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HEMDAT YAMIM

PARASHAT HASHAVUA

Pinchas, 14 Tamuz 5774

Pinchas' Reward

Harav Yosef Carmel

In the aftermath of his act of zealotry, Hashem announced that he was rewarding Pinchas with two covenants: a covenant of peace and a covenant of eternal *kehuna*. We will try to understand what these presents entail.

Regarding the *kehuna*, we need to first see why Pinchas needed such a covenant, as he was an authentic grandson of Aharon, which ostensibly includes the status of *kehuna* without a special reward. According to the Chizkuni and the Abarbanel, Pinchas had served as a *kohen* before this episode. The point was that he feared losing his *kehuna* due to the fact that he had taken human lives, and so he was promised that he and his offspring would not be penalized. In contrast, the *gemara* (Zevachim 101b) cites two different opinions on the issue. According to Rabbi Chanina, Pinchas did not become a *kohen* until he killed Zimri, as he proves specifically from the need for Pinchas to be given an eternal covenant of *kehuna*. Rav Ashi (ibid.) says that he was not included among the *kohanim* until the incident several years later, in which he brought peace between the tribes (see Yehoshua 22:30). Both are working with the assumption that Pinchas did not have natural rights because when he was born to his father, his father did not have the *kehuna* to pass on to him and he was not old enough to receive the distinction when it was given to Aharon and his sons (Rashi, Bamidbar 25:13).

Rav Ashi's thesis is novel, in that the Torah ascribes Pinchas the distinction at the time of our *parasha*, even though it did not become operative for whatever reason until years later when he brought peace. The story there was that two tribes had built an altar under suspicious circumstances, and Pinchas helped prevent the episode from escalating into civil strife or even war. The logic seems to be that despite its positive elements, Pinchas needed atonement for his responsibility for the death of a fellow member of Bnei Yisrael before he could become a *kohen*.

Let us move on to the covenant of peace. The Radak (Shoftim 20:28) points out that Pinchas lived more than 300 years and says that he merited such long life because of the blessing he received in our *parasha*. Ibn Ezra says that the blessing was that Zimri's brethren should not exact revenge and kill Pinchas.

In any case, we see that Pinchas' approach of zealotry cannot serve as a model of proper behavior under normal circumstances. Only due to divine intervention, which Pinchas deserved because of his extreme piety, did he remain unblemished and able to serve as a *kohen*. Only special treatment protected him from the wrath of Zimri's family. In fact, according to an opinion of the *gemara*, despite all the positive, Pinchas still needed to wait until he performed an act of peacemaking, in the tradition of Aharon, to pave the way for his serving as a *kohen*.

May we be blessed to bring peace between our fellow brethren and, in the process, merit that Hashem's presence will dwell among us.

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by Rav Daniel Mann

A Loan/Investment that Needs a *Heter Iska* After Its Inception

Question: I have an ongoing arrangement by which a friend loans me thousands of dollars to use for my business at a fixed rate of interest. I think (but am not sure) that we agreed to have a *heter iska* (I can't find one), but it is possible it was only agreed orally. Some money has been paid, and some is still owed. What should I do at this point?

Answer: If there was a valid *heter iska*, you have no problems even if you cannot find it. That is because a *heter iska* sets the nature of the transaction as having an element of investment (subject to profit or loss, at least theoretically) from the outset, and therefore there is no problematic loan. [The reason that a *heter iska* can be used to pay at a fixed rate, irrespective of actual profits is connected to the halacha that the investor can demand verification (witnesses, oath) that the investment did not earn more than stated. The *heter iska* states that a fixed rate can be paid as "assumed profit" (*d'mei hitpashrut*) in lieu of verification.]

According to most *poskim*, an oral *heter iska* agreement is valid *b'dieved* (see Brit Yehuda 40:9; Torat Ribbit 16:2). Why then do we bother with a written agreement? While we certainly do not intend to cast aspersions on a halachic system that the rabbinic community has accepted broadly, most will admit that it borders on halachic fiction. The sides basically agree to a loan to be returned with interest even if the borrower did not profit. It is therefore worthwhile to be able to lean on the halachic precedent that the written word can raise doubtful agreements to the minimum level required (see Ketubot 56b; Tzemech Tzedek, Yoreh Deah 88). Additionally, many people do not understand the conditions of the *iska*. Most *poskim* do not require a high-level understanding of the mechanism, but it is unclear what the minimum level is. When things are in writing, there is more chance one understands (see Brit Yehuda 354). Also, there is a broad rule that when something is in writing, we do not enable one to claim he did not understand; he is to realize he is accountable for whatever is written (see Netivot Shalom p. 726). This element is missing when the "agreement" is oral. Also, there are different types of *heter iska* which can be used, and not everyone knows how to specify which version they are agreeing to. In summary of this part of the question, it is important to have a written *heter iska*, and you should prepare one now. However, if there was an agreement to follow the conditions of a classic *heter iska*, under the circumstances you can assume the agreement had the proper halachic effect.

What if there was no agreement? Interest that was paid already would be the violation of a Torah prohibition, which the creditor is required to return to the borrower (Shulchan Aruch, YD 161:5). However, the borrower is allowed to waive the right to have the money returned (*ibid.* 160:5), as you are apparently interested in doing. (There is more to be said on this matter, but it is beyond our scope.) Regarding the future, it is possible to create an *iska* at this point. This can be accomplished by transferring to you potentially profit-producing assets by means of a *kinyan sudar* (Dagul Me'revava to Shach, YD 177:41) or through a written *heter iska* (slightly modified language is preferable). This new *iska* arrangement cannot change the nature of the loan retroactively, and thus it is forbidden to make new interest payments to correspond to the time that passed (Torat Ribbit 16:29). Some allow compensating for the lost profit by making the *d'mei hitpashrut* higher than what was planned (*ibid.*; Netivot Shalom, p. 721). However, others counter logically that it is clear that the added payment is *ribbit* for the past and not incidental (*ibid.*). The less exact and less clear the compensation is the more reasonable leniency is on this point.

[Since each case has its own details and dynamics, we suggest you speak to us about arriving at the best arrangement for your case.]



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Ein Ayah

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

A Time for Fear and a Time for Love

(condensed from Ein Ayah, Shabbat 1:5)

Gemara: Rav Ashi said: I witnessed the following practice of Rav Kahana: When there was pain in the world, he would remove his cloak, clench up his hands, and *daven*. He would say that this is like a servant before his master. When there was peace in the world, he would wear [nice clothing], wrap himself [in a cloak], and then *daven*. He would say that [this fulfills the *pasuk*] "Prepare for approaching your G-d, O Israel" (Amos 4:12).

Ein Ayah: Fear and love are two emotions that a person has to acquire in order to walk on the pure path of Hashem. The broad results of fear are the lowering of one's spirit and the retreat in one's efforts so that one will not burst forth beyond his boundaries and thereby damage the good path. This is the opposite of the effect of love, which expand one's powers so that he can accomplish ever-increasing good things.

One cannot know exactly how to create the proper balance between the different emotions he should cultivate. At what times should he focus on internalizing fear of Hashem? When should he focus on love of Hashem, which widens the heart?

The best idea is to take a look at the standing of the broad community and to see how Hashem is acting toward the world. There can be great swings in the mood. Sometimes there is a spirit of happiness and excitement, and sometimes there are stormy times that contain frightening circumstances. An individual should view himself as part of the general situation of the world, at least that part of the world that is close to him. The situation around him should be the greatest indicator of whether it is appropriate to focus on a fear that serves as a roadblock to powers of evil, or whether he should increase acquisition of love that expands his positive powers.

When there is pain in the world, this is a sign that there had been a lacking in those characteristics that are related to pain in the generation. Rav Kahana would then clench his hands and remove his cloak before *davening* to stress that it was necessary to increase the level of fear. When there was peace in the world, it was time to expand the powers of goodness. At that time he would "wear" happiness and cloak himself in clothes of honor and grandeur. This was to widen his heart, increase the vigor in performing good deeds, and expand the completeness of the mind and the light of Hashem. He did this in the spirit of "Prepare for approaching your G-d, O Israel."

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Beit Yitchak – Rav Yitzchak Shmelkes (a historical look)

[We move on to a new author and will dedicate this week's survey to a historical look.]

Rabbi Yitzchak Yehuda Shmelkes (1828-1904) was one of the leading rabbis in the latter part of the 19th century in Eastern Europe. Rav Shmelkes is known as the Rabbi of Lvov (Polish version of the city's name; in Ukrainian, it is Lviv and in German and Yiddish it is Lemberg). Lvov was the capital of the Jewishly famous country/region of Galicia, an area which when not an independent entity was in Poland, Ukraine, and/or Austria. In the 18th and 19th century it produced many of the time's greatest *talmidei chachamim*. For one example of the prominence of the rabbinate of Lvov, until two decades before Rav Shmelkes' assumption of the position, the rabbi had been Rabbi Shaul Yosef Nathanson, famed author of the Shoel U'meishiv, and arguably the greatest halachic authority of his time. Actually, while Rav Shmelkes' last ten years were in Lvov, he served as Rabbi of Perzemysl (Polish spelling), also in the Galicia region, for 24 years, and most of his published work was written there.

At that time, leadership required more than just Torah erudition. Jews comprised approximately a third of the population of Lvov. That population was itself varied and challenging, as the traditional community shared the town with a major center of Chasidut, on one hand, and an increasingly strengthening Reform community on the other. His son-in-law described Rav Shmelkes as beloved by all due to his genuine love of others, which without a doubt helped him succeed in that climate.

For a reason that I cannot explain, not only is Rav Shmelkes not well known within today's broader Jewish community, but he is not even well known within the world of *yeshivot*. This is despite the fact that he left behind some wonderful scholarship: six volumes of his responsa *Beit Yitzchak*. One of his most cited responsa (Yoreh Deah II, 110) presents a serious thesis on the matter of conversion of a person who appears to be insincere about his or her declaration of acceptance of *mitzvot*. (One liberal author writes that this responsa was the first of its kind, which only afterward became the standard Orthodox approach. This is a historically strange claim, as until that time (the 1870s), conversion to Judaism was extremely rare and extremely dangerous for all involved. Rabbinic literature on the topic, even on a theoretical basis, was often censored, either as a precaution by the author or by the authorities. Certainly few were interested in converting to Judaism when they were not sincere until the opening of general society to the Jews in the 19th century.)

We will be focusing, as is our practice in this column, on the volume of Beit Yitzchak on Choshen Mishpat. This is the work's last volume, corresponding to the last section of the Shulchan Aruch, and it was the only volume to be published posthumously. Rav Shmelkes began died in the midst of his work on the volume on Kol Nidrei night of 5665 (1904). His son-in-law, Rav Nosson Levine, Rabbi of Reisha, finished it in 1908. The responsa includes discussions of actual cases from other communities, posed to him, along with theoretical Talmudic discussions.



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