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המדת ימים

PARASHAT HASHAVUA

Behaalotcha, 9 Sivan 5774

Menora or Chanukiya?

Harav Yosef Carmel

Our *parasha* begins with the instructions to Aharon about lighting the seven-canded *menora* in the *Mikdash* (Bamidbar 8:2). The *haftara* deals with a golden *menora* that was foreseen, with the prophet addressing the *kohen hagadol*, Yehoshua, who served at the beginning of the time of the Second Temple, and spoke about the coming of Tzemach, which is normally a reference to *Mashiach*. This *menora*, shown to Zecharia in his prophetic vision, had seven lamps and had olives to either side of it.

This section of Zecharia was also selected as the *haftara* of the Shabbat of Chanuka, at which time we, of course, remember the special miracle that allowed for the continued lighting in purity of the *menora* later in the period of the second *Beit Hamikdash*. The question arises whether *Chazal* saw the miracle of Chanuka as the fulfillment of the prophecy of Zecharia.

Zecharia lived at the time of the Persian Empire, under the rule of Daryavesh (Darius). The leaders of the Jewish community were Zerubavel ben She'altiel, who was a descendant of David, and Yehoshua ben Tzadok, who was a descendant of Aharon Hakohen. We will now summarize another of Zecharia's prophecy's (Zecharia 8), which speaks about a wonderful liberation.

The liberation comes with good feelings and without the need for "birthing pains." There are no wars or security issues. The Divine Presence will return to dwell in Yerushalayim and its *Mikdash*. There is internal harmony within *Am Yisrael*, including between the spiritual leadership and the political leadership. The nations of the world will recognize Hashem's kingdom and the liberation of Israel and will take a positive, active part in the process.

To our great dismay, with all of its great importance, none of these things occurred in the time of the Chanuka story. Therefore we can conclude that the *menora* described in Zecharia is not referring to the miracle of Chanuka and its celebratory *chanukiya*.

The decision of the young State of Israel to adopt as its symbol the *menora* of Zecharia, as it is flanked by olive branches on its side, contains an element of setting a high standard for what it envisions as liberation that it would like to reach. We thank Hashem for having the merit to see the beginning of the process and commend the State on its choice. We urge, already at this time, to work hard to forge a peaceful partnership between the Torah leadership and the political leadership, as Zecharia foresaw.

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Ask the Rabbi

by Rav Daniel Mann

Returning a Lost Item That the Owner Knows About

Question: Neighbors on an upper floor have several little kids who regularly throw toys and even heavy objects onto our ground floor garden. For years we have picked up and returned the items and dealt with a mess, as they have refused to put up screens or come promptly to pick them up. We believe that if we leave the toys, they will change their behavior. Is that permitted?

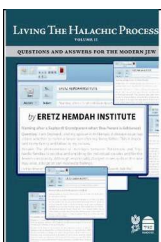
Answer: We will explore a few possible ways to exempt you from returning the items.

Let us assume that your neighbors are improperly taking advantage of you. Does that justify your stopping to retrieve their toys to get them to change their behavior? At first glance, this seems like *nekama* (revenge) – refusing to do for your counterpart a favor that you would normally do because of grievances against them (see Rambam, Deiot 7:7). On the other hand, several sources indicate that *nekama* applies when one is punishing another for past behavior, whereas it is permitted to take unpleasant steps to try to dissuade him from his improper behavior or for another positive, not spiteful, reason (see Rama, Choshen Mishpat 388:7; Mitzvot HaLevavot p. 32; Torat Ha'adam La'adam, from p. 172). Precedents for this rule include telling *lashon hara* to protect one's legitimate rights (see Chafetz Chaim, Lashon Hara 10 where he also discusses the conditions) and steps that David Hamelech took against those who tried to harm him. In this realm, there is likely a distinction depending on the level of need and the steps contemplated and between refusing to do a favor and acting in a way which would normally violate a Torah law, e.g., *hashavat aveida* (see Torat Ha'adam La'adam *ibid.*). Therefore, it is important to determine if the *mitzva* of *hashavat aveida* is obligatory in this case.

There is a question as to what *hashavat aveida* requires of a person: return the object to the owner, or enable him to retrieve it (see discussion in Mishpat Ha'aveida, p. 21). The stronger position in our view, which is reportedly endorsed by Rav Moshe Feinstein and the Chazon Ish, is that the finder does not have to deliver the object (Pitchei Choshen, Aveida 7:(1); Torat Ha'aveida, p. 58). You imply that making them come pick up the toys would suffice, so there is a second reason to allow you to take that step.

Even if one wants to be stringent on the above issues, we should consider whether the pattern of behavior falls under the category of *aveida mida'at* ("intentional loss"). There are different levels of *aveida mida'at*. One is when the owner demonstrates he does not care if the object gets lost. In that case, there is even an opinion (Rama, CM 261:1; the Shulchan Aruch *ad loc.* disagrees) that one is allowed to take the object for himself. Your case does not fall into this category, as your neighbor wants the toys back and is not overly concerned about their being thrown from her home because she relies on you. However, the Shulchan Aruch (*ibid.*) assumes the owner is not *mafkir* the object and yet understands that by not taking precautions to protect its disappearance, he loses his right to require the finder to bother to return it. This seems to apply in your case, although she could argue that she tries to limit the children's throwing of toys and that you cannot blame for lack of success and are required to help your counterpart, as *hashavat aveida* requires (even a hundred times – Bava Metzia 31a). Even so, it appears that in this case, there is no *aveida* because your neighbor always knows where to find her objects, and she has the responsibility to come get it. (This is better than the case where one informed the owner where his lost object is because there the *mitzva* took effect previously.) Thus, there is another reason to exempt you.

In summation, there are ample reasons to allow you to tell your neighbor that she will have to come collect the toys. That being said, we urge you (who know the dynamics) to consider whether the situation is acute enough to justify the steps and whether your idea is the wisest way to deal with the issue.



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Ein Ayah

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

Importance of and Limitations on Individual Thought

(condensed from Ein Ayah, Bikurim 9:39)

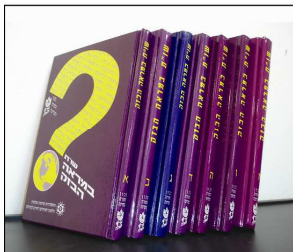
Mishna: While the basket is still on the shoulder [of the one bringing *bikurim*], he recites from “I have told today to Hashem, your G-d” (Devarim 26:3) until he finishes the entire Torah portion. Rabbi Yehuda says: He recites until “*Arami oved avi*” (ibid. 5). When he gets to “*Arami oved avi*”, he takes the basket down from his shoulder and holds its sides. He puts his hand under it and waves it and reads from “*Arami oved avi*” until he finishes the whole Torah portion. Then he puts it by the side of the altar and bows down and leaves.

Ein Ayah: [In the previous piece (which was too long and complicated to bring in this context), on the same mishna, Rav Kook learned from the mishna that while in the realm of religious action, there is a need for a high level of conformity, regarding religious thought, there is much more room for individualism. This will be important in appreciating the following short piece.]

The *mizbeach* (altar) is the symbol of the covenant of spiritual unity, as Hashem is One and dwells within Bnei Yisrael. That is why there was particular anger against the members of the tribes of Gad and Reuven when they built their own altar (Yehoshua 22:12). This serves as a sign that the unity in the matter of practical actions will always go together with spiritual unity. Specifically, just as all the actions must strengthen the path of Hashem within the nation in practice, so too the lofty spiritual ideas must be strengthened.

A condition of the joining together of all the contributions of the individuals to one unified setting in action and in thought is that every individual must not turn his individuality, whether in action or thought, into a fundamental matter. All philosophical thoughts and actions have to be primarily intended to benefit the greater community, in regard to their actions and thoughts. Following this approach brings one to a good way of life in both of these realms.

This limiting of one's emphasis on individualism is represented by bowing down, as it shows that one nullifies himself as an individual before the great light that is good for all, whose spirit fills the whole world. Therefore, to complete the whole experience that is included in the bringing of *bikurim*, the one who brings the fruit puts his contribution beside the [unifying] *mizbeach* and bows down before leaving.



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Partners in Practice, but Not in the Documents

(based on Shut Maharit, Choshen Mishpat 29)

[Yaakov and Yitzchak had a partnership in a business, as was well known to the community. In that framework, they jointly bought a large house from the duke, in which each lived and the business ran. Yaakov was married but did not have children; Yitzchak had one daughter. Yitzchak died, and Yaakov continued the business, giving Yitzchak's part of the profits to his widow. At some point, Yitzchak's son-in-law came with a claim that the house belongs to his wife (Yitzchak's inheritor) and him, with the proof being that the sales contract of the house from the duke is in Yitzchak's name alone.]

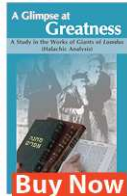
It is clear that Yaakov has rights to half of the house, due to his *chazaka* in it (the indication from his occupancy of the property over a long period of time). One might counter that since the property is written in Yitzchak's name, Yaakov should need all the criteria of *chazaka*. Regarding *chazaka*, we find that if the one who is the known original owner and the one claiming that he acquired part of it are living under one roof, the latter does not have a *chazaka* (Bava Batra 29b). The Rashbam and the Ramban argue whether the *chazaka* is lost only when the original owner shares the premises with the one who claims *chazaka* or even when he just passes by. However, in this case, it seems that Yitzchak shared the premises. Nevertheless, regarding those parts of the house where Yaakov lived privately, without Yitzchak's involvement, *chazaka* should work. Regarding the areas of the house that were rented out to others, it is well known that Yaakov would receive his share of the money as a partner.

Furthermore, even if Yaakov did not have any area to which Yitzchak did not have entry, Yaakov still has *chazaka*. The aforementioned *gemara* is talking about a case where one party was the original owner and now a second one is claiming that he received it from the first, in which case it is necessary to show that the first one's lack of protest is significant. In this case, though, the claim is that they were partners from the beginning, and that just needs to be substantiated by evidence of joint usage.

The son-in-law's main claim is that the fact that only Yitzchak's name is on the contract is a proof that he was the sole owner, but there are points that neutralize this claim. It is not the practice of noblemen in such cases to write two names. They regularly claim back the property after the death of the buyer's children and prefer not to have to deal with more than one family. There is halachic precedent to give a non-literal interpretation to a document if the alternative interpretation conforms to common practice (Bava Metzia 104a). In a case where there is a presumption of people of partnership, an understandable use of one name in documents is not a disproof. We have precedent in the halacha that a brother who handles the estate's affairs has to prove that documents in his name are his specifically and not the other inheritors' (Bava Batra 52a).

One should also not claim that the duke had in mind to transfer rights only to one, because it suffices that at the time of the acquisition, the one who did the acquiring did so on behalf of the two of them (see Bava Kama 102b and Bava Metzia 10a).

Therefore, Yaakov is assumed to be a joint owner of the house along with Yitzchak's daughter.



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