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HEMDAT YAMIM

Parashat HaShavua

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Sinning against those Closest to us and Sinning against G-d

Harav Yosef Carmel

At the end of the *parasha*, the Torah brings the following case: "If a person sins and acts deceitfully against Hashem, by denying his friend's (claim) regarding an article that was deposited by him..." (Vayikra 5:21).

The opening words of the *pasuk* imply that the sin is within the realm of "between man – and G-d." However, the specific description is of a sin between man and man. *Chazal* sensed the seeming contradiction. We will bring Rabbi Akiva's explanation in Midrash Halacha, cited by Rashi.

"When someone gives another a loan, or does a business deal, it is done with witnesses and a document. Therefore when one denies the action – he denies the validity of the witnesses or document. But when one deposits something with his friend, he does not want many people to know about it – only the third party (=Hashem). Hence when one denies the deposit, he is also denying the third party."

According to the Midrash, when one deposits an object, we are most probably talking about a friend whom the depositor trusts. The depositor doesn't want other people to know, as this heightens the risk of theft or for other reasons. Therefore when the guardian denies that the act took place, he abuses the situation where there are no other witnesses other than G-d. Therefore the denial of the deposit is simultaneously a denial of G-d, and not just an abuse of their friendship.

This seems to be the reason that the Torah uses the word "*me'ila* (taking deceitfully)" even though this is usually used only in the context of taking from sanctified donations. The word *me'ila* comes from the root word *me'il* (cloak). Similarly the word *begida* (unfaithfulness) is related to the word *begeg* (garment).

The cloak and garment are used to protect oneself. One also shares his clothes with friends. Hence any unfaithfulness by close friends or family is described as *me'ila* or *begida* – a misuse of the close bond that was meant to protect oneself. Similarly his friend (*amit*) becomes his opponent (*immut*), as the Ibn Ezra points out.

A person who does such a sin is obligated to bring a sin offering over and above returning the stolen article. The Mishna brings an interesting halacha: "If one brought the stolen article but not the sin offering, he fulfilled his obligation. If he brought the sin offering but did not bring the stolen article, he does not fulfill his obligation" (Bava Kama 110a). In other words, one cannot bring the sin offering to sort out the sin "between man and G-d" and only afterwards fix the injustice between man and man.

Rabbi Elazar Ben Azarya taught that Yom Kippur atones for all sins other than those between man and man, which require appeasing the victim (Mishna, Yoma 8:9). The simple explanation is that on Yom Kippur one can only ask forgiveness from Hashem regarding sins between man and Hashem, but sins between people need a request of forgiveness. Based on our words above, we can explain that Rabbi Elazar stated a novel idea. Even regarding sins "between man and man" there is an element of "between man and G-d." One cannot gain atonement from G-d for even this element before he has asked forgiveness from his friend.

Let us pray that we are all able to remain faithful even to those closest to us and not sin against them, or Hashem.

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Ask the Rabbi

by Rav Daniel Mann

Effect of Wrong Type of *Bitul Chametz*

Question: What are the consequences if, after *bedikat chametz*, one recited the daytime *bitul chametz*?

Answer: We must start with a look at the purpose and mechanism of the various *bituls*.

The Torah forbids possession of *chametz* on Pesach (Shemot 13:7) and mandates its removal before Pesach (Shemot 12:15). To facilitate this, we search for *chametz* the night before Pesach and physically “destroy” the leftovers the next day (*bi’ur chametz*). The *gemara* (Pesachim 6b) says that after *bedikat chametz*, the Rabbis instituted *bitul chametz*. It explains that this is out of concern that he might find some tasty *chametz* on Pesach, which without *bitul* would cause him a problem (there are different explanations on how). The *gemara* refers to *bitul chametz* at night.

The *gemara* does not mention *bitul’s* text, and slightly varied versions exist. The consensus, though, is that it applies to *chametz* that is unknown to the declarer at the time of *bitul*. One reason to exclude known *chametz* is because some is slated for eating during the next half day, making a statement that his *chametz* is worthless and ownerless disingenuous. Regarding *chametz* slated for burning, we want it in our possession because the complete fulfillment of *bi’ur chametz* is with one’s own *chametz* (Mishna Berura 434:7). (This is only a *hiddur*. We also do *bi’ur chametz* at a time and in a manner in which it is anyway not clear that the burning of the *chametz* is a special fulfillment (this is beyond our scope – see Dirshu 445:4).)


Daytime *bitul* is a post-Talmudic *minhag* designed to deal with the possibility that some of that which was purposely left over was neither eaten nor destroyed (ibid. 11). According to most *poskim*, it is done after *bi’ur chametz* and, therefore, is done with catch-all terminology that even includes *chametz* thrown into the fire but insufficiently burnt (Da’at Torah 434:3). If one uses the daytime text at night, it will ostensibly have applied to even that which he plans to eat and that he plans to burn. Is that a problem? Well, what does *bitul* do?

According to Tosafot (Pesachim 4b), *bitul* makes *chametz hefker* (ownerless). Assuming that no one hears the mistaken declaration and takes still desired *chametz*, the owner can eat the nullified *chametz* as is or reacquire it (if it is in his house, he requires no action to reacquire it). Regarding wanting to burn his own *chametz* as well, he can easily reacquire some (which suffices) or all. The potentially more serious issue is the *bitul’s* impact on one’s *mechirat chametz*, which rabbis do for us the next morning. However, the same answers probably apply.

There is also a more fundamental factor. If one reads the words of *bitul* and does not understand their content, the *bitul* is ineffective (Mishna Berura 434:9). This is probably the case for one who reads the morning instead of the night version. Even if he understood the words and forgot that it was the wrong time to do an all-inclusive *hefker*, we should apply the concept that *hefker* done by mistake is ineffective (Tosafot, Pesachim 57a).

According to Rashi (Pesachim 4b), *bitul* is not based on *hefker* but is a special “mental destruction” of *chametz*, which the Torah indicated is significant in regard to one’s *chametz*. This certainly does not affect one’s ability to eat *chametz* he desires before the time of *bi’ur chametz*. It probably also does not impact the ability to sell *chametz* to a non-Jew. To the contrary, if anything, it is likely that the act of sale, in regard to food that he put aside in special places for that purpose, may undo such *bitul* for the following reason. If you do not value the *chametz*, how are you able to sell it? But you will be redoing the *bitul* the next morning anyway. Regarding the value of *bi’ur chametz* after such a *bitul*, it could in theory be negatively impactful (well beyond our scope). However, again fundamentally, *bitul* without intent or probably even by mistake is not valid (see Ran, Pesachim 1a).

While most likely unnecessary, it does not hurt to state that he reverses his declaration regarding *chametz* he is aware of.



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P'ninat Mishpat

Returning Money of an *Iska* Loan – part I

(based on ruling 76003 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl), his uncle the defendant (=def), and other family members decided to jointly, with different roles and shares, purchase and develop a plot of land that cost 2.9 million shekels. Pl and another uncle founded a company to develop the property and made the first payment of 1.9 million shekels. At a later stage, def gave them 1 million shekels, with the following conditions. The money was to accrue a 7% annual return (while no *heter iska* was written, the parties apparently agreed to follow the Chochmat Adam's *heter iska*). Def would receive one of the apartments to be built, which would ensure the money due him. Subsequently, a municipal planning issue arose, which caused a serious delay in the project and made the money def gave unneeded at that time. Pl wants to return the money and exempt himself from the 7% return. Def refuses to receive the payment, demanding that their deal continue.

Ruling: Much of this case depends on how to categorize a deal based on (the Chochmat Adam's) *heter iska*. Half of the money involved is given as a loan and half is given as an investment which the recipient is to invest on behalf of the investor. The return is the "compromise money," which represents the investor's assumed share of the profits in lieu of proof.

In general, a borrower may return a loan to the lender even against his will before the agreed time (Shulchan Aruch, Choshen Mishpat 74:2). The reason is that a loan's due date is assumed to be for the borrower's benefit, whereas the lender does not lose by early repayment. This ostensibly applies to a *heter iska*'s part that is a loan.

Regarding the investment part, the recipient is considered a worker for the investor. In that regard, a worker may back out of his work commitment without penalty (Bava Metzia 10a). This also applies to those who are working with money entrusted to them (Shulchan Aruch, CM 176:23), who can return the money before the due date. Arguably, the above is true regarding an investment with a specific time limit, when he is a *poel* (a worker based on time), who can back out. However, if the limit is the end of a job, he is a *kablan* (contractor), who is penalized if he does not complete the project he accepted (S'ma 176:57). However, even a *kablan* is allowed to back out if extenuating circumstances make it necessary (Bava Metzia 77a). This is the case here, as pl was forced into a situation in which he is negatively affected by def's investment.

On the other hand, the Shiltei Giborim claims that since the reason a borrower can return the loan early is that the loan is for his own benefit, perhaps this does not apply to an *iska*, where the loan includes a nice return for the lender. However, the Tumim (74:6) treats the *iska* as two separate parts: a loan with no return, and an investment, which can be returned for the above reason. So, first, we cannot extract money when there is an unresolved *machloket* on the matter. Second, the Shiltei Giborim apparently agrees that when the return is linked to a specific project that does not come to fruition, one can back out.

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