

This week.....

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A Two-Edged Cloud

After discussing in detail Bnei Yisrael's encampment during their stay in the desert and the erection and inauguration of the *Mishkan* in previous *parshiyot*, a small section of our *parasha* describes an important phenomenon in this regard.

In the nine *p'sukim* (Bamidbar 9: 15-23) the word *he'anan* (the cloud) appears eleven times and the root of *mishkan*, either referring to the Tabernacle or to the way the cloud dwelled over it, appears eight times. The Torah tells us that the cloud first covered the *Mishkan* on the day the latter was erected. It goes on to say that at night it "had the appearance of fire." The Torah continues: "So will it always be: the cloud will cover it, and the appearance of fire at night." The Netziv infers from these words that unlike in the first days after the Exodus, when there was a cloud during the day and fire at night, here there was always a cloud, just that it had the appearance of fire at night. Another inference to be made is that the cloud is always referred to as "the cloud" and never "a cloud." The Midrash Yelamdenu says that this is the same cloud that appeared so majestically before at Har Sinai and continued to be a conduit for the dwelling of the Divine Presence upon and among Bnei Yisrael.

It is worthwhile to contemplate what the philosophical significance of a cloud that looks like a fire at night is. In many places in Jewish thought, the day is taken to refer to times when things are looking positive, and the night symbolizes times of trouble. A cloud represents a covering or protection from the heat of the sun. It also covers that which is stored within, usually the moisture which might or might not yield rain. In this case, Hashem's Presence can be strongly sensed from close proximity but nevertheless cannot be seen outright. Indeed, in good times, one can sense Hashem's protection and His involvement, but still He is behind the scenes.

Fire symbolizes energy, which can be very useful when harnessed, but can consume things, seemingly indiscriminately, when it is out of control. It can be seen from a great distance, especially in the dark night and can light and lead the way for those who need guidance. During hard times, Hashem's Presence, while being able to be seen and give light in some ways, is also related to the pain of the oppression and shows rejection of the people.

Perhaps the message of the cloud/fire is as follows. At Sinai, the cloud and the fire were two different things interacting in proximity. However when it comes to "so will it always be" (i.e. - the long haul of history) it is different. That which looks during hard times as a fire is just human eyes' different perspective of the same protective cloud. Although it might be hard to see that to be the case, the Torah encourages us to recognize that situation.

May the fire that has accompanied us during the night be clearly visible as a protective cloud as the day continues to dawn.

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Question: I am selling my car. A friend connected me with Reuven, who expressed serious interest in buying at the price I quoted without seeing it. However, the completed sale depended on a few things. I have to find another car; he has to see the car and have it tested. The expectation was that these things would work out. In the meantime, a good friend, to whom I not only prefer to sell, but who also offered me more money, wants it. Am I obligated to sell the car to Reuven?

Answer: After making a *kinyan* (act of finalization), one cannot back out of a transaction. If the buyer gave money for the object without making a valid *kinyan*, he can back out, but a curse-like process called a *mi shepara* is applied if he insists on doing so (Bava Metzia 44a). When neither took place, there is a *machloket* in the *gemara* (ibid. 49a) whether an oral commitment binds the parties based on a concept of *mechusarei amana* (lack of trustworthiness). The Shulchan Aruch (Choshen Mishpat 204:7) rules that one is morally bound to complete the sale (see sources cited in Pitchei Choshen, Kinyanim 1:(2), attributing a moderately strong level of severity to the matter).

It is doubtful whether your friend's offer makes a difference. The Rama (CM 204:11- see commentaries' discussion, ad loc.) cites two opinions whether *mechusarei amana* applies when the object's going price goes up after the time of the agreement. However, when the price is the same but the seller just gets a better offer, the matter is more problematic (see Pitchei Choshen ibid.:5). The Chatam Sofer (Shut, CM 102) says that when the entire desire to sell was based on a lack of information, one is not bound by *mechusarei amana*. However, a case where one did not know that a friend wants to buy the car is not comparable to a case where the entire sale proved unnecessary. However, there are other factors involved.

Halacha deals with two fundamental elements of a transaction. First, there must be a clear decision to make the transaction. Second, legal steps are taken to finalize the matter, preventing people from backing out. The *gemara* (4th perek of Bava Metzia) and the Shulchan Aruch (CM 204) discuss differences in the steps of finalization, oral commitment being the weakest. However, when even the decision was not at the point of certainty that a transaction could be completed, there is no halachically meaningful commitment to uphold. What are signs of lack of certainty?

Regarding a *mi shepara*, the Shulchan Aruch (ibid.:6) seems to require that the final price was set in order for the sanctions to apply. The same appears to be the case for *mechusarei amana* (Pitchei Choshen ibid.:2). Regarding *mechusarei amana* when one promised a small present and no longer wants to go through with it, B'tzel Hachochma (V, 158) says that when the matter depends on a condition that the party cannot fully control, the required definiteness that creates *mechusarei amana* does not exist. Some distinctions that are cited there are hard to apply to our case, but in general we say as follows. It is possible (you are more aware of the details than we are) that you would not find a car quickly enough to accommodate the buyer, making the matter like a condition that negates *mechusarei amana*. Furthermore, since the potential buyer did not see or test the car, it is difficult to call the sale decided upon, even if your car is in good shape. He could decide he doesn't like it. At the very least, the price quoted was not fully meaningful, as even when two parties are certain they will go through with a car sale, blemishes affect the final price.

It is wonderful that you are concerned with the appearance or feeling that you are not acting in good faith, and you can take that into consideration. However, according to your description of the case, halacha does not seem to mandate (to any degree) you to sell the car to the first person.

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

Non-Jewish Ownership of Eretz Yisrael – part IV

(from Eretz Hemdah I, 5.3)

[In explaining last time the different limitations on the extent of the sale of land in Eretz Yisrael to a non-Jew, we saw that some learn from the pasuk in question that it does not remove the obligation of ma'asrot (ein kinyan). Others learn that he has a kinyan but that he cannot dig up the land prior to its return to the original Jewish owner during yovel. To understand this dichotomy, we introduced the two opinions in the Yerushalmi on whether a land sale could take effect at all during yovel and cited the related machloket between the Rambam and Ramban. They dispute whether the prospect of yovel limits the scope of a sale from its inception or whether the sale is a complete one and yovel returns the field to its original owner anyway.

The Yerushalmi asked on the opinion that one can buy land during yovel, that, if so, the buyer should be able to dig holes in the field. It answers that this is precluded by the pasuk, "and he shall return to his land of heritage." It turns out then that if the sale does not go through, the lack of ownership mandates that he cannot dig and that according to the opinion that it does take effect, he may not dig because of the mitzva to return the original owner to the field. There should be a difference between the reasons in the case of a non-Jew who buys the field. The limitations on the sale of the field would affect the non-Jew as well, but the mitzva to return the Jew to his land would not. Therefore, if the sale would go through, the non-Jew would be able to dig holes, for the mitzva that precludes the digging does not apply to him.

The Chazon Ish (Shvi'it 1:1) posits that even the Bavli agrees that a non-Jew does not have an obligation to return the field he bought, as the Yerushalmi says that if he sells it, it is sold. This would explain why according to Rabba it is permitted for the non-Jew to dig holes unlike a Jew who bought the field. He explains that even R. Elazar who says that it is forbidden to dig holes says so only because of the possibility that it will return to a Jew's possession. However, it is very difficult to say that the possibility that it may return to a Jew would preclude a non-Jew from doing with it that which he wants while it is still his.

Rav Chaim Halevi explains the Yerushalmi based on the implication of the Bavli. The Yerushalmi did not intend that a non-Jew does not have to return the field during yovel. Rather it means that just as, without a pasuk, we would have said that a non-Jew could buy the field permanently, so too regarding removing the obligation of ma'asrot [where there is no pasuk], he has a kinyan and can remove the laws of kedusha in regard to ma'asrot. However, this explanation is difficult to insert into the language of the Yerushalmi.

Therefore, it seems more likely that the Bavli and Yerushalmi disagree. This goes well with what we said (5.1) within the Rambam's approach, that the matter depends upon the machloket between Abaye and Rava if when one does something that he is not allowed to do, it takes effect (Abaye) or not (Rava). The Bavli holds that there is no kinyan, as it holds like Rava that it does not work for one to remove the kedusha improperly by selling the field in a permanent manner to a non-Jew.

There is also a machloket between Rabba and Rav Elazar in the Bavli regarding the meaning of "degancha" (your grain), which is written in the context of ma'asrot. According to Rabba, it excludes the miruach (smoothing out of the pile of produce) that is carried out by a non-Jew. According to Rav Elazar, it comes to exclude the grain that is owned by a non-Jew (Giitin 47a).

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P'ninat Mishpat

Does a Guardian Remain After Inheritor's Bar Mitzva?

(based on Halacha Psuka, vol. 44 - a condensation of Piskei Din Rabbaniim vol. III, pp. 154-160)

Case: A man appointed, before dying, his adult daughters (the defendants = *def*) to be guardians for his son, the inheritor. His wife (the plaintiff = *pl*) was to control his *seforim* store and care for the child for two years. After two years, she demanded support as a widow from *def*. *Def* claim that since the son is now 14 years old, they are no longer guardians and do not have to respond.

Ruling: The Shulchan Aruch (CM 290:1) rules that one should appoint a guardian to tend to his minor children's financial affairs until they grow up. If he does not, *beit din* must appoint one. He clearly implies that there is no need to appoint a guardian for "adult" inheritors. The Rama (ibid.:26) says that if one did appoint a guardian for adults, they can refuse him unless the matter pertains to a case where it is "a *mitzva* to listen to the words of the deceased." Apparently, though, the guardian continues his role until the inheritor objects. However, this refers to a case where the guardian was appointed specifically for that purpose; if he was appointed simply when the inheritors were small, the guardianship would end when they grew up. Although we now view anyone up to 18 as a minor, in our context we must consider the father's intention; out of doubt, we should not give *def* a status they deny.

Our presentation of an orphan adolescent's status does not seem unanimous. One may lend money on an orphan's behalf with *ribbit d'rabbanan* (rabbinic-level usury). The Rama (YD 160:18) says that this leniency applies even after the orphan's bar mitzva, as long as he is not fit to handle his own fiscal affairs. The same guideline ostensibly applies to guardianship.

There are two elements to guardianship: 1) He tends to his "client's" affairs; 2) He does so without his client's authorization. The first element depends on the orphan's practical needs, including lending with *ribbit d'rabbanan*. However, regarding authorization, a bar mitzva can decide if he needs help and who should give it. When the adolescent is before us, we can do nothing without his authorization. Therefore, he should be involved in any claims on his inheritance, as *def* claim.

Furthermore, the Shulchan Aruch (ibid.:12) rules that a guardian does not respond to a claim against orphans, as he might lose, but if he did and won, the ruling stands. Since this entire claim is to the orphan's detriment, there should be no case. Although the Shulchan Aruch (Even Ha'ezer 95:6) says that a widow can demand support and *beit din* does not deal with the part of her salary that is to be given to them until they demand it, that is only in a case where the obligation to her is clear. In contrast, in our case, several questions were raised regarding whether the orphan is obligated to support the widow.

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