



REMINDER

Those participating on ZOOM must sign in via the Zoom Chat in order to receive a letter confirming attendance.

Professionalism topic 2.4

Recognizing and being sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language, gender, socioeconomic status, demeanour)

Vignettes

- 1> Susan is hired as counsel to FundJewish, a Jewish non-profit which raises money for social service organizations that benefit the needy. FundJewish has an excellent community reputation for quality of service, integrity, and communication with stakeholders. On her first day on the job, Susan meets with the FundJewish leadership, who ask what steps they should take today to reduce fallout from any crisis down the line. [They assure Susan that they don't know of any issue; this is purely prophylactic.] What advice can Susan give, from secular and Jewish perspectives?
- 2> Not long after Susan begins work for FundJewish, the organization learns that Richard, their Director of Fundraising, has been directing contributions into his own pocket. The organization has never experienced anything like this, and Richard had no record of such activity in the past – but it does appear that the leadership missed clear warning signs as Richard provided incomplete financial information at meetings over the past year. The CEO wants to issue a full, transparent apology, but she is concerned about potential legal fallout from admitting guilt. What advice can Susan give regarding apologies, from secular and Jewish perspectives?
- 3> Situational Crisis Communication Theory (SCCT) claims that we can anticipate what sort of response to a crisis would be effective with the public, while being minimally expensive for the entity in crisis. In some situations, an organization could successfully navigate a crisis without accepting responsibility. How could Susan use SCCT to help FundJewish deflect and mitigate blame for its current crisis? What would Judaism say about this approach?
- 4> If there is time: FundJewish replaces Richard with Morris, who brings with him a philosophy of total transparency; finances should be public to the fullest extent possible. But is full transparency wise, from a legal perspective? And what would Judaism say?

Overview

1. W. Timothy Coombs, *Protecting Organization Reputations During a Crisis: The Development and Application of Situational Crisis Communication Theory*, *Corporate Reputation Review* 10:3 (2007)

A crisis is a sudden and unexpected event that threatens to disrupt an organization's operations and poses both a financial and a reputational threat. Crises can harm stakeholders physically, emotionally and/or financially. A wide array of stakeholders are adversely affected by a crisis including community members, employees, customers, suppliers and stockholders. Crises threaten to damage reputations because a crisis gives people reasons to think badly of the organization.

2. Zamoum and Gorpe, *Crisis Management: A Historical and Conceptual Approach for a Better Understanding of Today's Crises*, in *Crisis Management*, ed. Holla, Titko, Ristvej

What constitutes a crisis is not easily agreed upon however, despite lack of clarity, there are specific conditions of crises in the crisis literature. For example, crisis situations share six characteristics which are rare, significant, high impact, ambiguous, urgent and involve high stakes. Crisis involves a period of discontinuity, a situation where the core values of the organization/system are under threat, and this requires critical decision-making. There is a destabilizing effect to the organization and its stakeholders and an escalation of one or more issues, errors or procedures are expected in this period.

Vignette 1: Before the crisis

3. Nick Watson, Keystone Law, *Crisis Management for In-House Lawyers*

<https://www.kestonelaw.com/wp-content/uploads/2019/11/Nick-Watson-Crisis-Management-for-In-House-Lawyers.pdf>

- Gather stakeholders and specialists to assess the state of the organization
- Gather stakeholders and specialists to assess possible crises
- Prioritize interests you will take care of in a crisis
- Ensure that you keep your plan up to date, accessible and rehearsed

4. Rabbi Moses Nachmanides (13th century Spain), Commentary to Deuteronomy 18:13

וטעם "תמים תהיה עם ד' אלקיך" שנייחד לבבנו אליו לבדו, ונאמין שהוא לבדו עושה כל והוא היודע אמתת כל עתיד, וממנו לבדו נדרוש העתידות, מנביאיו או מאנשי חסידי רצוני לומר אורים ותומים.

The meaning of "You shall be complete with Hashem your Gd" is that we are to dedicate our hearts to Gd alone, and to trust that Gd alone engineers all and knows the truth of all future events. From Gd alone we should seek the future, from His prophets or from His pious ones, meaning the *urim v'tumim*.

5. Rabbi Moshe Feinstein (1973 USA), Igrot Moshe Even haEzer 4:10

כיון שעתה נעשה זה באופן קל לבדוק יש לדון שאם אינו בודק את עצמו הוא כסגירת העינים לראות מה שאפשר לראות, ומכיון שאם ח"ו אירע דבר כזה הוא להורי הילד צער גדול מאד מן הראוי למי שצריך לישא אשה לבדוק את עצמו. ולכן טוב לפרסם הדבר ע"י עתונים ואופנים שידעו העולם שאיכא בדיקה כזו.

Since it is easy to check, one should realize that failure to check one's self would be like closing one's eyes before that which one could see. G-d forbid, such an event would cause the child's parents extraordinary pain, and so it would be appropriate for a man who wished to wed a woman to test himself. It would be good to publicize this in newspapers and other media, to alert people that there is such a test. It is clear that this must be done privately.

6. Mishnah, Avot 2:9

איזהו חכם? הרואה את הנולד.

Who is wise? One who sees what will happen.

7. Don Isaac Abarbanel (15th-16th Spain/Portugal/Italy), Commentary to Kings I 2:5

והנראה אלי בהם הוא, שאדוננו דוד לא צוה את שלמה שיהרוג את יואב ולא את שמעי על העונות הראשונים אשר הוא לא הרגם עליהם, ולא נתן אל בנו נער ורך משוח מלך עצה מסוכנת כזאת להמית אנשי חיל בתחלת מלכותו, אבל היה דעתו וכוונתו לספר לשלמה מה שעשה יואב ושמעי נגדו, כדי שישמר הוא מהם ולא ימשילם בביתו פן יגברו עליו ויעשו לו דומה מה שעשו נגדו...

It appears to me regarding this, that our master David did not command Solomon to kill Yoav and Shimi for their first sins, for which he did not kill them. And he did not set his son, young and soft and [newly] anointed as king, such dangerous counsel to kill these men of *chayil* at the start of his reign. Rather, his thought and intent was to tell Solomon what Yoav and Shimi had done against him, so that he would be careful of them and not give them power in his house, lest they overpower him and do to him as they had done to [David]...

8. Talmud, Ketuvot 72a

דספד יספדוניה, דקבר יקברוניה, דידל ידלוניה, דלואי ילווניה, דטען יטענוניה.

One who eulogizes others will be eulogized; one who buries others will be buried; one who bewails the death of others will have others bewail theirs; one who escorts others [to burial] will be escorted; one who carries others [to burial] will be carried.

9. Talmud, Berachot 27b

מעשה בתלמיד אחד שבא לפני רבי יהושע, אמר לו "תפלת ערבית רשות או חובה?" אמר ליה: רשות. בא לפני רבן גמליאל... היה רבן גמליאל יושב ודורש ורבי יהושע עומד על רגליו, עד שרננו כל העם ואמרו לחוצפית התורגמן, "עמוד!" ועמד. אמרי: עד כמה נצעריה וניזיל? בראש השנה אשתקד צעריה, בבכורות במעשה דרבי צדוק צעריה, הכא נמי צעריה, תא ונעבריה!...

Once, a student came before Rabbi Yehoshua and asked, "Is *arvit* optional or obligatory?" He replied: Optional. The student came before Rabban Gamliel... Rabban Gamliel sat and taught, and Rabbi Yehoshua stood on his feet, until

the entire assembly complained and said to Chutzpit the Translator, "Halt!" And he halted. They said: How long will he continue to pain Rabbi Yehoshua? Last Rosh haShanah he pained him, in Bechorot [36a, in the story of Rabbi Tzaddok's *bechor*] he pained him, now he pained him – let us remove him!...

Vignette 1: Apologies

10. Rehm and Beatty, *Legal Consequences of Apologizing*, Journal of Dispute Resolution 1 (1996) <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1313&context=jdr>

An apology, properly given and accepted, diffuses anger and helps avoid litigation.¹⁸ Sometimes obtaining an apology is an object of litigation.

¹⁸ Daniel W. Shuman, *The Psychology of Compensation in Tort Law*, 43 KAN. L REV. 39, 68 (1994). It has been found in the medical malpractice arena that when physicians are honest about what has happened and accept responsibility, patients are less likely to sue.

11. Rehm and Beatty, *Legal Consequences of Apologizing*, Journal of Dispute Resolution 1 (1996)

This section covers attorney discipline. Such cases are distinct from tort cases in that the issue is not damages, but whether or not the attorney is fit to practice law. The cases reviewed included a discussion of apology as a mitigating factor and the lack of apology as an aggravating factor. The apologies the courts looked for were self-initiated expressions of sorrow, regret or remorse to the injured clients, as well as remorse generally before the court. Self-initiated restitution to injured clients was also very important.

12. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Hilchot Teshuvah 1:1

כל מצות שבתורה בין עשה בין לא תעשה אם עבר אדם על אחת מהן בין בזדון בין בשגגה כשיעשה תשובה וישוב מחטאו חייב להתודות לפני הקל ברוך הוא שנאמר "איש או אשה כי יעשו וגו' והתודו את חטאתם אשר עשו" זה וידוי דברים, וידוי זה מצות עשה.

Regarding every biblical mitzvah, commandment as well as prohibition: When one violates any of them, whether intentionally or in error, and he performs teshuvah and returns from his sin, he is obligated to admit it before Gd. It is written, "When a man or woman performs... And they shall admit the sin they performed." This is verbal admission, and this verbal admission fulfills a commandment.

13. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Hilchot Teshuvah 2:9

עבירות שבין אדם לחבירו כגון החובל את חבירו או המקלל חבירו או גוזלו וכיוצא בהן אינו נמחל לו לעולם עד שיתן לחבירו מה שהוא חייב לו וירצהו

Social transgressions, like wounding another, cursing him, stealing from him and the like, are never forgiven until he gives the other what he owes, and he appeases him.

14. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Hilchot Chovel 5:9

אינו דומה מזיק חבירו בגופו למזיק ממנו, שהמזיק ממון חבירו כיון ששלם מה שהוא חייב לשלם נתכפר לו אבל חובל בחבירו אף על פי שנתן לו חמשה דברים אין מתכפר לו ואפילו הקריב כל אילי נביות אין מתכפר לו ולא נמחל עונו עד שיבקש מן הנחבל וימחול לו.

Harming a person's body is not the same as harming his property. One who harms another person's property, having paid what he must, has now atoned. But one who wounds another, even having paid the five forms of payment, has not atoned. Even if he brings all of the rams of Nevayot [as ritual sacrifices] (Isaiah 60:7), he has not atoned and his guilt is not forgiven until he seeks [forgiveness] from the victim, who forgives him.

15. Rehm and Beatty, *Legal Consequences of Apologizing*, Journal of Dispute Resolution 1 (1996)

In its 1982 decision in *Senesac v. Associates in Obstetrics and Gynecology*, the Supreme Court of Vermont held that a doctor's admission of a mistake did not automatically prove the doctor departed from the appropriate standards of medical care. In June of 1973, defendant Mary Jane Gray, M.D., performed a therapeutic abortion upon plaintiff Mary Senesac. During the procedure, Gray perforated Senesac's uterus and had to perform an emergency hysterectomy. Gray allegedly apologized to Senesac shortly after the operation, saying that she had "made a mistake, that she was sorry, and that [this] had never happened before.

At trial, Senesac introduced no expert medical testimony to show that Gray departed from the standard of care ordinarily exercised by the average reasonably skillful gynecologist. She attempted to satisfy this element of the tort with the admission of mistake and the apology. The trial court ordered a directed verdict in favor of the defendant. Senesac appealed the granting of the motion for a directed verdict.

On appeal, Senesac argued that the directed verdict was improper because the jury could reasonably have concluded from Gray's statement that she had admitted negligence. The Supreme Court of Vermont, in reviewing the directed verdict, assumed, without deciding, that the apology had actually occurred. The court acknowledged that it is possible for a plaintiff to win without expert medical testimony when the defendant's own testimony establishes the standard of care and subsequent departure. However, they affirmed the directed verdict because Gray's statement did not establish a departure from the standards of care and skill ordinarily exercised by physicians in similar cases. The court saw this statement as simply being the physician's belief and expression of the belief that her performance was not in accordance with her own personal standards of care and skill. This statement, without additional expert medical evidence, was not enough to establish the second element of the tort.

16. Talmud, Sanhedrin 9b

אדם קרוב אצל עצמו, אין אדם משיים עצמו רשע

One is considered a relative to himself, and one cannot identify himself as wicked.

17. Talmud, Gittin 40b

הודאת בעל דין כמאה עדים דמי

Admission by a litigant is like one hundred witnesses.

18. Apology Act, 2009, S.O. 2009, c. 3 <https://www.ontario.ca/laws/statute/09a03>

2. (3) Despite any other Act or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any civil proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

(4) However, if a person makes an apology while testifying at a civil proceeding, including while testifying at an out of court examination in the context of the civil proceeding, at an administrative proceeding or at an arbitration, this section does not apply to the apology for the purposes of that proceeding or arbitration.

3. Nothing in this Act affects,

(a) the admissibility of any evidence in,

(i) a criminal proceeding, including a prosecution for perjury, or

(ii) a proceeding under the *Provincial Offences Act*, or

(b) the use that may be made in the proceedings referred to in subsection 2 (3) of a conviction for a criminal or provincial offence.

Vignette 3: Deflecting or reducing blame

19. W. Timothy Coombs, *Protecting Organization Reputations During a Crisis: The Development and Application of Situational Crisis Communication Theory*, Corporate Reputation Review 10:3 (2007)

Attribution Theory posits that people search for the causes of events (make attributions), especially those that are negative and unexpected (Weiner, 1985; Weiner 1986, 2006). A person attributes responsibility for an event and will experience an emotional reaction to the event. Anger and sympathy are the core emotions in Attribution Theory. The attributions of responsibility and emotions can serve as motivations for action. Behavioral responses are negative when a person is judged responsible and anger is evoked. Behavioral responses are positive when a person is judged not to be responsible and sympathy is evoked (Weiner, 2006)...

20. W. Timothy Coombs, *Protecting Organization Reputations During a Crisis: The Development and Application of Situational Crisis Communication Theory*, Corporate Reputation Review 10:3 (2007)

The first priority in any crisis is to protect stakeholders from harm, not to protect the reputation. Instructing information tells stakeholders what they must do to protect themselves from the physical threat of a crisis. Examples would be telling

consumers not to eat contaminated foods or warning sirens alerting people to a chemical release and the need to shelter in place. Instructing information can be delivered directly to stakeholders (e.g., sirens) or through the news media (e.g., recall alerts).

Adapting information helps people to cope with the psychological threat from the crisis (Sturges, 1994). A crisis creates a need for information. The uncertainty of a crisis produces stress for stakeholders. To cope with this psychological stress, stakeholders need information about what had just happened. Furthermore, stakeholders want to know what is being done to protect them from similar crises in the future – what corrective actions are being taken. Corrective actions reassure stakeholders that they are safe thereby reducing their psychological stress (Sellnow et al., 1998). A final component of adjusting [should be “adapting”?] information is an expression of concern for the victims. Expressions of concern are expected by stakeholders and recommended by crisis experts but are not admissions of guilt (Fuchs-Burnett, 2002; Patel and Reinsch, 2003).

21. SCCT crisis types (Coombs 2007)

- Victim cluster Natural disaster, rumor, workplace violence, product tampering
- Accident cluster Technical error accident, technical error product harm
- Preventable cluster Human error accident, Organizational misdeed

22. SCCT primary crisis response strategies (Coombs 2007)

- Deny Attack the accuser, deny there is a crisis, blame a scapegoat
- Diminish Excuse to avoid responsibility, minimize the damage
- Rebuild Compensate, apologize

23. SCCT secondary crisis response strategies (Coombs 2007)

- Remind of past good works by the organization
- Praise stakeholders
- Remind that the organization is also a victim

24. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 182:1

בכל דבר שלוחו של אדם כמותו, חוץ מלדבר עבירה דקיימא לן אין שליח לדבר עבירה.

In all matters, one’s agent is like himself – except regarding sin, for which our principle is that there is no agency for sin.

25. Denying and diminishing

- Cain Genesis 4 “Where is Abel, your brother?” “I don’t know”
- Adam and Eve Genesis 3 Blaming Eve, Blaming the Serpent
- Aaron Exodus 32 Blaming the character of the nation
- King Saul Samuel I 17 Blaming intimidation by the nation

26. Addressing crises directly: King David

- Massacre of Nov Samuel I 21-22 Accepting responsibility
- Murders of Saul, Abner, Ish Boshet Samuel II 1, 3, 4 Direct rebuke and punishment of villains
- Uriah and Bathsheba Samuel II 12 Full apology and acceptance of punishment

27. Jerusalem Talmud, Shekalim 3:2

רבי שמואל בר נחמן בשם רבי יונתן: בתורה ובנביאים ובכתובים מצאנו שאדם צריך לצאת ידי הבריות כדרך שהוא צריך לצאת ידי המקום. בתורה מנין דכתיב [במדבר לב כב] "והייתם נקיים מד' ומישראל", בנביאים מנין דכתיב [יהושע כב כב] "קל אלקים ד' וגו' וישראל הוא ידע", בכתובים מנין דכתיב [משלי ג ד] "ומצא חן ושכל טוב בעיני אלקים ואדם."

Rabbi Shemuel bar Nachman cited Rabbi Yonatan: We find in Torah, Prophets and Writings that one must satisfy others as one must satisfy Gd. Bamidbar 32:22 says, “And you shall be innocent from Gd and from Israel.” Yehoshua 22:22

says, "Kel Elokim Hashem... and Israel will know." Mishlei 3:4 says, "And find favour and [a reputation for] good insight in the eyes of Gd and Man."

Vignette #4: Transparency

28. Leviticus 19:16

לא תלך רכיל בעמך לא תעמוד על דם רעך אני ד'

Do not travel as a peddler [of tales] in your nation; do not stand by as the blood of your neighbour is shed; I am Hashem.

29. Talmud, Yoma 4b

מניין לאומר דבר לחבירו שהוא בבל יאמר עד שיאמר לו לך אמור שנאמר "וידבר ד' אליו מאהל מועד לאמר"

How do we know that one may not repeat something told to him until he is told, "Go tell it"? It is written: "And Gd spoke to him from the Tent of Meeting, to go tell."

30. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 290:8

"א כמו שהאפוטרופס יכול ליתנם לאחרים, כך יכול לקבל המעות לעצמו, ובלבד שיעשה בבית דין, משום לזות שפתים.

Some say that just as a guardian may invest with others, so he may accept it for his own ventures – so long as the rabbinical court oversees it, due to concern for gossip.

31. Rabbi Yosef Karo, Rabbi Moshe Isserless (16th century Israel/Poland), Code of Jewish Law, Yoreh Deah 257:2

מחבר - ואין מחשבין בצדקה עם גבאי צדקה... הגה: ומ"מ כדי שיהיו נקיים מד' ומישראל, טוב להם ליתן חשבון (טור). וכל זה בגבאים הכשרים, אבל מי שאינו כשר, או שנתמנה באלמות וחזקה, צריך ליתן חשבון. וה"ה בכל ממונים על הצבור.

Mechaber: We do not demand accounts of tzedakah from collectors...

Rama: But it is good for them to present accounts, to fulfill the verse, "And you shall be innocent from Gd and from Israel." And the above is where we have collectors who are known to be righteous; otherwise, or where they have taken the position through their strength, they must offer accounts. The same is true for all communal appointees.