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HEMDAT YAMIM

Parashat HaShavua

Ki Teitzei, 9 Elul 5780

Be Careful! Can It Make a Difference?

Harav Yosef Carmel

The Torah instructs one who builds a house to build a fence for its roof, so that no one should fall from it (Devarim 22:8). The reasoning behind the *mitzva* raises a well-known philosophical question, which applies in varied forms in many cases. If the person who might be killed if there were no fence did not deserve to die (in this manner), would he fall just because the homeowner did not build a fence? If indeed he would not fall, why is there a need for the *mitzva* in the first place?

The most famous answer is found in the *gemara* (Shabbat 32a): "This one was suited from the sixth days of creation to fall ... but meritorious matters are arranged to involve meritorious people and tragedies are arranged to involve culpable people." The simple explanation is that a given person who was supposed to die would have died anyway, but it is better for the homeowner that he should die in some different way, or if by falling from someone's roof, let it not be his roof. The *Kli Yakar* adds on (in the name of "some say") to the approach that what is supposed to happen will happen anyway, as follows. Possibly, the person who needs to fall will fall from the very house that he was supposed to – despite the fence. He continues to explain the rationale of the *mitzva* according to this – "the fence saves only he who was not fit to fall." It is not clear if he means that the saved person would not have fallen or that he would have fallen elsewhere or died in another way, assuming it was not destined how and where he would die.

The *Sefer Hachinuch* (*mitzva* 546) relates to a different philosophical possibility. He posits that great people are above the rules of nature, allowing such *tzaddikim* as Avraham and Chananya, Mishael, and Azaria to escape alive from furnaces. Most people, though, will be harmed if they are in situations that nature dictates will cause harm. He quotes *Chazal* as saying that when one relies upon a miracle, he does not receive the miracle. The *gemara* (Shabbat 32a) adds on that if he does merit a miracle, the miracle is reduced from his merits. Thus, posits the *Sefer Hachinuch*, if one stands on a roof without a fence, he may die even if he was not slated to die. This is in line with *Tosafot* (Ketubot 30a) who says that one should not put himself in a dangerous situation, "for certainly a person is able to kill himself."

These *Rishonim* extend the idea of not "relying on a miracle." It does not take a miracle to spend time on roof without a fence and not fall (I have been on my roof many times and was never saved by the fence). Rather, the fence just reduces the risk a little more. They posit apparently that if 1,000 Jews (not *tzaddikim* like Avraham) without a decree to die decide to ignore proper safety precautions and enter a 1/100 chance of death situation, approximately 10 will die from it. This is an important opinion to consider for those who, to use just a couple of examples, drive less carefully than they should, smoke, eat unhealthily, or ignore the risks of dangerous infectious diseases.

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Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
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Ask the Rabbi

How to Determine when Paying on Time Is

Question: I live in New York, but often people in Israel do work for me, which they send me via computer. How do I calculate my deadline to pay them and fulfill the *mitzva* to pay on time – based on my time-zone or my workers'?

Answer: I did not find *poskim* who deal with this question, which is not surprising, because the ability to work and pay at such a distance is new, and nowadays people do not usually pay for such jobs right away (see below). We must analyze the matter at its roots.

We will start with the general issue of time differences. Obviously, a person does *mitzvot* according to his time, but what about when they relate to someone or something with a different time? We cannot deal with all halachic applications, but the general rule is that the person deciding how to act follows his own time. Let us mention a couple of examples. At least fundamentally, one may operate in a place where it is not Shabbat on behalf of one for whom it is Shabbat or operate equipment where it is Shabbat (see this column, Bamidbar 5774). One may not own *chametz* when he is in a place where it is Pesach even if the *chametz* is in a place where it is not Pesach. In the opposite case (it is on Pesach for the object, not the person), Igrot Moshe (OC IV:94) says that it is fundamentally permitted (he claims it creates a Rabbinic problem, while some say it is fully permitted).

On the other hand, it seems obvious that although a father is obligated to do/arrange a *brit mila* on his son's eighth day, if the two are many time zones apart, he would have it done on his son's eighth day. Why is that obvious? The *mitzva* of *mila* is focused on the baby. The father's *mitzva* is as a facilitator. A proper facilitator has to act in synch with the baby who is becoming *nimol* and being impacted in the process. It may not always be simple to determine upon whom the focus is. In Living the Halachic Process (I, D-13) we discussed the possibility that *matanot la'evyonim* need to be given at a time when it is Purim both for the giver and the receiver.

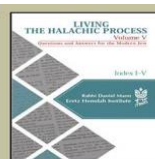
So on whom is the focus regarding an employer paying a worker promptly (i.e., before the next change of day/night after receiving the product – Shulchan Aruch, Choshen Mishpat 339:6)? Is it the worker who may need the money promptly, or is it the employer, who must not procrastinate (or both, so that the time requirements of both must be met)? While philosophically, *Chazal* considered this *mitzva* crucial, likely due to the needs of the worker (see Devarim 24:15), the *mitzva* includes unusual *halachot* that focus on feasibility for the employer. For example, if a craftsman finished his work and informed the client, the payment clock does not start until the client receives it (ibid.; see opinions in Pitchei Choshen, Sechirut 9:(31) about cases where the employer improperly refuses to receive it). Also, if the employer does not have money available, he does not violate *bal talin* (Shulchan Aruch ibid. 10). In both cases, the worker may need the money as desperately as usual, but we follow the employer's situation, if he is not stalling from his perspective. These are some of the indications (not proofs) that the basic *halachot* are based on the mandate on the employer not to procrastinate – apparently based on his circumstances.

These *halachot* are not usually practical because of another surprising leniency. If the worker knows that the employer usually has cash flow only on the market day or that he usually doesn't pay anything until he has calculated how much he owes, he is not obligated to pay right away. Also, it is only when the worker has asked (or assumed to want) immediate payment that the *mitzva* to pay promptly is activated (ibid.). Therefore, since in most cases, workers are not paid for several days after they give the work they did, the employer/client can keep within the normal range (see also Shach ad loc. 2). Of course, it is laudable to try (when feasible) to be ahead of the curve in paying workers (see Rav Pealim IV, CM 7), but the exactness you refer to is rarely needed.

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Ein Ayah

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

Purgatory – Hands Off!

(based on Ein Ayah, Shabbat 12:43-44)

Gemara: [We continue with lessons learned from pairs and then groups of three letters.] “YaM kol” – the officer of *gehinom* (purgatory) said to Hashem: “Master of the Universe, everyone should come to the sea” (the great pool into which most souls enter- Rashi). Hashem responded: “**Achas betah gif**” – I have mercy on them because they kicked (in disgust) promiscuity.

Ein Ayah: All creations were created not in their complete form, in which they will be in the future when the whole world will be morally repaired and all will be prepared for the feast (see Avot 3:16). For this reason, in the beginning of existence, there is a point of breaking, and worlds that were previously destroyed, because Hashem was not pleased with them, needed to be recreated. Finally, a world in which Hashem is pleased was created.

However, even this improved world will also be turned into a new world, as the *pasuk* says: “The new heavens and the new earth that I am making” (Yeshayahu 66:22). Certainly, even in this world of ours, which our Creator wants to continue, still all creations, whether the spiritual ones or the physical ones, are slated to receive a new form, which is grander, more complete, and more illuminating. The completion of the process will come by turning that which was missing into something new.

Gehinom is the smelting cauldron of souls and spirits, who, due to their sins, left the physical world in a blemished state. *Gehinom* is that which will create the new and improved creation. The impurities will be “burnt out of the pure silver” of the former living beings and all that is connected to them. That is why this power of destruction that is connected to *gehinom* has such a powerful desire to bring everyone into its realm and have its power of destruction act on them so that they can emerge more complete. The officer thus asks Hashem to bring all into the “great sea,” which inundates its inhabitants who came in with different forms. For that reason, despite all of the pain involved, the process is still one of completing matters.

The following is behind Hashem’s refusal to send everyone through the process of *gehinom*. The foundation of spiritually completing man’s form is that he should turn the depths of his life to the lofty goal of sanctification, which is what keeps all generations standing. In man’s higher spirit, there is an inclination toward keeping the species going through a means that embraces all of the inclinations of life. When the concentration of inclinations is done in a pure and ideal manner, it turns out that the foundation of sanctity, including removing spiritual filth from his inclination of procreation, is set in the center of the soul. Then the whole character of the person is completed in a manner that does not require it to be elevated by being broken, which can only be done by the fearsome fire of *gehinom*.

Within the holy lineage of Israel, to whose males Hashem attached a sign of the covenant in their flesh, this inclination is controlled in a manner that the purity can be intrinsic. This allows the soul to remain as it was. It can then be elevated even further after death without the need for destruction and being turned into a certain nothingness, as the fire of *gehinom* is able to do. Therefore, because Israel kicks away promiscuity, they do not need *gehinom*.



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

Money Given for Shemitta Observant Farms - Part II

(based on ruling 78063 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) gave 480,000 NIS, for which he needed to take a mortgage, to the defendant (=def), an unregistered partnership of neighboring farms, to enable them to work their fields during *Shemitta* according to the *otzar beit din* system (without a *heter mechira*). Def was supposed to return the money plus 40% of net profits, which were expected due to an agreement to supply pepper to an *otzar beit din* (=obd) at 5 NIS per kilo. The obd did not keep their deal, causing def to do a late harvest and produce less than expected. Def ended up losing for the season, despite receiving some compensation from their insurance. Def returned a small amount to pl and admitted to owing another 307,000 NIS; their representative had stated in a text message that they owe 338,600 NIS. Pl demands a return of all of the loan plus compensation for pl's mortgage payment and what he could have earned elsewhere with the money. Pl claims that since def acted negligently, pl and def's contract, which required def to act financially wisely, is null. Specifically, they should not have allowed obd to lower the price, but should have harvested on time, forced the produce onto obd, cashed obd's guarantee check, and started working according to a *heter mechira*. Instead, def signed a compromise agreement with obd. Def also paid too much money to a marketing agent. The contract's provisions for a breached contract award pl significant compensation (we will omit details). Also, def used some of the funds for other purposes. Def claims to have done the best possible under the circumstances, which include the actions of obd (which was not directly obligated to def but to their *yishuv*) and the impact of following the *halacha* on the growing process. The sides also differ if their agreement was of a loan or an investment.

Ruling: [Last time we saw that the money pl gave was an investment, which leaves him open to losing profits and even principal, and that def's agreement to compromise with obd was not necessarily negligence.]

In general, the claim of negligence needs to be proven in order to extract money. None of the area's farmers had an individual contract with obd, and there were advantages to going as a group, and therefore one cannot prove negligence there. The idea of harvesting on time and forcing obd to receive the produce is hard to demonstrate to be an advantage. First, greater harvest would have come with a labor cost and there would not have been a payment by insurance, so that most of the ostensible advantage is not true. Second, if obm did not sign on receipt of the produce, it is unlikely that def could have forced obm to pay for it.

On the other hand, one can question the wisdom of not switching to the *heter mechira* system earlier, as all the other area's farmers did. While the agreement with pl does state pl's desire to take part in keeping *Shemitta* properly, which def shared, since the switch after obd breached the contract was a natural step, def should have at least discussed the matter with pl. Therefore, out of compromise that is close to *din*, *beit din* awards pl 15,000 NIS in damages for the likely negligence of not switching earlier.

We will finish up with other elements next week.

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