

May 30, 2024

Dear Shearith Israel family,

Our Year of Hope. With Lag L'Omer behind us, many of us are back to listening to music. Enjoy my few random [links](#).

More important, the lines are open for our next Congregational song list. Send in suggestions for topics or subject matters. What will it be this year? [Poetry in motion](#)? Or songs for a [summer in the city](#)? Monumental points and other prizes await!

On this, the 37th day of the counting of the Omer, we are nearing the successful end of Rabbi Soloveichik's spring lecture series, *A History of Judaism in Five Foods*. Alas, we are not as close to a successful end of our fund-raising needs for this part of the year. Here is a [link](#). Please help. I promise not to nudge any more than for what we really and truly need to keep the place running. We need your [help](#).

Comedian-in-residence Alan Zwiebel sends in this hilarious mash-up of our need for funds, our current (and progressing) carpet project, and my solicitation for sayings and tag-lines to compete with the *Sage Sayings (Pirkei Avot)* study now going on between Pesah and Shavuot. Read it and [guffaw](#):

Carpet Diem

Contracting Out of Negligence. The worldwide Daf Yomi learning cycle is holding this week in Tractate Baba Metzia and learning pages 88-94. The pages straddle the end of Chapter 7 and the beginning of Chapter 8. The last several Mishnaot of Chapter 7 return to the subject of the different types of bailees or watchers, or *shomrim*, which is the main thrust of Chapter 8. So to me – which matters not at all – you might think of these Mishnaot as belonging to Chapter 8.

Earlier in the Tractate, on page 33b, we met the four different types of *shomrim* ([see my email of April 4, 2024](#)):

*First, the shomer chinam, or the unpaid custodian;
Second, the shomer sachar, or the paid custodian;
Third, the sochair, or a renter; and
Fourth, the sho'ale, or a borrower.*

As the Talmud explores and expands on issues concerning these different relationships, it is predictable that we will meet discussions of the circumstances under which different types of *shomrim* are liable for different types of events. How much a *shomer* is paid will influence whether the *shomer* is an expert in watching, which in turn will influence whether the *shomer* is liable in cases of unanticipated events, which in turn leads to a discussion of liability *vel non* (ooh, a cool law school term – ask a law student if you don't know what it means) in cases beyond the control of the *shomer*.

On page 93b of the Tractate, the Mishna interestingly asks whether a *shomer* can contract out of any of his or her obligations. Says the Mishna:

מתני' מתנה שומר חנם להיות פטור משבועה, והשואל להיות פטור מלשלם, נושא שכר והשוכר להיות פטורין משבועה ומלשלם. כל המתנה על מה שכתוב בתורה – תנאו בטל,

MISHNA: The halakha is that in any case involving monetary matters the parties may agree to special terms. Therefore, an unpaid bailee may stipulate with the owner that he will be exempt from taking an oath if the item is lost, and similarly, a borrower may stipulate that he will be exempt from having to pay, and a paid bailee or a renter can stipulate that he will be exempt from taking an oath and from having to pay, as one can relinquish his monetary rights. With regard to matters that do not involve monetary claims, anyone who stipulates counter to that which is written in the Torah, his stipulation is void.

This discussion is fascinating for us today, lawyers or non. The reason is two-fold:

First, contracting out of negligence, or exculpating oneself for negligent behavior that leads to damage to the watched object, is a topic of great importance under the common law. Its evolution is also interesting – today, in most states, one can contract out of negligence, though for the longest time one could not under the common law; in very few cases, one can even contract out of *gross* negligence; and in virtually no cases can one contract out of willful misconduct.

Second, this issue is familiar to those of us who have been marching through the Daf Yomi learning cycle (or who have been reading these emails). Are there limits to two parties contracting between themselves, or, stated differently, can the state at some point step in and not allow parties to create their own private law? The issue of human freedom (why post-modernity prefers the phrase ‘human agency’ is a mystery to me) is a fundamental underpinning of societal organization. To me, it has resonance in the schisms fracturing American and world politics today (too bad we don’t discuss politics, eh?)

Who remembers some recent Talmudic discussions involving these issues? THREE big fat points for even a single example discussed right in these emails over the past several years!

Books. Speaking of human agency, I just finished *Smoke and Ashes*, by Amitav Ghosh. The best parts of the book describe the history of India’s involvement in the opium trade during the past several centuries. The worst parts of the book are when the author, who writes lucidly and in fact beautifully when not [polemicizing](#), tries to draw analogies between opium in China and opiate misuse in America. What is missing is a clear analysis of the role of human agency in the two very different phenomena. Still, while not a must-read, it is certainly a good-enough-read.

Has anyone else read it?

Probity in Practice. Howard Schranz feels that “[only a fool](#) feels bound to tell the ‘truth.’” And, as a final note on this fascinating discussion over the past few weeks, thank you to Jan Rothschild, who

agrees that the story of Abraham and Sarah shows the Almighty as charitable truth-bender. Thanks as well to Albert Rosenblatt, who sums it up nicely:

If one's wife asks 'how do i look?' and you are on the way to the opera -- the only answer is 'great'.

I have not been faced with that particular moral dilemma. Fortunately for me, that is a truthful statement all the time.

Sage Sayings. We still don't quite have consensus on the new translation of the title of *Pirke Avot*. Bentsi Cohen prefers *Teaching of Principles* and has oh, 30 or 40 reasons why my favorite, *Sage Sayings*, is flat wrong. I love Bentsi but don't love *Teaching of Principles*.

Aura Bijou's suggested title is great: [Father Knows Best](#). Aura, I wouldn't worry about copyright; we had it first.

Chapter 4 Pirkei Avot (studied last Shabbat) includes unsurpassed wisdom such as:

הוא ה'ה אומר, אל תהי בז לכל אדם, ואל תהי מפליג לכל דבר, שאין לך אדם שאין לו שעה ואין לך דבר שאין לו מקום:

[Ben Azzai] used to say: do not despise any man, and do not discriminate against anything, for there is no man that has not his hour, and there is no thing that has not its place.

Unsurpassed is not the same as unmatched. We have been collecting newer sayings, tag-lines, adages. They have been terrific. Try these, too:

Laura Fleischmann from Teaneck offers the following from Fred Rogers:

There are three ways to ultimate success. The first way is to be kind. The second way is to be kind. The third way is to be kind.

Faith Fogelman offers this one, attributed to so many people over time that I'm sure it's true:

- *A wise man is not he who never makes a mistake, but he who never makes the same mistake twice.*

Faith offers another one, attributed to Benjamin Disraeli:

- *As a rule man is a fool.
When it's hot he wants it cool.
When it's cool he wants it hot.
Always wanting what is not.*

It reminds me a little of the recent comment by Nobel Laureate Venki Ramakrishnan, who, in *Why We Die*, quips that, when some of the wealthiest people in the world are now questing for immortality, his

reaction is that, when these people were young they wanted to be rich, and now that they are rich they want to be young.

Theatre Review. Expanding our already substantial offerings, our nextgen editor, SM Rosenberg, sends in the following brief review of [October 7: A Verbatim Play](#), which is playing off-Broadway until June 16. I've been interested in whether this is worth seeing. Says SMR:

Depending on the quality of the acting and production, I figured it could be a disaster or an excellent and unique way to convey the story, and I'm glad to say it was the latter.

[It is a] really impactful and well-done play, written and produced by a husband-wife team of non-Jewish Irish journalists, who interviewed survivors in the immediate aftermath of Oct 7, and wrote this play using the survivors' own words to convey their experiences. This is their statement from my playbill:

Author/Producer's Statement

We were in Ireland when the Oct. 7 attacks happened and we noticed that on October 8th conversations around the world were already shifting to Israel being the bad guys. They were being condemned for turning off the electricity supply in Gaza. Those were the headlines in our media after the single worst atrocity against Jews since the Holocaust. It was like being in an episode of the twilight-zone.

We saw what was happening in Ireland and the wider world. Because of media and influencer deflection good people were forgetting about what had happened in Israel that day.

That's why we went directly there and interviewed people from all over the country whose lives were forever changed by the Oct. 7 attacks. Everyone we spoke to witnessed death and destruction or lost a loved one, often right in front of them. Many of them fought back, often in heroic ways against overwhelming odds. OCTOBER 7 is a story of humanity, surviving, and fighting back against the forces of darkness. As journalists we knew these stories had to be told. The people we interviewed and whose compelling words you will hear in this play all suffered enormous losses, all witnessed the very worst and sometimes the best of humanity. We are so proud and privileged to have met them, and honored that they trusted us with their testimony. Aliances, and the world should never forget these stories. October 7 changed these people; we think it also changed Israel and we think you can't talk about Gaza without first understanding what happened in Israel on October 7. That's why we wrote this play.

-Phelim McAleer & Ann McElhinney

Great Signs And Wonders. We've been asking for other signs and store-front billboards. Jerry Raymond brilliantly accommodated with the first of these, and then he threw in the second from Katz's Deli:



New York, and I assume other cities, are full of great [signs and wonders](#) (with apologies throughout for the inane ads in the links). Keep the great ones coming, team.

Thank you all. Bless us all. Shabbat shalom. *B'yachad* (united together). יהיה טוב *Yihyeh tov* (things will be good).

Louis Solomon, Parnas