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HEMDAT YAMIM

PARASHAT HASHAVUA

Chayei Sara, 22 Cheshvan 5775

The Torah Writes: "To me"

Harav Shaul Yisraeli – based on Siach Shaul, p. 65-66

Chazal tell us that Eliezer, the servant of Avraham was a respected Torah scholar within the circle of Avraham's disciples (Yoma 28b). The Torah (Bereishit 24:2) calls him "the venerable one of his home, who ruled over all that was his," which the *gemara* says refers to all of Avraham's Torah. *Chazal* also say that the name *Damesek Eliezer* (ibid. 15:2) hints that he was *doleh u'mashkeh* (drew and gave to drink) his master's Torah to others. The *midrash* (Bereishit Rabba 59:8) says that his mastery extended to his control over his evil inclination. Indeed, it is no surprise that the Rabbis said in the context of this great man: "The speech of the servants of the forefathers' house is nicer than the teachings of the children" (ibid. 60:8).

Yet, we find a starkly different teaching about Eliezer in regard to the *pasuk*, "In the hands of C'na'an are scales of trickery, to deny his dear friend" (Hoshea 12:8). The *midrash* (Bereishit Rabba 59:9) says that Eliezer was "weighing" his daughter as being fitting for Yitzchak. Avraham told him: "You are cursed (as you come from Cham), and my son is blessed, and it is not fitting for a cursed person to cling to a blessed one." The question needs to be asked: after seeing all the wonderful things said about Eliezer, how could he be considered cursed, and why was his daughter not fit to marry the blessed Yitzchak?

If we look at the difference in behavior of master and servant during this episode, we can find a hint of the difference in their character and thinking. Eliezer asked Avraham: "Maybe she [the appointed girl] will not want to follow me" (Bereishit 24:5). In contrast, Avraham said that Hashem "will send His angel before you" (ibid. 7). Avraham had no doubts; he had a clear path and firm belief. He had no questions and needed no answers. He knew that the local population of girls did not include an appropriate wife and that the search had to be taken up at a distance. He knew the correct person was there, and so he was ready to wait for the sign of who she was.

Eliezer was different. While he was dedicated to his master, he was uncertain and felt a need to consider other options. The plan had to be "realistic" and calculated. At first glance, Eliezer seems correct. We are not usually supposed to rely on miracles. However, in practice, the entire process of finding a mate for Yitzchak worked miraculously, and it became clear that a "miraculous reality" is a totally different one. Avraham and his confidence in Hashem was correct; Eliezer's suspicion was not.

In order to put the differences of approaches in perspective, the Torah hints with unusual spelling and *Chazal* (Yalkut Shimoni, Heshea 12) deciphered as follows: "To me - if the woman will not follow me." Whereas Avraham was able to elevate himself over his own personal calculations, Eliezer had a mixture of considerations. He indeed was an expert student and exponent of his master's teachings, but he still allowed his own personal agendas to creep in. From there stemmed his doubt and his shortcoming.

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Ask the Rabbi

by Rav Daniel Mann

Grounds for Cutting Down Fruit Tree

Question: May one cut down a fruit tree in order to make room for improvements to their back yard for recreational purposes such as to put in a pool or a basketball court?

Answer: The Torah forbids cutting down fruit trees (Devarim 20:19), which is the strictest application of the concept not to be destructive (see Rambam, Melachim 6:8). It is thus not surprising that the *gemara* and *poskim* identify “non-destructive” cases where it is permitted to cut down fruit trees.

The *gemara* grants permission in the following cases: 1. The tree no longer produces a *kav* (a relatively small amount) of fruit (Bava Kama 91b-92a). 2. It is worth more for wood than for fruit (see Rashi, ad loc.). 3. It is significantly damaging a more valuable tree (see Tosafot). 4. It is damaging someone else’s property (Bava Batra 26a).

The Rosh (Bava Kama 8:15) learns from the above that one may cut down a tree if needed to use its location, which the Taz (Yoreh Deah 116:6) applies to building a home. Most *poskim* say this includes expanding a home, at least when the addition is objectively more valuable than the tree (see Chayim Sha’al I:22; Yabia Omer V:12). On the other hand, the *gemara* tells of an *Amora’s* son who died because he cut down a fruit tree prematurely, and R. Yehuda Hachasid also warned about it. Therefore, even when it is apparently permitted, some prefer that the work be done by a non-Jew (*ibid.*) and/or that the tree be transplanted (Chatam Sofer, YD 102).

To what extent can we rely on the Rosh’s thesis that making room for something else is an excuse for cutting down a fruit tree? The Beit Yaakov (140) claims that Tosafot and others disagree with the Rosh. The Meishiv Davar (II:56) adds that it is hard to be certain that after cutting down the tree, the building project will actualize. However, many *Acharonim* (see Chayim Sha’al I:22; Yabia Omer V, Yoreh Deah 12) strongly reject the Beit Yaakov and adopt the Rosh/Taz leniency.

How important must the need for the spot be? Although the *gemara’s* cases (e.g., wood worth more, affecting another tree) are not huge benefits, they relate to situations where the tree’s existence is more directly wasteful. In contrast, in the Rosh’s (and your) case, the tree is fully viable, just that it precludes another future use. It is therefore not surprising that some who accept the Rosh say that the need must be substantial. The She’eilat Yaavetz (I:176) relates to a case where a *shul* is too small and needs to be extended to an area occupied by fruit trees. The Chavot Yair (195), while allowing cutting down a tree that darkens one’s house, forbids doing so to allow for a place for walking around or increasing space and light. Several *Acharonim*, including important *poskim* such as the Aruch Hashulchan (YD 116:13) and Yabia Omer (*ibid.*) adopt this middle-of-the-road approach.

Appraising the cases you raised is tricky. On one hand, building a swimming pool or a basketball court is expensive, so that one erects one only if it is important to him (see Minchat Asher, Devarim 33), in which case the tree should not prevent it. On the other hand, some *poskim* (see Yabia Omer *ibid.*) indicate that the value of the change should be an objective one that applies to the average person. Swimming pools and basketball courts are not likely to qualify in that regard (even if we focus on the positive and permitted uses of those facilities). It is hard to ignore the possibility that one who uses honest but faulty judgment could be punished with death (aforementioned *gemara*; see also Chatam Sofer YD 102; She’eilat Yaavetz *ibid.* is more extreme). Another factor is that it might be possible, even if less convenient, to build what is desired without cutting down a fruit tree.

Therefore, we suggest the following. If you are willing to professionally, preferably by a non-Jew, transplant the tree, you may do so. Otherwise, we would have difficulty permitting removing the fruit tree unless we were convinced that the need and the lack of alternative were clear.



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Ein Ayah

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

Chayei Sara

Two Positive Ways of Reacting to Illness

(condensed from Ein Ayah, Shabbat 1:43)

Gemara: One who enters to visit the sick on Shabbat, says: "It is Shabbat, so that crying out cannot be done and healing shall come soon."

Ein Ayah: The existence of diseases plays a positive role in shaping a person's character. First, it makes him "surrender" to Hashem. Second, the knowledge that people can become sick softens the stubbornness of the stubborn and the wickedness of the wicked.

In order to complete the personal improvement brought on by illness, one needs to engage in prayer to Hashem to save him from his difficult situation. Such prayers are very important for a person and are one of the reasons that Divine Providence arranges disease, by encouraging one to return to Hashem (see Tehillim 90:3). When the sick person or those close to him have prayed intensely and thereby actualized the goal that the illness improves their moral state, and hearts have been brought closer to Hashem, the person may recover, given that the goal was met.

There are two ways in which difficult times can improve a person's ways. The simple one is that the situation will give him the emotional impetus to turn to Hashem and strengthen himself spiritually and morally.

A higher level is that instead of crying out to Hashem to save him, he purifies his thinking and recognizes how proper it is to rely on Hashem in silence. He should realize that man does not know what is good for him and that even that which seems bad contains hidden good. Illness can actually cause him to focus on the desire that whatever Hashem wants for His world should occur, including his own illness. This is the level of the truly pious, who trust Hashem totally and do not ask for a thing for themselves, because they trust that Hashem will do that which is good for them and for the world, even if it includes their pain. This attitude will lower the desire for powerful prayer regarding their own condition, for why should one cry out when things are good?

The proper approach for a normal person is the first one, in which he maintains his natural desire for life, good health, and happiness. Based on those feelings, he will use his mouth to turn to Hashem in his sorrow and, through that, healing will come. While it represents a lower spiritual level, it is the approach that is closest to him and appropriate for all but the most unique of pious people who care only about what Hashem wants.

The second, select group of people do not need to purify their emotions through prayer at the time of troubles. Rather, troubles can only serve to straighten their understanding of the good in everything that Hashem does, which grows as their troubles grow.

During the week, a person is generally only capable of taking the approach of improving his emotions when turning to Hashem in impassioned prayer. However, on Shabbat the heart and the soul are elevated, and therefore it is a time in which one should not awaken the emotion of crying out to Hashem but should focus on the belief that Hashem has the power and the goodness to do what is best. For that reason, crying out in prayer is forbidden on Shabbat.

A person should not think that without crying out to change the situation, but just through the approach of belief, he will not succeed in becoming healed quickly. The speed of the positive effect of prayer is a function of the degree to which the disease brought the moral goal for which it was designed. If this is so for the lower level response to adversity, then it is all the more so that once one reaches new heights in his level of belief, the healing can come quickly. Therefore, since Shabbat is not the time for crying out, there is every reason to believe that the "healing shall come soon."

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P'ninat Mishpat

Relinquishing Rights to a Partnership Deciphering an Unclear Provision in a Will

(based on Shoel U'Meishiv I:III152)

[Reuven died without children, leaving behind a will that included provisions that Reb Yosef should say Kaddish for Reuven and that Reuven's relatives/inheritors should give him 50 rubles. Yosef started saying Kaddish and was given all the money, but then he died after only a few months of saying Kaddish. Reuven's inheritors are now asking of Yosef's relatives to return the money that is beyond that which corresponds to the time that Yosef said Kaddish, since the condition was not fulfilled. Yosef's relatives responded that since a condition was not made as to what would happen if Yosef did not finish his period of saying Kaddish, he should receive the full amount, which can be considered tzedaka (ed. note – one gets the impression that Reb Yosef was poor and that is why he was given the opportunity to receive the 50 rubles), which then was transferred to his inheritors.]

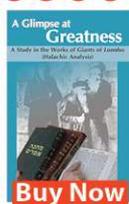
The querier [who seems to not be a rabbi but a budding scholar, whom the author praised and encouraged] cited the *gemara* in Beitza 20 about one who said: "Give Ploni 400 zuz, and he should marry my daughter." The *gemara* says that because he said to give the money before he said that he should marry his daughter, the present is intact even if the recipient did not marry the daughter. [Both the querier and the Shoel U'Meishiv apparently wrote intricate analyses of the opinions of the *Rishonim* on this *gemara*, but neither presentation is found in this responsum.]

In any case, here, since Reuven wrote first that Reb Yosef should say *Kaddish* and only afterwards that he should receive the money, he should not receive more money than due to him for the part of the job that he carried out. One might raise the argument that since Yosef's failure to fulfill the condition for full payment was only due to *ones* (extenuating circumstances), he should not lose the payment that was slated to go to him. However, this is incorrect due to the rule that although failure to do something due to *ones* is not failure, it is also not considered positive fulfillment (see Shach, Choshen Mishpat 21). Since in this case the money was for fulfillment of the need to say *Kaddish*, as opposed to a case where money needs to be withheld as a sanction for failure, Yosef did not deserve the money. Another claim one can make on behalf of Yosef's family is that the will did not state how long Yosef had to say *Kaddish*. However, it is clear that the intention is for a full 11 months, as since Reuven left no child, we can safely assume that he would not have been satisfied with less *Kaddish* than the usual amount done (see a parallel case in Gittin 74b).

Despite the fact that Reb Yosef could not have demanded pay for the time he was not able to recite *Kaddish*, since he was already paid in full, Reuven's inheritors cannot recover the money from Yosef's inheritors. One reason has to do with the fact there were no explicit conditions for how long he needed to say *Kaddish* to deserve the lump-sum payment promised. As such, we apply *umdanot* (assumptions) that indicate that he did not deserve the full amount. However, we are left in a situation of uncertainty whether the *umdanot* are true in this case. Therefore, Yosef could not have extracted the full sum, but neither can Reuven's family extract money already paid. Another reason is that Reuven's inheritors did not follow the will's provision, to their own detriment. While the will spoke about saying *Kaddish* and then receiving money, they gave money before the task was finished. As such, they turned it into a case where the saying of the *Kaddish* was the secondary commitment, making the giving of the money unconditional on the completion of Yosef's obligation.

Therefore, Yosef's family does not need to return any of the 50 rubles given to him.

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“In the Name of the Lord, The Creator of the World“

An appeal to humanity to recognize the truth and to a life of righteousness.

R. Yohai Makbili, Chief Editor in Mishne Torah Project

After our father Abraham made his covenant with the king of the Philistines, he planted an “eshel” in that place and called “in the name of Hashem El Olam” (Gen. 21:33). According to one interpretation in the words of our sages “eshel” was a roadside inn where our father Abraham would greet travelers. After hosting them and giving them food and drink, he would teach them to say the blessing, “Blessed is El Olam of whose bounty we have partaken” (Genesis Rabbah 54:6, Sotah 10a), and in that way cause the name of Heaven to be pronounced by all mankind (Leket Tov Breishit 21,33).

Judaism isn't a missionizing religion, and it doesn't call for the whole world to convert. Rather it calls for everyone to accept the Seven Noahide Commandments, seven simple universal truths. The first and foremost among them is to recognize Hashem as the creator of the world. Rambam gives an astounding description at the beginning of the Laws of Idolatry in the Book of Knowledge of the Mishne Torah how our father Abraham fought idolatry, not by sword or spear, but by spreading knowledge and proper understanding of the natural world, trying to wipe out the ignorance and suffering idolatry entails.

After this mighty man [Abraham] was weaned, he began to explore and think. Though he was a child, he began to think incessantly throughout the day and night... his mind explored and sought to understand until he achieved the true path and understood the just way by use of correct reasoning and arrived at the knowledge that there exists one God... once he recognized and comprehended this he began to debate with the people of Ur Casdim, and he told them that they weren't following the true path and broke their idols ... he then started to travel and call on people and gather them from city to city and kingdom to kingdom until he arrived in the land of Canaan. There he made his proclamation, as it is written, “And there he called in the name of El Olam”. And since the people were gathered around him and asked him the meaning of his proclamation, he would teach them one by one each according to his inclination until he returned him to the true path, “And our Father Jacob taught all his children”... to teach them the way of Hashem and to fulfill the commandments of Abraham. (Laws of Idolatry 1:3)

According to the simple sense of Scripture, the meaning of “El Olam” is the Eternal God, since in the entire Hebrew Bible, the term “olam” refers to eternal. Rambam recasts the meaning of “olam” to refer to a place, our world; Hashem is the Creator of the world. This new emphasis had a deliberate intention, the name of Hashem is not just a philosophical term, but rather it marks the connection between humanity and Hashem the Creator and ruler of the world. It is this proclamation, “In the name of Hashem El Olam” that Rambam, like that of our Father Abraham, chose to place at the beginning of all his books: at the beginning of his magnum opus *the Mishne Torah*, at the beginning of each book of the *Mishne Torah* (as can be found in the manuscripts, something which in hundreds of years of printed editions the publishers saw as superfluous and expunged), at the beginning of each order in his commentary on the Mishnah, at the beginning of each part of his profound *Guide of the Perplexed* and at the beginning of his important correspondence. Rambam saw this verse not just as an expression of the truth, but as a summons to all humanity to recognize this truth and unite around it.

To teach the path of Hashem

What is this path? Rambam already explained this in the Laws of Human Dispositions (end of chap. 1).

And along this path the prophets referred to God with all those attributes: long suffering, full of loving-kindness, saintly, steadfast, upright, heroic, mighty and similar expressions – to proclaim that these paths are straight and good, and that a person must conduct himself according to them and to follow Hashem's example according to his strength ... and because these names refer to the Creator they are the “middle path” we are obligated to follow – the path known as “the way of Hashem”. This is path that our Father Abraham taught to his children, as it is written: “For I know him that he will command his children and his household after him, and they shall keep the way of Hashem to do righteousness and justice” (Gen. 18:19). And the one who walks in this path brings goodness and blessing to himself, as it is written, “that Hashem may bring upon Abraham that which he has spoken of to him” (same verse).

The existence of the God of Truth and the way of life of truth that brings goodness is the yardstick that guides humanity toward the truth and gives us a focal point for righteous judgment. The Middle East, in the days of Abraham and in the days of Rambam was full of murderous violence. With continuous threats (such as ISIS) the situation hasn't changed all that much. Our father Abraham's faithful, passionate appeal in the name of Hashem to the entire world, that there is true and false in the world, there is a path of life and a path of death, and that “the path you are travelling is not the path of truth” – is an appeal that still resonates today. Presidents of the United States throughout history in their inaugural addresses have called on God as the foundation and inspiration for their efforts toward truth and justice. Can our leaders draw from those wellsprings today?

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