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HEMDAT YAMIM

Parashat HaShavua

Noach, 1 Cheshvan 5778 The Ancestors and Enemies of Avraham

Harav Yosef Carmel

It is clear from the *p'sukim* of *Parashat Bereishit* that Adam, Chava, Kayin, and Hevel all believed in Hashem and in fact had the privilege to engage in discussion with Him, each in his or her own way. Even when they strayed from the proper path, they merited hearing words of rebuke from Hashem, which, along with the harsh words, showed great closeness.

By the time of Adam's grandson Enosh, there was a spiritual downturn, as the *pasuk* says "then it was mundane (*huchal*) to call out in the name of Hashem" (Bereishit 4:26). In fact, *Chazal* relate to Enosh's generation as the epitome of idol worship (Shabbat 118b). The Rambam (Avoda Zara 1:1) explains the seeds of deterioration, as the people first showed respect to celestial bodies as important agents of Hashem, and then came to increasingly attribute independent powers to them.

In the slippery slope of heresy, the next major jump was to the time of Nimrod. He turned himself into an idol, built the Tower of Bavel as a rebellion, and commanded all to bow down to him. Yeshaya (14:13-14) describes him as one who declared that he would go up to the heavens, above the stars, and be similar to the divine.

The Torah was cryptic in regard to Nimrod, just referring to him as one who "began (*hechel*) to be a brave man in the land" (Bereishit 10:8). *Chazal*, based on the hint of *huchal-hechel* explained that Nimrod "knew his Master and intended to rebel (*limrod*) against Him," as indeed the name *Nimrod* indicates (Midrash Aggada, Noach 10).

Avraham Avinu was the only one who dared to stand up to Nimrod. He gathered people publicly and taught monotheism, imploring his followers to follow a good and straight path. He refused to give up his belief even when Nimrod threatened him with being thrown into the fire. The Torah is cryptic about this episode as well, mentioning only the death of Avraham's brother Haran, "before his father Terach in Ur Kasdim," from which Avraham left (see Bereishit 11:28). The *midrash* fills in on the dialogue between Nimrod and Avraham, with the former saying that he worships only fire and dares Avraham's G-d to save Avraham from the fire (Bereishit Rabba 38).

Avraham was saved miraculously from the fire and left Ur Kasdim to go to the Land of Canaan. He continued, with his wife, Sarah, to teach belief in one G-d and called out in the name of Hashem. This was different from Adam who called names ... for the animals (Bereishit 2:20).

Surprisingly, Nimrod reappears in the Torah, at the head of a fearsome army of the four kings who defeated the five. In that context, he is called Amrafel, alluding to the fact that through his command, Avraham fell into the furnace. There is even a dispute within *Chazal* (Eruvin 53a) which of his names was the original one, and which was changed to hint at the element of his persona. In any case, by defeating the four kings, Avraham was able to strengthen the forces of Malkitzedek, the King of Shalem.

As we approach the full liberation, we will experience the nations being "called to the mountain" (Devarim 33:19). The *midrash* (Sifrei, Zot Haberacha 354) tells how nations will come to *Eretz Yisrael* for commercial purposes and, while here, will notice and be impressed by the service of one G-d that exists here. They will desire to cling to this wise nation and will convert and offer sacrifices, as the *pasuk* finishes, "there they will offer sacrifices of righteousness."

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Ask the Rabbi

by Rav Daniel Mann

Maintaining a Possibly Grafted Tree

Question: I bought property with a nectarine tree and do not know if it is grafted. What do I do with it?

Answer: The main prohibition regarding tree grafting is the act of grafting – (inserting the branch (scion) of one tree into the wood (rootstock) of another tree). Actually, this prohibition is not explicit in the Torah, but *Chazal* (Kiddushin 39a) derived it from the proximity between crossbreeding of animals and crossbreeding in one's field. The derivation is presumed to be of a Torah-level law (Rosh, Kilayim 3), and because it is derived from crossbreeding animals, which is not a land-based prohibition, it applies even outside *Eretz Yisrael* (Kiddushin 39a).

It is forbidden not only to plant *kilayim* (a mixture of species) but even to allow it to remain in one's field (Rambam, Kilayim 1:3), and this extends to grafting trees as well (Shulchan Aruch, Yoreh Deah 295:7). Although one may not leave the trees intact, one may eat or benefit from the fruit that grows there (Yerushalmi, Kilayim 1:4; Rambam, Kilayim 1:7). Exceptions to this rule are when grape orchards are involved and that the offspring of crossbred animals are invalid for a *korban* (Chulin 115a).

It is unclear whether leaving the grafted tree intact is a Torah-level prohibition or a Rabbinic one (see Tosafot, Bava Kama 81a), and it could depend if one is passive in the matter or active (see Shut Chatam Sofer II:288). In any case, the stronger opinion is seemingly that it is only Rabbinic (Derech Emuna, Kilayim 1:41).

The Chatam Sofer (*ibid.*, cited by the Pitchei Teshuva, YD 295:4) was bothered by the practice in his time of many observant Jews (outside Israel) to buy orchards containing grafted trees. He explained that since the source for the prohibition and its extension to *chutz la'aretz* is from crossbreeding animals, the prohibition in *chutz la'aretz* is only when one is active in joining them together. Thus, claims the Chatam Sofer, their practice, even if it was not ideal, could be justified, especially if non-Jews control the doings in the orchard. The Chazon Ish (Kilayim 2:11) critiqued this leniency strongly. Thus, at first glance, it is quite problematic to keep and cultivate a grafted fruit tree even though its fruit are permitted.

In practice, you probably have no problem. Grafting trees is forbidden only when the scion is of a different species than the rootstock (Shulchan Aruch, Yoreh Deah 295:6). Actually, nectarines are simply a variety of peaches; they are not (at least not usually) grafted onto a plum tree, as many think. Thus, it is permitted to graft a nectarine branch onto a nectarine or a peach tree. (Why would one graft if he does not want to mix species? Apparently, the main idea is almost like cloning. If you grow trees from seeds, fruit will only grow if there is cross pollination from another tree and then you don't know their exact genetic makeup. By grafting, the scion will turn from a simple branch into, in effect, the beginning of a new tree with the old tree's properties.)

Since we do not want "to go out on a limb" botanically, let us keep your assumption that you do not know if your tree is grafted in a forbidden manner. (In most cases, one with horticultural experience can tell you if it is grafted at all.) The Chazon Ish (Kilayim 2:9) says that if one is unsure whether the scion and the rootstock are (considered) of the same species, it is permitted to keep the tree and cultivate it. This is based on a halachic type of "divide and conquer." On the level of Torah law, there is a double doubt: perhaps there is never a Torah prohibition to maintain an already grafted tree; even if there is, perhaps the case before us is not an example of forbidden grafting. Therefore, regarding Torah law, we permit it based on double doubt. On the level of Rabbinic law (the Rabbis certainly forbid maintaining an improperly grafted tree), one may be lenient regarding the single doubt of whether they are different species. In *chutz la'aretz*, there is even slightly more room for leniency (see Chatam Sofer, *ibid.*).



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Ein Ayah

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

A Leader Who Goes Down and Brings Up

(condensed from Ein Ayah, Shabbat 5:56)

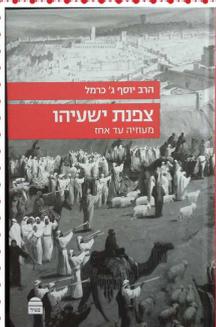
Gemara: R. Shmuel bar Nachmani said in the name of R. Yonatan: Whoever says that the sons of Shmuel sinned is making a mistake, as the *p'sukim* say: "And so it was when Shmuel became old, and he made his sons judges for Israel... and his sons did not follow in his ways" (Shmuel I, 8:1-3). "In his ways" they did not follow, but they did not sin either. So how does one explain the [continuation of the] *pasuk*: "they went after improper profits (*betza*)"? This means that they did not act like their father, as the righteous Shmuel would travel to all the places in Israel and judge the people in their cities, as the *pasuk* says: "He would go year by year and would go to Beit El, Gilgal, and the Mitzpa and judged Israel" (ibid. 7:16). In contrast, his sons did not do so, but they sat in their cities so that they could increase the profits of their assistants and scribes.

Ein Ayah: The greatest level of a leader of a nation is that he should consider himself so dedicated to the needs of the people he leads that he fully appreciates their worth, their situations, and their specific needs. Specifically, he should be able to not view these elements of the people's lives from his own perspective but to lower himself into their situation in a clear manner, as if he is standing in the same predicament and in one place with them.

When this delicate characteristic is found in abundance in a righteous judge, it will cause him to "go down" to the people, travelling from one place of their inhabitation to another place. This will then naturally cause him to lower his spirit to their inner situation, which is quite distant from his own level. In that way, he will raise them up, take them with him, and judge them with justice and with an approach of belief. Such a holy judge will be led by a great internal strength to keep the judicial apparatus functioning on firm footing without the need for intimidating officers to enforce the smooth running of the judicial system.

However, to reach this level is no simple thing. How great and lofty, holy and transcendent, it is?! How much spirit of Hashem must a person have upon him to know how to lead those who are far from his level based on their true situation?! Shmuel was blessed with these abilities, and therefore his "spirit took him" to travel from place to place in the cities of his fellow Jews – going down to them and raising them up to him, as opposed to influencing them from his high station.

Shmuel's sons did not attain their father's high level in this regard. They decided to judge the people from their own places according to their understanding. Such justice cannot be definite, and therefore it needs a judicial apparatus to support it. These positions were filled by assistants and scribes who received pay. Shmuel's sons' actions could not be considered a sin in the regular sense of the meaning; however, this was not the way of their father, who was chosen by Hashem – the righteous Shmuel.



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

Too Late to Fix a Wig?

(based on ruling 76021 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) bought a wig from the defendant (=def) at the price of 10,500 shekels, with several checks dated for different times starting with May 2015. Def delivered the wig in July, soon before pl traveled abroad for several weeks. Upon returning, pl gave back the wig to def, due to a defect that both agree makes it unusable. Def promised to have the wig producer fix it before the *chagim* of Tishrei, and while def did not return the uncashed checks, she said she would not cash anymore of them. When the *chagim* passed and the wig was not yet fixed, pl demanded her money back (def had actually cashed almost all the checks). Def refused, claiming that the defect was done by the wig manufacturer, whom she already paid. Since they refuse to return the money to def but only to repair it, pl must keep to her agreement with def and wait for the fixed wig.

Ruling: Def admits that she never presented herself as a representative of the wig producer and in fact also sells wigs from other companies. Therefore, she is the one who sold the defective wig, irrespective of whose fault it was that there was a blemish.

The question is whether the blemish justifies nullifying the sale, or whether the seller has the right to fix it instead. The Shulchan Aruch (Choshen Mishpat 332:3,4,7) rules that a buyer can demand a return of the sale even after a long time if it turned out that it was seriously blemished from the outset and the buyer just found out. The seller cannot force him to keep the object according to its value as a blemished item. The Rama (ad loc. 5) does say that at times the seller is allowed to fix the blemish and uphold the sale. However, that is only when the blemish is either external or not very significant, and neither of those is the case here (see also Netivot Hamishpat ad loc.).

There are times when the buyer waives his rights to nullify the sale, especially when the buyer continued using the object after finding out about the flaw (Shulchan Aruch, *ibid.* 3). However, this is only when this is an indication that he actually waived his right. However, here, pl expressed lack of willingness to keep the object as is and just agreed for def to try to fix it; that is not considered *mechilla*. Even if one wanted to claim that she agreed to have it fixed, that was on two conditions that were discussed: that it would be fixed before the *chagim*; that pl would not cash any more checks before it was fixed. Since def did not keep these conditions, pl no longer has to allow her the opportunity to fix the wig.

Therefore, def has to return the entire amount that was paid for the wig, and def of course can negotiate with the producer. Although there is some logic to obligate def to pay the entire *beit din* fee, since it was evident to *beit din* that def believed she was correct in her claims, she had a right to hear what *beit din* had to say. Therefore, the two sides will share the costs.

We daven for a complete and speedy *refuah* for:

David Chaim ben Rassa

Lillian bat Fortune

Eliezer Yosef ben Chana Liba

Yehoshafat Yechezkel ben Milka

Ro'i Moshe Elchanan ben Gina Devra

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