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HEMDAT YAMIM חמדת ימים

Parashat HaShavua

Ki Tavo, 21 Elul 5779

Even the Wicked are Important

Harav Yosef Carmel

We have discussed in the past the connection between the end of *Parashat Ki Teitzei*, which deals with the struggle against Amalek, and the beginning of *Parashat Ki Tavo*, which deals with the *mitzva* of *bikurim*. Both sections (Devarim 25:18-19; 26:1) include a reference to coming to "the Land that Hashem your Lord has given you as an inheritance."

One can ask: how was Amalek able to effectively attack Bnei Yisrael as they left Egypt, considering that they were protected by the miraculous clouds that previously shielded them from the Egyptians (see *Mechilta D'Rabbi Yishmael, Beshalach 4*)? The Midrash, followed by Rashi, explains on the word "vayezanev" that the Amalekites inflicted wounds at the area of the tail, specifically, that they cut off foreskins and threw them up in the air. On the words "hanecheshalim acharecha," it explains that these people were "those lacking in strength due to their sins, who were expelled by the cloud." In other words, Amalek was able to harm only those who did not agree to perform a *brit mila*, which is a marking of oneself or of his child as a servant of Hashem. Another *midrash*, cited by the Bechor Shor, learns from the proximity of *p'sukim* in *Ki Teitzei* that the vulnerable people were those who violated the laws of honest weights. In other words, the unprotected were sinners in the realm of monetary honesty.

Rav Kook (*Orot Hatechiya 20*) has a very novel, related idea. He posits that evil people actually support the righteousness of the righteous. As long as they remain connected to the nation in general, one can apply to them the *pasuk*, "Your nation are all righteous people" (*Yeshayahu 60:21*), which is from this week's *haftara*. The external, evil behavior actually helps the righteous, like the yeast at the bottom of a wine barrel, which protects the wine from spoilage. It is like the idea that the incense in the Temple service has to contain *chelbena*, even though, individually, it has a very offensive odor.

Our conclusions from this matter are thus as follows. On the one hand, the cloud did not protect the type of sinners that we discussed. On the other hands, the Land was promised to the whole nation, including such people, lacking in morality. On the way to the Land, it is not possible to give up on any Jew, even if he was expelled by the cloud. If Amalek takes advantage of their weakness and attacks them, we will remember this treachery and not forget or forgive.

Let us pray that we all be on the level of, "Your nation are all righteous people."

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Ask the Rabbi

by Rav Daniel Mann

Finding a Discarded Aron Kodesh

Question: I found a discarded wooden box, which someone who sold their apartment left outside a storage room. The neighbors want to throw it out. After opening it, I could tell it was used to store a small *sefer Torah*. What should to do with it?

Answer: The *gemara* (Megilla 26b) says that a *tashmish kedusha* (something that serves holy [scrolls]) is holy and needs *geniza* when one no longer uses it. One of its examples is a *maktara*, which Rashi translates as the chest in which a *sefer Torah* is held. Usually an object must come in direct contact with a *sefer Torah* to be its *tashmish* (*ibid.*). Since a *sefer Torah*'s parchment rarely touches the *aron*, why should it be considered a *tashmish kedusha*? Some explain that it is enough that it happens on rare occasion (see sources in *Yabia Omer VIII, OC 19*). However, many accept the following distinction. If the *tashmish* provides *kavod* for the *kedusha*, it is a *tashmish kedusha*; if it is (only) for *shemira* (protection), it is not a *tashmish* (Rama, *Orach Chayim* 154:3 based on *Ohr Zarua, Shut* 745).

How does one know if an *aron* is for *shemira* or for *kavod*? The *Mor U'ketzia* (OC 154) says that if an *aron kodesh* is built into a wall, it is for *shemira*; if it is movable, it is for *kavod*, as the *Ohr Zarua* seems to indicate. Presumably, an *aron* does not have to be fancy to be for *kavod*, as wanting to have the *sefer Torah* covered is part of its *kavod*. Rav Ovadia Yosef (*Yabia Omer ibid.*) cites those who say that, if the parchment never touches the *aron kodesh*, we need to decide practically whether it is for *shemira* or *kavod*. (He leans toward leniency regarding a large *aron* with a strong lock; your case might be different.) Still the *Mishna Berura* (154:9) indicates that the standard movable *aron* is a *tashmish kedusha*, and this would be our basic assumption regarding the *aron* you discuss (see also *Tzedaka U'mishpat* 15:18-19).

One can make a *t'na'i* (condition) by which *kedusha* will not take effect on a *tashmish kedusha* (*Shulchan Aruch ibid. 8*). Can one entertain leniency by assuming that this is what happened before this abandoned *aron kodesh* was used? Actually, even if one makes a condition, the object does not lose all special status. The *Mishna Berura* (154:34) says that while one may use it for mundane things, he may not disgrace it. We find a *machloket* regarding objects used in a *mitzva* (e.g., *tzitzit*), which do not require *geniza* (Megilla 26b). The *Shulchan Aruch* (OC 21:1) allows throwing them in the garbage, but the *Rama* (ad loc.) is somewhat more stringent (ad loc.). The halachic situation would be similar according to the lenient opinions/cases discussed above.

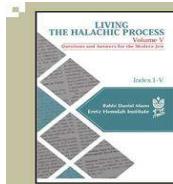
While we cannot exhaust all the cases and analyses, we will provide some suggestions in order of halachic preferability. The obvious suggestions are to try to find someone to use the *aron* for a *sefer Torah* or find the owner and ask him to take it.

Geniza is certainly a respectful solution without problems. If the *aron* is going to be permanently "retired," it is permitted to respectfully separate the pieces of wood, so it takes less space.

Many *poskim* permit using an *aron* for storing regular *sifrei kodesh*. The *Taz* (OC 154:7) says that while there is a rule that one may not lower the level of sanctity of the use of a holy object (Megilla 25b), we prefer a lower usage related to sanctity to *geniza*. While the *Taz*'s opinion has to fend off several questions, many support it regarding an object that only *serves* an object of sanctity (see *Yabia Omer ibid.*). In a case like ours, where there are other grounds for leniency, this is a good option.

If one nominally sells the *aron* and uses the small amount of proceeds to adorn a *sefer Torah*, many posit the *aron* loses its *kedusha* status (see *Shulchan Aruch, OC 153:9*; *Orach Mishpat* 34; *Tzitz Eliezer VII:7*). The buyer should just be careful not to disgrace it (see *Shulchan Aruch ibid.*). It is questionable whether putting it in the garbage is a disgrace, and wrapping it first improves matters. Doing that without first selling it is a last resort one should try to avoid.

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Ein Ayah

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

The Time for Accepting the Torah out of Free Will

(condensed from Ein Ayah, Shabbat 9:68-69)

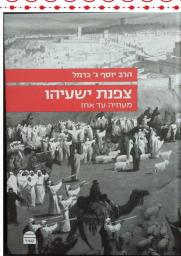
Gemara: [Last time we saw the famous gemara about Hashem holding Mt. Sinai over Bnei Yisrael's head and thereby effectively coercing them to accept the Torah.] From here there is a great *moda'ah* (Rashi- excuse) [for insufficient observance] about the Torah. (The way that we will see that Rav Kook explains this *gemara* is somewhat different from Rashi). Rava said: Even so, they accepted it once again at the time of Achashveirosh, as the *pasuk* says: "The Jews fulfilled(/confirmed) and accepted" (Esther 9:27) – they confirmed that which they had accepted previously.

Ein Ayah: [We saw last time that the idea behind the Torah being coerced is that Bnei Yisrael were of a nature that made it absolutely necessary for the world that they accept it.] Had the Torah been given to Bnei Yisrael through their free will, then its illuminating content would not have been as connected to the essence of the nation and the depths of the souls of its individuals. Then it would have been possible for their transgressing the Torah by their choice to have erased the impact of sanctity that the Torah was supposed to have made in them. However, since Bnei Yisrael are linked to the Torah based on the necessity that it is not possible any other way, transgressions cannot alter that except on the external level. These matters are beyond any specific display of desire and apply even when actions seem to point in a different direction.

This is what the *gemara* means by a *moda'ah* – all the improper actions do not cause a ruining of the foundation of Bnei Yisrael's level by means of bad choices. This is the highest level of *moda'ah*. It is not a *moda'ah* based on a weakening of the acceptance of the Torah (as Rashi explains), but rather a divine revelation that nothing can alter the overall relationship between Hashem and Israel, which is beyond choice.

The natural foundation that beats in the heart of Israel does not allow the element of free choice to find expression to its fullest extent. Since our forefathers stood by Mount Sinai, the natural light of a life of sanctity gained strength and became revealed, which caused the element of free choice to take a step back into darkness. Then, the only way to give the fullest expression to the free choice arose when there was a great storm of intoxication caused by the evil inclination toward idol worship. Then the nation was capable of having free will which could have allowed them to either accept or not accept the Torah. It required a high intensity of venom and power of the inclination toward idol worship to make there be such a possibility of choice.

The deterioration on a national level caused a great weakening of the light of natural sanctity. At the time of Achashveirosh, when there had already been the phenomenon of bowing down to the form of an idol and the enjoyment of taking part in the feast of the wicked Achashveirosh, all of those foreign elements penetrated into the Nation of Israel and darkened the light of natural sanctity. The light was hidden inside the soul. This was specifically arranged by Hashem so that they would be able to use the ability to make a free choice [on a broad national level]. This, in turn, brought about repentance, as there was choice to go in one direction or another, which was caused by Haman's decree. This is when there was an actualization that confirmed that on the level of free choice, there was also a will to accept the *mitzvot*. It was no longer based only on the natural level, which had been the basis previously.



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 Hemda-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

Firing with Insufficient Warning? – part I

(based on ruling 75033 of the Eretz Hemda-Gazit Rabbinical Courts)

Case: The plaintiff (=*p*) worked for the defendant (=*def*), an NPO, in 2012-2013, doing work on their website. In 2014, *def* asked *p* to return in a different, expanded role to help *def* out of financial woes. *P* explained that he needed work stability and wrote a contract that required *def* to give him 60 days warning before terminating employment. Toward the beginning of *p*'s tenure, *def* replaced their director. Since *p* worked closely with him, *p* met with the head of *def* (=*hdef*) to ask about his future. *Hdef* assured *p* that he would not be fired. As time went on and *p* felt excluded from decisions, he asked to meet with the new director (=*ndir*), but this took weeks to happen. Finally, on 29.12.14, during his 6th month of employment, *ndir* fired him and told him he might not get paid for that month. *P* is suing for salary for 60 days after the notification, as well as for 10,200 shekels for payment for travel over the whole period per the contract, and lawyer's fee (*to be discussed in part II*). *Def* said that the contract is to be read that the need for 60 days notice is only after the six-month trial period.

Ruling: The relevant paragraph in the contract has three sections: A. The first employment interval is 6 months. B. If the sides agree to continue, the agreement automatically renews itself for 12 months. C. Each side will give prior notification of 60 days before ending the employment.

P claims that C, requiring notice, applies to the entire period. *Def* argues that it refers only to B and that A refers to a six-month trial period that requires no warning. *Beit din* finds that the paragraph can be read either way. *Def* invokes the rule (Law of Contracts 25.1ב) that when a provision has multiple understandings, is to be read to the detriment of the one who had an advantage in its formulation. In this case, *p* wrote the contract. However, even according to this law, *p* did not have an advantage, as he is an individual who wrote the provision without legal help, whereas *def* had a legal staff to review it.

The halachic sources on the matter are complicated. The Shulchan Aruch (Choshen Mishpat 61:15) says that we look carefully at the language, even if the litigants do not have great command of legal language. But he continues (*ibid.* 16) that some say to follow the intention rather than the written word. The Nachal Yitzchak reconciles that in order to add a provision not written, very strong indications are needed. If there is a provision, and it is unclear how broadly to apply it, we can use external indications to do so.

There are valid arguments (omitted in this presentation) whether there was a trial period and whether only afterward formal notification was needed. However, there is no question that *p* demanded to be warned before being fired. Since *p* asked about his status during the six months, it was *def*'s responsibility to give him the information he requested. Since *hdef* and *ndir* either purposely or unintentionally withheld the information and gave *p* reason to believe he would continue, the requirement for 60-day notice certainly applies.

[We will continue next time with various ramifications.]

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