, in writing and orally transmitted, that were subsequently the basis of this branch of *Kabalah*. R. Yehuda himself excelled in piety and humility, such that he was able to rise to unbelievable spiritual heights. Though obviously he concealed most of this, due to his background, scholarship and behavior, glimpses of it were revealed.

Thus, despite his piety (he fasted two days Yom Kippur and often even fasted on Shabbos) and humility, he attracted the greatest scholars as his disciples. His contemporaries said of him that had he lived at the time the Talmud was written he would have been a Talmudic sage, and had he lived at the times of the prophets he would have been a prophet. He was reputed to have had contact with *Eliyahu Hanavi* on many occasions. He attained the title *Hechasid*, the pious. The story is told that when on his deathbed he instructed those near him to look at the floor at the foot of his bed. They told him that inscribed in the dust was the word *Chasid*.

He wrote works on all areas of Tanach and Talmudic commentary, Halacha and Kabalah. However, he is probably best known for his works on *Mussar*, ethics. These were originally published separately, but were later collected from other works and published with the title *Sefer Chasidim*. The Sefer includes ethical teachings and warnings, based on both the Talmud and Kabalah. He also wrote a *Tzava'ah*, ethical will. This is often considered a short summary of, or a selection from a larger work of his, often quoted as the *Sefer Hakavod*. Unfortunately, this Sefer seems to have been lost to later generations. The *Tzava'ah* includes many practices that are considered "dangers" similar to some mentioned by the Talmud. [A Talmudic example would be eating fish with meat.] [For a discussion on the items that raise concern about superstition, or that contradict Talmudic rulings, see *Halochoscope VIII:38*.] [See e.g., *Shav Yaakov Even Haezer 22*, *Noda Biyehuda E.H. II:79*, *Divrei Chaim E.H. 8*, *Mekor Chesed*, introduction.]

(B) Haircuts on Rosh Chodesh

One of the restrictions mentioned in the *Tzava'ah* forbids haircutting, beard-trimming or nail-cutting on Rosh Chodesh. This is an ethical ruling, but is cited

by some Poskim. However, all Poskim debate the permissibility of haircutting and shaving on Rosh Chodesh during the *Sefirah* mourning period. It hinges on how to calculate the days of mourning. No mention is made of any other restrictions. Evidently, the basic Halachic ruling does not follow the ethical directive. There is a debate on whether this also applies when Rosh Chodesh falls on Erev Shabbos. Does the ethical ruling override the quasi-Scriptural precepts of *Kavod Shabbos*. Many assume that it does apply, because the main time that a haircut should normally be taken is in preparation for Shabbos, so this is exactly what the *Tzava'ah* was talking about. Other disagree, maintaining that it could not possibly override it. Perhaps the debate is based on the reasoning for the restriction. Those citing the view that it applies on Erev Shabbos mention the "danger". This is the single direct reference to a reason. Some Poskim distinguish between haircutting, which they forbid, and nail-cutting which they permit. In explanation, some cite the debate on whether nail-cutting is permitted on *Chol Hamoed*. Haircutting is forbidden on *Chol Hamoed*, mostly as a penalty for not cutting it before *Yomtov* began. Presumably, those Poskim maintain that Rosh Chodesh should be treated similarly. One should really accord Rosh Chodesh respect by taking the haircut beforehand.

If one follows this practice consciously and knowing that it is not Halachically required but an ethical ruling, he has adopted a *Neder*, binding vow. He would need to have it annulled before violating it. However, if he thought it was a Halachic requirement he is not bound to continue following it. It is not Halachically binding, though it might have become widespread, as is evidenced from the discussion on Rosh Chodesh during *Sefirah*. It is also not binding as a vow, because he did not adopt it knowing that he was choosing to follow it willingly. He need not annul it at all, and may keep his appointment. [See *Tzava'ah*, 48, *Mekor Chesed 65*. *Shulchan Aruch Orach Chaim 260:M.A. 1*, *Ba'er Hetev*, etc. 493:3, 532:1, commentaries.]

(C) Unilaterally cancelling an agreement

Suppose the person decides that at least this time he wishes to follow the *Tzava'ah*. He has already made the appointment. May he consider it as though he mistakenly made an appointment on a day that it is actually forbidden to take a haircut? May he then cancel it? Or should keeping his appointment override any praiseworthy practices, since his own piety could be at the expense of his barber?

The laws of breaking agreements usually govern written agreements, or those made between an employer and his worker. Others govern agreements between a buyer and vendor and the like. One could consider the barber an employee, though the work is done on his premises. He would be, basically, similar to a

contractor, paid for a job. Making an appointment could be considered an oral agreement to hire the person for the service.

In this case, the Talmud says that if one party makes changes in an agreement, he is at a disadvantage in litigation. However, if work had not yet begun, in the case of a contractor, no penalty is assessed. The losing party can complain, but not claim damages. If the contractor came to the place of work, then discovered that there was no work for him, the employer must reimburse his loss. However, the reimbursement is not for the full potential payment for the job. He need only pay what the contractor would have accepted for paid vacation. This only applies if the contractor can no longer find another customer for his services in that time slot. The Poskim say this also applies if the contractor did not come, but that the deal was cancelled when it was too late to find other work. [If the employer reneges in the middle of the job, he must pay in full for the work done thus far.]

The problem is that the basis for these damages is the laws of *Garmi*, directly causing a loss but not actively doing it. However, the law is that if one closes the store of his fellow, or otherwise causes him monetary loss, he is not liable. One reconciliation is that in this case the damage is done to the person by the other person. In the case of a store, the damage is done to property.

In any event, it would appear that the appointment may only be cancelled in time for the barber to fill that slot with someone else. A reasonable cushion of time can be negotiated. If this was not done, the customer should be penalized, but not the full cost of the service. The person cancelling need not have a good excuse. Since he is not taking the service, he may pay the lower amount. Nonetheless, it is unfair to cancel for no good reason. In our case, the customer feels that the practice to refrain on Rosh Chodesh might justify it. [See Baba Metzia 86a-b, Poskim. Tur, Sh. Ar. Choshen Mishpat 333:1-2, commentaries.]

However, in our case, the issue is whether to place personal piety ethics before the ethics of interpersonal dealings. By backing out of the agreement, he will cause the barber a small loss. There will also be "complaints". Though he is within his rights to back out, he need not feel bound by the ethical ideal to refrain from the haircut. It would seem more laudable to honor his appointment than to refrain from the haircut.

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