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HEMDAT YAMIM

PARASHAT HASHAVUA

Vayishlach, 14 Kislev 5775

Individual Stones and Communal Stones

Harav Shaul Yisraeli – based on Siach Shaul, p. 106-8

[Below are excerpts of an address Rav Yisraeli gave as part of a gathering of rabbis to remember Yeshivat Volozhin, which had closed approximately half a century before the event.]

In our *parasha*, we are told that Yaakov made a monument (*matzeva*) of stone upon his return to *Eretz Yisrael* (Bereishit 35:14), as he had promised when he was leaving the Land (ibid. 28:22). *Chazal* tell us that this stone was the *even ha'shtiya* (which stood on the place of the *aron* during the Second Temple Period). The Ramban (ad loc.) explains that the reason that it became forbidden to use monuments, which Hashem hates (Devarim 16:22), even though previously they were beloved, is that the idol worshippers had turned them into a part of their service.

We can expand on this idea within a broader philosophical light. We can break up modes of service of Hashem into two parts – the way the forefathers served Hashem, and the way the Israelite nation did. The fundamental difference between them is that the forefathers served as individuals, whereas the nation served as a community. Each of the three forefathers served through his own spiritual powers, with each one innovating and breaking new spiritual grounds. Avraham had a son other than Yitzchak, and Yitzchak had a son other than Yaakov. But each one was left out of the legacy, and the torch of service of Hashem was passed to an individual. Thus, the forefathers' service was like a *matzeva*, with a single stone serving as a ladder that leads to a state of clinging to Hashem.

Afterwards, though, the Jewish Nation was established, and we quickly start having distinctions. There are *Levi'im* and *Yisraelim*, those who are close and those who are distant, upper and lower echelons. Yet all of them join together to form one *mizbe'ach* (altar). A higher pillar cannot exist if it does not rest on a lower pillar. With no foundation, there is no building.

"When it rested, he would say: 'Return, Hashem, unto the ten thousands and thousands of Israel'" (Bamidbar 10:36). *Chazal* teach us that the Divine Presence dwells on no less than 22,000 Jews (Yevamot 63b). When one of these people is missing, no matter how simple or distant a person he is, that missing piece of the edifice causes the whole structure to be untenable, and the Divine Spirit will not dwell. This is what an altar represents, and this is what the Israelite nation is about – one united altar made of many pieces of stone.

The Volozhiner Yeshiva made the existence of the town of Volozhin famous, while the people and history of its Jewish community remain mainly unknown. However, without the town and other towns like it, the *yeshivot*, which produced great Torah giants, could not have existed. Unfortunately, we do not have many communities like Volozhin in *Eretz Yisrael* these days, which are willing to do that which it takes to form a *yeshiva*. Our village (K'far Haro'eh, with its modest hard work and its very Israeli lifestyle, worked hard to build a home for the home of Torah (Yeshivat K'far Haroeh), with an atmosphere that is conducive to the development of a Torah institution.

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by Rav Daniel Mann

Buying With Intention to Return

Question: I, an amateur seamstress, liked a dress I saw in a store, but it was too expensive. I wanted to buy it, learn its cut, and then return it, which Israeli law permits within 48 hours of the purchase. May I buy the dress with the intention to return it? (Additional information – in any case, I will not buy the dress; the saleswoman is a hired worker, and so neither she nor the owner loses by my actions.)

Answer: Without the special governmental provisions (not a law of the Knesset, but a *takana* (ordinance) of the relevant minister), the halacha is that after making a *kinyan* (act of acquisition) on a sales item, a buyer cannot back out of the deal unless: 1. The object was seriously blemished; 2. It was very overpriced. 3. A condition was made to allow it. However, we will work under the assumption (whose guidelines are beyond our present scope) that this law of the land is binding. Certainly, the ordinance was not instituted to help buyers in cases like yours. Furthermore, even assuming that the law would apply to this case, you seem laudably aware that this does not mean that you are morally and halachically permitted to buy the dress with the intention of returning.

While we are not experts in this ordinance (*Takanot Haganat Hatzarchan*, 2010), perusal shows it includes pertinent limitations. For one, the consumer can return the item only if he has not used it. It is a good question whether handling a dress minimally in order to figure out its cut counts as using it. We would assume that a use is a use, even if it is not a standard one and it does not wear out the dress. (See Bava Metzia 29b-30a, which says that one may not display to beautify his house a lost fabric that he must return. Admittedly, some factors apply there and not here.) Thus, if you disguise your “use” of the dress, this would be misapplying the law. Another provision of the law is that the seller can demand, as a charge for returning, the lower of: 5% of the sales price or 100 shekels. We will see how this may actually help you morally, but first we will look at the *halachot* of *ona'at devarim* (non-physical abuse).

It is forbidden to ask a merchant the price of a sales item if he has no intention of buying it (Bava Metzia 58b). While some describe the classical problematic case as when the “buyer” intends to upset the seller (see *Mayim Chayim* II:83), others refer to damage caused to the seller. The Meiri (Bava Metzia 58b) talks about the possibility that the discussion of price may take away from others’ interest to buy the item at that price and says that even if no one else is present, he still caused the seller pain and toil. These considerations do not depend on bad intentions. While any negotiations with a proprietor can lead to disappointment, a normal process of commerce (i.e., there is some chance he will buy) justifies it. (One who is overly sensitive should not be a storeowner). However, when the proprietor has nothing to gain, it is forbidden to engage him for no reason.

In your case, it is not clear to what extent a worker is upset by the return, although we would not rule it out. In any case, there are a few scenarios of loss for the owner. By occupying the salesperson, you may discourage others from buying or prevent her from doing something else of value; while the dress is out of the store, it cannot be sold; handling the dress may take away from its freshness, etc. While such concerns are not very strong, they may be enough for the halacha of not faking interest in buying to apply.

On the other hand, if indeed you will have to, or you will volunteer to pay, albeit modestly, for returning the dress, it stands to reason that this compensates for the small concerns and logically makes it permissible. That, though, would not solve the problem that the law does not apply after “usage.” In any case, we would urge, if it seems possible (depending on the worker’s personality) to be open and honest on the matter - request permission to do what you want for a modest agreed price.



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Ein Ayah

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

Vayishlach

The Reasons to Distance Oneself from Sin

(condensed from Ein Ayah, Shabbat 1:52 – part I)

Gemara: One should not read by the light of an oil lamp [on Shabbat]. Rava said: If he is an important person, it is permitted. A question was raised from a *baraita*: “One should not read by the light of an oil lamp, lest he tilt the oil cup. Rabbi Yishmael ben Elisha said: ‘I will read and will not tilt.’ One time, he read and almost tilted. He said: ‘How great are the words of the Scholars, who used to say that one should not read to the light of the candle.’ Rabbi Natan said that [Rabbi Yishmael ben Elisha] read and tilted and wrote [after Shabbat] in his notebook: ‘I read and tilted the oil cup on Shabbat. When the *Beit Hamikdash* is rebuilt, I will bring a fat sin offering.’”

Ein Ayah: There are two intentions behind Rabbinical prohibitions that distance one from the situation in which he may come to violate a Torah law. The simple intention is to remove the practical stumbling block of a violation. According to this element, the goal of the Rabbinical prohibition is negated only when one ignored the Rabbinical law in a way that actually caused the violation of the Torah law.

However, there is a second intention behind the Rabbinical prohibition. The foundations of fear of Hashem and the fulfillment of the Torah depend on the quality of one’s high view of the loftiness of the Torah law in his heart. When one is personally careful not to put himself into a situation in which there is any concern that he will come to violate a Torah law, the steps that illustrate this concern engrave in his heart a strong imprint of the importance of Torah observance and the damage done by violating even one law of the Torah. This is the psychological result of one who is as careful to stay away from a situation of danger of violating the Torah as to avoid danger to his life or to protect a precious treasure from the remote danger of losing it.

In the inverse, when one places himself into a situation in which he is liable to violate a Torah law, even when in practice he is careful enough to not violate it, his behavior makes an impression in his heart of, in general, lowering the value of fulfilling the Torah. After all, he was not concerned enough to protect himself from a situation that could lead to a Torah violation. This act of laxness about Torah has an impact even if he does end up violating the Torah prohibition. Therefore, the *gemara* asks that Rava’s approach that an important person may read next to an oil lamp is contradicted by the source about Rabbi Yishmael ben Elisha, who read and almost tilted the oil cup. We see that even an important person could bring himself to violate Torah law, and therefore even if the person did not sin and there seems to not have been damage, there still was a weakening of the spirit of Torah observance by allowing himself to be close to a violation. That is why Rabbi Yishmael praised the Rabbis for making the Rabbinic prohibition on reading. The Gra (Dvar Eliyahu, p. 67) explains that by not including in the prohibition the reason of not coming to tilt the oil cup, the *gemara* illustrates that the prohibition is not just to avoid that the cup will be tilted, with the resulting Torah violation, but to avoid the situation (based on the second reason for the Rabbinic prohibition). The question that relates to the first reason behind the prohibition is from Rabbi Natan’s version that he actually did do the Torah violation, as we see that no one can rely on himself not to come to a violation.

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P'ninat Mishpat

Iska Obligation With the Claim There Weren't Profits

(based on Shoel U'meishiv, II:II:18 – part II)

[Sarah, whose husband was away for an extended period of time, borrowed money from Reuven, which included payments of expected profits based on a heter iska, which stated that she invested the money she received. Now Sarah claims that she gave the money to one specific person and did not see profits, and so she is not willing to pay the promised profits. Upon the husband's return, he claimed that he was not obligated to return even the principal, because his wife took the loan without his authorization.]

(Last week we dealt with the husband's responsibility.)

Regarding the claim that the *iska* (investment) money Sarah was given did not produce profits, the matter may be affected by the fact that she already made payments. There are two opinions in the Shulchan Aruch (Choshen Mishpat 81:30) concerning a case where one made interim payments on *iska* money under the assumption that they were for profits and now he claims that there were no profits and the payments should count to reduce the principal. According to the first opinion, he cannot change the purpose of those payments to count toward principal and exempt himself from profit payment by swearing that there were not profits. According to the second opinion, he can now swear that there were no profits and change the nature of the past payments. The Shach (ad loc.) rules like the first opinion that that which was paid as profit is irretrievable.

Here matters are even clearer, as the money was given with a *shtar* (document). Since the *shtar* spells out the payment of set assumed profit as a given, one who claims that there was no profit is like one who claims that he has paid and thereby relieved his obligation. As such, the burden of proof is on Sarah. Since the profit was paid and the principal remains and the *shtar* makes it considered as if the payment has already been made, it is Sarah who is trying to "extract money."

Even as far as future profit is concerned, Sarah's claim, that she transferred the funds to someone else and that person says there are no profits, is not a good claim. She was given the money to invest and is ultimately responsible for the profit that she pledged to make. Even if we believe her that she gave money to someone else, who is to say that it was the *iska* funds that she gave to him? Furthermore, Reuven and Sarah are like partners in the *iska* money in such a way that if the moves that Sarah took caused losses, she is responsible, whereas the profit will be split evenly. If Sarah swears that she did not earn money in any of her investments, then she is believed about future profit but not about that which she already gave.

In this case, Reuven wrote a waiver of his rights to profits payment. However, the waiver is not valid because he told witnesses that he wrote it only so Sarah would agree to make her principal payments. When we know that she indeed made such threats, his apparent concessions are considered coerced and ineffective. Therefore, Sarah should pay all the money that was set forth in the *iska* contract.



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