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PARASHAT HASHAVUA

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Beware of the Effect of the Path on the Halachic Path

Rabbi Daniel Mann

Yosef's last instruction to his brothers as they embarked to tell their father of Yosef's survival and to prepare the family to move to Egypt was, "*Al tirgezu baderech*" (Bereishit 45:24), perhaps best translated, "Do not be agitated on the path." Rashi's final explanation is perhaps the simplest one (the Ibn Ezra concurs) – they should not fight during their trip over responsibility for the sale of Yosef.

Rashi also cites the *gemara* (Ta'anit 10b) that he was warning not to get involved in the study of halacha, with the apparent reason being that this could negatively affect the journey. *Rishonim* point out that the *midrash* says the opposite: they should study halacha along the way. The *gemara* actually distinguishes – they should learn straightforward *halachot* but not delve into halachic analysis. Anyone who has merited taking part in halachic analysis knows that one who appreciates it can become oblivious to his surroundings, which could indeed cause delays or expose him to dangers along the way.

The Kli Yakar raises the possibility that the issue might not be Torah study's impact on the journey, but the journey's impact on Torah study. By "running with" this latter approach, we can connect the two explanations we cited from Rashi. While it is proper to be involved in Torah in almost all states of mind, one should be careful to engage in weighty halachic matters only in the right state of mind. For example, while it is permitted to learn Torah when mildly "under the influence," he may not render halachic rulings in that state. When one is on the road, he is likely to be unable to concentrate well enough to arrive responsibly at the deeper, finer points of scholarship.

If the above is always true (one could claim it was exacerbated by the brothers' emotional state), why does the Torah teach us this idea in the context of Yosef and his brothers? Let us suggest that Yosef was sending a message to his brothers. Certain decisions, especially complex, high-staked decisions, require perfect conditions in order to ensure that they are done correctly. One example was the practical lessons (e.g., who was at fault and what price should he pay) to be learned from the sale of Yosef, as they returned to inform their father that Yosef was rediscovered. They should not quarrel on the way, where they were not equipped to decide anything responsibly.

Perhaps Yosef was also hinting at his brothers' decision to kill or sell him decades before. They indeed did not employ a responsible process for such a weighty decision. They judged Yosef even though they were interested parties. They made a hasty decision on the road. And, while ten of them took part, two really convicted Yosef while eight were afraid to oppose them (see Rashi, Bereishit 49:5). This is similar to group learning on the road. There is no room to sit down and discuss together. Rather, two travelers who are riding near each other are likely to decide things among themselves and inform the others of their conclusion. Yosef warned that such rulings must cease.

As those who value Torah-based decisions, we must always strive for a halachic process done with care that everything that can contribute to wise and just rulings and decisions has been employed.

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by Rav Daniel Mann

Paying a Poor Person's Guaranteed Loan from *Ma'aser* Money

Question: My *shul* has a *gemach*, which gives loans only with an *arev* (guarantor). One borrower (Reuven) came into serious financial and medical problems some time after the loan. Realizing that he was not going to be able to pay, some friends decided to pay the loan for him, and they want to use for this purpose their *ma'aser kesafim* money (a personal *tzedaka* fund, consisting of a tenth of one's income). The question arose: since the *arev* (Shimon) will have to pay, given that the borrower cannot, and the *arev* is not poor, the donors are actually not sparing the poor but the "rich," and therefore can *ma'aser* money be used?

Answer: This is a case where halachic intuition screams from the outset that it must be permitted to use *ma'aser* money, as the money is being given with the intention to help Reuven. We now aim to provide specific reasons why the intuition is indeed correct.

We begin with a simple halacha. After a guarantor has, based on the agreed terms, paid the loan back instead of the borrower, the borrower is required to reimburse him (Shulchan Aruch, Choshen Mishpat 130:1). This halacha impacts on our question in two ways. First, on the practical level, the donors are extricating Reuven from debt, whether you view it as the present debt to the *gemach*, or the future one to the *arev*.

Perhaps more significantly, the above and other *halachot* are instructive in understanding the nature of the mutual obligations when a borrower is unable to pay and an *arev* is called on to do so. It is not that the *arev* turns into the borrower, as the borrower remains obligated. Therefore, if the donors pay, they will be paying and relieving Reuven's debt. The fact that practically this will benefit Shimon greatly does not cancel the *tzedaka* toward Reuven.

Under certain circumstances, there are additional reasons. Let's assume Shimon took the responsibility as a *chesed* (not for some personal gain) and planned that if Reuven would be unable to pay, he would count his payment of the loan as *tzedaka/ma'aser*, as he may (see *Tzedaka U'mishpat* 5:(50)). If so, if the new donors relieve Shimon of paying, they are saving money for Shimon's *ma'aser* fund, which is in effect a donation to it. While we usually think of giving our *ma'aser kesafim* to poor individuals or official NPOs, one can give (or, as in the case, give, in effect) his *ma'aser* money to someone else's *ma'aser* fund. Thus, even if one views it (incorrectly, in our opinion, as above) as giving money on behalf of Shimon, it could still be considered giving it to his *ma'aser* fund.

Another way of looking at the donation as a valid use of *ma'aser* is to simply look at the donors' actions as replacing the existing guarantor. While one could claim that this was an unnecessary gesture, as Shimon does not need to be replaced, in the final analysis, the donors are paying for Reuven, as Shimon had been prepared to do. So if, as we posited, Shimon could consider his payment as a legitimate *tzedaka* outlay (even though he originally hoped not to), certainly the new donors, who are acting in at least as altruistic a manner as Shimon, can consider it such.

Finally, it may be possible to give the money as a donation to the *shul's gemach*, as they are actually giving it, just doing so on condition that the *gemach* will let their friend "off the hook." This is not far-fetched. After all, the *gemach* is not interested, despite the requirement of an *arev*, in forcing payment from one with extreme difficulty paying. Rather, they are concerned that if they let people off too lightly, they will lose the ability to continue lending to others in the future. The new donors are assuring the *gemach* that they can forgive Reuven because the donors are replenishing their resources commensurately.

Thus, we have been able to find five constructs to support the intuitive conviction that the donors' philanthropy should be considered a proper use of *tzedaka* funds. However, we would point out that the first two constructs are the most straightforward truths.



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Ein Ayah

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

Vayigash

Remembering Sin and Its Root Causes

(condensed from Ein Ayah, Shabbat 1:53)

Gemara: [The Rabbis said not to read by the light of an oil lamp, but some thought that it was permitted for a person who knows how to be careful]. ... [He] read and tilted the oil lamp and wrote in his notebook: "I, [Yishmael ben Elisha] read and tilted the lamp on Shabbat; when the *Beit Hamikdash* will be built, I will bring a fat sin offering."

Ein Ayah: Writing in a notebook awakens a person to realize it is proper to remember, not forget, one's sins. If all acts of sin would only have a temporary impact on one's soul, it would have sufficed for him to repent at the time of the sin, rendering remembering the sin long term superfluous. In truth, though, a person's spiritual powers and his personal actions are intertwined, and one sin can ruin much goodness. Each act of sin has a negative impact on several of a person's good attributes and can cast away a person's altruism from his heart, according to the level of the sin and the imprint it leaves.

A person's spiritual powers are hidden, and some of their shortcomings are unnoticeable except when life arranges matters so that he needs to act by using that power, which he will then find to be lacking. Only at that time will the person be able to rectify the shortcoming by having the powers of goodness and sanctity, which are the foundations of repentance, overcome and thereby fix the shortcoming.

For this reason, a person should make sure that his sin will not be forgotten until he sees that his spiritual powers that relate to the area of the sin are complete and are not harmed either in attributes or in philosophies. Then he can be happy and know reliably that his sin has left him and has dissipated like a cloud.

Every action makes a different imprint on the soul, not just according to its value as good or evil, but also based on the situation and reasons that caused it. One cannot compare, for example, the impact of an action that was done when a person was in a good mood to one performed when in a state of heartache. It takes great study to know how to strengthen the position of goodness and sanctity in a person's soul in relation to the damage that sin brought according to the essence of the sin and its circumstances. Therefore one should not only write down the essence of the sin but even the factors that brought it about. That is why Rabbi Yishmael ben Elisha wrote that he was reading (the cause) and tilted the lamp (the action), stressing the noteworthiness not only of the action but even its causes.

The human body lives and survives with the help of its flesh and bones. The body's fat provides some benefit that would otherwise be missing. Sin also is supported by factors that help bring about the sin. If a sin's causes did not make a difference, then the fatness of the sacrifice brought to atone for it would not be significant enough to record and remember. Rabbi Yishmael realized that he needed to distance himself greatly from the decision to not heed the warning of the Rabbis. Therefore the fact that he decided to read by the light of the lamp had to be written with the fact that he needed atonement, even though the sin (violating Shabbat) has its own complete character without this specific cause. He also recorded the need to bring a fat animal to stress that he needed atonement for that which made the sin a "complete one," as his thought process was intrinsically lacking and required work. Every person needs to learn from this story and be vigilant to follow all of the injunctions of the Rabbis, without trying to find personal ways around them. Therefore, the circumstances that surrounded the sin needed to be recorded as part of the effort to receive full atonement.

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P'ninat Mishpat

Bal Talin When Worker is Working for Himself

(based around Shoel U'meishiv II:III:42)

[This response appears to be based on a real story. Although it is not the classic monetary dispute with which we usually deal in this column, it appealed to me enough to want to include.]

Reuven gave fabric to Shimon, a tailor, to make clothes, but the tailor was to keep the clothes for himself. The generous Reuven even promised to pay Shimon for making the clothes. The question is: if Reuven is late in paying Shimon, does he violate the prohibition of *bal talin* (paying a worker late)?

The Torah, in describing this prohibition says, "*Lo talin peulat sachir itcha ad boker*," which Rashi explains as not having the work of the worker "lie by you" until morning. We would have expected it to say not to have his pay lie by you. (Some commentaries say that this is the intention, but the choice of words is telling.) It seems that the Torah is bothered by the work "lying" by the employer, for until the work is paid for, it is as if the work is stolen. One difference between the approaches is in a case like this. Shimon worked for himself, and Reuven only promised to pay him, so if Reuven does not pay on time, we would not say that Shimon's work was lying by him.

This also explains the *gemara's* discussion in Bava Metzia (112a). The *gemara* says that if a craftsman acquires rights in the object he improves, it is considered that he is not a worker for the person who engaged him but that when he returns the improved object, the owner becomes a debtor to the craftsman who "sold him" his part in the improved object. If, though, he is paid for the work, it turns out that the work is unpaid in the "possession" of the owner of the object, and he violates *bal talin*.

We can also relate the above to homiletic discussion. How can *Chazal* tell us that Hashem does not give reward for *mitzvot* in this world but in the next, if this "delay" should be a case of Hashem violating (*k'v'yachol*) *bal talin*? A *midrash* attributes such a complaint to Moshe Rabbeinu when Hashem refused him from entering *Eretz Yisrael*. Some say that only Moshe had a complaint because the rest of the nation was promised reward through an agent (Moshe), in which case there is no *bal talin*. According to our thesis, the question is answered simply. We do not do an action that is "by Hashem." Rather, He just promised reward for good things we do, in general.

This also sheds light on the Rambam's distinction between *mitzvot* to Hashem, for which we are not promised reward in this world, and *mitzvot* for people, for which we are. This makes sense since only regarding help for our fellow man are we doing work for someone (the recipient), at Hashem's behest, in which case the *mitzva* to "pay on time" applies.

This also explains the *midrash* on Ruth that says that she was blessed that Hashem will pay her reward for her good deeds, with the Targum saying that she would receive it in this world. This does not contradict the concept that reward for *mitzvot* is in the next world because that applies to born Jews, who were born obligated in *mitzvot*, in which case their actions are not considered for Hashem but for their own obligation. In contrast, a convert "gives to Hashem" on some level by volunteering to do what He wants. Therefore, Hashem has reason to pay right away.

In any case, irrespective of the homiletic ideas, halachically, if Reuven promised Shimon pay for work he did for himself, delay in payment would not violate *bal talin*.



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