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הֵמְדַת יָמִיִּם

PARASHAT HASHAVUA

Vaetchanan, 13 Av 5774

No More Talking

Harav Yosef Carmel

Our *parasha* starts with Moshe's request of his Maker – just as Hashem had shown him great miracles and feats of strength, so too He should allow Moshe to enter the good Land (Devarim 3:24-25). Hashem's negative answer is very clear and firm: "It is enough for you. Do not continue to speak (*daber*) to me on this matter (*davar*)" (ibid. 26). The same root (*davor*), used usually for speaking, comes up twice in that *pasuk*.

The two themes – of miracles and of speech – remind us of the debate (if we can call it that) that took place between Hashem and Moshe at the burning bush. Moshe asked Hashem for the ability to demonstrate Hashem's miracles in Egypt, with his staff being used to prove that he must have been sent by the omnipotent G-d. Hashem stressed something different to Moshe, telling him that he must use speech to convince people of what he was saying. If we take a look at the charge Moshe was given to take to Egypt in Shemot 7, we find the root *davor* no less than nine times, including appearances which seem superfluous.

We have explained in the past that Hashem originally wanted Moshe to take Bnei Yisrael out of Egypt with speech and without signs. Moshe argued that the people needed to start with signs and wonders and only later could the people reach the point that they were ready to accept the stated word, as occurred at Sinai with the giving of the Torah. Because Hashem went along with Moshe's request, there was no problem that Moshe could use his staff to get water out of the rock before the giving of the Torah. However, later, at Mei Meriva, Moshe was commanded to speak to the rock and was punished when he reverted back to hitting with his staff (see Rambam, Yesodei Hatorah 8:1).

Now that Moshe was unable to take the nation into the Land, leadership was given to Yehoshua, who was a man who was to use miracles. We find Yehoshua involved in the miracles of the splitting of the Jordan, the destruction of the wall of Yericho, the boulders from the heaven, and the stopping of the sun in Givon. The end of Moshe's period is hinted at with the words, "Do not continue to speak (*daber*) to me on this matter."

Let us pray that our belief in Hashem will be strengthened, until we will be able to once again hear the voice of Hashem speaking to us. Let us listen with one heart and respond in unity, "We will do and hear."

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by Rav Daniel Mann

Pay for Cancelled Summer Camps

Question: During Operation *Tzuk Eitan*, when summer camps were cancelled because campsites were not “missile-proof,” do the parents have to pay anyway? Does it make a difference if they already paid?
[We answered this question during the fighting, but the halachic and moral concepts can be applied even after its hopefully successful conclusion.]

Answer: We start with a few halachic sources and conclude with an important moral message.

Bava Metzia 77a records the general rule regarding a work agreement that became unfeasible to carry out. If one side is assumed to have been aware of the possibility of work stoppage and the other was not, the side that knew loses (by paying or not paying, respectively) because of his failure to stipulate otherwise. If the two sides' degrees of awareness are comparable, the worker is not paid. There are different opinions as to whether the worker loses because he has the more difficult task of extracting money, or because only under special circumstances does a worker deserve pay without performing the work (see Terumat Hadeshen 329 and Be'ur Hagra, Choshen Mishpat 334:5). One difference between the opinions is if the worker was pre-paid. Another pertinent source discusses a case where Reuven rented a boat from Shimon to transport wine and the boat and wine sank midway. Does Reuven have to pay Shimon the rental fee? There are four different *halachot* (obligated, exempt, split the money, depends if he already paid) in four different permutations of the case (the factors are: whether Reuven can provide other wine; whether Shimon can provide a different boat).

Finally, we present the concept of *makat medina* (an impediment that affects a broad population). The *mishna/gemara* (ibid. 105b) says that a field's sharecropper is entitled to partial relief from his payment if crops are destroyed by a regional infestation. The Maharam Padova (86) explains that in such a case, one cannot say the “bad fortune” relates to a particular person, and he and the Rama (CM 334:1) apply the concept also to a worker who was prevented from working due to a *makat medina*. The Mordechai (Bava Metzia 343) cites the Maharam as saying that if the government suspends schools, parents still have to pay teachers. There is great debate (see S'ma 321:6; Shach 321:1; Netivot Hamishpat 321:1) if and under what circumstances we accept the Rama. The Chatam Sofer wrote, regarding teaching that was suspended for weeks due to war, that he found it nearly impossible to determine whether strictly halachically, the teachers must be paid, and he urged for the various sides to reach compromises.

If a specific case came to our doorstep (which would require the presentation of two sides), we would find it hard to be more certain than the Chatam Sofer was. If the question is general, as it appears, it is even harder to answer because many fluid factors are not addressed. A partial list of questions follows. Is the camp in question in a region where some such activities are continuing or are all suspended? Is it possible for the camp to make other arrangements? Was the problem known at the time of payment and by whom?

One of the great national assets going into and to this point of Operation *Tzuk Eitan* is a palpable feeling of solidarity. Especially around Tisha B'av time, we should recall the *gemara* (Bava Metzia 30b) that says that Yerushalayim was destroyed because people were unwilling to go beyond monetary law and act beyond the letter of the law. In most cases, both parents and camp directors will have legitimate claims. Let us hope that all people involved in such issues will be willing to offer their brother a compromise if not the benefit of the doubt. (One of our *dayanim* likes to tell of a Yerushalmi ancestor who was sued in *beit din* for refusing to receive more payment than he thought he deserved. While our *beit din* has not yet adjudicated such a case, we will happily do so.) In the merit of mutual understanding and concern, may we defeat our enemies and see a *geula shleima*.

May Hashem avenge the death of the kidnapped boys
Yaakov Naftali Frenkel, Gil-Ad Michael Schaer and Eyal Yifrah o.b.m



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Ein Ayah

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

Leaders who Lead

(condensed from Ein Ayah, Shabbat 1:10)

Gemara: Until what time of day do they sit in judgment? Rav Sheshet said: Until the time of the meal. Rav Chama said: What is the *pasuk*? "Woe unto you, the land whose king is a *na'ar* (youngster) and your officers eat in the morning. Fortunate are you, the land whose king is a free man and its officers eat in strength and not in drunkenness" (Kohelet 10:16) – with the strength of Torah and not the drinking of wine.

Ein Ayah: The point of judgment is to establish social life properly, but it is a matter of disagreement what the goal of social life itself is among nations. A nation that is burdened by material desires will only strive for ongoing fulfillment of their desires. They will want their judges to have the same mindset, and therefore they will be happy if they sit in judgment with a full stomach, like the goals of the people he judges. In contrast, a holy nation realizes that judgment is divine and that the goal of society must go well beyond the animalistic and the material. It should be full of light, goodness, purity, and justice. Therefore, judgment should be done in a manner that is divorced from physicality (i.e., not on a full stomach).

A Jewish king is fit for his crown when he ensures that the nation's judicial system functions on the high spiritual level that befits humanity. This fully applies when the constituency still has far to climb on the ladder of spirituality. That is why a king is appointed by anointment with sanctified oil. Such a king is not a simple servant of the people, which is appropriate only when the recipient of the service knows what he needs, but must be a free man. A Jewish king has a responsibility to Hashem to make sure that he implements His justice to elevate the nation and that he advances them on the long road that mankind must take. The king must be a free man who leads and does not follow the lowly desires of the nation, for the latter type of king is a *na'ar* (which means both youngster and servant (see Shemot 33:11)).

The sanctity of Israel mandates that the judgment of the Torah must elevate people. That is the reason the Torah's discussion of justice is found in proximity to building the altar and specifically that one's private parts not be exposed to the altar and compromise the element of modesty that is central to our nation. A judge should be in a frame of mind in which he is focused on spirituality rather than physicality, which is why it is best for him to judge before the meal. That applies to all judges, which sets the tone for the behavior of the king.

This is the intention of the *pasuk* that talks about the king not being a *na'ar* and the officers (including judges) not eating their meal in the morning because these negative actions set a tone of physicality. Rather the king should be a free man who can lead properly, and the officers should eat at a time which is appropriate for separating between that physical pursuit and their spiritual ones.

It is possible that people will scorn a nation which has such high spiritual goals and will attribute this approach to a lack of being in touch with the rigors of the real world. However, people who think that way do not understand that strength is a function of Torah, which leads even the physical world on a correct path of spiritual advancement. This is the proper alternative to those who allow physicality to make them drunk, which disfigures the image of Hashem within mankind.

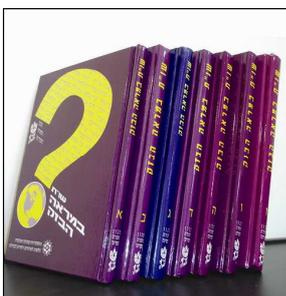
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P'ninat Mishpat

A Lender's Right to Prevent the Sale of Collateral

(based on Beit Yitzchak, Choshen Mishpat 47)

[Reuven borrowed money from Shimon, and Reuven gave Shimon a place in the shul's women's section as a *mashkon* (collateral, in such a manner that the lender uses it during the loan period). Shimon's wife began using the place. In the meantime, Reuven sold the seat to a *bar metzra* (a "neighbor") of the seat, to be used not for herself but for her daughter-in-law. (A neighbor has first rights to buy his neighbor's property, and if he is not afforded that right, he can force the buyer to sell it to him – see Choshen Mishpat 175.) Can Shimon remove the buyer from the seat? Consider that Reuven sold the seat to finance the wedding of his grandson, who is an orphan from his parents.]

The Rama (Choshen Mishpat 175:57, who argues on the Shulchan Aruch, ad loc.) rules that the possessor of *mashkon* rights can remove a buyer from that which was sold by the borrower (even to the extent that his ability to insure his loan can be handled in a different way). Even the Sha'ar Mishpat (175:6), who says that one who rents cannot remove a neighbor who buys property without first asking the renter if he wants to buy it, agrees that one who has the property as collateral can remove the buyer.

The question, then, is only whether the sale should be allowed to stand because it was done under the pressure of facilitating a marriage, as Geonei Batra (57) says that when one sells property to finance his daughter's wedding, the rules of *bar metzra* do not apply. Perhaps that is only for a daughter's wedding, not for a grandson's.

The simple logic is that there is no difference between one's daughter's wedding and one's grandson's. Indeed, the halacha is that one may sell a *sefer Torah* in order to facilitate the marriage of an orphan boy, even though there is a *machloket* whether one can do so for the marriage of a girl (Chelkat Mechokek 1:1 – only a man is obligated to get married; Beit Shmuel 1:2 – a woman also has some level of *mitzva* to marry). Since one who barely has what to eat is not allowed to sell a *sefer Torah* (Rama, Yoreh Deah 270:1), we see that facilitating a man's marriage is more important than one's great financial need. Yet when one sells his property due to such need, the laws of *bar metzra* do not apply (Rama, CM 175:43). It follows that the laws of *bar metzra* certainly do not apply to one who sells in order to facilitate his grandson's marriage.

Although we have seen that according to some, the possessor of *mashkon* rights exceeds those of a neighbor to buy, we do find that the Ra'avad says that there are no *halachot* of *bar metzra* for seats in shul. Therefore, when selling a seat in *shul* to facilitate a grandson's wedding, all should agree that the possessor of *mashkon* rights cannot remove the buyer. On the other hand, in this case, Shimon actually needs the seat, whereas the buyer only bought it as an extra convenience. Still, it is doubtful whether that is grounds to prefer Shimon's needs, and he cannot remove the buyer from the seat under these circumstances.



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