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HEMDAT YAMIM

Parashat HaShavua

Pinchas, 24 Tamuz 5775

A Roving Capital

Harav Yosef Carmel

Our *parasha* is the first one to deal with Tzlofchad's daughters' request to merit receiving their father's portion in *Eretz Yisrael*. From that time, they turned into the symbol of women who love the Land. This week we will relate to the last one on this list of daughters – Tirtza (Bamidbar 27:1) – and specifically the city that bore her name in First Commonwealth *Eretz Yisrael*.

The city Tirtza was located on the eastern slopes of the Shomron region, in the land of the Tribe of Menashe, from whom the sisters came. Yerovam ben Nevat, first king of the separatist Kingdom of Israel, made it his capital. How that decision came about is complicated.

Yerovam became king of the Ten Tribes in the historical capital of the Shomron, Shechem. Shechem was already an ancient city in the time of the Patriarchs, and Yaakov bought a plot of land there upon his return from Aram (Bereishit 33:19). Shechem is located on the border between the sections of the two sons of Yosef, Ephrayim and Menashe (see Yehoshua 17), as Yerushalayim is on the border of Yehuda and Binyamin. Shechem was prominent as the venue of the acceptance of the covenant upon entering *Eretz Yisrael* at the time of Yehoshua, an event with similarities to the acceptance of the Torah on Sinai (see Yehoshua 24: 24-25).

Along this backdrop, we can certainly understand the beginning of the following *pasuk*, but are left puzzled by its end: "Yerovam built Shechem on the Mountain of Ephrayim, and he settled there, and he left there and built Penuel" (Melachim I, 12:25). Why did Yerovam forsake his historical capital? Further study of Melachim shows that at the end of his reign, Yerovam built up another city to be his capital – Tirtza. We find this out indirectly. Yerovam's son Avihu fell deathly ill. Yerovam sent his disguised wife to Achiya Hashiloni to find out his fate. The prophet knew her secret and told her that Avihu would die. As the queen returned to the palace – in Tirtza – the lad died (ibid. 14:17). Thus, the new capital, with the palace, was in Tirtza, as we continue to see over a significant period thereafter.

Prof. Yehuda Elitzur has an interesting theory to explain the chain of events. Upon founding the alternative Kingdom of Israel, Yerovam naturally turned to Shechem as the capital. However, soon thereafter, Paroh Shishak of Egypt came with demands on Yerovam to pay up for Egypt's support of the Israelite rebels. He demanded of Yerovam to open war on his brethren from the Kingdom of Yehuda. When Yerovam refused to wage a fratricidal war, Shishak attacked him and destroyed tens of cities, including the capital Shechem. In need of refuge and a new capital, Yerovam built Penuel, in the relatively distant eastern bank of the Jordan, on the slopes of the Gilad. Only after many years did the Egyptian pressure subside, enabling him to set up his capital on the western side of Israel, in the Shomron. He made Tirtza his capital, which it remained until the days of Omri. Apparently, the merit of the matriarch of sorts – Tirtza – stood up for her in the form of the city that bore her name.

A year ago, our nation was exposed, under tragic circumstances, to modern day female role models of love of the land and the nation and of bravery, along with love for their children. Rachel Frankel, Bat Galim Sheyer, and Iris Yifrach taught a unity which will hopefully keep us away from the disunity that caused the split in the nation at the time of Yerovam.

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by Rav Daniel Mann

Requirement for the Seller to Fix the Situation

Question: I bought an apartment from the project's developer's brother. My lawyer did not discover that the project's building permits were incomplete. Now, the municipality is "making noise" about kicking out the residents and/or allowing us to stay with limitations. I have tried to smooth things with the municipality but have not yet succeeded. The developer has the best chance of getting the municipality to complete the permit after the fact, and the seller, who admits he did not tell me of the problem, can make him to do it. The seller says that it is uncertain that anyone can get the permits, but that if people act wisely, the municipality will not evict us. (He points out that he still has an apartment in the project, and many who knew of the problem bought). He is willing to buy back the apartment but not take action. Can I force him to fix the situation?

Answer: This case undoubtedly contains many unclear elements, which require either a settlement or adjudication in *beit din*, but we will address your main inquiry in general terms.


Fundamentally, a sale is the transfer of an object from the ownership of one person to another, as opposed to obligating the seller to give or do something for the buyer. Thus, the seller has a good point, when refusing to take a course of action, despite the flaws in the property and his behavior. Rather, the buyer's general recourse regarding purchases that turn out to be seriously flawed is to nullify the sale (see Shulchan Aruch, Choshen Mishpat 232:3).

Some sources do indicate that the seller is required to act to fulfill the buyer's basic expectations from the purchase. For example, there is an opinion that if one made a purchase before a document was written but pledged to write one, he can be forced to write it and cannot opt to nullify the sale (Shulchan Aruch, CM 243:9). The Imrei Yosher (II:52) explains that the document is part of the process of the purchase.

However, these sources are quite different from your case. For one, there the buyer pledged to write the document. Here, even if (we do not know) the seller said or implied the property had a complete permit, he did not pledge to take further steps to get it to that point. If he gave a false picture of the present situation, there may be grounds for nullifying the sale, but not to force him to take the action you desire. Second, in the case of buying property second hand, dealing with building permits is not part of the sale process (when buying from the developer, the contract usually states what his legally required steps are).

The Rosh (Shut 96:6) says that if one buys an object with a flaw that can nullify the purchase, the seller can, under certain circumstances (see Shulchan Aruch and Rama, CM 232:5), say that he is willing to fix it rather than allow the purchase to fall. Our question is the opposite situation: can the buyer say: "Rather than have to nullify the sale, I demand of you to fix the flaw." The Ulam Hamishpat (ad loc.) understands from the Rosh that he can demand that the seller either fix the problem or reduce the price so the buyer can. However, some Acharonim (including Lev Meivin, CM 144) disagree. I believe that the latter opinion is correct. Realize also that the Rosh says (Bava Batra 5:14) that a seller who overcharges by enough that the sale can be nullified cannot be forced to return the overcharging if he prefers to cancel the sale. Similarly, the Shulchan Aruch (CM 232:4) says that a seller can opt to nullify a sale rather than reduce the price due to the flaw. The Ulam Hamishpat is also clear that he is only referring to cases where that which needs to be done is readily accomplished. In fact, even if one promises as part of a sale to do something, he can only be forced to do so if it is readily accomplished (see S'ma 209:23).

Therefore, in your case, it does not appear that you can compel the seller to take complicated steps that may or may not rectify the situation, although there may be various claims that can be made on him.



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Ein Ayah

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

David – Connection between Past and Future Glory

(condensed from Ein Ayah, Shabbat 2:45)

Gemara: When Shlomo built the *Beit Hamikdash*, they wanted to bring the ark into the Holy of Holies, but the gates stuck to each other. Shlomo recited 24 songs of praise and was not answered. He then began to say, “Gates, raise your heads ...” (Tehillim 24) and was not answered. When he said: “Hashem, the Lord, do not turn aside the face of your anointed one. Remember the righteousness of Your servant David” (Divrei Hayamim II:6:42), he was immediately answered.

[In previous pieces, Rav Kook explained that the *Beit Hamikdash* relates to an emotional connection to Hashem and the ark, which holds the Tablets/Torah, relates to the intellectual connection. We skip over the explanation of the initial failure to get the gates opened and discuss his explanation of the success.]

Ein Ayah: The internal connection between the emotion of a pure heart, which is connected to prayer and service of Hashem, and intellect, which stems from Hashem’s Torah can be found in the connection between the standing of Israel in every generation and its standing in the ideal and eternal future era.

Emotion is found in the love that good people have for their nation, and it grows when the nation is full of good, holy traits. Therefore, the strong love that should connect every Jew to the Assemblage of Israel should be strong enough to raise him to a high level of piety. Tikunei Zohar explains the Zohar (Mishpatim 114:2) as saying that one is pious if he makes the connection between the Divine Presence and the Nation of Israel.

This feeling is elevated into the status of proper intellect if one sees how the love of the nation at the present time will turn into the loftiest eternal light, which makes us fit to be a unique nation forever. In order to connect this sanctity of present and future, one needs the secrets of Torah and *avoda* (service of Hashem).

In this regard, there is importance to the spiritual attainments accomplished in these times in a hidden manner, in which it appears that many individuals reach nice levels by being inspired by the Torah of Israel. Every uttering that Hashem made was broken up into 70 languages. However, this is only part of the story. One cannot reach the proper level of understanding of Hashem without appreciating the level of Israel as the nation that Hashem chose to be an eternal nation. One who sees it otherwise has a weak recognition that is no more than a preparatory recognition of the truth. Remembering the level of Israel in every generation spawns positive thought about the future *avoda* in the *Beit Hamikdash*, and it helps the intellectual light of the Torah embrace all times and situations. These are the circumstances under which the ark with the light of the Torah can enter the Holy of Holies, after the gates open to allow it.

David represents the power of the Kingdom of Israel throughout eternity. Even when he sinned, the promise that the kingdom would remain in his family was intact. This remains an eternal foundation, whose full light will shine in the End of Days. The different forces will then join under one flag and with one language. David strove to be a vehicle for the highest level of world connection to Hashem in the future. However, this relates not only the future by itself but also that which it will draw from the past. This makes David’s kingdom in the past/present relevant in this regard, connecting David’s own reign with the future kingdom that will bear his name. That is why Shlomo asked not to turn aside the face of His anointed one. The task of the emotion that loves the success of our nation, which is an outgrowth of the fulfillment of the Torah, is a preparation for the lofty eternal goal of preparing for future glory. When Shlomo connected the two [by mentioning his father], it was fit for the ark to enter the Holy of Holies

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P'ninat Mishpat

Sanctions Against One Who Might Have Altered a Receipt

(based on Shut Chatam Sofer, Choshen Mishpat 39)

Case: Reuven borrowed 600 gold coins from Shimon and returned 500. Reuven had a claim against Shimon that, he believed, exempted him from paying the last 100, but he could not prove it in *beit din*. It was decided that Reuven would make four quarterly payments of 25 gold coins. Reuven has a valid receipt for one payment, but they dispute a second payment. Reuven claims that they decided he would make one more payment of 70 coins and be forgiven the rest and presented a receipt for 70 coins. Shimon said only 25 was paid and claims the second receipt was forged. Shimon paid (100 gold coins) for an expert in Vienna, who confirmed that the number 25 was replaced by the number 70. Reuven explains that since he and Shimon met in the market far from where Shimon kept the original document, Shimon made the change to the receipt and promised to bring the document to be ripped up later. Shimon demands, in addition to payment of the loan, reimbursement for the expense of the expert and that *beit din* disqualify Reuven from serving as a witness or swearing in the future.

Ruling: It is not clear who initiated hiring the expert. If the matter was taken to the non-Jewish courts, Shimon does not deserve reimbursement. If *beit din* authorized it, he is entitled to expenses if he can prove how much he paid and *beit din* agrees the amount is reasonable (Shulchan Aruch, Choshen Mishpat 14:5). It is distressing that 100 gold coins were spent on a dispute over 50.

Realize that while a receipt with an erasure is inadmissible, Reuven still has a claim that he paid the entire amount due, and he could force Shimon to swear that he did not receive payment. Although one who has been proven to be trying to forge a document in a certain case can no longer make unproven claims in the case, here it has not been proved that Reuven forged anything, as his version of the story is plausible. If Shimon did not win the case outright, he cannot demand expenses from Reuven, although it is possible that the disqualification of the receipt is considered losing, regarding expenses.

Reuven's disqualification to serve as a witness in the future should not be Shimon's affair (see S'ma 33:25). This is even if the disqualification is a penalty on the one who lied, and certainly if it is just a legal fact. In any case, it is not clear that Reuven is liable for censure, as we do not know that the forgery was his doing. While there is a concept that we penalize the one who is "holding" the matter of sin (see Kiddushin 56b), that is when we know that he sinned (just that another person also did). However, since Reuven's story is plausible, we cannot disqualify him without proof. Actually, even if he did alter the receipt, since we know that he believed that the whole obligation to pay was not true, improperly trying to get out of the payment does not necessarily mean he can never be trusted again. As a matter of fact, the *gemara* (Ketubot 36b) brings an opinion that one who forged a document can swear on the matter at hand, and while we do not allow that, we do say that that he is believed in other cases.



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