

*This week.....*

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## The “Fall” of Eretz Yisrael

Harav Moshe Ehrenreich

The Torah, in describing the inheritance of Eretz Yisrael by Bnei Yisrael uses the term “falling to you” (Bamidbar 34:2). What is the significance of this terminology? Rashi brings two possibilities: 1) We find the verb used in reference to lots, which were used in dividing the Land. 2) The *midrash* says that Hashem knocked down the angels in charge of the existing nations of the Land to show Moshe that Bnei Yisrael would succeed in overcoming them. Another *midrash* (Rabba 23:6) elaborates that this was the response to the spies’ claim that Bnei Yisrael had no chance.

In general we understand that the spies were mistaken in not appreciating the special sanctity of the Land. What was the root of this mistake? A *midrash* (ibid.:11) presents a parable of a king who first imported mates for his servants, until he realized that it would be wiser to take his male and female servants and mate them one with the other. This symbolizes the special relationship that Hashem has both with the chosen Land and the chosen nation, which makes it a perfect match to bring the two together.

The Sefat Emet (see Masei 646-8) says that when Bnei Yisrael entered Eretz Yisrael, a special aura fell upon Bnei Yisrael, similar to the “extra soul” that one receives on Shabbat. At the same time, a special aura of the “Heavenly Land” fell down to the physical Land. The problem had been that the spies had experienced the Land before the nation entered it, and, therefore, it was not yet the sacred Land that it was destined to become. This caused their tragic and destructive lack of appreciation.

We can learn from these ideas that the more connected we become to the Land, the holier it will become and the holier we will become. Hopefully, we will be spared of repeating the spies’ mistake.

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**Question:** I went with friends to play ball, one of whom decided to leave early. He asked me to take his bag back but I forgot about it, and it is now lost. He says that I owe him \$500 for my negligence, as he had a lot of cash and some electrical devices. While I trust him on the facts, I would not have accepted such a big responsibility had I known what was in the bag. We asked a rebbe of ours what to do, and he said I should pay, which I did. Later, he said that it might be a complicated case and that we should ask someone who studied *dayanut*. Did I have to pay and, if not, can I get the money back?

**Answer:** Indeed, the question and the present situation are tricky. The *gemara* (Bava Kama 62a) says that if Reuven told Shimon that coins he wants him to watch are silver and they are really gold or if he covers a pile of wheat to be watched with barley, Shimon is responsible to pay only for the lower value of the objects he thought he was watching. Following this logic, you might claim that you accepted upon yourself to watch the normal value of a bag one brings to a playground, which is far less than \$500.

However, there are at least two distinctions between your case and the *gemara*'s. The *gemara* discusses a case where, after deceiving Shimon, Reuven wants him to pay according to conditions he had indicated did not exist. Here, while your friend did not volunteer pertinent information, he did not lie or refuse to answer your questions (he probably did not think twice about telling you what was in the bag). Also, Shimon accepted to watch certain objects and Reuven wants him to pay for different ones. In your case, you knew you were responsible for the unknown contents of the bag with unknown value. You just were surprised by the extent of your surprise.

We must find a precedent that is closer to your case. The Shulchan Aruch (Choshen Mishpat 72:8, based on the Haghot Mordechai, Bava Kama 207) tells of Levi who lost a sword that Yehuda received from a non-Jew as collateral. The non-Jew extracted a lot of money from the Jewish lender but, says the Shulchan Aruch, Levi has to pay Yehuda only the price of a normal sword. The S'ma (72:28) understood the case that the non-Jew made Yehuda pay an unreasonable price, which he may not pass on to Levi. However, the Shach (72:40) proves that the sword really was worth a lot of money, just that Levi could not have been expected to realize that. Still, says the Shach, we apply the rule from the *gemara* above that one is not responsible for values above what he reckoned for. What is important to us is that the Shach's case resembles ours in the two elements that we discussed above, and the Shach still posits that the exemption applies.

The Yam Shel Shlomo (Bava Kama 6:34) and the K'tzot Hachoshen (291:4) agree that one cannot obligate a watchman for more than he accepted. However, they say, a watchman cannot claim that he was unaware of the object's value (even if he is being honest), as one accepts an open-ended obligation for whatever the object is worth unless the owner actually deceives him. In our case, there was no deception. According to them, you should be obligated. The Netzach Yisrael (Grossman, 6) claims that the K'tzot Hachoshen would agree in some cases that the watchman is exempt from the higher value, as one's acceptance of obligation is not fully open-ended. However, we believe that in his case, the surprise was qualitatively bigger than yours should have been.

It is likely (we cannot say in a one-sided forum) that had the case come before us, we would not have enabled your friend to extract money from you out of the doubt of a *machloket*. However, in a case of doubt, if the defendant paid even based on an erroneous *p'sak*, the former plaintiff now holds the benefit of possession (according to most opinions- see Shach, CM 25:2 and commentators, ad loc.). While you cannot demand the money back, we believe you have a moral right to request a compromise.

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## Focusing on the Proper Goals

(based on Berachot 2:2)

**Gemara:** Why was the section of the Torah that discusses *tzitzit* set within *Kri'at Shema*? Rav Yehuda bar Chaviva said: Because it contains six concepts: the *mitzva* of *tzitzit*, the exodus from Egypt, the yoke of *mitzvot*, [rejection of:] heretical ideas, thoughts of sins, and thoughts of idol worship.

**Ein Ayah:** Man's *shleimut* (completeness) depends on his having a serious intellectual goal that guides his direction and actions in life. This lofty intellectual purpose is included in what the holy Rabbis said: "All of your actions should be for the sake of Heaven" (Avot 2:12). The Rambam noted that the philosophers wrote entire books about the question of purpose but did not complete the task, whereas the Rabbis were able to capture all in the above short statement.

When a person has an intellectual goal, the emotions of his heart and his aspirations will also follow along this important path, and he will arrange all of his actions for this great purpose. Then the person will be complete in all elements: his intellect, his emotions, and his actions; they will all proceed in straightness toward the goal of human *shleimut*.

However, there is also the side of failure. When one loses his way and his intellect is uprooted from its main goal, then his soul's emotions will work upon him. Instead of working toward a good goal, they will go to waste and will bring him to perform actions that are pointless but follow the urgings of his physical side, which are based only on that which is pleasant to the senses at the moment.

That is why these six ideas found in the section on *tzitzit* are included in *Kri'at Shema* - to complete the purpose of accepting the yoke of the Heavenly Kingdom. The *mitzva* of *tzitzit* awakens one to the idea that all of his actions should be for the sake of Heaven, as the Rabbis said that the *techelet* (the blue color of the strings, which has been lost for centuries) is reminiscent of the sea, the sea of the sky, and the sky of the Seat of Glory. The exodus from Egypt is there because the lowliness of the soul when one is a slave lowers all of the moral emotions. Thus when Hashem took us out from slavery to freedom with a "strong hand," He elevated us with lofty emotions. After all, a slave does not have his own goals in his life and actions, which lowers his moral powers, but a free man's spirit can reach the heights of intellectual goals, the pillar of the world. The yoke of *mitzvot* is that which connects all the specific actions to the goal. These concepts, then, cover a person's *shleimut* regarding his intellect, his emotions, and his actions.

Correspondingly, one must avoid things that could lower him to utter destruction. One is heresy, which removes one's mind from any lofty goal and morality. Still, even though the "leadership" of the evil person's powers is uprooted from his heart, his spirit still does not rest but is dynamic, and thus without a goal, it will move aimlessly. That is the element of thoughts of sin, which are thoughts without a real goal, like reeds in the water, which follow any external or internal stimulus. However, when the spirit will be disgusted and will feel horrible emptiness that opposes his nature, which strives for a purpose, and when the light of its intellect will grow distant from the light of the truth, it will look for a goal. In that state, it may find the broken wells that are the basis of idol worship.

Thus, it is very appropriate that this section of the Torah, which includes the worth of a person and his guarding from elements that are destructive from beginning to end, should be close to the recitation of the matter of accepting the yoke of the Heavenly Kingdom.

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## Damage to an Illegally Parked Car (based on Eit Ladun, from Halacha Psuka vol. 59)

Someone parked his car on the side of a narrow street in a place that was marked as illegal to park, in a manner that made it difficult for cars to pass, but possible if they did so slowly and carefully. One car passed by quickly and scratched the parked car, whose owner wants the driver to pay him for damage caused by his recklessness. While not condoning the illegal and potentially dangerous parking of the damaged person, may he still be deserving of compensation for the damage that occurred?

If the parked car had closed off the street in a manner that cars could not get by, people would have had the right to move the car even at the risk of damaging it (Shulchan Aruch, CM 412:2) based on the rule that one can take the law into his own hands. However, here it was possible to pass carefully.

First we must determine what category of damage was done. Was it damage that a person did himself because the driver held the steering wheel and pressed on the gas, or was it the damage of his property? In the similar case of one riding his horse and damaging, the Rosh (101:5) says it was considered damage done directly by the rider. Regarding such damage, the *mishna* (Bava Kama 26b) says that the damager is liable even if there were extenuating circumstances, but Tosafot says that this is only if the circumstances were somewhat under his control to prevent. If, though, he had the chance to avoid the damage only to the degree that one can prevent robbery, he is exempt. The Ramban, though, says that the damager is liable no matter the level of extenuating circumstances, and the reason the Yerushalmi says that he is exempt if the damaged put the object near the sleeping damager is that the damaged was at fault.

In our case, according to Tosafot, the damager should be liable because it was negligence not to slow down when he saw the road had narrowed. The question is, according to the Ramban, whether this case is equivalent to that of the objects placed next to the sleeping person. The *mishna* (Bava Kama 27a) says that when one puts a barrel in the public domain and it is damaged by someone who trips over it, he is exempt. The *gemara* asks that he should be obligated because he should have looked where he was walking and answers that is not normal for people to be so careful when walking on the path. The Ramban will have to explain that one who puts his barrel in a place where people are not careful about it is considered one who caused the damage to his own object. However, in our case, since one can easily see the parked car, the Ramban should agree that the driver is liable.

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Baba Metzia 78-84

## Safeguarding Collateral

This week in the Daf Hayomi, the Gemara deals with the laws of a shomer (a person who receives an object to safeguard) and particularly with the distinction between a shomer chinam (who doesn't receive pay for safeguarding) and a shomer sachar (who receives pay). The main difference between them is that a shomer chinam has to pay for the object only if he was negligent, while a shomer sachar also has to pay in a case where the object was lost or stolen. The question arises; is a person who gives a loan, and takes collateral to secure the loan, considered a shomer chinam on the collateral or a shomer sachar?

The Mishna (80b) states that a person who gives a loan and takes collateral is considered a shomer sachar. At first glance, this appears puzzling. A person who gives a loan is doing a favor for which he receives no payment, so why is he considered a shomer sachar on the collateral? The Gemara (81b-82b) offers a few explanations, and the Rishonim argue about how to rule. The Rif (51a) rules in accordance with the opinion of Rav Yosef. According to Rav Yosef, any time that the act of guarding involves a Mitzvah, that generates the status of a shomer sachar. The reason being, that when a person is fulfilling one Mitzvah, he is exempt from fulfilling other Mitzvot. If a poor person will come to ask for charity while he is busy taking care of the object, he will be exempt from giving it to him. According to Rav Yosef, this is considered receiving benefit from the safeguarding, thus defining one as a shomer sachar. So too, a person who gives a loan is fulfilling a Mitzvah, and when he is taking care of the collateral, he is exempt from other Mitzvot, thus defining him as a shomer sachar.

The Tosafot (82a d"h Neima) disagree with the Rif and state that we do not rule in accordance with Rav Yosef. According to their opinion, the fact that a person is fulfilling a Mitzvah is not sufficient to turn him into a shomer sachar. Therefore, they claim that, in principle, a person who gives a loan is really a shomer chinam on the collateral. The reason the Mishna states that he is a shomer sachar is because, when a person takes collateral against a loan, it is considered as if he stipulated with the borrower that, if the collateral will be lost or stolen, its value will be deducted from the loan. If the collateral is equal to the loan, then the debt will be cancelled out completely.

The difference between the opinions of Tosafot and the Rif is borne out in a case where the collateral is worth more than the loan. According to the Rif, the lender is considered a shomer sachar on the entire value of the collateral, and therefore, if the collateral will be lost or stolen, he will both lose the debt and have to pay the remaining value of the collateral. However, according to the Tosafot, he is only considered a shomer chinam on the value of the collateral that is beyond the value of the loan, and therefore, he will only lose the debt, but he will not have to pay the remaining value.

The Shulchan Aruch (Choshen Mishpat 72, 2) rules according to the Rif, but the Ramma quotes the Tosafot and states that, since this issue is in doubt, we cannot obligate one to pay.

### **Summary:**

A lender who takes collateral is considered a shomer sachar on the collateral. According to the Rif, even if the collateral is worth more than the loan, he is considered a shomer sachar on its entire value. According to the Tosafot, he is considered a shomer sachar only up to the value of the loan, but on the remainder he is considered a shomer chinam.

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