



HEMDAT YAMIM

Parashat Hashavua

Shelach, 19 Sivan 5782

Harav Shaul Israeli zt"l
Founder and President

"Their Shadow has been Removed"

Harav Yosef Carmel

Amidst the people's bout of crying, Yehoshua and Kalev tried to convince Bnei Yisrael to follow their advice and not the wicked spies'. A major argument that these noble leaders promoted was: "Their [the Canaanite inhabitants of the Land] shadow (*tzel*) has been removed from them" (Bamidbar 14:9). What did they mean by this?

We have discussed the connection between roots that contain the root-part *tzel*, such as *tzelem* (form), *hatzala* (salvation), and *tzela* (rib). We will continue in a similar direction. The Pesikta (Lekach Tov, Bereishit I:26) comments: "Tzelem represents the form in which a matter is seen ... and it is similar to 'their shadow has been removed,' which means that the images of their faces were changed ... due to fear." Ibn Ezra turns this homiletic idea into the simple reading of the *pasuk*: "If a warrior does not have a shield to protect him and be a shadow for him, his heart will be full of fear." The Seferorno explains similarly: "They agree to leave all of their offensive and defensive weapons behind to enable them to flee quickly." Thus, we can explain that the Canaanite nations were so fearful of Bnei Yisrael's expected arrival that they were ready to throw away their weapons and run for their lives.

We find similar imagery in Az Yashir (Shemot 15:14-15) and in Rachav's description of her compatriots as Bnei Yisrael were approaching (Yehoshua 2:11). However, this approach is difficult because there is no hint at it in the rest of the discussion. We will go in a different direction.

The *gematria* (numerical value of the letters) of *tzelem* is 160, which, points out the Shelah, is the same *etz* (tree). When Moshe spelled out the spies' mission, one of the matters to determine was whether "there are trees or not" (Bamidbar 13:20). In Hebrew there is also overlap between the words *tzel* (shadow) and *etz*. Rashi connects them by saying that both words hint at righteous people, who have a developed *tzelem* of Hashem and position themselves in the shadow of the Divine Presence. They protect the people of their nation. Therefore Rashi explains that Yehoshua and Kalev were saying that the "shadow of Hashem" had left them, or in other words, the inhabitants of Canaan lost their spiritual, moral protection. In such circumstances, as long as Bnei Yisrael preserved their own spiritual level, they had nothing to worry about.

In the praises of the beloveds in Shir Hashirim, he says that when the *tzelalim* disappear, he will go to the Mountain of *Mor* and the Hill of *Levona* (Shir Hashirim 4:6). The *midrash* identifies these places as related to Avraham and Yitzchak, who acted piously together on Mount Moriah. In other words, our protection is from our privilege as descendants of the forefathers.

Our patriarchs taught us that Hashem does not want people to sacrifice their children to Him in the primitive manner of other inhabitants of the Land. (Those of our enemies who use their children as human shields to enable them to more easily target civilian populations and then assail Israel for accidentally injuring their civilian population, are cynical people who embrace the lowest tendencies in mankind, and are undeserving of a part of the merit of the righteous.)

May we merit having leaders like Yehoshua and Kalev, who presented an example of morality in the nation and the 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

An Agent Showing a House on Shabbat

Question: Asked by an American rabbi: A congregant of mine is trying to sell his house. His non-Jewish real estate agent suggested doing an open house on Shabbat, a good time for many buyers. If the owner goes away for Shabbat, may he do that?

Answer: I leave to you to deal with communal implications of an event done to attract specifically non-Shabbat observant buyers and the possibility it will cause non-observant Jews to violate Shabbat. Those issues require familiarity with the local situation.

It is difficult to know if the agent, who provides services for the Jewish seller, will need to do *melachot* in showing the house. When it is not necessary, then even if he does *melacha*, it does not relate to the Jew for whom he is doing the job (Orchot Shabbat 23:54-58). However, even assuming the agent will not take any steps of formal transactions for you at the open house, just trying to promote a future deal is forbidden on Shabbat (Shulchan Aruch, Orach Chayim 306:1). One may not ask a non-Jew to do even a Rabbinic prohibition such as that, without special grounds (Shulchan Aruch, OC 307:5).

A major factor that often permits *amira l'nochri* (asking a non-Jew to do work for him) exists here, namely, *katzatz*. When the non-Jew gets paid by the job, as opposed to as a worker paid by time, it is permitted for him to do *melacha* for the Jew (Shabbat 19a; Shulchan Aruch, OC 244:1). The logic is that in such a case, he is acting not because the Jew asked him to but to receive the money that the result earns him (see Mishna Berura 244:2). Realtors are almost always paid only if and when they succeed in facilitating a sale and their rate is unrelated to the amount of time it took, but to the result.

However, there are two problems with using this leniency in this case. One is that even regarding *katzatz*, the non-Jew must not be told explicitly or otherwise realize that it is necessary that at least some of the work must be done specifically on Shabbat (Shulchan Aruch, OC 252:2). Here, the plan the Jewish owner accepts is for the open house to be held specifically on Shabbat. It does not help if the realtor thought of the idea, as it is still a plan to work on the Jew's behalf specifically on Shabbat. If this were the only problem, one could look for leniencies to alleviate the problem (details are beyond our present scope.)

The second problem, which applies if we are discussing a home in the midst of a community that includes Jews, is *marit ayin*. The *gemara* (Avoda Zara 21b) says that one may not let a non-Jew work on his property even if he does so for his own profit because it is known as a Jew's establishment and some people will assume the type of business arrangement with the non-Jew was one that is forbidden. While this can apply even when the non-Jew is working on a Jew's movable object (e.g., fixing his car), if it is clearly a Jew's, the prohibition is broader and sterner when it is related to land/house (Shulchan Aruch, OC 244:1-2). While the problem should not apply when it is known that this type of work is paid by the job (as is the case for realtors), this does not help when the work is done in the Jew's known, accessible house (*ibid.*). The concern is that although people will figure he is paid per result, they may suspect that the Jew asked him to do the job specifically on Shabbat (Mishna Berura 252:17).

Therefore, writing about a case where the owner does not live in the house and hands over the job of showing the home to the realtor alone, Orchot Shabbat (23:158) forbids allowing the non-Jew to show the house on Shabbat if it is known to be a Jew's house and is accessible to a Jewish community. Our case, where the owner takes part in making the open house on Shabbat, is more clearly forbidden. In many communities, this will not only be "technically" forbidden but may be seen as a scandalous affront to Shabbat.

May the concern for the honor of Shabbat help provide the seller with merit to succeed in finding his buyer, during the week.

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



Igrot HaRe'aya - Letters of Rav Kook

Connecting Disciplines in Torah Study - #103 – part III

Date and Place: 21 Tevet 5668 (1908), Yafo

Recipient: Rav Yitzchak Aizik Halevi, the author of a monumental history of rabbinic scholarship, Dorot Harishonim.

Body: [We are in the midst of the development of the idea that halacha is related to wisdom and aggada to prophecy and that the Talmud of Eretz Israel (Yerushalmi) excels in brevity.]

Perhaps the distinction between Talmud Bavli and Talmud Yerushalmi is capsulized by the following disagreement. In the Torah section on *zaken mamrei* (a Torah scholar who refuses to accept the majority decision of the Sanhedrin), the topic of the deliberation of the Sanhedrin was called *davar* (a matter). The Bavli explains that this is a matter of *halacha*, and the Yerushalmi explains that it means a matter of *aggada*.

In the introduction to [the medieval philosophical work] Chovot Halevavot, the author writes that matters of philosophy (which are the root of *aggada*) are not included in the section of *zaken mamrei*, which begins with the words “shall it beyond you.” He writes that this is evidence that such matters are not within the expertise of the scholars involved in the transmission of the traditions of the Torah but are matters that can be clarified by means of intellect. There were some great scholars who said, based on this approach, that matters of *aggada* are not as firmly founded as those of *halacha* are. However, there were also scholars, apparently including Rav Hai Gaon, in a responsum, who considered *aggadic* passages in the Rabbinic sources as a co-equal part of Rabbinic tradition.

The distinction is simple. An approach to study that is based on the roots of prophecy and its related tools will experience a unification of the fields of *halacha* and *aggada*. According to this approach, embraced by the Talmud Yerushalmi, as opposed to the Chovot Halevavot, there are traditions on matters of philosophy just as there are on matters of practical observance. In contrast, the approach to Torah study that is practiced in the Diaspora, which is not fit for prophecy, is different. It is unable to connect matters of *halacha* and its analysis, and the notable philosophical principles are only those which one can arrive at by means of logic. Therefore, the philosophical ideas are distinct from matters of practical *halacha* and are not covered by the prohibition not to stray from the decisions of the majority of the Sanhedrin. This distinction is the most fundamental difference between the Talmud Bavli and Talmud Yerushalmi.

This distinction is also at the heart of the difference between a *kohen* and a judge, both of which are mentioned as leaders who are involved in the decision of the Sanhedrin (Devarim 17:9). The *kohen* represents one whose approach to scholarship in *halacha* is assisted by Divine Spirit, as the *kohen* is described: “the lips of a *kohen* shall guard knowledge ... for he is an angel of Hashem, the Lord of Hosts” (Malachi 2:7). This is especially true of the *kohen gadol*, who needs to speak with Divine Spirit, as part of his usage of the *urim v’tummim*. In contrast, the judge arrives at his judgment based on logic and an approach to textual study that is based on analysis of the sources and their ramifications.

It is not independently obvious without textual confirmation that each of these leaders is subject to the prohibition not to reject the decisions of the majority. If it had only mentioned a *kohen*, I would have said that only one who speaks with Divine Spirit is bound to the prohibition not to reject decisions, and if it had said only the judge, I would have said that there is no place for Divine Spirit in trying to arrive at the *halacha*.

We continue next time.

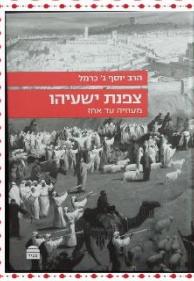
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Tzofnat Yeshayahu- Rabbi Yosef Carmel

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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P'ninat Mishpat

Limits of Interest Rate for Loan with Heter Iska – part II

(based on ruling 80033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=*pl*) is a lender who lent 500,000 NIS to a contractor (=*def*) to carry out a *Tama 38* project (a special plan to strengthen and improve a building in return for the right to add stories to it). They used the *heter iska* used by Bank Mizrahi, and the rate of interest was 18% annually plus punitive interest of \$200 a day for late payment. *Def* gave three checks and three promissory deeds, and put certain properties in a lien to *pl*. *Def* paid 527,000 NIS but late, so that some interest was outstanding. *Pl* made a claim of 390,360 NIS with *Hotza'ah Lapo'al*, which *def* opposed, and the courts transferred the case to *beit din*. *Pl* claims that since *def* owed 135,000 NIS and it has been over three years, *def* owes 61% interest plus around a quarter million dollars for the punitive interest. *Def* claims that since he already paid more than the principal he took, he cannot be subject to punitive interest, and that it is enough to pay 18,000 NIS for outstanding interest.

Ruling: [Last time we saw that the regular interest in this case could have been permitted but the punitive interest made the total interest too high.]

More fundamentally, interest as a penalty for late payment, which does not fit into the legal logic of a *heter iska*, is forbidden, as we shall explain. A penalty payment that increases by the day (as opposed to a one-time penalty) is classic *ribbit*, as it is *agar natar* (reward for waiting) (Shulchan Aruch, Yoreh Deah 177:16). The Rama (ad loc.) cites those who are lenient regarding a penalty, but most disagree, and the Shach (ad loc. 33) and the Shulchan Aruch Harav posit that it is a Torah-level prohibition. The Shach is lenient in the case where there is a *heter iska*, but Brit Yehuda (38:9) writes that this is only regarding a one-time penalty. While there might be room for leniency regarding a corporate entity, like a bank, here we are dealing with an individual, and therefore one must not be lenient in this case.

We calculate that after *def*'s last payment, he owed 33,237 NIS, which increased to 37,369 NIS by the time *pl* went to *Hotza'ah Lapo'al*. After this point, interest should no longer be accrued for two reasons. First, *def* should not have been expected to pay because *pl* sued for an exaggerated amount of money. Second, a *heter iska* is based on the expectation that the recipient is investing the money, whereas in a case in which the "lender" is demanding the money immediately, it is apparently forbidden to invest anymore, and therefore there is no justification for the amount to increase.

Next time we finish up with questions about claims that the investment was unprofitable.

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