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HEMDAT YAMIM

Parashat HaShavua

Ki Tavo, 21 Elul 5775

Hakarat Hatov – The Heart of Our Religion

Harav Yosef Carmel

Our *parasha* begins with the *mitzva* of bringing *bikkurim* (first fruit) to the *Beit Hamikdash*, along with the pronouncement of *parashat bikkurim*, in which we thank Hashem for the goodness He bestowed upon us – as a nation and as individuals. The *p'sukim* (Devarim 26:1-11), which play a central role in the *Haggada* of Pesach, discuss the national problems and ultimate success of the nation, culminating in the entry into and receiving of *Eretz Yisrael*. It also discusses the happiness the individual should feel with the fruit that has grown in his field along with the other blessings he has received.

Soon after this section, the Torah takes a sharp turn, moving to the very harsh section of the rebuke and presentation of the curses the nation could incur for sinful behavior. One of the sins is "because you did not serve Hashem, your G-d, with happiness and a good heart, from an abundance of all" (Devarim 28:47). Rashi explains that, having so much, it is sinful to not have *hakarat hatov* (appreciation for the good one receives).

Rav Meir Simcha of Dvinsk opened our eyes with observations on the matter of *bikkurim*. He points out that in this section of our *parasha*, Hashem's main name appears thirteen times and that right after the Torah's mention of the thirteen attributes of mercy (Shemot 34:6-7), the Torah commands us to bring *bikkurim* (ibid. 26). This indicates that the matter of forgiveness, which the thirteen attributes highlights, is connected to *bikkurim*, which is not only about bringing the fruits but about expressing our gratitude to Hashem at that time. Hashem's main name is based around the idea of His mercy and kindness. This had to be included in the world in order for it to survive, as without mercy, we are too sinful to escape the wrath we deserve. In fact, that Name is repeated twice at the beginning of the thirteen attributes, and the *gemara* tells us that there is a special assurance that the saying of these attributes will never be without positive effect. That is tremendous kindness.

This is the reason that at this time of year (Elul and until Yom Kippur) we say "L'David, Hashem ori" (Tehillim 27) daily. The psalm begins with the Name, Hashem, which, the *gemara* (ibid.) explains, refers to Hashem being the same before a person sins and after he has both sinned and done repentance. In that psalm, Hashem's Name actually appears thirteen times.

This teaches us a few things. The basis for our being worthy of Hashem's kindness is our ability to have *hakarat hatov*, which is the most fundamental part of our spiritual life. There are no good attributes without that one, and no spiritual building can stand without it. Also, Hashem's goodness is the basis for Creation, which is why the ability for us to repent existed from before the world was created. That ability must be in place before the sin, and all of this is included in Hashem's main name. There is no repentance without recognizing Hashem's goodness.

At this time of year, when the kindness of being able to repent gives us hope going into these upcoming High Holy Days, we should remember to thank Hashem for all the good He has and continues to give us every day and every hour.

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by Rav Daniel Mann

Indirect Fire Damage

Question: We went away and lent out our apartment for Shabbat. Due to the guest's gross negligence, a fire broke out that caused significant damage. Our *sefarim* were actually more damaged from water than fire/smoke, as I will explain. Good-hearted people (=sprayers) sprayed down the *sefarim* with water in a way that may have been unnecessary. I will not make claims against them, but can I demand that the guests pay for water damage they did not do? (They feel very bad and, despite not being rich, want to pay everything they should.)

Answer: May Hashem make up your losses and reward both parties for their good intentions under trying circumstances.

We will assume in this discussion what we do not know – that the guests were at least causatively responsible (*gerama*) for the damage, including from water, which was at least an understandable course of action by the sprayers. In many cases of *gerama*, the damager (*mazik*) has a moral obligation to pay (*chiyuv latzeit y'dei shamayim* – see Bava Kama 56a). However, one should not demand pay unequivocally when there is only a moral obligation (K'tzot Hachoshen 75:4). Therefore, you must determine before making claims how much you believe the guests owe in legal, not just moral, terms. Of course, realize that we have heard only your presentation and can say nothing conclusive, other than what we think you can ask for based on your version of the story. Your guests have every right to present their version to a halachic expert of their choice, and you will then see if there is a need for dispute resolution. This is very healthy when people do it in the right spirit.

If the sprayers acted in a way that professional firefighters would have, then the guests would be obligated to pay even for water damage. It is not only the direct damage one causes that one is responsible for, but even the continuing naturally results. This is similar to the halacha of one who wounds another and must pay for new medical problems that develop later from the old ones (Bava Kama 85a).

What if the spraying was uncalled for? The closest Talmudic precedent we found regarding such third-party damage is the *gemara* (Sanhedrin 74a), regarding damage done while trying to prevent murder. The attempted murderer is exempt from payment due to the fact that he is simultaneously subject to being legally killed to save his would-be victim (see Sanhedrin 72a). If a third-party savior damages someone's property during his efforts, he is exempt due to a special Rabbinic enactment to not discourage people from helping. This implies that according to standard halachic rules, he is considered the *mazik*. Similarly your sprayers appear to be the *mazikin* regarding water, although they likely fall under the exemption of the above enactment (see Chiddushei Anshei Shem, 44a of Rif, Bava Kama). The simple reading of the *sugya* is that the attempted murderer who precipitated the need for strong action is not a candidate for being obligated to pay. Thus, in your case, the *mazikin* for waterlog damage are the sprayers rather than the guests.

However, there is a different reason to obligate the guests – they were *shomrim* (watchmen). While *shomrim* are generally not obligated for damage to land, including houses (Shulchan Aruch, Choshen Mishpat 301:1), that applies only to that which is connected to the ground. However, there is cause to obligate them for the *sefarim*, which are movable. If guests' negligence caused valuables to be stolen, they would be obligated to pay, as this preventing theft is within the implied responsibilities of one who "borrows a house." Similarly, the guests are obligated for both fire and water damage to *sefarim* that their negligence caused. (The mechanism is halachically complex – see Shulchan Aruch, CM 291:5; Pitchei Choshen, Pikadon 2:(47)).

One thing to be careful about when making demands is estimating value. Halacha grants compensation for the drop in value of the damaged property, which often does not suffice to replace with new items (Shulchan Aruch, CM 387:1).



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Ein Ayah

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

To Have Light or Not to Have at the Time of Exile

(condensed from Ein Ayah, Shabbat 2:64)

Gemara: That which [Yirmiya lamented], “My spirit was deprived of peace” (Eicha 3:17), is referring to [the inability to light] Shabbat candles.

Ein Ayah: Daytime is set aside for lively human interaction, whether or not a person tends to enjoy being around other people. However, night is the time when one retreats to his natural surroundings. If he is one whose love of peace is well-entrenched in his soul, because he and others relate to each other properly, then he will benefit from continuing interaction and will want to make night day-like. Such a person will consciously decide to light candles, so that he can enjoy seeing those close to him.

During the week, when people are used to working and toiling, a person will not always focus on his internal life. He will be forced into working hard during the day and resting up at night for the next day's toil. On Shabbat, the feelings of the heart return to act as they naturally do, and one feels the natural enjoyment of life. If he finds at that time that the people who surround him make him feel good and loved, then he will easily appreciate the need to have light even at night so that he can take the choice to pursue the relationships. That is different from the relationships he has during weekdays, because those are relationships of necessity and these are relationships of choice.

However, when the world becomes a dark place for the nation and enemies afflict its members, people around a person are often a bitter yoke, as happen to people whose lives are out of order. Then, when he has a desire to cling to his internal life on Shabbat, he will, for the most part, choose isolation, as opposed to the task of interacting well with others. A depressed person will look negatively at relationships and be deprived of peace. This is different from the time of national tranquility, when things around a person were upbeat, as he would feel a desire to have Shabbat candles to broaden the social opportunities by choice. But after the exile, when we are among people who are foreign to us, society is a source of pain and hatred, and a person prefers to avoid the attempt of peaceful interaction but to look within his inner spirit in solitude. It allows him to escape from the society that forces itself upon him during the day.

The above is what a person would feel were the Rabbis not to have lit our path in the way of Torah and *mitzvot*. Shabbat is a special present which is connected to the divine promise that we will have an era of tranquility in which the nations will treat us with respect. Then we will be interested in embracing relationships, and this spirit will extend to the whole world. So even if Israel will call out its desire to forget about the light of the Shabbat candles, while we are in the depths of the darkness of exile, Hashem's word will counteract our inclination and will restore our spirit. Hashem's impact on us through the medium of *mitzvot* will “skip over mountains” and lift us to the heights of the future, to the time of the kingdom of *Mashiach*. That is why we are commanded to light Shabbat candles and thereby reawaken the pursuit of positive relationships, for “Hashem will not deprive forever” (Eicha 3:31), as he is the Master of Peace.

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of those that fell in the war for our homeland.

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Backing Out of a Now Unneeded Unfinished Sale

(based on Shut Chatam Sofer, Choshen Mishpat 102)

Case: Reuven “sold” (i.e., received money, did not deliver goods) silver utensils to Shimon. It was known and mentioned at the time of the payment that he did so in order to buy a vat needed for whiskey production. After the money was paid but before Shimon took the utensils, Reuven’s brother died, and Reuven inherited such a vat. May Reuven refuse to go through with the sale (i.e., give the silver utensils) but instead return Shimon’s money?

Ruling: According to the letter of the law, Reuven can back out, since he performed only an act of *kinyan kesef* (payment of money), which does not create a final sale of *metaltelin* (movable objects) (Shulchan Aruch, Choshen Mishpat 198:1). This is true even without special circumstances.

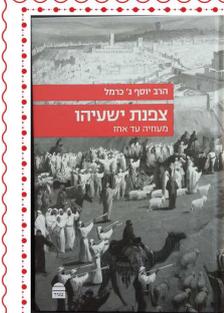
The question is just whether there is a *mi shepara*, a curse of sorts against one who backs out of a sale after money has been paid. When an event occurs that makes it not worthwhile for a buyer or seller to go through with the sale, there are opinions that the moral problems of backing out do not apply (see opinions in Rama, CM 204:11).

The Shulchan Aruch (CM 207:3) rules that one may back out of a sale when the situation upon which he had stated that the sale was predicated does not come about. The Rama (ad loc.) says that this applies only to the sale of land, not to movable objects, but the Shulchan Aruch does not seem to make that distinction. Therefore, a seller can say *kim li* (I follow) the Shulchan Aruch’s opinion. The logic behind the distinction is that it is more common for a person’s sale of land to be predicated solely on his plan to move, whereas it is more common for people to sell *metaltelin* for any number of reasons. Therefore, a stronger language of linking the sale to the circumstances is necessary.

One can distinguish between one who sells while saying “if such and such happens,” as opposed to selling “because such and such” is expected. Only “if” relates to a situation of conditional transaction. Even if Eliyahu Hanavi will come and tell us that the seller intended for a conditional sale, it makes no difference, considering that “matters that remained in one’s heart” do not count, unless there is clear understanding that a condition was intended. This, for example, is how we can rely on the questionable intentions of the participants in the pre-Pesach sale of *chametz* to a non-Jew.

The Rishonim cited by the Tur (CM 207) disagree regarding the extent to which assumptions about the seller’s intention have an impact on the sale of *metaltelin*. The Derisha says that they differed regarding to what extent we are confident about the parties’ intentions. If we were truly unsure about the seller’s intention, we certainly would not allow unspoken matters to play a role. Even if Eliyahu would tell us what his intentions were, it would not make a difference. Rather, the question is how we assume *Chazal* would relate to such a case.

In our case, the seller, who articulated that his reason for selling the silver was to buy the vat, certainly cannot be compelled to go through with the sale.



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Rabbi Yosef Carmel**

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