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HEMDAT YAMIM

Parashat HaShavua

Ki Tisa, 18 Adar I 5779

The Power of Forgiveness – *Shechina!*

Harav Yosef Carmel

Forty days before Yom Kippur, Moshe went up to Sinai, and after forty days he returned with the second set of Tablets and with Hashem's announcement: "I have forgiven!" During Moshe's "negotiations" with Hashem, Moshe was commanded twice (Shemot 33:21; *ibid.* 34:1-2): "*v'nitzavta ...*" (you shall stand).

In order to express complicated concepts in a simple manner, the Torah uses "key words" or "guiding words." These hint to the one who studies the texts what some of the main themes of the section are. The fact that the root *nitzav* is used twice in this section, post-Golden Calf, when the root is also found to describe Bnei Yisrael preparing to receive the Torah earlier at Sinai (*ibid.* 19:17), connects these two periods. Similarly the root is also present in the word *matzeva*, involved in Bnei Yisrael's connecting to Hashem at that momentous occasion (*ibid.* 24:4).

We will suggest that all of these "linguistic" phenomena hint that after the forgiveness granted after the great sin, Hashem's Presence returned to dwelling among the nation. This is because the root *nitzav* in many places is used in cases in which the *Shechina* is present.

When Avraham encountered the three angels after his *brit mila*, it says that they were *nitavim alav* (Bereishit 18:2). The famous ladder that Yaakov saw leading to the Heaven was also *nitzav* on the ground and was followed by Yaakov's making a *matzeva* (*ibid.* 28, 12-18). When Yosef wanted to hint that his dreams were a result of a prophetic vision, he too invoked the verb *nitzava* (*ibid.* 37:7).

It is also used when Miriam was standing at a distance, watching what was happening to her baby brother, who was put in the Nile (Shemot 2:4). *Chazal* therefore stressed that already at that time, Miriam had been serving as a prophetess, saying that her mother would give birth to the savior of Israel. When he was born and the house became filled with light, her father was elated that she seemed right, but when they were forced to put him in the Nile, her father expressed his skepticism. She stood there (with the root of *nitzav*) to confirm her prophecy, i.e., that which the Divine Presence conveyed to her (see Megilla 14a).

Moving on to *Tanach*, the *gemara* (Sota 11a) relates that this root in the story of Hashem's revelation to Shmuel for the first time was a sign of the presence of the *Shechina*. Amos (9:1) also tells of Hashem being *nitzav* on the altar. Finally, Tehillim (82:1) talks of Hashem being *nitzav* in the presence of a Jewish court. From here, we see that Hashem's Presence is found in a *beit din*.

Let us pray that we will experience the return of a palpable Divine Presence, in general, and within the judicial system, specifically, as the *pasuk* describes the spiritual situation.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Is Partial Compliance to Choshen Mishpat Helpful?

Question: If a court case is being tried in the secular court system in Israel (against Halacha), is there an advantage if some laws of Choshen Mishpat (section of Shulchan Aruch dealing with monetary law) are followed, or is it all-or-nothing? [Upon inquiry as to what specifically the querier was referring to, he mentioned a matter of public interest. We fielded that matter privately; publicly, we will discuss the principle.]

Answer: [Some of the basics of the matter of adjudication in secular court are discussed in, among other places, *Living the Halachic Process* V:1-2.]

The *poskim* identify two complementary problems with going to secular court instead of *beit din*: 1. If the ruling of the court is different from that which *beit din* would render, then one of the sides is extracting or withholding money rightfully belonging to the other side. 2. Preferring a judicial system based on something other than Torah is damagingly insulting to the primacy of the Torah (see Shulchan Aruch, Choshen Mishpat 26:1, based on the Rashba).

(Incorporating specific Israeli laws based on *dina d'malchuta dina* (the law of the land), as our *beit din* often does, is not following a non-Jewish system. It is even halachically permissible to legislate *takanot* based on contemporary societal needs. Basing the system as a whole on Ottoman and British law is not proper.)

There are practical differences (some certain, some possible) between these elements, with each one applying to cases the other might not. The matter of taking money in an unauthorized manner might not apply when: 1. Both sides prefer the secular courts and thereby authorize the other side to receive the "fruits" of their ruling. 2. The side that won checked responsibly with halachic experts (including by telling all of the arguments the other side could raise) that he deserves the court's award. The matter of preferring another judicial system may not apply if: 1. There is no *beit din* available to adjudicate (see *Living the Halachic Process* V:1-2). 2. From the perspective of one litigant, he had no choice because the other litigant refused to go to *beit din*.

If one has already received a favorable ruling from a secular court, is he allowed to accept the award without further investigation? The matter of disgracing the Torah has already occurred – in some cases he or both sides were at fault; in other cases, the other side forced him. The question is, in each of the scenarios, what to do about the money which he might have or might not have been awarded in *beit din*. See opinions on the matter in *Techumin* vol. XXV, p. 249-253 and *Eretz Hemdah's* position paper from 5774.

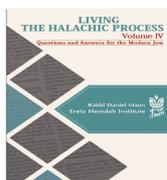
Would it make a difference if the specific matter is something in which the secular courts follow Choshen Mishpat? As long as the system is based on a different judicial authority, the problem of disgrace remains. The Shulchan Aruch (CM 26:1) rules that one is not allowed to go to a non-Jewish court even regarding a topic in which their laws are identical to Halacha. The *Tzitz Eliezer* (XII:82), in expounding on a letter by Rav Tzvi Pesach Frank, says that the situation is not better and is, in some ways, worse regarding Jewish courts that adopt a non-Jewish system. In such cases, the matter of taking money not coming to the litigant is less likely to be a problem. On the other hand, those who are not trained in Halacha cannot be trusted to implement its rules correctly. Rav Yaakov Ariel (*Techumin* vol. I, p. 319-328) argues that accepting certain rulings based on halachic sources (what Israeli academia calls *Mishpat Ivri*) does not remove the halachic and philosophical problems of going to a secular court. On the other hand, purposely and increasingly adopting elements of Choshen Mishpat would (if it occurred) lessen the sting of rejecting Torah-based justice.

In summary, there are small gains when secular law adopts halachic laws and principles, but it does not remove or dramatically alter the halachic and philosophical problems of adjudicating before their courts.

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Ein Ayah

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

Keeping Out Thoughts that Went Astray

(condensed from Ein Ayah, Shabbat 9:2)

Gemara: The *pasuk* (Yeshaya 30:22) says [in regard to the reaction to idol worship after being warned by the prophet]: “Distance them like a *dava*, say to it: ‘Leave.’” Do not say to it: “Come in.”

Ein Ayah: There are sometimes thoughts, feelings, and inclinations of the heart that emanate from holiness, from a person’s connection to the true G-d who created us all and is Master of our soul and our body, but they are taken to foreign places. When this happens, these thoughts spread all over the place, exploding in the light of every fleeting inclination, in a manner that is no longer connected to holy purposes. This spreading out to all places makes the original root of the inclinations foreign to their original nature and ultimately destructive. It turns light into darkness and the words of the living G-d into words of emptiness and of a negative spirit, of evil, and even of the roots of murder, with one person taking dominion over another to cause damage.

When the possessors of such ruined ideas feel that they have trouble fitting into the Jewish community and separate themselves, one should not close the door on them. It may be enough for them to have the impurities removed from them. However, as long as they have left and are on the outside and oppose matters of sanctity that are part and parcel of the purity and sanctity of Israel, they should not yet be invited in. They have been deemed defiled by leaving the sanctums of Israel. Were they to come in, they would defile the encampment and desecrate that which is holy.

This is what happens in regard to idol worship, which is always rooted in people seeking sanctity but is greatly lowered when they encounter the evil inclinations of people who join together to spread matters of imagination and coarse materialism. They become so unrefined and dark that the once adorned part becomes an unseemly matter. That which appears fit to be sent away indeed should be sent away. Once it leaves, it becomes even more disqualified and loses its connection to the sacred.

On the other hand, the general power of sanctity has the ability to return he who has been cast away, as he retains a kernel of goodness deep within him. He will be able to return at the time of the ideal future, when the spirit of impurity will disperse like smoke. We say about this time: “I will remove the blood from his mouth and the disgusting matters from between his teeth, and he will remain for our G-d” (Zecharia 9:7). *Chazal* tell us that the theatres and circuses in the Diaspora will turn into venues for the noblemen of Israel to teach Torah publicly (Megilla 6a). All of this light and elevation will come about due to the care at the time of unsettledness that no corrupt thought within Israel should make its way inside. This is as the *gemara* said that we tell him to leave and not to come in. The initial closeness to spirituality will make its mark in the ideal future, but this should not allow us to let him in prematurely. For the process of becoming foreign will make the person like a “distant brother,” and his estrangement is profound and is actually compounded by the original spiritual brotherhood. “Indeed Eisav is a brother to Yaakov; I loved Yaakov and I hated Eisav” (Malachi 1:2-3). Since he is like a foreign person, we tell him to leave, and we do not tell him to come in.



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

Fallout from Underground Encroachment – part III

(based on ruling 71018 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: Defendant #1 (=def1) built a house next to a lot owned by defendant #2 (=def2). His sewer pipe went partially under def2's property. In 1998, def1 and def2 signed an agreement whereby they would exchange property so that def1 would get the land over the pipe, but the agreement was never taken to the land authority for implementation. The plaintiff (=pl) bought def2's plot and built a house on it – not along the lines of the property exchange. As pl's house was being built, in 2004, the parties made a basic agreement by which pl would do landscaping as he likes on top of most of the pipe. Pl claims that the presence of the pipe raised the cost of his development. Additionally, the sewer is faulty and has more than once gotten clogged and leaked, giving off horrible smells; this causes his property to devalue. Pl demands the removal of the pipe and/or compensation for various elements of more than 200,000 shekels. Def1 claims that the land exchange was binding and that def2 asked as a favor not to report it right away to the authorities and that pl was told about the situation before buying the lot. Def2 says that he changed his mind on the land transfer the day after signing that agreement and that it is probably not possible to carry it out legally. He told pl about the problem and demands that pl finish payment for the house and adjudicate with def1. Pl responds that since the contract states that the property is free of any other parties, def2 is in breach of contract and does not yet deserve the final payment.

Ruling: We have seen that the 1998 agreement was not binding but that there was implied 2004 agreement that def1 could keep the pipe as is in exchange for compensation was effective.

Since it is clear that there was agreement to keep the pipe as is and there is doubt about the level of compensation, the burden of proof is on pl. However, as a general rule (see Rama, Choshen Mishpat 246:17) and based on what we know of the negotiations between the sides in 2004, it was certainly not meant to be for free.

Pl's claim that def1 gave a virtual carte blanche for any expenses, which they claim is some 200,000 shekels, is implausible. Pl admits that def1 could have moved the pipe in 2004 for 60,000 shekels (there are indications that it was possible for 20,000 shekels). It was not proved that the ground height at which pl chose to build his house was due to the existence of the pipe. In fact, during 2005-6 there was no indication that pl planned to make a major claim against def1; apparently acrimony between the sides that arose in 2007 is responsible for the present large claim.

The main basis of the compensation we award pl is the price of the land that def1 is using according to the price at the time of agreement. We added modest appraisals of actual related expenses. The amount is 20,000 shekels. There is no excuse for pl to withhold final payment to def2. Any negotiations with def1 should have been dealt with at the time of the sale, and def2 did his part by being up-front on the matter.

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