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HEMDAT YAMIM

הֶמְדַּת יָמִימִים

PARASHAT HASHAVUAH

***Nitzavim Vayeilech* 23 Elul 5769**

Life for Your Children

“Life and death I have placed before you, blessing and curse, and you shall choose life so that you and your offspring will live” (Devarim 30:19). This *pasuk* is somewhat puzzling. When Hashem offers you to choose life and you choose it, then isn't it obvious that you will live?

One straightforward answer that fits in well with the context of the *p'sukim* depends on our noticing that the *p'sukim* directly before and after this one refer to life specifically in *Eretz Yisrael*. There were times that a generation sinned so terribly that they brought on exile, but the exile actually took place only a few generations later. The *navi*, for example, blames Menashe for the destruction of Yerushalayim (Melachim II, 23:26), although it took place decades later. Thus, the test of one's choosing of life in the Land may be only in the lives of the offspring, as the *pasuk* infers.

The *Netziv*, understanding the life in question as referring to one's afterlife, points out that there are different relative levels of life and lack thereof. One who sins still has some level of life in the afterlife, which is further reduced the more one sins. To encourage one to see the value of making proper choices, the Torah points out that the impact will extend to the prospects of future generations as well. We know that people sometimes tire of efforts to save themselves, whether physically or spiritually. Many good people who would find it difficult to succeed are aided by the knowledge that their efforts will help others, certainly when the others are their progeny.

A third *p'shat* understands the reference to offspring not in regard to the possible punishment or reward but in regard to the choice itself. Obviously, making a choice between life and death does not consist of making a declaration or a one-time action like pressing a button (or putting a name in the ballot box, as some politicians would have us believe). Rav Moshe Feinstein (in *D'var Moshe*) says that one's choice of life has to cause not only that he will live as a result but that his choice will influence his offspring to live as well.

How does one accomplish this and thereby pass the Torah's test? Rav Moshe says that if one follows the *mitzvot* of the Torah in a manner that makes it appear as a burden that he personally is able to bear but is an unwanted task, then his children are likely to decide that they are not up to being so heroic. What, he says, is needed is to go about fulfilling *mitzvot* in a manner that shows his appreciation and love of the lifestyle of significance that they engender. When one does that, then his children will be eager to follow in his footsteps. This is the real choice of life that is responsible for the blessings that Hashem would like to bestow upon us.

Let us remember this *Yamim Noraim* season that our goal is not just to survive by means of *teshuvah* and *mitzvot* but to enjoy and thrive under their influence as well.

With great sorrow we inform the passing of **Prof. Emeric Deutsch**,
member of Eretz Hemdah's Amuta. The funeral was held on Sunday, 17 of Elul

We at Eretz Hemdah express our condolences to **Rabbi Yosef Carmel**, the Head of the Kollel
On the passing of his mother, Malkah **Toibeh**, o.b.m.

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Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich

5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360

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Fax: 972-2-5379626

Email: info@eretzhemdah.org

web-site: www.eretzhemdah.org

Ask the Rabbi

Question: Someone locked his bike to the banister next to the steps leading to our building. The wheel blocked a third of the steps. This created a significant inconvenience (especially to an old, sick man) and caused a couple of people to trip (it was not easy to notice the protruding wheel). After waiting several weeks when apparently no one moved the bike and being unable to ascertain the owner's identity, we broke the chain and moved the bike nearby to a place where it does not disturb. Must we buy a new chain to lock up the bike to prevent its theft? (In our safe neighborhood, carriages and (often) bikes are left unlocked, and they can remain many months without being stolen.)

Answer: We need to first see if you had a right to break the chain and move the bike, as it impacts on your question also. In general, one may "take the law into his own hands" to remove/prevent damages in a manner that causes the least necessary loss to the damager (Bava Kama 28a; Shulchan Aruch, Choshen Mishpat 4:1). One may break things that prevent him from getting out (ibid. 412:2). It seems that the accumulated inconvenience and potential danger the bike caused justified doing something. If you exhausted reasonable efforts to find the owner and have him remove the bike, it was proper to break the chain and remove it.

At this point, why should you not have the normal responsibilities of *hashavat aveida* (which includes preserving the object until the owner is found- see Tosafot, Sukka 25a)? Perhaps you could claim to be exempt because there is no *aveida*, as the owner presumably knows where the bike is. Indeed, when one leaves his object purposely in a certain place, no one should take it to return it (see Bava Metzia 26b). However, this is not relevant because when the owner left it, the bike was chained up and now it is not. This resembles the case of one who hid an object in a garbage dump that was not slated to be vacated and now it is slated for removal, in which case there is an obligation of *hashavat aveida* when feasible (ibid. 24a).

However, a different exemption from *hashavat aveida* seems to apply. The *gemara* mentions in a few places (including Bava Batra 87b, Bava Metzia 25b) the situation of *aveida mida'at* (literally, an intentional losing). The common denominator of the cases is that an owner purposely left his object in a situation where its chances of remaining intact and in his possession are poor. In that case, one is not required to do *hashavat aveida*. The Rambam (Aveida 11:11) derives this from a *pasuk* (apparently based on a Talmudic source- see Shut Habach 97) that one does *hashavat aveida* when the object was "lost from him" (Devarim 22:3), as opposed to an intentional loss. The Rambam says that while there is no *mitzva* of *hashavat aveida* in this case, the finder may not claim the object. The Tur (Choshen Mishpat 261) says that the finder may take it because we consider the owner to have been *mafkir* (relinquish rights to) the object. According to the Rambam, there appears to be a rule that one does not have to go to greater efforts to protect someone else's possession than the owner did (see Netivot Hamishpat 261:1; Even Haezel, Aveida 11:11). Similarly, in our case, when one left his bike in a manner that he should have expected people to eventually exercise their right to cut the chain, he knowingly exposed it to the prospect of being unprotected. Thus, you are not required to take steps to remove the danger he should have anticipated. The Tur probably agrees to this concept, in cases of *aveida mida'at* where *hefker* does not apply (see Bava Batra 87b; Netivot Hamishpat 261:1).

In summary, you are probably not required to obtain a chain for the bike you moved, especially if the bike is in a situation where he still has good chances of getting it back. On the other hand, you do not know what caused the owner to leave the bike as he did, and it would be a responsible move and nice gesture to protect it.

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Ein Ayah

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

Improving Those Whose Intentions Are Not Complete

(based on Berachot 2:41)

Gemara: May it be Your will, Hashem ... that you shall put peace in your legions above and below and between the students who are occupied with Your Torah, whether those who do so with proper intentions (*lishma*) or those who do so not *lishma*. And may it be Your will that they will occupy themselves *lishma*.

Ein Ayah: The reason for this prayer is that general human peace depends on Israel's peace. Since Torah scholars increase peace in the world, it should be His will that there be peace between them, so that they reach the level of peace that enables them to increase peace within Israel.

Those who study *lishma* will have peace because they recognize the truth. The prayer extends to those who do not study *lishma*. Although they did not yet merit to purify their hearts to be occupied *lishma*, they still need to not be so corrupt as to pervert the straight truths and make arguments based on ideas antithetical to Torah's truth. As these people still act like one who studies Torah *lishma*, their actions facilitate peace as if they learn *lishma*, despite the incomplete purity of their hearts. This is not totally dependent on one's capabilities, for Hashem can purify the hearts of those who are lacking. Thus the prayer asks that Hashem raise the spirits of those who study not *lishma* so that they should do so *lishma*.

Different Paths to Appreciation of Service of Hashem

(based on Berachot 2:42)

Gemara: May it be Your will ... to place us in a corner of light and not place us in a dark corner and that our heart will not know pain and our eyes will not be darkened.

Ein Ayah: The significance of this prayer is based on the fact that one can be inspired to serve Hashem by either the Torah or by intellect.

It is greatest for one to have his intellect enlighten him to serve Hashem by recognizing the greatness of the Master and serving Him out of love. Whoever does not recognize the goal of his service of Hashem is one who walks in the dark. One who is enlightened by his intellect is one who stands in a corner of light.

It seems that while it is praiseworthy for one to be inspired by his intellect, the drawback is that it is not as all encompassing as what he can attain through Hashem's perfect Torah. Therefore, the former is referred to as a corner of light, as it gives light only to the degree that his intellect and his situation allow it to extend. The Torah, though, is the light of the world and not just a corner of light. It is still a worthy attribute to think about the value of his service. However, when one analyzes things himself, he must beware of two things.

First, he should not allow himself to be overtaken by too many questions that pain the heart when he lacks a solution for them, a phenomenon that does not affect those who live with blind faith. That is why the prayer requests "that our heart will not know pain," which can happen even to those in the light. The second thing happens when one gets involved in problems that are beyond his mental capacity. The Rambam and Chovot Halevavot compare this to one who damages his eyes by looking straight at the sun. This can affect someone who investigates things that he cannot appreciate, which makes him unable to grasp that which he was originally capable of grasping. That is the request that "our eyes not be darkened."

One request relates to the intellectual sphere and the other to the emotional. He should have a straight path that enables him to experience greater joy as he understands more and continue to strive to increase his understanding without reaching the point of distorted views of the Divine.

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P'ninat Mishpat

How Do We Judge These Days?

(based on Sha'ar Ladin, Halcha P'suka, vol. 28)

We saw last time that in order to force someone to adjudicate, it is necessary to have *dayanim* who have authentic *semicha* that was passed on from the time of Moshe Rabbeinu. Considering that the chain of transmission has been broken, how does the *beit din* system work nowadays?

The *gemara* (Bava Kama 84a) says that nowadays we judge people as agents of the last *dayanim semuchim*. The *gemara* in Sanhedrin (3a) gives a somewhat different explanation, claiming that it is a rabbinic institution so that "doors will not be locked before those who need to borrow money" (in other words, a necessary step to ensure that a normal society can continue). Why is this necessary if we have the idea of serving as agents of the *semuchim*?

Tosafot (Sanhedrin 3a) says that both ideas refer to the same rabbinic institution. Rashi (ad loc. 13b) says that one institution discussed a time when there were *semuchim* but not in the specific place, and the other referred to a time when there were no *semuchim* anywhere.

In any case, the *gemara* limits the use of non-*semuchim* judges to cases that are common and involve a loss of money. Two examples of cases that are excluded are damages to a person's body and payment for embarrassment. The Rambam (Sanhedrin 5:10, accepted by the Shulchan Aruch) says that regarding damages to a person's body, while we do not judge depreciation in overall value, we do judge loss of income and medical bills. The S'ma explains that smaller damages that do not affect one's overall value but do cause absence from work and medical expenses are common. The Rosh (accepted by the Rama) makes no such distinction.

The *Rishonim* discuss how it could be that the rabbinic concept of agency for the *semuchim* of old can work to force a *get* and to do a conversion, which are Torah laws. Some say that in fact the ability to continue these practices is rabbinic, and they say that the absence of these processes would cause great damage, thus justifying their implementation.

Rishonim point out that the *minhag* of the ancient communities of Bavel was to excommunicate those who did not appease their counterparts whose cases did not warrant a *beit din* hearing due to lack of *semuchim*. Furthermore, when the two sides agree to adjudicate upon that which *beit din* does not have jurisdiction, their agreement empowers the *beit din*. We would also point out that many cases of bodily damages are governed by agreements with insurance companies. In those cases, the issue is not of a Torah-levied payment for damages but is based on prior agreement and this is under the jurisdiction of even a contemporary *beit din*.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Elul 17 – Elul 23, Baba Batra 16-22

Preventing Damage

Rav Ofer Livnat

This week in the Daf Hayomi, we begin to learn the second chapter of Baba Batra, which deals with the obligation to take preventative measures in order to avoid causing damage to neighbors. Even when a person is doing something in his private property, he must take certain precautions so as not to cause damage to his neighbors. For example, when a person lights a fire in an oven, the Mishna (20b) states a certain safety distance that must be kept in order to prevent the fire from breaking out.

What happens if a person kept the safety distance and nevertheless a fire broke out? According to the Chachamim (Mishna ibid), he must pay for the damages, while according to Rabbi Shimon he is exempt. The Halacha is like the Chachamim (Shulchan Aruch Choshen Mishpat 155, 1). Therefore, even when one keeps the safety distance, he must still guard his fire from spreading.

The Rif (Baba Kama 25b) asks about a seeming contradiction from a Mishna in Baba Kama (61b). The Mishna there gives a safety distance that one must keep when lighting a fire in his property, and states that, if one kept the distance and nevertheless a fire broke out, then he is exempt. The Rif answers that the Mishna in Baba Kama deals with the unusual situation where he lit a fire somewhere beside his oven, and the safety distance is very large, and therefore, if a fire nevertheless broke out it is considered something beyond one's control. However, in Baba Batra, the Mishna deals with lighting a fire in an oven on a regular basis, and thus one must continually guard his fire from breaking out.

The Netivot (155, 1) explains that the Rif is differentiating between two types of safety measures. Regarding lighting a fire on an irregular basis, the Sages gave the maximum safety distance, so as to prevent a fire from breaking out in any way. If a fire nevertheless broke out, it is deemed as something that was beyond one's control. However, regarding the use of an oven, the Sages did not want to require the maximum safety distance, since that would make it difficult for people to use their oven, which is a basic necessity. Therefore, the Sages gave a minimal safety distance, which, when combined with continuous safeguarding, would prevent a fire from spreading. If one did not safeguard the fire in the oven, and a fire broke out, he is liable.

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