HaRav Shaul Israeli zt"l
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HEMDAT YAMIM
חמדת ימים
Parashat HaShavua

Tazria Metzora, 5 Iyar 5781

To be a Free Nation in its Land

Harav Yosef Carmel

Parashat Tazria opens with the command to do a *brit mila* on a baby's eighth day. It would seem that we thereby make a bodily sign of being like slaves of Hashem, which would indicate that we left the bondage of Egypt to be slaves to Hashem. So in what way did we become free men? We will investigate this matter as we go through, in the coming weeks, the holidays of spring (Pesach, Yom Hashoah, Yom Hazikaron, Yom Ha'atzmaut, Lag Ba'omer, Yom Yerushalayim, and Shavuot).

We have experienced Pesach – we strengthened our humility, ate *matza*, and discussed many Torah themes. We began counting toward the giving of the Torah. We should look more deeply into the process and understand the significance of being a "free nation (consisting of free people) in our Land."

The Exodus from Egypt meant that a nation of slaves turned into a nation of free men. *Chazal* taught us, based on the similar words *charut* (engraved) and *cherut* (freedom) that deep study of Torah (whose words were engraved on the Tablets) is the primary way to become a free man (Kalla Rabbati 5:3). The P'sikta said that even one who is *osek* (occupies himself) in Torah, which implies that he just tried to understand, even if he ended up making mistakes, is included in this distinction. Either way, though, the people could not become fully free until they left Egypt and also arrived at Sinai to receive the Torah. But how is this so?

The servitude of an *eved ivri* (a Jew acquired by a Jew; an ***eved c'na'ani*** is more enslaved) is measured in a few ways: He relinquishes his ability to control his time, to choose a life partner (see Kiddushin 15a), and other things. His life during those years is dedicated to increasing his master's wealth. But perhaps the biggest thing is the loss of the ability to make decisions of great spiritual consequence. He must follow the orders he is given, after all, and therefore cannot take full responsibility. (That was a silver lining for those who became servants because of repeated mistakes in leading their lives.)

Certainly, the slavery in Egypt was worse, as people had their rights to human dignity stripped from them. So why were the people not considered free when they passed through *Yam Suf* and were totally saved from their masters, at a place called *Pi Hachirot*? Why only at Sinai?

At Sinai we received the gift of the obligation to sanctify ourselves and, with it, sanctify time and the material world. This was a condition for receiving the Torah, as where the people could stand and the nature of the clothes they could wear all had to conform with the rules (see Shemot 19:6-15).

Sanctifying means that non-traversable boundaries are drawn. But doesn't that make us slaves? When there are constraints on time and place due to the Torah, placing limitations on activities and even matters within the family, that would seem antithetical to freedom!

We will continue with this theme next week and discuss other presents that we received. In the meantime, we have just been reminded of the horrible sign in the entrance to Auschwitz, history's worst house of slavery (with the sign saying "work is emancipating"). We also are commemorating the deaths of IDF soldiers and terror victims, who, in death, left us a legacy that we should live as free people in an independent Jewish state.

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Those who fell in wars for our homeland. May Hashem avenge their blood!

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Ask the Rabbi

by Rav Daniel Mann

Dealing with Late Payments and *Ribbit*

Question: I, a lawyer, often need to write a contract with a clause for extra payment if the buyer pays late. How can I do this without making the client violate *ribbit* (usury)?

Answer: In some ways, such late payments are classic *ribbit* in that a person who needs to pay must pay extra because of the time that passed (what the *gemara* calls, *agar natar* – the reward for waiting). But it is/can be different from classical *ribbit* in two main ways: 1. The payment is not the return of a loan but payment for a sale, which makes it, at worst, a Rabbinic prohibition (Shach, Yoreh Deah 173:4); 2. The increase in payment is not desired by the lender to make money, but is created to pressure the buyer to pay on time (Shut Harashba I:651).

Neither of these grounds for leniency create a permitted situation alone. It is forbidden to sell something and say that there is a lower price if the buyer pays on time and a higher one if he pays late (*mishna,* Bava Metzia 65a; Shulchan Aruch, YD 173:1). The Shulchan Aruch (YD 177:14) rules that it is forbidden Rabbinically to make a penalty for one who returns a loan after the due date. (The Rama ad loc. does provide a way to do so.) But when the two lenient factors combine, it is permitted, i.e., one may make a legally binding condition that if a buyer pays later than he is supposed to, he will pay even a significant penalty (Shulchan Aruch ibid. 18).

While this system seems to be the solution to your problem, not all sellers would agree to it because of the following limitation: One may use only a one-time penalty. Multiple penalties over time make it considered like one who is charging for the time, as opposed to for lack of adherence (Shulchan Aruch ibid. 16 and Shach ad loc. 33).

There are possible ideas to make such an approach work. On a practical level, it can be quite effective to make one penalty late enough that it will not be activated by accident and large enough to strongly discourage delaying payment indefinitely. (If there is basic trust between the parties and they understand what and why they are doing it, the seller can relinquish his right to some of the penalty for an honest delay, if it is not built into the binding agreement). I have another idea, based on the idea that it is permitted for a borrower to pay certain loan-generated expenses, including legal ones, which is not considered a penalty (see The Laws of Ribbis (Reisman), p. 78). I would thus propose a system like this. After the one penalty, the buyer obligates himself by contract to pay a high but realistic fee for a lawyer to work on the case if another X weeks go by without full payment; this can be followed by paying for further actions, and eventually for the expenses of adjudication.

Realistically, only clients who are *bnei Torah* are likely to agree to such convoluted arrangements. Therefore, the best straightforward approach is to write a standard late payment schedule and include a clause that any payment that can be construed as an interest payment is to be governed by the provisions of a standard *heter iska*. We, at Eretz Hemdah, include such a clause in the relevant documents available for the public.

It is best to rely on such a standard clause only when a more specific *ribbit* remedy is unavailable. A *heter iska* is susceptible to the claim of *ha'arama* (lack of serious intent), especially if the sides lack even general understanding of its mechanism (see opinions in Brit Yehuda 35:4 and Torat Ribbit 16:1). The mechanism (sharing assumed profits and dangers) can justify only moderate price increases. However, despite reservations, *heter iska* is a legitimate halachic tool when not abused, and it is a necessity as a halachic alternative within Jewish financial institutions and interactions.

If you made your client aware of your recommendation for a *heter iska* (you can mention that all the major Israeli banks have one) and he or the other side refuse to include it, you can still work on the case (development of that topic is beyond our scope – see The Laws of Ribbis, p. 58).

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.

Igrot HaRe'aya – Letters of Rav Kook

The Limits of Free Thought – #20, p. 19-21 – part I

Date and Place: 10 Sivan 5665, the holy city of Yafo

Recipient: R. Dr. Moshe Zeidel (a close disciple of Rav Kook, from their time in Boisk. Dr. Zeidel was a philologist and philosopher, who asked Rav Kook many philosophical questions.)

Opening: About that which you asked regarding my language in my open letter (see letter #18) that I do not demand any control on philosophical matters, if that is because that situation is forced upon me or that is the way the laws of the Torah have it.

Body: My language leaves no room for question, as I said: "… because in our days it is something that is not accepted." We can learn from the root of the wording that if it were accepted, there would be room for such a demand. However, the matter depends on great mountains of philosophical inquiry, and its delineation needs explanation. Since I am not able to write at length, I will write down some short notes, which I hope suffices for someone as wise as you.

Realize that straight logic is always a great foundation in Torah rulings, and this is so both in operative and in philosophical matters. Therefore, we always need to arrive at the center of straight thought. If it appears to us that there is a contradiction between various truths, then by necessity there must be a means to choose between them, and this is the place to learn something new. Therefore, it seems that in the "laws" of searching for philosophical ideas, which is now the realm of most of the world's thinkers, one must look for boundaries of how far one's intellect can reach.

Maybe you will say that there is no boundary? You cannot say so. First, there is no characteristic in the world regarding which extremism is not dangerous. Furthermore, by the matter's nature, there must be some boundary to freedom of thought, for if not, everyone would remove the yoke of accepted morality. Then people would use their personal intellect to the furthest degree of what each stands for, and the world would be full of abominations. You cannot make a total break between philosophies and actions because actions follow ideas, whether a lot or a little.

For example, it is certainly a sin for one to decide internally that there is nothing wrong with murder, for if this outlook were to flourish, it would destroy civilization's stability. There are other examples.

Therefore, there must be some boundary to the freedom of thought, although it is difficult to know exactly where to draw the line. Apparently, the line cannot be drawn at the same place in each society. For example, if one would fully decide in his heart that there is no damage to publicly walk around naked, if someone were to actually do this, it would be a sin for us, as it is fitting to be. However, there are indigenous people in the Guinean islands who do not consider it a sin. Since there must be differences between societies, the limits of free thought must be different in different places, and they are affected by many factors.

Regarding beliefs, there is a big difference between Israel and the other nations. If any nation in the world's whole existence depended on a certain philosophy, then there would be full permission and even an obligation to disallow freedom of thought regarding that idea. In fact, a tendency to ignore the troubles caused by individual people would not be freedom, but laziness to protect itself. Sometimes individuals rebel against their nation when they find that the idea that unites and sustains it is damaging to the world. Then they abandon the nation because of the truth. However, when the nation's unifying idea is not at all destructive and certainly if it is even helpful in other surroundings, then there is no room for tolerance of rebellion, and one who is "tolerant" should be disgraced by his nation and even by every person.

We continue from here next time.

P'ninat Mishpat

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Tazria Metzora

Preserving the Management Company's Security – part II

(based on ruling 77009 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=*pl*) are the sixty families of a *kevutzat rechisha* (a group that buys land and builds a housing project together), organized by a management company (=*def2*). *Pl* all signed two agreements: 1) A management agreement between them and *def2*; 2) A partnership agreement, signed by all of *pl*, in which their obligations as partners are spelled out. At the time of adjudication, *pl* were close to completing, after many years, the project. *Def2* claimed outstanding fees (approximately 2.5 million shekels) from *pl*, and *pl* are planning a major countersuit against *def2* for mismanagement. *Pl* are trying to receive outside funding to continue the project, which is now unfeasible because their lawyer (=*def1*) created a *he'arat azhara* (=*he'az*; an encumbrance) on behalf of *def2*, preventing *pl* from taking legal actions on their property, including putting a lien on it to a financial institution. *Def2* is willing to remove the *he'az* only if *pl* put in escrow the amount of money *def2* is suing for. *Pl* argue that *def1* did not have a right to create the *he'az* for *def2*, as it was authorized only to be in *def1*'s name, as *pl*'s lawyer looking out for their interests against the possibilities of a partner not fulfilling his obligations to them.

Ruling: *Last time we saw that the question of removing the he'az is on the assumption that def2 deserves to be paid.*

Def2 is not *muchzak* in the right for a *he'az* because *def1*, *pl*'s lawyer, has an irrevocable power of attorney to undo it, which he can do despite his close relationship with *def2*. On the other hand, *pl*'s attempt to revoke the *he'az* requires changing the status quo.

Beit din analyzed several passages in the partnership agreement. It mentions the need to pay third parties and that *he'az* is a means to ensure the payment of obligations, but no passage clearly says that a *he'az* should be used for a third party's benefit and be put in his name. Everything is compatible with, although not explicit in support of, *pl*'s claim that the idea was to protect the group from individuals' refusals to take part in paying third parties, as it would put the burden on remaining members. For that reason, the *he'az* was supposed to be in the name of *def1*, their lawyer.

There are several indications that the *he'az* was not intended as a security for *def2*. *Def1* wrote a letter to *pl* explaining that he was forced to put the *he'az* in *def2*'s name because the Land Registry did not allow him to put it in his own name. He explained that it would not grant power to *def2* because of the power of attorney *def2* gave him to undo it. One of the financial institutions also referred to the arrangement in that way. Finally, if it were for *def2*'s benefit, it would have been mentioned in the management agreement (which focuses on *def2*'s rights).

A plaintiff can petition *beit din* to take steps to ensure there will be a means of his extracting payment from the defendant. However, *beit din* should do a "*ma'azan nochot*" to see which side's needs are more pressing. In this case, all members of *pl* are responsible, if needed beyond their portion of ownership, to pay any award *def2* might receive, and each owns property that can be used for this. Therefore, the danger to *def2* of non-payment is negligible, and the claim that the *he'az* impedes *pl*'s ability to receive crucial financing is credible. Therefore, *def2* must remove the *he'az*.

We *daven* for a complete and speedy *refuah* for:

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Yisrael ben Rivka
Rivka Reena bat Gruna Natna
Arye Yitzchak ben Geula Miriam
Neta bat Malka
Meira bat Esther

Together with all *cholei* Yisrael

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