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# HEMDAT YAMIM

## Parashat HaShavua

Bo, 6 Shevat 5780

### On Nationalism and Sanctity

Harav Yosef Carmel

In *Parashat Bo* we find the commandment to take the *Korban Pesach*, slaughter it, and eat it. This process was done first in Egypt, and it served as a declaration of liberation and independence in many ways. The bringing of the *Korban Pesach* throughout the generations also turned into one of the most important national symbols. The name *Pesach* has turned into the name of the seven-day holiday (which the Torah calls the Festival of *Matzot*), which begins with the *Seder* night, and of which eating the *Korban Pesach* meat is supposed to be the highlight.

In our generation, *Pesach* is the first among a chain of commemorations during the spring season in which we celebrate national events. At the center, of course, are those that are from the Torah – *Pesach* and *Shavuot*. But there are also a wide variety of special days that run the gamut of Jewish experience, from the *Mimuna*, celebrating *aliya* and unity, to *Yom Hashoah*, commemorating the horrible *Sho'ah*, and connecting it to the foundation of the State of Israel. We have *Yom Hazikaron*, recognizing the sacrifices of the many who gave their lives making the State possible and helping to keep it going safely. *Yom Ha'atzmaut*, of course, declares the liberation of the nation from a political and spiritual perspective. *Lag Ba'omer* reminds us that the dream of reestablishing independence, with the efforts of *Bar Kochva* and his soldiers, prominently including students of *Rabbi Akiva*, was not an empty dream. (The great kabbalists, who are students of *Rabbi Shimon Bar Yochai*, preserved secrets about the future liberation.) *Yom Yerushlayim*, celebrating the liberation of *Jerusalem*, our nation's eternal capital, from a national and spiritual basis, is finally followed by *Shavuot*, the holiday of the giving of the Torah, as the seven weeks of the *sefira* conclude.

Some in the nation commemorate these days only from a national perspective; others commemorate only some of these days and only from a religious perspective. There are those of us who try to connect the two important focuses. In the next few weeks, we will try to clarify an episode in *Sefer Shmuel* that is closely related to these matters.

In the last *perek* of *Shmuel*, we read about the terrible plague that ravaged Israel after *David* carried out a national census in an improper way. The plague ended when *David* erected an altar in the silo of *Aravna the Yevusi*, which turned into the site of the *Beit Hamikdash* on *Har Habayit* (*Shmuel II*, 24:1-16; *ibid.* 17-25). These events teach us two things:

1. *Har Habayit* is the "place that Hashem chose" for the *Beit Hamikdash* (see *Divrei Hayamim I*, 22:1).
2. There are hints in this *perek* that this place was also the place of *akeidat Yitzchak* (*Divrei Hayamim II*, 3:1 says explicitly that *Arvana's* silo was on *Mt. Moriah*).

Many great people have tried to figure out how *David* came to the mistake about the census, ostensibly ignoring the *p'sukim* in the beginning of *Parashat Ki Tisa*. The question is also asked why *David's* sin could cause 70,000 people to be killed. It is also not obvious why the altar was able to end the plague. These will be among the topics discussed in the coming weeks. May we see *Jerusalem* in its full glory, rebuilt as the full spiritual and national center of *Israel* and as the capital of world peace.

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# Ask the Rabbi

by Rav Daniel Mann

## Difficulty in Returning Stolen Funds

**Question:** Years ago, when I was working for a consulting firm, my bosses had me inflate hours we charged clients. (I received a set monthly salary). I now feel bad that I stole from my clients. I would want to return that money, but it is too hard to track down the clients and know how much to pay each. I understand that in such cases, one can donate money for public needs, so that those who are owed benefit. How do I do that, considering that many clients probably now live throughout the country and likely the world?

**Answer:** When one stole from a group of people but does not know how much from whom, if the victims also do not know, *beit din* cannot force the thief to pay more than he admits, but he does not fulfill his moral obligation until he removes all the doubt (Shulchan Aruch, Choshen Mishpat 365:2). Therefore, if one wants to do the right thing and can track people down, he should do so, even if it means paying more than he owes.

However, there is a different *halacha* to deal with cases where the range of possibilities is so broad that it is unfeasible to pay everyone who might possibly deserve it. The *gemara* (Bava Kama 94b) says that shepherds (who grazed in others' fields) and tax collectors (who took more than they were entitled to) who cannot remember who they owe should use the money due for communal needs. An example is digging publicly accessible water holes. Others (see Pitchei Choshen, Geneiva 4:(50)) give the example of giving *sefarim* to the local *beit midrash*. While you have the problem that people may have moved away (and anyway may have never lived in the same community), technology now makes it possible to try to help people throughout the world simultaneously. Do realize, though, that even if you did this successfully (perhaps easier said than done) it is not considered full payment (S'ma 231:34), and if one were able to figure out later who he owes, he would have to pay them (see Pitchei Choshen *ibid.*).

However, the above does not apply to you. On a certain level you were an accomplice to the deceit of your clients (and you may have lied to them), and this warrants *teshuva*. However, the decision to deceive your clients was made by your bosses, you did not (we assume) physically take money from them, and the money did not go to you (but likely the firm's bank account). So even though there is a concept of *ein shaliach lid'var aveira* – according to which if one's boss tells him to steal, the worker alone is responsible (Bava Kama 79a), that is in a case where the subordinate actually takes the money from the victim and it is initially in his possession. At this point, it does not seem practical to "open a can of worms" by taking on your former firm and trying to make them research and return whatever money they can (We do not volunteer to attempt this *mitzva* of rebuke and *hashavat aveida*). There is even a concept that when someone has stolen a lot and now wants to do *teshuva*, his victims should not accept the return of what he owes them, for this would discourage him from doing *teshuva* (Bava Kama 94b).

In regards to you, we are not experts in the perfect steps to take to rectify and receive atonement for each *aveira* in each circumstance. Certainly, the basics are admitting one's misstep, regretting it, and not returning to it (Rambam, Teshuva 2:2), and it seems that you have done these. From the time it was decreed on Adam to need to work hard to earn a living, a major part of that involves not allowing one's job to cause him to sin, whether it be in regard to Shabbat and *chagim*, relationships with co-workers, or in matters of business ethics (stemming from his bosses' inclinations or his own). Certain fields lend themselves to bigger challenges in one or more areas. May you and others be *zocheh* to have not only a sufficiently profitable job but also "a clean and easy" job (see Kiddushin 82a) from the moral perspective. The best ways to increase the likelihood include: *tefilla*, good training, setting priorities, and being willing to quit if the situation warrants it.

**Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.**

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# Ein Ayah

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

## Necessary Opposition to the Torah Can Any Man Possess the Torah?

(condensed from Ein Ayah, Shabbat 9:113-115)

**Gemara:** [The Satan was looking for the place on earth in which Hashem had put the Torah and searched in vain among different elements of the world. Finally, Hashem told the Satan:] Go to the son of Amram (Moshe). He went to Moshe and said to him: "Where is the Torah that Hashem gave you?" [Moshe] said to him: "What am I that Hashem should give me the Torah?" Hashem said to Moshe: "Moshe, you are a falsehood teller."

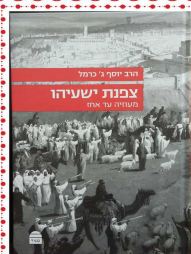
**Ein Ayah:** Throughout the world, there are fundamental elements that hold back the Torah from being firmly entrenched with its full spiritual glow in those places. The dominion of the powers of nature and the life that is dependent upon them are the most powerful preventers of the Torah, which is the source of freedom and the storehouse of kindness, sanctity, and purity, from taking root fully.

However, from the outset, Hashem prepared a savior for the world, with the type of soul that prepared the whole land to discard the pollution of flesh and coarseness, and leave dependency on the powers of nature to reach the heights of divine freedom. Moshe was predestined with a nature that enabled him to accomplish this and be the source of goodness in the world. He was thus able to reveal the freedom of everything in the world to elevate itself to the level of the word of Hashem, which is the source of good fortune, justice, freedom, and grandeur. That is why Hashem told the Satan to find the Torah by Moshe.

The Satan, which represents evil, could not understand, with all its wisdom, the internal purity and special characteristics that put Moshe above the limiting rules of nature. How could Moshe rise above the lowness of evil that is connected to the animalistic tendencies of man? How could he break through the natural boundaries of physicality and human spirituality? How was he able to become divine to some internal extent and become able to connect the land with its rules to the life that flows from the good will of the Creator?

Evil cannot recognize a way for a man to be so special that he can hold the Torah in his soul and connect the storehouse of sanctity with the dwellers of the land. Therefore, the Satan asked in wonder: "Where is the Torah that Hashem gave you?" "How could the glow of Hashem's ideals be within you, Moshe, and how could you bring it to the land?"

Moshe himself, though, was not able to see how unique and independent he was. It is true that he had a treasure of divine sanctity within him, which he could use to raise people from their low points to their divine origin. But viewing his greatness as not qualitatively unique was part of the characteristic of pure humility that was engrained in his nature, as a lofty soul with a special glow. Therefore, Moshe went along with the assumptions that the Satan had and declared that he too could not understand how the Torah could possibly be within him.



### 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

## Realtor's Fee

(based on ruling 77101 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** *Def2*, a couple looking for an apartment, contacted the plaintiff (= *pl*), a licensed real estate agent. *Pl* took *def2* to see a house with an attached living unit, and then to four, almost complete, expensive (around 3 million shekels) cottages, thinking that *def2* and her parents (= *def1*), who came along, might each buy one. No realtor contracts were signed. The cottages were too expensive, and *pl* was unsuccessful at lowering the prices. A few months later, *def2* called *pl*, telling her that they were buying two cottages and offering 12,000 shekels as a realtor fee (since the standard realtor fee is 2% plus VAT, the offer was around 10% of the normal). *Def2* is only renting a cottage, but they have done serious renovations to it. *Pl* is demanding a full fee. *Def2* argues that they only are now only renting the cottage and should not pay the fee for buying. *Def1* argues that they never hired *pl* but just accompanied their children. The defendants argue that the cottages were in their proximity, so they did not need to have them shown, but just have an agent negotiate a good price, at which *pl* did not succeed. *Def1* is paying the contractor's agent, who helped with negotiations.

**Ruling:** The basis for an obligation to pay for agents' services without an explicit agreement is the Shut HaRashba (IV:125) regarding someone who worked to bring customers to a store and the idea of working in one's field with permission, in which the landowner has to pay for the benefit provided.

According to the Law of Agents, payment is due only when the customer signed a contract. We accept this law in cases where the customer was unaware that he was expected to pay, but here the defendants were aware that they were employing professional agents, and they even volunteered to pay (a smaller amount). The fact that *pl* did not finish the job does not preclude deserving partial pay. We see this concept of partial payment in the Shev Yaakov (13) regarding one who raised a *shiduch* idea and another brought it to fruition and the Rama (Choshen Mishpat 185:6, based on the Shut Harosh), regarding a real estate agent who could not finish the deal. Rav Shlomo Kluger (ad loc.) limits the payment to agent 1 when he also is paying agent 2 to a case in which the payment to agent 2 was done ingeniously. Not only does it make a lot of halachic sense to not accept Rav Kluger's limiting of the Rama, but in this case, the fact that *def1* and *def2* abandoned *pl*'s services in the middle makes it appear disingenuous.

The defendants have no proof that the first attempt to buy the cottages ran its course and that they "started again from the beginning." Rav Moshe Feinstein (Igrot Moshe CM I, 49) dismisses the claim that the passage of a significant amount of time is proof of a new deal or that the fact that they saw advertisements elsewhere is significant when they first saw it through an agent. Likewise, *def1*'s claim that they saw the cottage just to help their children is also hard to substantiate from the fact that they were also in the market and ended up buying it.

Because *pl* did not finish the deal, she should receive only half of the usual fee, from *def* right away and from *def2* when they finalize their purchase.

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