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Mazal tov to **Chaim Mann** on the occasion of his bar-mitzvah.
May he continue to grow in Torah, *yirat shamayim*, and *middot tovot*.

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There is Judgment and a Judge Harav Yosef Carmel

The *haftara* speaks about the great salvation to the city of Shomron that came about in the aftermath of Elisha's prophecy. Due to the Aramite siege to the city, the starvation caused prices to soar to unsustainable levels. Elisha assured the king that the next day the prices would be back to normal "in the gate (*b'sha'ar*)" of Shomron, an idea that the *shalish* (king's assistant) scoffed at. Elisha responded that the *shalish* would see it but would not eat from it (Melachim II, 7:1-2). As the story played out, much of the narrative repeats itself regarding the predictions and fulfillments of the prices in the gateway and the fact that the *shalish* was trampled in the gateway.

Why is there such stress on the *sha'ar*, both as a reference to a key place within a city and in regard to an exchange rate? One should realize from the outset that the court traditionally sat in the *sha'ar* and that one of its responsibilities was to ensure that the proper business practices would be kept. Let us put the recent history of the time in perspective and see how the gateway played a role in this whole story.

The king at that time was Yehoachaz, son of Yehu, who followed Hashem's instructions to destroy the idolatrous infrastructure of Achav's time and breaking ties with the *Tzidonim*, from where the wicked princess/queen Izevel came. This seemed to have been the cause of a major economic downswing, which was a major and vexing change from the material success at the time of the wicked Achav. The king expressed his great anger to the prophet, who apparently did not live up to his end of the bargain (see threatening language, *ibid.* 6:31). Yehoachaz, seeing such tragedy as mothers agreeing to give up their children to be used as food, remarked: "This evil is from Hashem. Why should I plea before Him anymore" (*ibid.*:33). In other words, the king gave up on Hashem with the claim that there is no judgment or judge, considering that he had followed instructions and the situation deteriorated.

The answer to the king was the *sha'ar*. Throughout *Tanach*, that place symbolized the place of judgment. Although the Divine judgment seemed to be absent, in fact Hashem was preparing the miraculous salvation, one that would come from the *sha'ar*. It came with the help of the four lepers who sat outside the *sha'ar*, and the food ended up going back to normal prices at the *sha'ar*. Those who doubted Hashem paid the price for their doubts at the *sha'ar*. It was proven that there was a Judge in the *sha'ar* and that He would prove His justice to those who would wait.

Hopefully, we can internalize the messages of patience and belief that are epitomized in this story.

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Ask the Rabbi

Question: Often during Pesach cleaning, I am aware of *chametz* that is in places where it is very hard to get to. Am I required to make every possible effort to get the *chametz* out?

Answer: *Gemaras* talk about cases where it is questionable whether one must get rid of *chametz* that is not readily accessible. The *gemara* (Pesachim 8a) states, regarding a hole in between the property of two Jews, that each one must put his hand as far as it reaches in search of *chametz*. Whatever might remain may remain, and *bitul* (a declaration of nullification) suffices. Similarly, the *mishna* (Pesachim 31b) says that one does not have to worry about possible *chametz* underneath rubble. Again, the *gemara* adds that one should do *bitul*. If it is known that *chametz* exists there, he must take steps necessary to remove it unless there are three *tefachim* (approximately, 9 inches) of rubble on top of it (Tosafot 8a; Shulchan Aruch, Orach Chayim 433:8).

Perhaps the most pertinent *gemara* for our case is the list of questions about *chametz* in out-of-the-way places in Pesachim 10b. The *gemara* presents two possible sides regarding *chametz* on top of rafters. Perhaps the Rabbis did not inconvenience one to bring a ladder to get it since he is unlikely to come and eat the *chametz*, perhaps it is necessary because the *chametz* could fall. The *gemara* then asks that if we are stringent in the former case, perhaps it is unnecessary if the *chametz* fell into a pit (from which it will not “fall up”). One might still be stringent there because it is possible that he will go down to the pit and eat the *chametz*.

The Rambam and Shulchan Aruch (OC 438:2) rule stringently on the question of the rafters. Regarding the pit, they are lenient but with the provision that one will do *bitul*. The Beit Yosef (ad loc.) explains that by doing *bitul*, one lowers the issue to a maximum of a rabbinic level problem, and then one need not remove the *chametz*. We do not make him remove that *chametz* before or during *bedika* because it is referring to a case where it will take a lot of toil to get the *chametz* and the fact that it is out of access makes it like the aforementioned case of rubble (ibid.; see Mishna Berura 438:15). One cannot put *chametz* into such a situation purposely (Beit Yosef, ibid.).

In describing the case of the rafters where one has to go to the trouble of removing it, the Rambam and Shulchan Aruch talk about there being a *k'zayit* (the size of an olive) of *chametz*. There are *poskim* who say that if there is less inaccessible *chametz* than that, there is certainly not a need to go to the trouble of removing it (see Mishna Berura 438:12 and Sha'ar Hatziyun 438:11). Anyway, all of the sources we have seen clearly indicate that if the *chametz* is in a place where one will not have access to it on Pesach and there is significant difficulty getting to it, one may rely upon *bitul chametz* (which we do as a matter of course) and leave it where it is.

However, many (most?) of us seem to be more stringent on ourselves in these matters than we might need to be. Why are we so apparently “masochistic”? The source or explanation for the fixation with perfection in our Pesach cleaning is apparently related to the following source. “People have the practice of scraping walls and chairs that *chametz* touched, and they have what to rely upon [for being arguably needlessly stringent], and if there is *chametz* in a crevice that one cannot reach he should put a little cement over it” (Shulchan Aruch, OC 442:6). Along the lines of this approach, many normal people do more than what is halachically required to remove every piece or even trace of *chametz* from different places. So, if you spend several minutes reaching into the recesses of your sofa to get out *chametz*, you may be more *machmir* than required, but you are also in good company. Even *chumrot* should have limits, but these are hard to quantify.

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Ownership on Foods That Are Assur B'hana'ah – part I

(from Sha'arei Shaul, Pesachim 13)

Metzora 5768

The *gemara* (Pesachim 6b) cites R. Elazar's statement that two things are not in a person's *reshut* (possession), yet the Torah considered them as if they were: a pit [that he dug] in *reshut harabbim* and *chametz* on Pesach. Rashi says that when it says it is not in his possession, it actually means that it is not his (regarding ownership). The *gemara* later states that one who tries to marry a woman with *chitei kord'naita* is not married to her. Rashi explains that even though *chitei kord'naita* is only *chametz* on a rabbinic level, "whoever marries does so based on the intention of the Rabbis, and the *hefker* of *beit din* is *hefker*, and they were *mafkir* his money." The Rashash explains that this works by the Rabbis creating an *issur*, as a result of which, the object is not worth a *peruta*, which is required for *kiddushin*.

Rashi says that the *gemara* refers to a time on *Erev Pesach* when *chametz* is *assur* only *mid'rabbanan* and that even though there are two reasons why the food is not *assur b'hana'ah mid'orayta*, the *kiddushin* is still invalid. The Rosh (Kiddushin 2:31) says it is talking about a time when *chametz* is *assur mid'orayta*, for if there were two reasons for being *mid'rabbanan*, the *kiddushin* would take effect. The Shulchan Aruch (Even Ha'ezer 28) accepts this distinction. The Beit Shmuel (28:52) asks: what difference does the level of the *issur d'rabbanan* make? Once it is *assur*, the *chametz* is not worth anything, so *kiddushin* cannot occur with it.

The Avnei Milu'im (28:54) answers the Beit Shmuel's question by comparing this case to that of one who gives something for *kiddushin* on condition that it will return to him (*matana al m'nat l'hachzir*). Tosafot (Kiddushin 6b) says that the *kiddushin* should have worked from the Torah and was uprooted rabbinically. Fundamentally, it is considered that he gave her something, even though practically she is unable to use it. The important thing is to give something of intrinsic value when excluding technical, even religious considerations.

This comparison is apt only according to the Avnei Milu'im's author (in K'tzot Hachoshen 241:4) that when returning a *matana al m'nat l'hachzir*, the original giver does not need a *kinyan* because the *kinyan* was temporary. Only in that way was the giving not of value, and one could learn the rule that when one gives something that the recipient is prevented from enjoying, it is still *kiddushin*. However, the Rosh holds that that there must be a *kinyan* back to the original giver, as there was a full *kinyan* that has to be reversed. Thus, it is different from the case of *chametz* that is practically *assur b'hana'ah*, and the reason for the lack of value becomes unimportant.

Tosafot (Pesachim 29b) deals with the *gemara's* contention that one who eats *chametz* of *hekdesh* is not *mo'el* (misappropriate from *hekdesh*) because it is not worth anything. Tosafot asks that since it is permitted to benefit after burning from *issurim* that require burning, *chametz* should have value due to that prospect. They answer that there is no *me'ila* because at the critical moment, it is valueless. Tosafot says that such an object cannot effectuate *kiddushin* either due to this idea or that it may be referring to a case where the *chametz* is not worth a *peruta* after burning.

Tosafot's first answer seems to assume that there are no acquisitions of *issurei hana'ah*, and it is thus irrelevant if the object has practical value. Otherwise, why does it matter that an action is needed before it becomes usable? Would we say that the raw meat is considered valueless because it first needs to be cooked? The second answer posits that there is ownership over *issurei hana'ah* and that the problem is technical: it is not worth enough. Tosafot in Kiddushin has another answer: if a bride receives something that is *assur b'hana'ah*, there is a *mekach ta'ut*.

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P'ninat Mishpat

Paying an Overdue Obligation With Linkage

(based on Halacha Psuka, vol. 41, condensation of *Mishpatecha L'Yaakov* II, pp. 361-373)

Case: The plaintiff (=pl) hired the defendant (=def) to cater with a fee quoted in dollars. Pl paid late; def sued in secular court, which forced pl to pay with linkage to the CPI (inflation rate). Pl sued in *beit din* to retrieve the interest payment, which he claims is *ribbit* (usury).

Ruling: *Acharonim* discuss whether linkage to the CPI constitutes *ribbit*. The Chazon Ish (YD 74:5; see also Igrot Moshe YD II, 114) says that if after one borrowed money, its buying power went down, he pays the same face value. Currency is halachically viewed as such that we always attribute price fluctuation to commodities, unless a coin's weight changed. Therefore, linking a loan to the CPI is *ribbit*. One could argue that it here is not *ribbit* because it is not paying to wait for the money. Rather it is payment for a clear loss of value between the time he was to have paid and the time he did, as def could have put the money in an account linked to the CPI. However, the Rashba (Shut III, 227) says that a borrower may not pay the lender for lost profits; this is not considered damage payments.

However, the Ohr Zarua cites differing opinions as to whether the above is true only for loans but that for withheld worker's compensation one may demand compensation for the withheld money. The Beit Yosef (YD 160) rejects the lenient opinion, but the Beit Yitzchak and Chatam Sofer support it. The latter explains that the Torah states that *ribbit* is to protect a borrower whom the lender should be helping but not to protect an employer who owes money to an employee, as, to the contrary, the Torah safeguards the worker's interest. The Chatam Sofer bases himself on the employer's responsibility to be concerned for his worker, and this applies only to a *sachir*, a worker who is paid according to the time he works for his boss. In contrast, the employer of a *kablan* ("contractor"), who is paid by the job, does not violate the prohibition of paying after the day the work is finished (see K'tzot Hachoshen 339:3). Def is a *kablan*, who is paid for the job of providing the food. Therefore, even according to the Chatam Sofer's leniency, one will not be able to link to the CPI and def must return that money.

The Nimukei Yosef says that one can promise to pay for something with something other than local currency. The K'tzot Hachoshen (203:4) says that regarding a worker, who is to be paid in cash, one cannot turn the obligation into something else. The Netivot Hamishpat (203:7) says that the matter depends on the wording one used. In our case, the promise of payment for the food provided is analogous to a sale of the food, and therefore according to both opinions, he could obligate himself to pay in any manner, including a set amount of dollars. Therefore, linkage to the dollars was appropriate. [*In those days, the dollar consistently went up.*]

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Tel: 972-2-537-1485 Fax: 972-2-537-9626

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