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YOU CAN SAY THAT AGAIN, PART II: PLAGIARISM IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article introduced some basic Torah perspectives on plagiarism; here, we cite additional discussions of plagiarism and consider some questions about the necessity of citation in particular scenarios.

The Gemara says:

And R' Elazar said in the name of R' Chanina: Whoever says something in the name of the one who said it brings redemption to the world, as it is said: And Esther said to the king in the name of Mordechai.¹

The Midrash Tanchuma says:

R' Chizkiah and R' Yirmiyah bar Aba said in the name of R' Yochanan: Anyone who does not say something in the name of the one who said it, of him the text says (Mishlei 22:22): Do not rob the destitute, because he is destitute...²

R' Yeshayah Horowitz (author of *Shnei Luchos Habris*, the *Shelah*) and R' Avraham Gombiner (author of *Magein Avraham*) cite the Gemara as declaring that anyone who does not say something in the

name of the one who said it violates a (*deRabanan*) prohibition, per the above *pasuk* in *Mishlei*,³ although such an assertion is not found in our text of the Gemara.⁴ The *Shelah* declares that such theft of Torah is even worse than the theft of money, "for he takes a life,⁵ i.e., the soul, for the souls of Yisrael and the Torah are one."⁶

CITING INTERMEDIARY SOURCES

R' Chaim Sofer (author of *Shu"t Machanei Chaim*) raises the question of whether one who learns of the existence of a primary source via a secondary source is obligated, when mentioning the primary source, to cite the work through which he discovered it. He inclines toward the view that one is indeed so obligated, and he concludes:

And this is why we find in the Gemara and in the Midrashim that they cite many *Tana'im* and *Amora'im* that this one heard from that

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³ *Shnei Luchos Habris*, *Sho'ar Ha'osios* as kuf s.v. *Bapeh uvakaneh*, *Magein Avraham siman 156 s.k. 2*.

⁴ See *Shu"t Noda Bihudah mahadura tinyana O.C. siman 20*; R' Tovia Preschel, *Ha'omer Davar Besheim Omro*.

⁵ *Dvarim 26:4*.

⁶ *Shnei Luchos Habris*, *Maseches Shvuos* (end of 32a), s.v. R' Meir omer. Cf. *Tahraras Hamayim mo'areches hagimmel os 15* (cited in *Sdei Chemed Vol. 1 mo'areches ha'aleph Kilaim Pe'as Haasah os 13*).

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PARSHAS BO

A MITZVAH IN HAND

Excerpted and adapted from a shiur
by HaRav Chaim Weg

You shall safeguard the matzos, for on this very
day I will have taken your legions out of the land
of Mitzrayim...

Shmos 12:17

Rashi, quoting Chazal, interprets "*ushmartem es hamatzos*" homiletically as "*ushmartem es hamitzvos*." Just as dough kneaded into matzah must be safeguarded to prevent it from rising, a mitzvah opportunity must be safeguarded and not allowed to pass. One may not even bypass a mitzvah for another mitzvah (*ein ma'avirin al hamitzvos*): The *Biur Halacha* says that one who inadvertently removes his tfillin from the bag before his tallis should don the tfillin first, despite the embarrassment involved if others are watching. The *Chayei Adam* (1:68), who maintains that this rule is *mide'Oreisa*, says there are three exceptions:

- One may bypass a mitzvah in order to watch another mitzvah performed *berov am* (with a large group of people).
- One may temporarily bypass a mitzvah in order to fulfill it in its preferred manner (mitzvah *min hamuvchar*) a little later. For example, the *Trumas Hadeshen* allows waiting a few days until *motza'ei Shabbos* to recite kiddush *levanah*, because saying it dressed in one's Shabbos finery is a mitzvah *min hamuvchar*.
- If one can either perform a lower-level mitzvah now or a higher-level mitzvah a day or two later, he should wait.

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Social Decline

Q I gave my credit card to a tzedakah collector, but the charge was declined, so he requested cash instead. Am I obligated to give it to him?

A If you have cash, you must not send an *ani* away empty-handed, as the *pasuk* says (Tehillim 74:21), "*Al yashov dach nichlam* (Let not the oppressed turn back in shame)." This teaches that one who is approached by a pauper for a donation must give him something, even a small amount (Rama Y.D. 249:4). A verbal pledge to give tzedakah is considered a *neder* (Rambam Hil. *Matnos Ani'im* 8:1). So if you told the man the amount you would give him, you must fulfill your vow. If you only indicated an amount to him

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¹ *Megillah 15a*, and see *Avos 6:6*.
² *Tanchuma* (Buber) *Bemidbar siman 27*.

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one, and this one from that one, for one must attribute things to those who said them, even when he subsequently saw the *svara* or the *din* in the original sefer. But the matter requires clarification, because it is a novel *din* in which I know of myself that I have not been meticulous, and I request of any *ben* Torah to clarify the matter for me.⁷

R' Yehudah Gershon Pikholtz (author of Shu"t Machanei Yehudah) cites this discussion of Rav Sofer, and he comments:

Since it seems to me that no *gadol* or *tzadik* is meticulous about this—if he himself saw the *svara* or *din* in a sefer, to later mention the one who revealed to him that the *din* or *svara* is found there. And who do we have greater than the testimony (sic) of the author of the Machanei Chaim himself, who was a *gaon* and *tzadik*, a *talmid* of the true *gaon* the Chasam Sofer *zt"l*, who testifies about himself that he has not been meticulous regarding this, and certainly there will not befall a *tzadik* any iniquity,⁸ therefore I said that I will discuss this matter a little and write my opinion.⁹

After a lengthy analysis of the question, he concludes:

Even if one did not hear the matter from the one who conceived the Torah idea himself, or he did not see the idea in the sefer itself, he nevertheless has permission to directly cite the name of the one who conceived it or the name of the sefer. There is nothing prohibited about not acknowledging that a certain person revealed this matter to him, and the only concern that may possibly apply is for bringing redemption to the world.

Now one certainly should examine the matter in the sefer itself, because it is inherently deficient not to examine the source of the *din*, but once he saw it in the sefer itself, he is certainly not obligated to say that someone revealed to him this item in this sefer, and even the concern for bringing redemption to the world does not apply here.¹⁰

R' Shmuel Wosner addresses this question briefly in the course of a *teshuvah* addressed to the mohel R' Moshe Bunim Pirutinsky—author of *Sefer Habris*, a modern classic anthology on the topic of *bris milah*—who had complained to him about someone who had plagiarized his magnum opus:

Even if the issue is related only to knowledge of the positions of *Rishonim* that are not well known, and one author discovered them, it is appropriate for a second author to at least acknowledge that he acquired this knowledge via his predecessor.¹¹

(This author's father relates that Rav Pirutinsky performed the author's *bris*, on which occasion he purchased from Rav Pirutinsky a copy of his sefer.)

7 Shu"t Machanei Chaim *cheilek* 2 at the end of the E.H. *teshuvos* (p. 158).
8 Mishlei 12:21. See Chulin 59a.
9 Shu"t Machanei Yehudah *siman* 5 p. 8a.
10 Machanei Yehudah *ibid.* at the end of the *siman*, p. 11b.
11 Shu"t Sheivet Halevi *cheilek* 8 *siman* 313.

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A man is incarcerated two days before Yom Kippur and is offered a 24-hour furlough on any day of his choosing. In prison, there are certain mitzvos to which he lacks

access. Should he take the furlough immediately to do the mitzvos he is obligated to perform right now, or should he hold off and have a proper Yom Kippur in shul? The Chayei Adam, following his third exception, says to wait, but the Radbaz says that *ein*

ma'avirin al hamitzvos directs that he should fulfill the current mitzvah rather than forgo it in favor of a greater one down the road. The Mishnah Brurah rules with the Radbaz.

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ATTRIBUTION OF IDEAS DEVELOPED INDEPENDENTLY

R' Zev Wolf Turbowitz (*rav* of Krozh, Lithuania) raises a question in the introduction to his work *Shu"t Tiferes Ziv*:

A *talmid* *chacham* innovated a Torah idea independently but subsequently discovered that a great man had preceded him in a sefer. Is he obligated to say it in the name of his predecessor, or may he say it in his own name because he innovated it independently prior to seeing it in the sefer?

He analyzes the issue in detail, and he ultimately distinguishes between Torah and other disciplines:

There is a strong argument that precedence is inapplicable to Torah, because the Torah was given to everyone, and every single Jew, small and great alike, has a portion in the Torah and can bring it to light by his toil in it...But in secular contexts, where the consideration of bringing redemption to the world applies, certainly, even if the idea was known to him independently, he is obligated to relay it in the name of the one who said it...¹²

Later in his work he records that R' Eliyahu Dovid Rabinowitz-Te'omim (the *Aderess*) challenged some of his analysis regarding Torah *chidushim*, although it is unclear whether the *Aderess* actually disagreed with his conclusion. In any event, Rav Turbowitz stands by his position in his response to the *Aderess*.¹³ R' Chaim Chizkiyahu Medini (author of *Sdei Chemed*) cites these two discussions of Rav Turbowitz (whom he characterizes as "a *gaon* of our generation"), and he comments:

Today the general practice in all these sorts of situations is to preface Torah novellae that one has innovated independently with the phrase "it appears to me" or the like. And if he subsequently sees the idea in a sefer that preceded him, he goes back and writes "I subsequently found in such-and-such a work" or the equivalent. By doing so, he fulfills the requirement of repeating something in the name of the one who said it, and he will also be saved from the fire of judgment of Gehinnom [which is the punishment] of one who steals Torah novellae of others and wraps himself in a tallis that is not his, regarding which the scholars of mussar have discoursed at length; may Hashem save us from this...¹⁴

We close with the poignant and provocative perspective of R' Chaim Shmuel Birnbaum (a son-in-law of R' Akiva Eiger, who described him at just 25 years old as "an outstanding *talmid* *chacham*, a *rav* great in acuity and erudition"¹⁵):

That which you wrote to bring me joy, that you found an authority that supports me in [a point that he had made], the *rav* and *gaon*, the author of the *Sha'agas Aryeh z"l*—I say to you

12 Shu"t Tiferes Ziv O.C. *cheilek* 1, introduction p. 10.
13 *Ibid.* end of *siman* 20 p. 77.
14 Sdei Chemed *ibid.* (cited in Inyano Shel Yom *ibid.* p. 137 s.v. *Ve'ulai titachein*).
15 Igros Sofrim letter 61 p. 86, cited in the beginning of the introduction to Shu"t Rachash Leivav.

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wordlessly (as is common during davening), e.g., by holding up three fingers for \$3, or if you keyed in the amount on his credit card terminal, the early *poskim* debate whether *gemirah baleiv* (a mental resolution) creates a *tzedakah neder*, or if that power is limited to the spoken word (C.M. 212:8); the Rama (*ibid.*) rules stringently.



This applies both to an *ani* collecting for himself and to someone representing a *tzedakah* organization or a Torah institution (see Mishnah Brurah 153:81).

When one undertakes that he will give *tzedakah* to a certain *ani*, he can fulfill the pledge by giving to another one (see Ketzos Hachoshen *ibid.* 4). But in your case, where you communicated your pledge to the man directly, he is relying on you, and you are expected to keep your word. Though this is not a bona fide obligation, one who doesn't follow through is called *mechusar amanah* (lacking trustworthiness: C.M. 204:8).

If it is inconvenient to give cash, you are not considered *mechusar amanah*, because you pledged based on the mistaken premise that you were able to pay by credit card (see Rama *ibid.* 11). You must still fulfill your vow, but you may give the money to a different *ani* at a later time.

regarding this, neither from your sting nor from your honey.¹⁶ Although it is the way of authors to recite a *bracha* for enjoyment when it becomes known to them that they conceived the same idea as a *gadol*, I do not share that perspective; on the contrary, I am distressed over this as upon the loss of great spoils.¹⁷ For what shall be left for a man like me of all his Torah, of the excellent teachings¹⁸ that he caught in his net,¹⁹ if they will not be said in his name in the *bais medrash*, because others have preceded him, and the lips of strangers mouth the words in the grave.²⁰ And such things befell me²¹ innumerable times. And that which I have not robbed I shall return,²² in despair,²³ to him who first attained the result of my hard labor, and I did not know.^{24,25}

16 Based on Tanchuma Balak *siman* 6, cited in Rashi Bemidbar 22:12.
17 See Tehillim 119:162.
18 Brachos 8a.
19 See Bava Metzia 16a.
20 See Bechoros 31b.
21 Vayikra 10:19.
22 See Vayikra 5:23.
23 Ivov 11:20.
24 Bereishis 28:16.
25 Rachash Leivav end of *siman* 20 p. 67 (cited in Inyano Shel Yom *ibid.* p. 139).

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