

# HALOCHOSCOPE

## This week's question:

On *Erev Yom Kippur* it is customary to beg forgiveness from fellow Jews who might have been offended during the preceding year. If a child has become *bar-mitzvah* during the year, does he need to appease and ask forgiveness from those whom he slighted?

## The issues:

- A) Asking for *mechilah*, forgiveness, on *Erev Yom Kippur*
- B) Liability for a minor's actions, and after he reaches majority
- C) The relationship between *mechilah* and liability

### A) *Mechilah* on *Erev Yom Kippur*

While *Yom Kippur* can atone for sins committed by man against Hashem, it has no power to atone for sins committed by man against his fellow. If one begs forgiveness and appeases his fellow, *Yom Kippur* will atone for the elements of the sin that were against Hashem. Every sin between man and his fellow includes a sin against Hashem – at least a violation of the *mitzvah* to love one's fellow as he does himself. Many maintain that the entire atonement of *Yom Kippur* depends on gaining forgiveness from one's fellows. Without it, even sins between man and Hashem are not atoned. Accordingly, before *Yom Kippur*, one must ask forgiveness from anyone whom he has offended in the past. When asked, the person slighted must forgive. Being forgiving is considered a central trait of a Jew. One who withholds forgiveness unfairly is responsible for any results of it.

The correct procedure is to try to gain forgiveness as soon as possible after the offense was committed. It may not be delayed past *Erev Yom Kippur*. Ideally, one should go in person. If this proves too difficult, or it might not succeed, most poskim agree that the offender may use an intermediary. If the offended party refuses to forgive, the offending party takes along three 'witnesses' and tries again. He repeats this three times. If the offended party still refuses to forgive, the offender assembles a *minyán*, quorum of ten men. He declares in their presence that he tried three times to beg forgiveness and was turned down, and that there is nothing more that he can do. Henceforth, he is absolved of any responsibility, and it is the responsibility of the offended party. If the offender wishes to, he may continue asking for forgiveness. If the offended party was an elder, a teacher, or a parent, the offender is obliged to ask as many times as it takes until he is forgiven.

If the offended party knows that the offender will not come to appease him, he should go and make himself available to the offender. If he feels he will actually be harmed by forgiving the sinner, whether financially or otherwise, he may withhold forgiveness. If the sin includes an outstanding debt, he may withhold forgiveness until it is paid up. Certain types of sin do not deserve to be forgiven, such as slander. The consequences of slander would be that others will have already accepted the slander as fact. They will not necessarily hear about the retraction and the appeasement. Since the dam-

age is not undone by forgiving alone, one is not obliged to grant it until all the harm is undone. Nonetheless, it is the way of the pious to forgive even under these circumstances. If the offended party is aware that the offender will not repent, but will continue to perpetrate the type of acts for which he begs forgiveness, it is improper to forgive him.

When asking for forgiveness, one should mention the sin. However, if this will embarrass the offended party, the offender should not mention it. Some maintain that one cannot ask for forgiveness for something done without the knowledge of the party that was violated. Therefore, it would be necessary to acquaint him with the circumstances of the sin. Others, however, maintain that this would cause him unnecessary pain. Therefore, it is preferable to withhold this information.

It is customary for everyone to pronounce on *Erev Yom Kippur* evening, before beginning the services, that he forgives anyone who caused him distress. [See Yuma 85b 87a-b, Bava Kama 92a, Poskim, Tur Sh Ar OC 606:1-2, [Mateh Efraim, Kaf Hachaim], CM 422:1, commentaries.]

### **B) Liability for actions of a minor**

A minor is considered, by definition, not to have *da'as*, the type of intelligence needed to be obligated in *mitzvos*. This changes when he reaches the age of majority. This is a physical maturity level, but the mind is presumed to mature at the same time. This all applies to Torah law. Thus, minors could not be included, generally, in Scriptural obligations. They obviously have minds and a lower level of understanding. Furthermore, they are developing all the time, and are moving towards maturity. Therefore, there is a Rabbinical *mitzvah* of *chinuch*, training in *mitzvah* observance. The poskim debate whether this obligation is imposed by the Rabbis on the minor himself, or on his father. In addition, certain *mitzvos* apply to parents interacting with children, such as *hakhel*, where they must bring very young children (though this might even apply to children who are below any level of understanding) and *hagadah* on *Pesach* night. Teaching one's children Torah also applies as soon as the child can be taught, at the varying levels of study.

Assuming that sinning in interpersonal matters falls into a category of *mitzvah*, the child could not be considered having sinned Scripturally. For example, a violation of the positive *mitzvah*, *ve'ahavta lera'acha kamocho*, to love one's fellow, could only be incumbent on adults. By offending one's fellow he violates this *mitzvah*. To be atoned for this, he must include appeasement of the offended party. A minor was never in violation. Therefore, he does not require atonement, and need not beg forgiveness.

However, it is possible that when one begs forgiveness, he has in mind both the initial offense, and the subsequent lingering hard feelings. This could all be part of the violation of *ve'ahavta lera'acha kamocho*. Causing long term distress is just as much a violation as an immediate pain. In that case, when the minor reaches majority and the offended party still feels the pain, his neglecting to beg forgiveness turns into a passive prolonging of the pain. Perhaps this new adult is now liable for this, and is obliged to ask forgiveness. The long term distress could be traced back to the offense, in which case, the minor could not be held liable. At the time of the offense, he was not punishable.

Thus, our question hinges on how to view the obligation to appease and the nature of the forgiveness. Is it for the initial distress or offense, and along with it all consequences? Or is it for prolonging the current distress, albeit resulting from an original act? Or is it

for both, meaning that the new adult would still need to appease anyhow?

A parallel is drawn to monetary obligations or transactions. A minor is not in position to arrange monetary transactions. The concern is that he does not fully understand money, and will make decisions that are considered unsound by any mature adult. At various levels of development he is considered mentally ready for different types of transaction, or of trustworthiness in money matters. The ages for these various levels are not always the same as for majority in *mitzvah* obligation. According to most poskim, a minor is also not liable for money obligations. These can be divided into various types. If a minor steals, he cannot be compelled to pay back. If he borrows, he cannot be compelled to pay. If he damages, he cannot be compelled to compensate. If he loses something he was entrusted with, he cannot be blamed. The person who entrusted him takes blame or absorbs his loss. When the child reaches adulthood, the poskim discuss whether he would have to pay for a loss he caused as a minor.

Though it might seem obvious that if the item he stole is intact, he must return it, what about compensating for loss? In most situations, there is consensus that the new adult is exempt. It seems that his liability is dependent on his level of *da'as* at the time of the offense. Some say that if the minor benefited, he cannot be exempted totally. He might be liable *bedinei shamayim*, in Heavenly judgment. This means that while he cannot be compelled in court, he must at the very least beg forgiveness. The offense is indeed counted as one, and he should make amends.

If a minor stole an item, grew up, and has the item intact in his possession, he must return it. There are two separate *mitzvos* involved here. There is a negative *mitzvah* forbidding stealing. The minor could not have violated this at the time of the offense. There is a positive *mitzvah* to return the stolen item, if it is intact. The minor could be obligated in this. Two caveats apply: first, it is the opinion of some prominent poskim that as long as a thief keeps a stolen item, and does not return it, he continuously violates the stealing *mitzvah*. In that case, could it be that although the minor did nothing Scripturally liable when he took it, by keeping he does violate the *mitzvah*, now as an adult? Second, there are many indications that the *mitzvah* to return a stolen item can only apply if the thief was liable for the first *mitzvah*, stealing it in the first place. If, as a minor, he could not be considered a thief, he could also not be liable to return it. He must return it, but not as a *mitzvah*. He is holding an item belonging to another person. That person never truly lost ownership, since it was not lost, but stolen. The owner has a right to get it back.

Furthermore, this could depend on whether the minor is considered a developing obligant who has not quite reached his full potential, or he is viewed as a non-obligant until he reaches majority. This issue is pondered by some poskim in explaining how a minor could be obligated in *chinuch*, rather than his father. Some propose the idea that a minor is really liable, with an exemption. Some maintain that a minor is liable for anything that a non-Jew is liable for. Non-Jews are liable for damages. Though the minor cannot be compelled to pay, when he grows up, he can be compelled. According to these views, while as a minor he could not be considered liable, the action could be attributed to him. When he reaches majority, his actions could cause him liability.

In practice, the consensus is that one need not pay for actions he did as a minor. It is, however, recommended that he pay something, though not the full amount. This implies

that he does have a lingering issue to settle. He should, ideally, also appease the victim. [See Bava Kama 39a etc. 43b 69b 87a etc. 98b, Poskim. Tur (BY BCh) Sh Ar OC 343:1, YD 240:1, CM 96:1-3 235:15 (290) 349:3 406:5 418:7 424:8, commentaries. Pischei Choshen, Genaivah 4:21, Nezikin 10:49.]

### C) *Mechilah and liability*

The question is whether these liabilities, or lack thereof, may be compared to the non-monetary side of the issue, asking *mechilah*. The terminology used by the Talmud implies that the appeasement is a separate issue. It is additional to the repayment. This implies that if one was never obliged to repay, he would not be obliged to appease either. On the other hand, the separation of the two obligations indicates that there is a separate pain. This could be considered ongoing, as mentioned above. In that case, one causes this all the time he hesitates to appease. The new adult should then be held liable to appease. Furthermore, the poskim discuss a non-personal sin committed by a minor. He should do something towards an atonement when he grows up. Though this is not obligatory, the implication is that there is some trace of liability. If this is the case, on *Erev Yom Kippur*, when one wants to 'come clean' in all senses, it would be appropriate to seek forgiveness. If the goal is atonement for the original sin, that the minor does not require atonement for because he was never liable, seeking forgiveness should not apply. Since the poskim recommend some form of *teshuva*, repentance for sins as a child, one would want this kind of atonement for inter-personal sins as well.

However, the basis for the nominal repentance after growing up, according to some commentaries, is a monetary case. Accordingly, some poskim maintain that this cannot be extended to non-monetary cases. Even children can come to Heavenly harm, simply because they are in possession of money that belongs to someone else. By the same token, if they deprived someone of his money or of the use of his possessions, they need to ensure that they are not held liable in Heaven. This liability would materialize when they reach majority. Thus, the reason they need to pay is for their own good, but not to appease the offended party. It might not be an issue of sin at all, but of holding money that is not theirs. [See Rema OC 343:1, commentaries, Pischei Teshuva CM 349:2.]

**On the Parsha ... Assemble .. and the children ... to learn ... [29:17-20.] children -- to reward [their parents] who bring them. [Rashi] Why is this reason given, if the children are obviously old enough to learn something from Hakhel? [See Gur Aryeh] This mitzvah comes at a time that everyone feels total dependence on Hashem for all material needs, due to both Sukos and Shvi'is. Parents also need to realize that they do not own their children, but are guardians of Hashem's children. They could leave them home, saying "Oh, they are too young to understand this!" The Torah says: "Bring them. They do indeed have *da'as*, even a measure of liability, and they will indeed learn from this, albeit on a simple level." Rebuke is understood by everyone.**

♠ In honor and in memory of my mother, Yitele bas R. Shimon a"l, Henriette Silver. ♠

In memory of Reuvain Shmuel Mordechal ben Chaim Yitzchok z"l, Reuben Silver,

whose *yahrzeit* is on the 5<sup>th</sup> of Tishrei.

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