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HEMDAT YAMIM
חמדת ימים

PARASHAT HASHAVUAH
Ki Tavo, Elul 21, 5772

First Fruit Next to the Altar

Harav Shaul Yisraeli – based on Siach Shaul, pg. 528-530

There is a special *mitzva* with special conditions – to bring *bikkurim* (the first fruit of the crop) to the *Beit Hamikdash* and make a declaration of thanks to Hashem for the fruit and the plot of land within the Land He gave us (see Devarim 26:2-4). If one does not have complete ownership of the land from which the fruit was nourished, the *mitzva* does not apply to its fruit.

The *kohen* is to take the fruit and place them next to the "altar of Hashem." How different is Hashem's altar from those used by idol worshippers. No metal is to be used in forming the altar, as this reminder of violence spoils it (Devarim 27:5). This is in contrast to the altars of others, which are built on the spilling of human blood. It is before such an altar of Hashem, pure from anything objectionable, that the fruit are to be placed. The fruit must also be free of sin, starting with the sin of thinking that one's success is due to his own resourcefulness. It must be free of manipulations, trickery, and arguments with the neighbors about the cultivation of his produce. It must be pure of even a hint of theft. The declaration over the first fruit must also be pure from anything false or even seems false. If the land used to grow the produce is not totally his, one can not say that the land is his. There is no sanctity without purity.

The Torah instructs to bring the fruit "to the *kohen* who will be in those days" (ibid. 3). Rashi picks up on the stress of "those days," saying that one is to make due with whoever the *kohen* is at that time. There is a similar derivation in regard to going for resolution of doubts on matters of Torah law to the *kohen* of the time. The latter derivation is more expected, as for Torah knowledge, one would think that we need an objective expert. However, why would one think that an available *kohen* would not be able to receive the first fruit? Based on what we have seen, the matter can be understood. A person needs a determination as to the completeness of his rights to the fruit and the land, and it is plausible that only an expert *kohen* could be trusted to decide for him. One might say that he would have accepted the verdict of the experts of yesteryear, but who are the people of his time to decide for him?

The Torah says that this is a wrong outlook. The main element needed to come to the right halachic decision is Divine Assistance (see Sanhedrin 93b), and the place one is located plays a role. When one brings his fruit to "the place that Hashem has chosen," the *kohen* who is charged to function there is to be trusted. In general, Hashem grants the necessary wisdom to the Torah leaders that He elevated to their roles. Do not stray from their decisions. The Torah sets out a straight path. It is the nature of the individual to stray to a given side and claim that the Torah is to the left or to the right of its proper position (see Devarim 17:1). In truth, it is the individual's responsibility to straighten himself to conform to the Torah.

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Eretz Hemdah
Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
2 Bruriya St. corner of Rav Chiya St. POB 8178 Jerusalem 91080
Tel: 972-2-5371485 Fax: 972-2-5379626
Email: info@eretzhemdah.org web-site: www.eretzhemdah.org

HEMDAT YAMIM
www.eretzhemdah.org
info@eretzhemdah.org

Ki Tavo

Ask the Rabbi

Making a Trust for a *Sefer Torah*

by Rav Daniel Mann

Question: I inherited a *sefer Torah* from my father, who had lent it to a *shul* with certain conditions, especially that it remained his personally. In order to ensure the *sefer Torah* is properly taken care of, I want to transfer ownership of the *sefer* to a trust, in which I will retain decision making power during my life, but ultimately trustees will determine what's best for it. Is the transfer akin to selling a *sefer Torah*, with all the halachic questions it raises?

Answer: The complicated rules of selling holy objects, with a *sefer Torah* being most stringent, appear primarily in the context of communal ownership. Regarding a *sefer Torah* owned by an individual, the Shulchan Aruch (Orach Chayim 153:10) cites two opinions whether he may sell it. While even the lenient opinion forbids doing so if it was given over to the community for their use, the Magen Avraham (ad loc. 22) says that when one explicitly does not want the rules of communal items to take hold or when that is the *minhag*, it is permitted to sell. One can rely on the lenient opinions in this matter (see Achiezer III:79), but they are not needed for your case for the following reason.

The two problems with selling a holy object do not apply here. One is using the object for something mundane or less holy (e.g., allowing a *shul* to be turned into something else), and obviously your trustees will make sure it is used as a *sefer Torah*. The other is using the proceeds for whatever purposes you want, and here you will not be getting any money. The Mishna Berura (153:68), basing himself on the Rama (ibid. 13) says that when one simply gives a *sefer Torah* as a present, with the *sefer Torah* continuing to be used as a *sefer Torah*, there are no limitations.

In truth, the trust you are describing (there are different types of trusts) would probably both halachically and legally be viewed as assigning the *sefer Torah* to charitable use (*hekdesh*). Just as someone can take a *sefer Torah* and donate it to a *shul*, so can you take one and donate it to a trust, whose trustees will decide who will benefit from it in the future. Doing so not only protects the *sefer Torah* from an uncertain future, about which you seem to be concerned if you leave it where it is, but also from any reservations you may have about your halachic and/or legal inheritors (after 120 years of good health).

Yet, there is another issue. The Torat Chayim (Sanhedrin 21b, cited by many *Acharonim*) says that the *mitzva* of writing a *sefer Torah* requires continued possession, and it is improper to sell or donate it (fully) because that uproots one's *mitzva*. If the trust takes effect during your lifetime, one could argue that the transfer would thus be a problem (if you do not own another *sefer Torah*). Not all agree with the Torat Chayim. For one, the Seridei Aish (II:77) posits that the consensus accepts the Torat Chayim only in regard to selling a *sefer Torah*. He views donating it as a way of using the *sefer Torah* for its proper *mitzva* use. There is likely a very different reason why uprooting the *mitzva* is not an issue for you. That is that one does not fulfill the *mitzva* of writing a *sefer Torah* by possessing a *sefer Torah* he inherited (Sanhedrin 21b; Shulchan Aruch, Yoreh Deah 270:1). In other words, if you presently are not fulfilling the *mitzva*, there is nothing to lose in this regard. However, this point is not unanimous. Igrot Moshe (Orach Chayim I:52) claims that there are two *mitzva* elements: to write a *sefer Torah* and to possess one. If one inherits a *sefer Torah* he fulfills the element of possession, just not of writing, and thus giving away such a Torah robs one of the element of possessing.

In summation, the issues of selling a *sefer Torah* per se do not apply to the creation of a trust of the type you describe. While one could claim that the founder of the trust uproots his *mitzva* of owning a *sefer Torah* in the process, there are ample halachic reasons to counter that claim, and it should not prevent you from doing what you feel is right for the *sefer Torah*'s future.

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www.eretzhemdah.org
info@eretzhemdah.org

Ki Tavo

Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, *z.t.l.*)

Periodic Sightings

(condensed from Ein Ayah, Berachot 9:163)

Gemara: One who sees the Great Sea recites the blessing … when he sees it periodically. How long a break constitutes periodically? Rami bar Abba says in the name of Rabbi Yitzchak: thirty days.

Ein Ayah: The reason for the time period of thirty days is that we learn wisdom from the heavenly bodies, as the *pasuk* says: "Lift up your eyes to the heavens and see who created these" (Yeshaya 40:26). Of all the heavenly bodies, the one that is closest and most linked to our own planet of Earth is the Moon. That is why the Jewish people count the passage of time based on the orbit of the Moon. The Moon's creation also has special significance for the needs of our planet. Part of its effect has to do with the fact that the amount of time of the Moon's orbit is connected to renewed feelings, which makes it appropriate to recite a new *beracha* based on it.

For this reason, also, new Moons are a time of atonement for Israel, as it is a time when a new spirit takes the place of an old spirit. At that time, it is possible to create a 'new heart' in matters of wisdom and fear of Hashem.

The Effects of Environment on a Person

(condensed from Ein Ayah, Berachot 9:165)

Gemara: What is [the significance of the name] *Chidekel* (the Tigris River)? It represents that its water is *chad* (crisp) and *kal* (light). What is [the significance of the name] *Prat* (the Euphrates River)? It represents that its water is ever increasing. Rava said: that which the people of Mechoza are sharp is due to the fact that they drink from the water of the Tigris.

Ein Ayah: Quality and quantity are two special characteristics. The Tigris excels in the quality of its water and the Euphrates in the quantity of its water (see also Shabbat 65b).

A river's water has an impact on the local environment. The better the water's quality, the better the vegetation that grows there and the animals that live there will be. As a result, the people who live in the region and are nourished by the above will acquire special attributes affecting their physical constitution. Even a person's spiritual makeup, which is connected to the status of his body and its health, will be positively impacted. This teaches us generally how important it is to learn how to improve our physical well-being, as it impacts our spiritual well-being.

The people of Mechoza were known for their sharpness, which, in the intellectual realm, corresponds to the element of quality, in which the waters of the Tigris excelled. This is in contrast to the ability to amass knowledge, which corresponds to the element of quantity. This should teach a person in general that Hashem created everything in a measured-out manner.

P'ninat Mishpat

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info@eretzhemdah.org

Ki Tavo

Wrong Way Collision – part II

(condensed from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=*pl)* pulled out of his driveway and banged into the defendant's (=*def*) car, as the latter was driving in reverse on a one-way street, causing damage to both cars. *Pl* claims that since *def* drove against the traffic rules, *def* is responsible for the accident. *Pl* claims to have pulled out slowly and says that he had no reason to suspect a car would be coming from the wrong direction. *Def* counters that since *pl* anyway had to look in both directions due to pedestrians, he was at fault for not seeing and avoiding *def*'s car. [*Last week we discussed why* def *is responsible for damages to* pl*'s car and not vice versa.*]
Def offered to pay *pl* for his damages using an auto garage that he knows. *Pl* refused, based on the advice of his insurance agent, and had the damage professionally appraised, after which he took the car to an expensive garage. The cost was 15,000 shekels, including the appraisal. *Def* says that he could have had it fixed for 4,000 shekels, had *pl* agreed to his garage.

Ruling: The *gemara* (Bava Kama 85a) discusses the medical payments of one who caused bodily damage to another. The *gemara* says that if the damager says that he wants to heal the injured person himself, the latter can refuse. Likewise, he can refuse for the damager to bring someone to heal him for free. As the *gemara* explains, the (lack of) quality one gets when the healer is not paid is expected to show. Similarly, one cannot bring a doctor who lives in a distant place because he does not have the same level of accountability. However, the underlying concept that we see from the *gemara* is that if the means of remedying the situation are reasonable, the damager, who has to pay, has a say in choosing the means of remedying the situation.

Thus, to the extent that *def* is to pay, it is his right to try to negotiate as cheap as reasonable a price for fixing the car, on condition that is within accepted standards. By employing a professional appraiser, one has to add to the cost of the appraiser the fact that once he has set a price, there is no leverage to get a garage to do the work for cheaper. Therefore, since *def* agreed to pay for damages through his sources, *pl* should have gone through that process.

At this point, *pl* has two options. If he wants to receive payment from the insurance company, he is likely to receive the full amount set by the appraiser (which is why he originally used one), and he can proceed in that way. If he continues to sue *def* directly, then he is entitled only to the sum of a more reasonably priced professional job. *Beit din* has the authority given to it by those who sign the arbitration agreement to employ their own experience and reason. (This is the correct approach, as a further appraisal will just add to the price). They set the price at 9,060 shekels.