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Parashat HaShavua

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Paying the Price – A Sign of Weakness or Greatness?

Rav Daniel Mann

The Purim story, which has such an ominous section to it, certainly seems to end up superbly. The hodgepodge Jewish community, spread throughout the Persian Empire, came out unscathed after the great scare. Their favorite son and daughter became very high in the ranks of the powerful people of the world. But do our heroes really emerge unscathed?

It is hard not to notice the similarities between our heroine, Esther, and our matriarch Sarah. These women, recognized by the Torah as exceptional beauties and by *Chazal* as prophetesses (Megilla 14a), were both taken against their will to the king's palace, with the plan of their being the queens of non-Jewish world-power kings. Their husbands stood powerlessly by the side as Divine Providence called the shots.

But the similarities stop here. Sarah was miraculously saved from the dubious honor of being queen and the outright disgrace of being the wife of a non-Jewish man. Esther, on the other hand, merited no such miracle and perhaps even was the 'victim of a miracle' in that she was chosen as queen, certainly according to the opinion that she was not beautiful and considering her stubborn reluctance to so much as say where she came from. What went wrong?

The Alshich (Esther 2:7) is sensitive to this problem and discusses frankly whether we can believe that Esther was as righteous a woman as we would like to think. He concludes that Esther was indeed a pure *tzadeket* and enlists the *midrash* (Rabba 58:3) to demonstrate the positive element of the comparison to Sarah. Rabbi Akiva said that Esther was fit to rule over 127 nations because she came from Sarah who lived for 127 years. Indeed, it was the strength of character of the matriarch that gave Esther power.

The Alshich explains that Sarah's and Esther's experiences saved Bnei Yisrael. Sarah stood as the harbinger of the power of the Jewish woman to stay pure despite the pressures of a corrupt Egyptian society during the period of slavery (Shir Hashirim Rabba 4:11). Esther took part in saving Bnei Yisrael by staying with the not-so-righteous king, being at the right place at the right time, and acting in the right way to be the vehicle to save the nation, as Mordechai so poignantly urged her (Esther 4:14). However, it came at a price. Esther was stuck with Achashveirosh. Mordechai lost his wife and perhaps some of his religious luster (Megilla 16b). But saving Bnei Yisrael was well worth the price, and being immortalized in the book that bears her name and the holiday they established was part of their reward.

Every Jew has to be ready to make the ultimate sacrifice for his nation and for his religion. Some people in perilous situations were miraculously saved (Avraham, Daniel, and others). Many actually did pay with their lives. The fact that they were not fully saved does not mean that they were not righteous but that at their time and in their circumstances, the divine plan included some other road to eternal greatness.

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Ask the Rabbi

by Rav Daniel Mann

Returning a Loan Complicated by Currency Changes

Question: Two years ago Reuven, an American, sent \$4,500 to Shimon, who lives in Israel, so that he could convert the money into shekels (then, 15,400 shekels) and lend it to Levi, a needy Israeli. Levi returned a quarter of the shekel sum every six months and believes he has finished repayment. Shimon now wants to return the money to Reuven, but the amount he received is worth only \$3,990. Should Shimon give Reuven \$4,500, or the dollar equivalent of what he received?

Answer: We cannot respond to the question's "Choshen Mishpat" element without hearing both sides. We will focus on the Yoreh Deah question of *ribbit* on the loan, which depends on the possibilities of what the arrangements between the parties were (we will relate to the major ones).

It sounds like Levi accepted the responsibility to repay a 15,400 shekel loan. If Shimon was but an agent who followed expectations, he returns only the dollar equivalent of what Levi paid. If Shimon accepted responsibility for payment, he was either an *arev* (guarantor) or there were two separate loans (Reuven-Shimon, enabling Shimon-Levi).

If there were two loans, Shimon must return his \$4,500 loan from Reuven. Is this permitted when the value went up? The rule is that it is Rabbinically forbidden to lend an object so that it be replaced by an object of the same type, due to the chance that its value will rise over the course of the loan (i.e., he will return more value than he borrowed). However, since we halachically view currency as a constant (even if its value, as compared to commodities and other currencies, changes), \$4,500 can be returned even if its shekel equivalent increased. Admittedly, currencies are considered commodities outside their country, and the leniency that dollars have a special status in Israel no longer applies (see Igrot Moshe, Yoreh Deah III:37). However, when an American in America transfers dollars and wants dollars returned, one cannot say that this is not currency (see *ibid.*). Thus, under these circumstances, Shimon can return \$4,500 to Reuven.

If there is one loan and Shimon is an *arev*, we should consider the three types of *arev*. 1) Simple *arev* – he pays only if the borrower defaults; 2) *Arev kablán* – the lender can choose to take payment either from the borrower or the *arev*; 3) *Arev shlof dotz* – the lender receives payment specifically from the *arev*.

The *gemara* (Bava Metzia 71b) says that if a non-Jew lends to a Jew and takes payment with interest from the Jewish *arev*, the borrower may not reimburse the *arev* for the interest. The *gemara* explains that since the non-Jewish practice is to go directly to the *arev*, it is considered as if the *arev* borrowed from the non-Jew and then lent the principal to the borrower. Therefore, the *arev* must not take back more money from the borrower than he gave him. There is a *machloket* among *Rishonim* and two opinions in the Shulchan Aruch (YD 170:1) if this prohibition and analysis of the loans is true only for an *arev shlof dotz* or even for an *arev kablán*. In our case, if Shimon is a simple *arev* or probably even an *arev kablán*, it is considered a loan between Reuven and Levi, and one that obligated Levi in terms of shekels. If so, neither Levi nor Shimon can give \$4,500, unless one of the leniencies of this Rabbinic form of *ribbit* apply (see Shulchan Aruch, YD 162:2 and see whether the most common one applies). If Reuven indicated he was giving a dollar loan, he deserves to receive \$4,500. If Shimon wants to take responsibility, especially if he failed to relay this fact to Levi, this is appropriate.

If Shimon is an *arev shlof dotz*, it is likely the loan was in dollars, in which case, Shimon may and should pay \$4,500 (see *Netivot Shalom*, p. 349). He can decide, based on his discussions with Levi, whether to ask for reimbursement from him.

Fine nuances can affect the way to view these matters. It is laudable (not required) for Reuven to waive the possible right to full payment, for halachic safety but especially for higher moral ground. (His dollar loss counts as *tzedaka*).



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Ein Ayah

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

Preserving, Widening, and Perpetuating Goodness

Gemara: At the moment that they make a man enter his judgment [after his death], they ask him: “Did you do your dealings with honesty? Did you set time for Torah study? Did you involve yourself in procreation? Did you look forward to salvation? Did you delve (*pilpul*) into wisdom? Did you understand one thing from another?”

[Last time, we analyzed the first three questions. Now, we approach the last three.]

Ein Ayah: (condensed from Ein Ayah, Shabbat 2:164)

“*Tzipita liyeshua* (Did you look forward to salvation)?” – A person, as an individual, is limited in a major way in all elements of his life in that he is but one organ in the great collective of his nation. In actuality, even the nation is only a part of the existence of the world, as all elements of goodness and light are connected with each other. While it is not always clear whether these elements will find expression in the present or only in the future, they will certainly have an impact at some point. All of the matters of goodness that emanate from an individual are part of a “storehouse of goodness.” The individual’s goodness will join up with all other matters of goodness to lead to Hashem’s ultimate salvation, which will come at the appointed time.

Based on the above, we understand why it is the highest demand of a person in regard to the way he lives his life to see if he views his place in the world in terms of *tzipiya liyeshua*. This *tzipiya* includes constant vigilance, even when there is no external sign of impending salvation. This is like a watchman standing guard for days on end. Even when there are no indications that there is anything new, he will not leave his post.

Along with this idea of *tzipiya liyeshua* is also that if he does observe an opportunity to do something that can help hasten the salvation, he will act promptly and tenaciously. This is like the lookout who sees something important in the distance. He is ready to act quickly, whether to flee or defend against an enemy. It is his responsibility to do that which is needed to rectify or otherwise improve the situation without any delay.

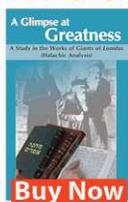
These two seemingly opposite approaches – to watch and watch without doing anything and to act swiftly at the right time – need to be in the midst of one’s deep thoughts in regard to anticipating salvation.

Ein Ayah: (condensed from Ein Ayah, Shabbat 2:165)

“Did you delve into wisdom? Did you understand one thing from another?” – Concepts must be understood deeply, each one individually. They also have to be broadened so that each concept will be completed to the maximum, until it brings its subscribers to new and deeper appreciation.

This broadening of the understanding is something that is very related to looking forward to salvation. The broad and true salvation is understood clearly by man only according to the depth of his thoughts and his ability to picture that he should be awaiting for the betterment of the broadest community. It is not enough to just make logical statements, but they need to be deeply felt in the heart. The deeper and clearer the feeling, the greater the *tzipiya*. This is why there is a need for *pilpul* and for *havanah* (understanding). This understanding has to start with the smallest details of the Torah and extend through the loftiest concepts. This brings a state of knowledge of Hashem that covers the land like water covers the seabed.

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Returning a Loan That Might Have Had Heter Iska – Part I

(excerpts from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

[We will divide different elements of the ruling over two weeks and skip over other parts of the long ruling.]

Case: The plaintiff (=p) lent \$200,000 to the defendants (=def) at 12% interest annually so that they could invest it in a commercial project in the US. From 2007-9, def paid \$2,000 a month (=1% a month =12% a year) to p and then lowered payment to \$1,000 a month. The project is stalled, and def have financial difficulties. P wants to receive the full remaining interest until 2013 (\$56,000) and then wants to cancel the loan and receive the principal. Def #1 claims that the loan is payable only when they sell the business they invested in but admits that they will then have to pay in full. Def #2 argues that no heter iska was signed (although it had been planned), and it is therefore forbidden to pay interest. In any case, he is willing to swear that the investment produced losses, in which case, according to the laws of iska, they do not have to pay interest. Therefore, they should count that which was already paid as principal, which should be subtracted from the \$200,000. P says that there was a heter iska, even though he does not find it, and says that it was discussed that this loan (as opposed to another loan/investment) is to be paid even if the main enterprise sustained losses.

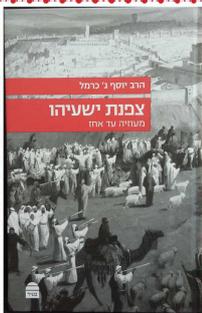
Ruling: Regarding the time of the payment of the interest, def #2 did not claim that it was to be pushed off until the sale of the business. The fact that they started paying the exact amount of interest monthly strengthens the anyway preferred reading of the contract that it is to be made monthly. The money paid is thus not to be seen as payment of principal unless it was forbidden to receive interest. Regarding return of the principal, while the loan agreement states that it is when there is a sale, since they have stopped paying the interest according to schedule, p can call for a cancelation of the loan.

At first, def #2 agreed that there was a heter iska, and only after the hearing did he submit the claim that there was not. Therefore, we should not consider his claim a definite one but one that raises questions as to whether there was a heter iska. Even if we would view def #2 as making a definite claim, we would not treat this as a forbidden loan with interest and without a heter iska. First, the Rosh (Shut 108:9) says that if one side says that the loan was done in a permitted manner and one said it was done in a forbidden manner, we accept the former claim (of course, he needs a strong claim that the money was promised). The Rama (Yoreh Deah 169:25) rules that the lender is believed that he lent the money in a permitted manner only if the payment was already made or he is in possession of collateral but not to extract payment. However, the Shach (169:79) and the Shulchan Aruch (177:12) say that the lender can even extract money based on the claim that it is permitted. Therefore, on these points, p's claims are accepted.

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