

**YOU  
BE THE  
JUDGE**

*A Collection of Ethical Cases and Jewish Answers*

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# Prelude

The “Bet Din” process that has been captured in this book came to life as an accident in a family Torah class I was running at the University of Judaism. It was basically designed to be just a mixer—with a little learning attached. It surprised all of us as it quickly became something very powerful.

It started out with circles of families gathered around and serving as juries trying to solve difficult cases. It was fun and interesting to see them try to verbalize their values and their ethics as they struggled to apply them. It was powerful to see the way they grabbed at the pieces of Jewish learning they had at their disposal and twisted them into workable answers. The creativity and the conflict were inspiring.

A few have objected that I have polluted halakhah by letting the unlettered serve as legal decisors (and live with the fantasy that they can make decisions).

A few have objected that the exercise is folly—because religious law no longer has a place in a universe where every opinion is valid.

A few have objected that it was too Reform. Others that it was too Orthodox.

But the truth is, most of the time whether with kids, with families, with seniors—and then again among a broad-based electronic circle in first *Shabbas.Doc* and now *C.Ha*—the Sefat Emet has proved to be right:

The entire Torah, God’s teaching, was given to the Jewish people.

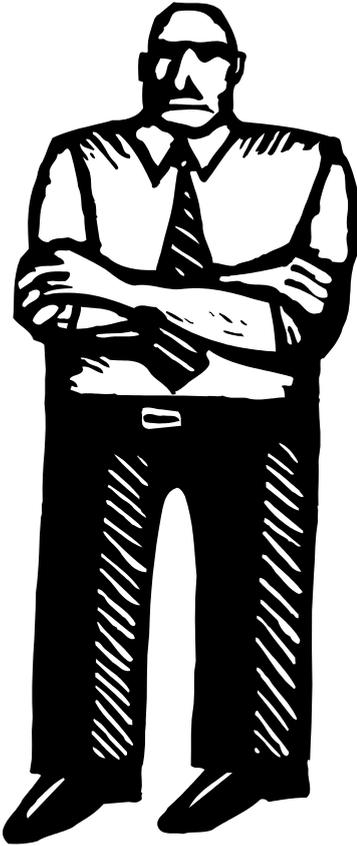
Each person, however, has a personal Torah,  
a particular life goal that is concealed in the soul.

When that particular teaching is released to the world  
the person moves toward the truth of his or her being.

**GRIS**



# [1] The Kippah That Was Too Trustworthy



**A** full-time kippah-wearing Jew went to Texas to serve as an expert witness for the defense in a criminal trial. It was not a capital case. Before he could testify, the judge asked him to remove his kippah. He objected. He and the judge went into her chambers and exchanged words. He told the judge the meaning and the purpose of the kippah—that it showed that “God is always above me.” The judge responded by telling him that the kippah gave him too much credibility. She was afraid that the jury would “over-trust” his testimony because of the fact that he was a religious man. He protested. She would not give in. If he tried to wear the kippah, he would be in contempt of court, sent to jail for several days, and would never be able to appear. The man called his rabbi to ask what he should do.

**QUESTION:** *If you were the rabbi, what would you tell the witness?*

## The Answer to “The Kippah That Was Too Trustworthy”

Most authorities agree that nowhere in the Torah are men told to cover their heads. In the Talmud there are statements that some righteous men refused to walk more than six feet without covering their heads (*Shabbat* 118b and *Kiddushin* 29b). We also find these texts:

**[a]** Rabbi Nahman ben Isaac’s mother was told by the astrologers before his birth that her son would grow up to be a thief. So she made sure that he was never bareheaded. She used to tell him, “Cover your head so that the fear of heaven will always be on you—and pray for Divine help.” He did not know the reason why she did any of this. Then one day he was sitting and studying under a palm tree when the evil urge got the best of him. He climbed up the tree and stole a cluster of dates with his teeth. *After this he understood his mother’s concerns* (*Shabbat* 156b).

**[b]** The Maharal (*Responsa Number 7*) makes it clear that a kippah is just a custom, a *minhag*. Any *minhag* that has been done by Israel for more than two hundred years is treated as if it is a rabbinic law.

**[c]** As to being a witness, the Torah says: “When a person is able to testify because s/he either saw or learned of a matter, and does not testify, s/he is subject to punishment” (Lev. 5.1).

**[d]** The *Shulhan Arukh* expands this and says: “It is a mitzvah to testify in court. In a criminal case (involving money, goods or possessions) one does not need to volunteer but must respond if summoned. In a capital case one must volunteer what one knows” (*Hoshen Mishpat* 25).

The witness’s rabbi advised him that in Jewish law a biblical mitzvah takes precedence over a rabbinic mitzvah or a custom, so he should take off the kippah and testify. That is what he did.



## [2] The Nolan Ryan Rookie Card Caper



**T**he Atlas family owned a baseball card store and was awarded a free trip to the Super Bowl because of the number of cards they sold. They left a cousin to run the store. A Nolan Ryan rookie card is worth about \$200. The cousin who was working in the card shop was a rookie, too, and knew little about card values. She misread the catalog (missing the asterisk that said “all prices times ten”) when she quoted the kid \$20. The kid was a baseball card shark. He knew a good deal when he heard one—even though he had just meant to “check out” the current value. He biked home, stole \$20 from his mother’s purse and then grabbed the card. The kid was also a regular. When the owner checked the day’s sales and saw that this kid had bought that card for that price, he called him up and demanded that the deal be undone. The kid said, “A deal is a deal.” The Atlas kid and the “shark” went to Hebrew school together. After the fight in the playground, the teacher took them to the principal,

who told the rabbi, who called in the family for a conference. The rabbi held a Bet Din, a Jewish court.

**BE THE JUDGE:** *How do you resolve this case?*

## The Answer to “The Nolan Ryan Rookie Card Caper”

In Jewish law there is a principle known as “a sale made in error.” It is based on this Talmudic story:

Once there was a famine in a town named Nehardea. All the people had to sell their homes in order to afford to buy food to stay alive. When the wheat finally arrived and the famine ended, Rabbi Nahman made a ruling. He said, “Torah teaches that the houses must be returned to their original owners.”

Rabbi Nahman’s ruling needs explanation. The lack of food made the price of food rise. People sold their homes in desperation. What the people who sold their homes (the ones Rabbi Nahman made the purchasers return) didn’t know was that the ship bringing food was already in the harbor, waiting for low tide to dock. The word had not yet gone out. But as soon as it did, the price of food would drop and everyone would be able to afford it without selling their homes.

These sales were made without full information. They were based on an error in understanding. In Jewish law, any deal made with errors of understanding on either side can always be taken back.

And so the law follows Rabbi Nahman, ruling, “A person who sells a plot of land because s/he needed money, and after the sale learns that the money is not needed, can take the sale back” (*Ketubot 97a*).

That Talmudic text was taught to the two involved families, and they followed its recommendation.



# [3] Nathan's Hundred Dollars



**N**ine-year-old Nathan, his little sister Becky and his mother are a family. Nine-year-old Nathan finds a hundred-dollar bill on the street. He walks home and says to his mother, “Look what I found.” His mother says, “Perfect, now we will have no trouble paying this month’s rent.” Nathan says, “No way! It’s mine.” Mother says, “Wrong! As long as you live in my house and I work to pay the bills, I say where *our* money goes.” The she added, “I’m sorry, though. If we could afford it, I would let you keep it.” Nathan said, “I’m sorry, but you can’t steal this from me.” They fought and fought. Then Becky said, “No one should keep it. It belongs to someone else who lost it. If we can’t find the owner, we should give it to tzedakah.”

**YOU ARE THE JUDGE:** *Decide who is right.*

## The Answer to “Nathan’s Hundred Dollars”

Should nine-year-old Nathan keep the \$100 he found?

**[a]** The first questions that must be asked are “Can anyone in the family keep the money? Do they have to try to return it?” Or, as Becky suggested, should they give it to tzedakah?

The Mishnah asks this very same question. It says:

“If one finds money in a purse..., a pile of money, or a stack of money..., one must try to find the owner” (*Bava Metzia* 2.2).

“If one finds scattered money, one may keep it” (*Bava Metzia* 2.1).

These two passages teach a basic idea called *hefker*. *Hefker* means “abandoned.” The idea is this: once an owner would give up and no longer look for a lost object, then the finder might as well keep it. When one loses money (with no identification), one gives up very quickly; therefore the finder might as well not bother looking for the owner. If one finds something that can be identified, one must look for the owner. If one finds something that cannot be identified, one can just keep it.

In this case, the \$100 bill can be kept. One need not look for the owner. One need not give it to charity.

**[b]** In the Gemara they ask this same question, and they say: “The finds of a child who is still supported by parents should be given to the parents for the sake of *darkhei shalom* (family peace)” (*Bava Metzia* 12a).

The idea is simple: As long as you are being supported by your parents, they are allowed to use the things you find or earn to help support the whole family, if necessary.



**[c]** However, in that same discussion the rabbis quote another discussion in a different part of the Talmud. There it says:

“It is forbidden to take a find away from a minor child who will not understand the reason why—and believe that his or her find was stolen away. This is for the sake of *darkhei shalom* (family peace). If you take it away, that child will learn that a bigger person is allowed to steal” (*Gittin* 5.8).

Therefore, if we follow Talmudic law, (1) the family may keep the hundred dollars, (2) Nathan should let his mother use the money for rent, but (3) she should not force him to do it if he can’t understand the reasoning.