



HEMDAT YAMIM

Parashat Hashavua

Vayechi, 14 Tevet 5783

Harav Shaul Israeli zt"l
Founder and President

“Pakod Yifkod” – On Leadership and a Jewish State
Harav Yosef Carmel

Before his death, Yosef informed his brothers, using the double language of *“pakod yifkod,”* that Hashem would bring the redemption and the family/nation would leave Egypt (Bereishit 50:24-25). These words of Yosef became the secret of redemption, as *Chazal* teach us (Shemot Rabba 3:8). Hashem told Moshe that in order to prove that he was the legitimate liberator, Moshe had to announce that Hashem sent him to liberate the nation with the words *pakod yifkod*.

Another *midrash* (Sechel Tov, Vayechi 50:24) goes into more detail on this “secret code” to convince the nation that they should trust the bearer of the news of *pakod yifkod*. It adds on the significance of the next word in the *pasuk*: “*pakod yifkod etchem*” (He will certainly redeem you (plural)). The *midrash* explains that Hashem knew and told them that He would shorten the prescribed time of exile because of the crying out of the masses.

What is the significance of *pakod yifkod*? Is it simply some type of secret password? What would happen if the secret of the code would leak out and an unauthorized person would use it? What does the *midrash* mean by saying the liberation was dependent on the masses, and how did they see it in the *p’sukim*? Is it simply from the use of *etchem* in the plural? Wasn’t that grammatically necessary because Yosef was speaking to his several brothers?

To deal with these difficult questions, we will raise the following suggestion. Yosef used specifically the double language of *pakod yifkod* to teach us that the goal of the Exodus, the first liberation, and as a continuation of it, the final liberation, will be a liberation of the masses, of the nation as a nation, including all of its parts. It is not enough to leave Egypt for the purpose of ceasing to be slaves. The challenge is much, much more all-inclusive and lofty. The nation leaving Egypt must turn into an independent entity, which lives in and as an independent state with all of its trappings. A state with a government and an army, an office of agriculture and an office of commerce and industry, a foreign affairs department and an office of finance. The idea is that it is not just individuals who must serve Hashem as individuals, as it was in the time of the patriarchs. Rather, there must be an independent state in whose public life, all parts of the public are partners in the implementation of the Torah of the patriarchs.

Pakod yifkod is a prompt to establish a society of justice and kindness, where all are assured a fair deal. There must be a society that is concerned about its weaker elements, and to which other countries can look to learn how every element of society is properly handled. Society must include not only the righteous, but also those on an average level, and even the wicked. Society cannot give up on anyone, even if it strives for a situation in which as many as possible will be righteous.

Pakod tells us we need *mefakdim* (officers) and *mefakdim* of *mefakdim*. Yosef taught his brothers that liberation is not to solve the problems of individuals. Liberation of only the ideal members of society is not liberation. The liberator must inform the nation that he is there for all of them. That is Yosef’s secret!

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Ask the Rabbi

by Rav Daniel Mann

Non-negotiated Fees

Question: When a service provider and a hirer do not discuss the fee in advance and disagree later, what does Halacha say about resolving the disagreement?

Answer: When we adjudicate such cases in *beit din*, we usually need to consider particular circumstances. We would give two pieces of advice. Discuss as many important matters as possible before work begins, and realize that compromise between the sides is almost always preferable to adjudication. However, it is good to also be aware of basic halachic/legal guidelines.

Two rules about monetary law and specifically employment law can compete in cases where some matters were not settled in advance: 1) We are to follow our society's common practices (Bava Metzia 83a; *ibid.* 76a). 2) When there is a doubt whether one needs to pay and how much, he pays the least of the reasonable options (Bava Kama 46b).

When there is no discussion, the service recipient cannot normally say that he thought the service was being provided for free (Rama, Choshen Mishpat 264:4). But how much should the worker receive?

When there is one accepted fee, that is what he receives (Bava Metzia 76a). A rare example of an accepted fee in our days might be "*shadchanus gelt*" in certain communities. A fee used in a simple majority of cases does not constitute an accepted fee, (K'tzot Hachoshen 331:3), but a sweeping majority would enter the realm of *minhag*. When there are multiple fees, the lowest one is used (Rama, CM 332:4). An exception to this rule is when (one of the) sides use language that indicates they want to use an average rate (Shulchan Aruch, CM 331:3, based on Bava Metzia 87a).

Standards are not only set according to the time and place, but also the type of profession needed and the objective qualifications the worker possesses (Pitchei Choshen, Sechirut 8:(11)). For example, electrical work done by a licensed electrician is more expensive not only than the work of a babysitter but than a handyman who also does electrical work. Other factors are dependent on the case. *Poskim* discuss cases in which there was no explicit decisions but that the intention can be deciphered from the circumstances. For example when the sides gave different offers and did not agree, and only later the work started without resolving the matter of price, the one who initiated the new contact is likely to be assumed to have accepted the other side's offer (see Pitchei Choshen *ibid.* (13), based on the Shulchan Aruch, CM 221:1).

The classic rules, including those above, produce some less standard applications in contemporary society. First, for many types of services, it is not possible for the worker to know how difficult and time-consuming a job will be, e.g., a car mechanic, computer technician. We can apply the K'tzot Hachoshen's (*ibid.*) ruling that when it is not possible to determine price in advance, the average fee is appropriate.

Furthermore, there are also fields in which the service provider is the one who normally sets the price. Determining what fields fall into this category will also be a matter of local practice. Often when there is no discussion about the price, it is the shortcoming of both sides, which has its own complicated halachic consequences (see K'tzot Hachoshen *ibid.*, Maharashdam CM, 335). However, when the hirer should have known that the worker would set his price and assume that the hirer will accept it or negotiate, that is what the hirer should do. The hirer cannot, then, object afterwards without prior warning. It is likely, even, that when he went into the process, the legal construct of giving trust to the person with whom you are financially interacting applies (see discussion in Living the Halachic Process VI, 1-2).

The exception to this rule would be if the worker makes an unreasonable or inconsistent charge or he does not provide commensurate service. Neither side should purposely refrain from discussing the fee in advance in order to seize an opportunity where he could negotiate later from a perceived position of strength.

“Behind the Scenes” Zoom shiur

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Igrot HaRe'aya - Letters of Rav Kook

When Should *Mitzvot* Cease to Apply? – #140 – part I

Date and Place: 27 Iyar 5668 (1908), Yafo

Recipient: Rabbi Shmuel Alexandrov. Alexandrov was a *yeshiva*-trained scholar, who was an autodidact in languages, philosophy, and science. He was a very independent thinker who at times angered the *Maskilim* and at times angered traditional rabbis. He was a member of the Mizrachi movement and tried, over the years, to recruit Rav Kook to take a leadership role within that movement. This is one of many correspondences between the two on matters of Jewish philosophy.

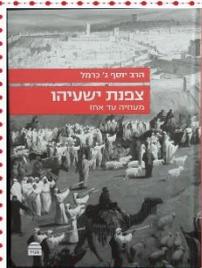
Body: I am not sure if I will succeed in clarifying the concepts that separate us to the point that we will be able to safely move from topic to topic without getting bogged down in unending polemics in one topic. Still, I am compelled to speak to the extent I can about a certain matter with which so many before the two of us have already dealt.

You treat as an important idea the matter of *mitzvot* being inactive in the ideal future (*le'atid lavo*), and you imply that I dispute this principle because I am more inclined to accept the opinion that *mitzvot* will remain intact *le'atid lavo* (see Nidda 61b). This is not so, my friend, and this falls within the rule that "These and those are the words of the living G-d."

We should all be able to recognize that this period of time called *le'atid lavo* is so broad that it is not possible to find a narrow area in which to say that there is a dispute on the applicability of *mitzvot* at that particular time. There is a time during *le'atid lavo* in which *mitzvot* will apply, and there is a time during *le'atid lavo* in which they will not apply. Those who desire to investigate the Talmudic treatment of matters of belief, with the appropriate purity, loftiness, and breadth, must clearly limit the parameters of the question and determine when these two periods of *le'atid lavo* are. They must understand, with a developed and settled mind, how matters apply to each sub-period according to its value. On this matter, I do not think that there is necessarily a significant difference of opinion between different thinkers.

The thing that I feel compelled to stress in my letter to you is that at times, it seems that you are trying to artificially move up this more distant period of *le'atid lavo*, in which the *mitzvot* will not apply, and claim that this time has already come. [This cannot be because] our time is full of despair and collapse, and it is a time that requires real building and strengthening through positive physical activity. The approach of saying we are already in the period in which *mitzvot* do not apply is one I dispute. I believe that everyone with a straight heart should distance himself from such thinking, which we have seen in other historical periods.

[Let us understand that what you are proposing is that] the world has already reached heights of morality to the point that it does not require any more spiritual improvement [of the type for which *mitzvot* can be helpful]. [In other words,] they do not need any guidance in matters of belief or any element of rules about things that need a tradition and agreement to implement! There is no need to receive anything from Hashem, from spiritual prophets, from national sources or from practical societal needs?! How can we say this without any clear divine indications [in our recent history]?! We see the exact opposite! Therefore, your thesis is simply a mistake in calculation of the many various periods.



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

Who's Responsible for the Leak?

(based on ruling 80133 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) have adjoining houses. Many years ago, pl and, later, def renovated their roofs. Over the years, there has been a history of leaks into pl's house from the roof, and there have been various steps taken to try to remedy them, which have had mixed results. Recently, pl brought a professional with a special camera to locate leaks, and he indicated that the main problem is from seepage under the stairwell def built on the roof. Pl therefore demands that def do the necessary waterproofing and pay for the expense of the professional who came. Def responded that the check was not done by the correct professional or in the correct way (a flood test), and that there are several indications that the damage does not come from him. Def also countersued for expenses, the biggest of which was for a wall between the two roofs, which def incurred based on pl's demands that he act to try to stop the leakage, as def believes such demands had been unjustified.

Ruling: [Much of the ruling deals with technical analysis, and this is not the place to review it. We will focus on principles of Halacha and jurisprudence.]

Beit din agreed not to rely on pl's expert and had the sides pay for a court-appointed expert, whose identity the sides agreed to. Because the sides were hesitant to pay the costs of this investigation, beit din set out the following rule. If the findings are in support of one side, then the other side shall reimburse him for his half of the expense of the expert.

The expert found that the areas of seepage are in pl's side of the roof, in addition to flaws in the water insulation of the wall, which he surmises was caused when pl drilled into the wall. Pl pointed out what he alleges are several flaws in the expert's report, but the expert answered his questions, albeit not to pl's satisfaction. Since all agreed in advance to the expert, we accept his findings and see no grounds to obligate def.

We move now to the counterclaims. There are signs that the actions that def took to improve the insulation on his side were partially successful. Therefore, we cannot view them as groundless and make pl pay for them. After the expert suggested that there is liable to be damage in the future by means of the wall, def demanded payment to deal with that. We do not accept this claim because the expert was not authorized to determine who caused flaws but only to find where the leaks are. Additionally, the expert did not even say that there was presently seepage from the wall but only that there could be in the future. Regarding the need for the wall, during the inspection, def said twice that he built it for privacy, and therefore it is troubling that his lawyer demands compensation as if it were done to protect pl from leakage. Therefore, no counterclaims are accepted.

Pl demands that another expert evaluate the situation, due to his dissatisfaction with the present expert. Beit din will consider this if pl will fix the problems discovered and, within a year after that, there will still be leakage. Pl will have to pay for that expert, and his appointment will have to be done through beit din.

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