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Founder and President

HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH

Beshalach 10 Shevat 5771

Bones as Arms

(Harav Shaul Yisraeli - from Siach Shaul, pg. 219-220)

The Torah writes (Shemot 13:18) that Bnei Yisrael left Egypt "*chamushim*," which Rashi explains as armed with weapons. Immediately thereafter it says that Moshe took the bones of Yosef with him. The *gemara* (Sota 13a) relates to Moshe's action the *pasuk* in Mishlei (10:8) that "the wise of the heart will buy *mitzvot*," as instead of acquiring spoils from Egypt, Moshe was involved in this *mitzva*.

As Bnei Yisrael was preparing for independence, like other nations enjoy, many made the mistake of thinking that their survival would depend on the same things it would for other nations. They left with arms, ready to assemble an army of warriors. They thus left with a "powerful hand" (Shemot 14:8). When they were accumulating the spoils that would get them off "on the right foot" economically, their leader, of all people, had other concerns. He was attending to the bones of an old deceased leader, which were buried under the Nile for many decades, a seemingly irrelevant act at this time of great immediate opportunity. While it might have been a pious act, where was the "wisdom of the heart" that the *pasuk* refers to?

The people found out the answer to that question a few days later. Paroh, who the people thought they had seen the last of, was attacking with a whole army of well-armed Egyptians. In one moment, the hearts of the previously confident former slaves froze in fear. The people started screaming that they would be annihilated. What happened to all the weapons they brought with them and all the plans to use them? Did they not know how to fight for their lives?

As we know, they were saved by the miracle of the splitting of the sea. But how did that happen? The *midrash* (Bereishit Rabba 87:8) tells us that "the sea saw and fled" (Tehillim 114:3) refers to seeing the casket of Yosef. What power did Yosef possess that so "scared" the sea?

Yosef represented the power of *mesirut nefesh* (the willingness to sacrifice) for Judaism. It was Yosef who resisted his temptation from Potiphar's wife, even at the price of being put in jail. When he eventually became powerful, it was he who refused to assimilate among the Egyptians and he who wanted to be buried along with his brothers in the Land of Their Fathers. When someone needed to learn how to find the courage to jump into the raging sea, where would he find it? From the spoils he had taken from Egypt?! No, he would find it by contemplating the courage of Yosef. All of the preparations turned out to be useless, except for the inspiration provided by the remains of Yosef, which Moshe had brought. No, it was not "only" piety; Moshe's planning was a better strategy in the long run as well.

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Question: We have a friend who, when visiting from America, stops by for meals often when she is in our area. For the first time, last night, she slept over. It was, shall we say, a nightmare! She received several phone calls in the middle of the night, which woke us, and also, despite being warned, tripped the alarm. She now seems to want to stay for another night and perhaps return in the future. Are we permitted to refuse her request?

Answer: This is a very hard question to answer, not just because it is hard to predict the likely potential scenarios, but because there is a conflict between values, as we will explain.

Hachnasat orchim (welcoming guests) is a rabbinically mandated application of the Torah command to love one's counterpart (Rambam, Avel 14:1). It applies both to poor and rich guests and, in theory, can be accomplished even when taking money for expenses (food, telephone calls, etc.) by providing a warm, welcoming place to be (Ahavat Chesed 3:1). Thus, even if someone can afford to stay in a hotel, (and, maybe, from her perspective, should do that) if she asks to stay at one's house or the situation is such that such an invitation is the normal nice thing to offer, the *mitzva* is normally a responsibility.

There is a general question about the obligation to fulfill a *mitzva* that has a large physical or emotional price, and this comes up in different contexts. In *Living the Halachic Process* (vol. II, D-15) we dealt with someone who can expect to have a moderate allergic reaction to eating *matza* on Pesach. The basic assumption is that one does not have to make himself sick in order to fulfill a *mitzva*, and while it is hard to do, one has to try to figure out what is a normal "price" one has to pay to fulfill a *mitzva*. In this case, when it is a matter of your needs against another person's needs and feelings, the matter is certainly not easy to determine, but one should try to consider this in an idealistic but realistic manner. The availability of alternative arrangements is a factor in this context (see Ahavat Chesed 3:2)

There is another element to the complex nature of this question. Just as a host is urged and, to a great extent, commanded to extend himself to make the guest happy and welcome (ibid. 1) so is the guest required to not take advantage or overdo her welcome (Halichot Bein Adam Lachveiro 8:28). If she is outright damaging to her hosts, they are not required to keep her (ibid. 6, in the name of Sefer Chasidim). We would certainly say that if she were stealing from her host, presumably even if the host is willing to spend similar amounts of money to feed her), she can be asked to leave. You could make the claim that *gezel sheina* (deprivation of sleep) would be equivalent. On the other hand, it is hard to know where to draw the line on such a matter (otherwise, we would all be thieves at one time or another).

A final, related issue is that if your guest continues to grossly abuse her rights, she is seriously sinning. By letting her continue to do so, in some ways you are wrongly facilitating her sins. The Rambam (Sefer Hamitzvot, Aseh 205) says that rebuke, in addition to correcting "religious" sins and those affecting third persons, is intended for people who are being abused (as opposed to harboring resentment – see Vayikra 19:17). While we are cautious about the use of rebuke, having your guest continue to upset you is unlikely to be in her best interest.

All this being said, we think you should consider seriously the likelihood that your guest was not aware of how her behavior disturbed you. She is less likely to trip the alarm again, and you can probably unplug the phone or mention calmly how its ringing disturbs you greatly. Hopefully, your friend is a nice person who will be a much improved guest in the future. So, if you can put up with her for another night and see how it goes, you would probably be doing a big *mitzva*, even if you arguably can get out of it. Feel free to follow up as things develop.

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The Reason to Work for a Livelihood

(condensed from Ein Ayah, Berachot 6:10)

[Last time, we saw the disagreement between Rabbi Yishmael, who said Jews should be involved in making a normal living, and Rabbi Shimon, who said one should strive to only study Torah. Abaye said that experience showed that Rabbi Yishmael's approach is the one that works.]

Gemara: Rava said to the Rabbis: I ask of you not to come before me [to study] during the months of Nisan and Tishrei, so that you will not be preoccupied with your livelihood all year.

Ein Ayah: Hashem engrained in creation that a person lacks satisfaction when involved only in intellectual [Torah] pursuit without any standard work so that one will be pushed to see to his many physical necessities. Otherwise, many would involve themselves just in the intellectual, only to become so overwhelmed by their needs that they would no longer be able to pursue wisdom. If one takes care of his practical needs during certain times of the year, he will be more naturally drawn to the intellectual during the most appropriate times.

Possibly, Abaye and Rava disagree about Rabbi Yishmael's reasoning. Abaye felt that experience showed that, irrespective of necessity, man's essence is made for some involvement in normal physical work. Rava reasoned that only when necessity dictates it do we say that man needs normal work, but to the extent that one is able to devise a plan to avoid such involvement, that is the higher level to strive for. A person, especially a Jew, can lead his life in a manner that he has extended periods when he is dedicated exclusively to the worship of Hashem.

The Balance Between Torah Study and Work

(condensed from Ein Ayah, Berachot 6:11)

Gemara: Come and see the difference between the earlier generations and the more recent generations. The earlier generations made their Torah study a set thing and their work a temporary activity, and they were successful in both. More recent generations, who made their work a set thing and their Torah study a temporary activity, were unsuccessful at both.

Ein Ayah: The foundation of tranquility, even in regards to this world, depends on fixing the general and the personal moral standing. When a person has reached a state of good characteristics in regard to fear of Hashem and belief, he is able to avoid many things that detract from his strength and make the burden of the trials of life greater. One with a proper approach is one able to enjoy that which Hashem provides him, even if he does not have that much.

In contrast, one who has a lower spiritual level will not be satisfied with his physical attainments, and his problematic tendencies will lead him in the direction of desires that destroy the foundations of a healthy life. This will cause spiritual disease for him and his offspring. Even if he becomes rich, it will not make him happy.

When the earlier generations made their Torah study the set thing in their lives, this led them to a healthy moral outlook of fear of Hashem and proper characteristics. Under those circumstances, the less serious effort they put into work sufficed to keep them happy, for they had a healthy outlook regarding their efforts and the fruits of their labor. In later generations, people were so concerned about their financial success and physical attainments that they did not leave enough time for Torah studies because they did not feel they could afford to do so. They were not successful even in their physical attainments because whatever they accumulated did not suffice to make them feel good.

When discussing set versus temporary, the main thing is not the number of hours but the attitude. The main question is what he considers most crucial, even if he is able to be involved in it for less time.

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Rights for a Worker Who Agreed to Substandard Conditions

(condensed from Shurat Hadin III, pp. 276-281)

Case: A teacher (=p) had been working at a school (=def) for 10 years and was let go. A year later p/ sued for vacation and severance payment, which are required by law. Def says that they made an oral agreement every year and, in the last year, a written agreement, that p/ relinquishes claims to such rights and receives only an hourly wage.

Ruling: Severance pay is not a Torah obligation. However, it has long been considered a proper practice, inspired by the Torah law of a present when setting free a Jewish slave. The Sefer Hachinuch (482) suggests adopting the practice, and it has become a widespread practice, which has been accepted as law in Israel. In general, one of the strongest rules in monetary law is to follow the practices of the land (Bava Metzia 83a). Although the Haghot Oshri (ad loc.) says that local practice is binding only if the place's leading rabbis endorse it, that is only when the practice contradicts a Torah law. Here, where the practice is in the spirit of the Torah, it should be binding. Rav Uziel claimed that this practice should not be binding because its implementation did not spread, but in the decades since, it has spread, he would presumably agree.

However, the rule of following a practice is opposed by the rule that two sides to an agreement can agree to change normal conditions including those mandated by the Torah (Tosafot, Bava Metzia 83a). Although p/ claims that he did not know that he was signing a waiver of his rights, we do not trust one who says he did not read an agreement he signed (Shulchan Aruch, Choshen Mishpat 45:3).

P/ claimed that he signed the waiver only because he was afraid they would fire him, and he needed the money. This is not a valid claim since they had the right to fire him (and pay severance), and it was his right to choose between the different options. This is considered extenuating circumstances one places on himself. Only if he made a formal statement in front of two witnesses that he did not mean what he was "agreeing to" can he undo the agreement. Although severance is a future consideration and usually one cannot relinquish rights to something whose time has not come, one can agree that rights will not start in the first place (see Bava Kama 92b, regarding one who says: "Rip my clothes and you will not have to pay"). Additionally, in the signed agreement, it says that he admits to having received all of the rights he deserves, and we say that one's admission is binding.

P/'s final claim is that he was unaware that the rights in question were coming to him by law, and therefore his relinquishment was based on a mistake. However, he cannot extract money based on that claim because, according to some poskim, even a mistaken relinquishment is valid if it is in writing. Furthermore, we have no reason to believe p/ that he was unaware.

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