

HALOCHOSCOPE



mony from witnesses. In monetary matters the defendant's admission is as good as witnesses. An admission may not be acted on if it also causes others a loss. An interesting case is a man and woman admitting that they had *kidushin*, the first step of marriage. This affects other people's relationships with them, and is considered *chav laacharinei*.

The Talmud discusses *tofais lebaal chov*. A creditor might seize money or goods from the debtor. Someone else could step in and seize on his behalf. However, if there are other creditors, who would like to seize the same goods themselves, the matter is debated. In one view, it is *chav laacharinei*. None of the other creditors were obliged to wait for one another, and each could have taken it for themselves. This person seizing it has no personal claim on it. If the seizer is also a creditor in his own right, all would agree that he may take it on behalf of another creditor.

In our case, the person might be able to give up his rights for a friend. This would depend on whether he has a real *chazakah* of his own. Does he own the rights to his spot, or does the *shul* designate him his *kibud*? Furthermore, it is not comparable to a creditor. The creditor is entitled to it himself, and his friend acts on his behalf. In our case, the recipient of this seat was not entitled to it previously, by the accepted conventions of waiting on line. Even if he had a spot further down the line, he did not have this spot that he is given. The *gaboim* of the *shul* do not necessarily have the arbitrary right to agree to this move either. Since they control a resource that is not their own, they do not have discretion to agree to this move. The claim that those behind the giver on line do not lose out is unfair. In reality, they may claim that had this person pulled out, they would be next, rather than the person receiving it. This same argument applies if he is absent.

With regard to a scholar or an older person, everyone in the community is equally obliged to honor him. Furthermore, the community might abide by the first come first serve ideal, or the convention of the list, provides for allowing distinguished people ahead on line. They would actually be obliged themselves. Thus, they would certainly agree to this person giving up his place totally. With regard to a parent or teacher, the person himself should certainly surrender his *kibud* in their favor. However, we have shown that it is not his right to give it away at the expense of the others on line. He might feel awkward taking the *kibud* in the presence of his elders, but to give it away he would need permission from the other congregants. If they do not agree, he may keep his *kibud*. It would not be slighting his elders, since they would not have a claim to it anyhow. [See Kidushin 65b Baba Metzia 8a 10a, Poksim.]

In conclusion, one may not give away his *kibud* to a parent or teacher over the objections of the other members of the *shul*.

On the parsha ... Hashem will make you a head and not a tail. You will only be at the top, and you will not be on the bottom. [28:13] This seems to be repetitious [see Ramban]. Perhaps Hashem is addressing the feeling of being privileged to receive Hashem's blessings. We will always be at the head of the line. There will never be a feeling of having others ahead on line, and having to wait, maybe forever!

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This week's question:

May one allow a friend, teacher or parent to take his spot in a line or a waiting list? Specifically, if a *shul* has an order of seniority or priority for *kibudim*, honors, over the *Yamim Noraim*, may someone give up his spot to someone else? Does it make any difference if the person giving up his spot will then not be present himself anyhow? Could the other people on the list ask to be moved up in his place?

The issues:

A) *Kedimah*, order of priority, in Judaism

B) *Chav la'acherim*, doing a friend a favor when it is detrimental to others' rights

A) *Priority in Torah and the Talmud* [excerpted from Halochoscope V:47]

The concept of standing in line is based on "first come first served". The sooner one arrives at the scene, the sooner he will be processed. This does not exist in its pure form in Judaism, but there are some similarities to it. This assumes that all those coming will eventually be served. It does not address the concept of only one person getting the privilege. This idea, also known as the early bird getting the worm, exists somewhat in Judaism. It is called *kol hakodem zacha*, the first one to get there gets it. Usually, it refers to taking possession of something from a neutral party, such as buying the last loaf of bread or claiming something that has been abandoned. To use it to arrange an order of priority is stretching the original intent.

The Talmud describes the process of selection for the services in the *Bais Hamikdash*. The first service of the day was *terumas hadeshen*, removal of ash from the *mizbach* each morning. Those who wished to do it needed to rise early. However, there was no guarantee that the earliest person got to do it. Indeed, initially there was a race, with shoving on the ramp. After a terrible accident, a system of lottery was devised. It seems that the concept of first come was not considered. One could argue that first come would not have worked anyhow if more than one person claimed to be first.

Sheep are counted for tithing by passing through a turnstile one by one. This is the explanation given by the Talmud on how Hashem checks us on *Rosh Hashanah* – one at a time. Most commentaries do not say that the sheep stand in line before the gate, though one minority view says this. Thus, the actual line has no direct precedent. Nonetheless, it might fit guidelines that do exist. The rules of priority in Judaism may be divided in four groups or types: merit or distinct obligations; lottery; *derech erez*, courtesy and ethical behavior; and prevention of strife.

Merit arises in various contexts. Some are competitive situations, wherein only one person can win the right. In other situations many will participate, but there is an order of priority. For example, at a meal, the *kohain* washes hands before the rest. They then all

get to wash. The *kohain* then recites *hamotzie* and shares out the bread. He is the only one privileged to do it. In *shul*, a *kohain* is called to the Torah first. Others are then called, but some will be left out totally. This is a combination scenario.

The merit of a *kohain* is not based on personal accomplishment or prestige. Rather, the others present have an obligation to put him first in matters of sanctity. This is a *mitzvah*, *vekidashto*, sanctify him. Lineage is also a factor in other cases of priority. The Talmud lists ten levels of lineage. Some say that they are sub-categories of *vekidashto*, to a lesser extent. For *aliyos*, prominence in the community is a factor, such as strong supporters, whether by personal effort or by generosity, the leadership and their family members. Supporters earn the respect of their peers. Their families are honored to show honor to them. Thus, it is not a right of those honored, but a duty on those showing the honor.

In some instances, the correct order is overridden. For example, a *mamzer*, illegitimately born, is considered quite low down in order of honor and respect. However, a Torah scholar is considered higher than any other. Thus if a *mamzer* is also a Torah scholar, he comes before the *kohain gadol*, high priest, if he is an ignoramus. Accordingly, in the ideal, a Torah scholar should be given an *aliya* before a regular *kohain*. The Talmud says that we follow the original hierarchy anyhow. If Torah scholars were put before *kohanim*, especially if the scholars were *mamzerim*, there could be strife. This is a case where *darkei shalom*, avoiding strife, is used to determine priority.

Another system for precedence is applied to distribution of *tzedakah* funds. One's first responsibility is to his family members. Within the family there is an order of closeness. Once family has been taken care of, the order is applied to neighbors, community members, townspeople and the poor of Jerusalem and Israel. Within these levels, there are rules as well. For example, the aforementioned Torah scholars could be the personal teachers of the donor, or a higher caliber scholar. In fact, a personal teacher can come before a father. An orphan, convert, widow, or stranger is given priority, based in part on the additional *mitzvos* to care for his or her needs. In most situations, a man is placed ahead of a woman or child. However, in many cases, a child or a woman is placed first, based on their vulnerability. A starving person comes before a hungry or poor person. One asking for food comes before one asking for clothing. Similar rules apply when returning the lost articles of more than one loser and to redeeming captives.

These rules of precedence apparently override the courtesy of a line. This applies to both the person on line, who would need to step aside for one of the aforementioned special cases, and the person managing it, who has personal obligations. The poskim debate whether he has the right to discriminate against the others on line due to his personal obligations. Thus, assuming that he is distributing *tzedakah* that is not his own money, may he show preferential treatment to his parents due to his own *mitzvos*? Most poskim maintain that while it may be permissible to show personal preference with personal decisions, he may not do so with communal resources. The donors rely on the rules that apply to everyone equally, rather than those of a person in charge.

The Mishna says that when people come to ask a *rav* a *shayla*, he should answer *al rishon rishon*. Some say this could be interpreted to mean in order of the line. The simple meaning is that he answers the questions in the order they are asked, even by one ques-

tioner. The response should be to the one who is *shoel keinyan*, whose question is relevant to the subject at hand. Thus, if one questioner changes the subject, the *rav* can ignore him to address the questioner who remains on topic. Within thirty days of a holiday, any question on the laws of that holiday are *keinyan*. The implication is that the *rav* asks everyone for their questions, and decides which to answer first, regardless of the arrival times of the questioners. If one person lower on the hierarchy is present, and one knows that another person higher on the hierarchy will be coming later, they should wait. For example, if a poor unrelated man comes for alms, and a relative is on the way, the donor should wait for his relative. Thus, even first come first serve can be usurped by the merit of a specific order of priority.

Lottery does not depend on seniority, spiritual stature, privilege, prestige or merit. All qualified people are included. The concept is to 'leave the outcome to Hashem' and divine intervention. There could be a draw or a number guessing system. The Torah calls for drawing lots on the goats on *Yom Kippur*, division of *Eretz Yisroel* and selecting the seventy elders. In Tanach an example would be the story of Yonah and *Purim*. Many situations where lots are mandated by *halacha* are versions of the *darkei shalom* avoidance of fights. All participants agree to abide by the outcome.

Derech erez, or courtesy, includes cases where one waives his claim to go first. He allows another to precede him. At a meal, two people should wait for each other to begin together, but not when two people need to wait for a third. The *botzaia*, the one honored with sharing the bread, need not wait for anyone. However, he may invite his teacher or anyone greater than himself to take bread before him. He may override objections of anyone else at the meal. The *botzaia* is the most distinguished person or the homeowner.

It is considered *derech erez* to offer to let another pass through a doorway first. This applies especially when one is honoring the other person by obligation, such as a teacher or scholar. The poskim even cite a ruling on *pikuach nefesh* in this light. If a villain plans to kill one of two people, let the simple person volunteer to save the life of the scholar. Normally, the rule is that one is responsible for himself before others.

From the discussion, we could compare a line to *darkei shalom*. Rather than applying a lottery, the concept of courtesy for those who came first would avoid strife. The lucky person arriving first merited it as a combination of effort and divine intervention. It could also be viewed in terms of *haskamah*, a communally agreed practice. This can have the force of *halachic* law, enforced by *Bais Din*. Agreed rights could also involve *chazakah*. One who has no documentation of a claim of ownership may use his occupation to support his right. A challenger should have served notice. Standing on line can be compared to staking a claim like this. He should be able to protest anyone cutting in ahead of him. [See Brochos 47a Shabbos 148b Psachim 6b Rosh Hashanah 2a 18a Yuma 22a 23a Gitin 59a-60a Horayos 13a-b (Yerushalmi) Avos 5:7, Poskim. Sefer Chasidim 698. Tur BY Sh Ar OC 135:3-4 136 167:14-17 YD 251-252 CM 149:31 156:7, commentaries. Nishmas Avraham II:251.]

B) Chav laacherim

the Talmud discusses whether one may affect others' rights by doing something voluntarily, not for his own interests. For example, to prove guilt, *bais din* must hear testi-