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HEMDAT YAMIM

Parashat HaShavua

Acharei Mot Kedoshim, 12 Iyar 5781

To be a Free Nation in its Land – Part II

Harav Yosef Carmel

Last week we started investigating how we became free people at the giving of the Torah. Becoming holy means putting up fences, which ostensibly makes someone less free.

At Sinai, a one-time event occurred – a point of connection was made between Heaven and earth. Rabbi Yossi said: “Never did the Divine Presence come down nor did Moshe and Eliyahu go to the Heavens.” While the Torah writes that “Hashem descended onto Har Sinai,” that was only 10 handbreadths above the mountain (Sukka 5a).

Moshe Rabbeinu and Elyahu Hanavi were very unique people, and they also had a lot in common. They both went 40 days without eating or drinking, and they both had special divine revelations at Sinai/Horeb. They both taught us that it is possible to free oneself from the bonds of time and place by finding the point of contact between Heaven and earth.

But again, there was still at least a minimal separation between Heaven and earth. Total freedom is found in Heaven, and total slavery was found in Egypt. Moshe came as close as man can to the freedom of the Heaven when he went up to Mt. Sinai, and along with him, Bnei Yisrael also did to an extent. *Chazal* (Shemot Rabba 29:4) tell us that “their souls flew off” at that time. This happened when Hashem granted their wish to see His glory and hear His voice. Since man cannot live through such an event, they lost control of their souls, along the lines of Shir Hashirim (5:6): “My spirit left me when I spoke to him.” They were restored to life “when the Torah asked for mercy for them.”

What does it mean that the Torah asked for mercy? The answer is that Torah study gives life to those who engage in it. While we cannot actually go up to the Heaven, we can have a taste of it in this world by learning Torah. This is the secret to the “path to the tree of life” (see Bereishit 3:24). The more one learns, the more he “eats from the fruit of the tree of life” and becomes a freer man. Thus, true freedom was not achieved from the Exodus but required the giving of the Torah.

For that reason, leaving Egypt started with the *mitzva* of *brit mila*. One has to set boundaries for the strongest human instinct, which draws man to overly stress his material side and does not allow him to strive for Heaven. The boundaries that the Torah sets allow one to return to that great moment of the giving of the Torah, and the meeting of Heaven and earth.

Therefore, the famous *machloket* between Rashi and the Ramban in *Parashat Kedoshim* is not one “of the root” but of stress. Rashi stresses that we sanctify ourselves by means of the *mila*, which happened in preparation for the Exodus; therefore he says that being sacred means staying far away from illicit relations. The Ramban stresses what happened at Sinai, when we tried to resemble Hashem by separating from permitted material matters (“sanctify yourselves by [refraining from] that which is permitted to you”). That allows one to “return to Sinai” as much as he can.

We are between Pesach, *Korban Pesach*, and the creating of the covenant, and the holiday of the giving of the Torah, and we are elevating ourselves throughout the *sefira*. Amidst all of this, may we help all of *Am Yisrael* join this great process, and thereby become an ever-increasing “free nation in our land.”

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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

Accidentally Paying Back Early

Question: Recently, the Citigroup “bank” mistakenly paid some \$900 mil. to Revlon’s creditors before the loans were due. A few big creditors refused to return the money. A court ruled that since the creditors took the money (they were owed) in good faith, they need not return it. Citigroup cannot demand the money from Revlon and will be paid by Revlon when the loans are due. Would the halachic ruling be the same?

Answer: We saw a bit of further information in financial newspapers but cannot promise to have captured all the details and legal nuances. Our presentation of the view of Halacha is thus quite general.

This decision relates to two questions – 1. Should the mistake be reversed (Citigroup vs. creditors)? 2. Must the bank take responsibility for its mistake and how (Citigroup vs. Revlon)?

The creditors received the money, apparently without wrongdoing on their part. On the other hand, if one innocently accepts a present intended for another person delivered by a courier, he must return it if it is demonstrated that the transaction was a mistake. This is a broad rule regarding misinformed transactions/commitments (see Shulchan Aruch, Choshen Mishpat 25:5). It is not that simple to apply that rule here because it is not objectively a full mistake, as the creditors received money due to them, even if it was envisioned to have been given under different circumstances, so perhaps the creditors can act on them once they are in their hands.

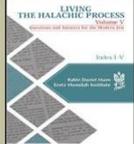
The following cases are good precedents. Reuven owes Shimon for two loans and pays him partially. The Shulchan Aruch (CM 58:4) rules that Shimon can determine which loan the money goes for (which is significant if one of the loans has strong guarantees). Furthermore, even if Reuven said he was giving the money for one loan and Shimon was silent, Shimon can say later that he received it for the other loan (ibid.). Even if Reuven gave money to Shimon to deliver it to Levi for Levi’s loan, Shimon can keep the money for his own loan (ibid. 5). So we might conclude that Revlon’s creditors are “in the driver’s seat” once they have control of money owed, and Revlon/Citigroup’s intention is inconsequential.

However, this is not so because the creditors do not yet have the right to demand the money. The K’tzot Hachoshen (83:1) and Netivot Hamishpat (Chiddushim 83:1) say that in the case of two loans, where only one is due, the lender must take the payment for the one that is due. Likewise, the deliverer of payment cannot claim the money for his own not-yet-due loan (Pitchei Choshen, Halva’ah 6:(16)). Likewise, the Tumim (67:16) rules that seizure of assets for a loan, which often gives the lender extra rights, applies only when the loan is due. Thus, before a loan is due, payment has no place in the lender’s hands unless the borrower intends to pay him. (A possible exception is if there is specific reason for concern that the borrower will lack funds to pay when the due date comes – see Shulchan Aruch, CM 105:4 and Sha’ar Mishpat ad loc. 4.) Therefore, it is likely that Halacha disagrees with the court ruling, and that the mistake should be remedied by return of the money. (If the confusion damages the creditors, compensation may be appropriate.)

Regarding affairs between Citigroup and Revlon, when an agent makes a clear mistake to the detriment of the one he represents, he must compensate him for the loss (Shulchan Aruch, CM 185:1). Sometimes, the lack of the agent’s authority causes a situation whereby a transaction with a third party does not stand, and sometimes it stands and the agent must compensate (ibid. 182:2). One could argue that it would be more appropriate for payment to be taken from Revlon and that Citigroup should pay the damage this causes. However, (halachic/financial analysis is beyond our present scope), Citigroup gave their own money, and while normally they could charge Revlon, there is no reason for Revlon to agree. Therefore, according to the court’s ruling regarding the creditors, we agree that Citigroup needs to wait until it is time for Revlon to pay.

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





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

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.)

Summary of Part I: There must be a limit to the propriety of free thought because it affects one's actions and thus also his surroundings. The "location" of the "boundary" depends on the nature of different nations.

Body: Israel is the only nation in the world for whom informing the world of Hashem's Name as the G-d of the world who upholds His covenant, kindness, and all paths of justice is the foundation of the nation's life and a special condition to be able to form an independent nation in its land. Therefore, there are elements of the nation that cannot be fulfilled without [the acceptance] of some of these great ideas.

Whenever there is greatness of the spirit, there are parallel lackings. Israel certainly has lackings, and it is these lackings that made it so crucial that the nation have the task of carrying on the Name of Hashem as a basic part of its national content.

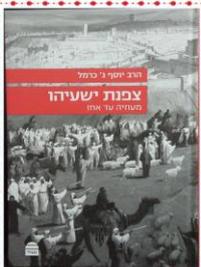
Therefore, whoever causes a weakening of the resolve to follow this philosophy that gives life to the nation, whether by its thoughts and, all the more so, by means of actions, is a national criminal, whom it is immoral to forgive. There is no other example in the whole world [of such a mission]. There is no other nation in the world whose very nature is tied to knowing Hashem who is in their midst and having Him known in the world or for whom any other belief is such a foundational manner.

If you will find a single nation who has a lowly belief and their belief is national, it is probably so small that if it were to spread, it would cause damage to the whole world and the nation itself would not be able to sustain itself. If so, this nation would be slated for destruction, and one could not complain to individuals if this happened.

This is the basis of our true zealotry for the ways of Hashem, which is the reason that Israel was fit to be given a covenant that gave it a special status as a nation of priests. This is different from imprudent zealotry that comes from the lack of knowledge and the weakening of spiritual strength.

In order to have the [Jewish] nation act with fullest force, all of its strengths need to be functioning at their fullest levels. But in any case, we cannot be prevented from functioning on some level, because the national spiritual character is always "alive," as we say "David, King of Israel, lives and exists."

It was a plan of Hashem, who has wondrous plans, that to the extent that our nation's power is diminished, so will our abilities [to accomplish], which in turn is testimony to Hashem's desire [for how we are destined to function]. There are many ways in which there is a diminishment of the nation's capabilities that Hashem wants. Sometimes it is practical, such as the fear of the kingdom. Sometimes there is a spiritual diminishment, based on which we are instructed to not say that which will not be accepted (Yevamot 65b), (thus preventing spiritual leaders from trying to make others comply with the Torah way). We are satisfied when these lackings in ability exist because we know that it is Divine Providence's desire at such times. We find this idea in the Yerushalmi (Sanhedrin 7:2) – that Rabbi Shimon Bar Yochai was happy that Jewish judges were unable to function fully at that time because we were not wise enough then.



Tzofnat Yeshayahu - Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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Promotion that Didn't Fully Happen

(based on ruling 80117 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) worked in security in a *yishuv* (=def) as a scout, working under the *ravshatz* (head of security), and he was paid hourly without social benefits. On Sept. 27, 2019, the *ravshatz* informed him that he would receive the post of assistant *ravshatz* and would receive a set monthly salary of 1,500 NIS. In Oct. 2019, the *ravshatz* told pl to start recording his hours of work that the *ravshatz* gave him to be paid hourly and told him that after he did an army course (necessary for the new job, which includes taking over for the *ravshatz* when he is away), he would get the rest of his salary retroactively. The course was repeatedly canceled due to Corona. In June 2020, pl, the *ravshatz*, and the *mazkir* (administrator) of def met to sign a contract, at which time pl asked to be paid retroactively since Sept. The *ravshatz* refused because pl did not carry out all that an assistant *ravshatz* does, and the contract was not signed. Pl demands his full salary retroactively, as he did everything he was asked to do since he received the new job. Def responds that since he has not been doing the full job of an assistant *ravshatz* and he accepted the hourly rate payment, that is what he deserves until he takes on all of an assistant *ravshatz*'s responsibilities.

Ruling: While pl is formally employed by def, it is clear from the accounts of all that the *ravshatz* is the person who is authorized to set the work agreements of all who work under him. An oral agreement is sufficient to create obligations to a worker, as long as an act of *kinyan* was performed. The most common act of *kinyan* regarding employment is the worker's beginning to work (Shulchan Aruch, Choshen Mishpat 333:1). So when a worker begins to work after an oral agreement, it is as if there was a written contract.

The *ravshatz* admits that he told pl that he would be paid a set salary of 1,500 NIS a month. This was agreed in Sept. 2019 and repeated in a WhatsApp in Jan. 2020. After these agreements, pl worked; therefore the agreement is binding.

We do not accept def's claim that pl does not deserve the salary promised because he did not carry out all of the responsibilities for which he was hired. In this type of job, the work is defined not by the number of hours one worked in practice, but by his carrying out the tasks he is given. It is the employer's responsibility to assign the tasks. If the worker refuses, he can be fired or the agreement can be renegotiated. However, an employer cannot take away from the salary for not performing tasks that he was never assigned.

It is also not relevant that pl accepted hourly payment. Since he was told that the salary would be added to, in no way was temporarily accepting less a relinquishing of rights.

Therefore, def is to pay the additional sum needed to bring pl's earnings to 1,500 NIS starting from late Sept. 2019.

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Arye Yitzchak ben Geula Miriam
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