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HEMDAT YAMIM

Parashat Hashavua

Ki Tetzei, Elul 9, 5786

“Lest His Heart Be Raised” – You Were Warned

Harav Yosef Carmel

In the Torah section on the laws of the king, there are a few prohibitions for the king – having too many wives or horses, or accumulating too much money. It also provides a less defined imperative – “so that his heart not be raised above those of his brethren” (Devarim 17:14-20). Our *parasha* opens (ibid. 21:10-21) with three *mitzvot* that are historically linked to the king, as we will see. One is the laws of taking a beautiful woman from the enemy captives; another is the *halachot* of dealing with the children of two wives; the third is the laws of the rebellious son.

King David was tremendously righteous and spiritual, and he merited to be the founder of the eternal dynasty of the kings of Israel. Under his leadership, all of *Am Yisrael* was united and during the reign of his son Shlomo, the *Beit Hamikdash* was built in Jerusalem. David was careful about the laws of the king – he did not have too many horses, or money, or wives. He also was careful about remaining humble, and the Rabbis view him as the right type of leader, like Avraham and Moshe.

Despite this, one of his sons, Avshalom, was the epitome of the rebellious son. Avshalom was the son of Maacha, the daughter of the King of Talmi, whom he took from the captives of battle (see Shmuel II, 3:2-3; Midrash Tanchuma, Ki Teitzei 1). The *midrash* tells that David had a desire for Maacha, and this explains how it came that Avshalom became a rebellious son, who wanted to kill David, openly slept with his concubines, was responsible for tens of thousands of deaths, and caused dispute in Israel.

We can continue this connection between Avshalom and the rebellious son. The Torah says that the rebellious son is killed by stoning, and the rule is that those who are executed by stoning are to be hung (Mishna, Sanhedrin 6:4). Avshalom experienced these two indignities, albeit not as carried out by the judicial system – his long hair was caught in the trees (Shmuel II, 18:10) and after his death he was covered by a big mound of stones (ibid. 17).

What caused Avshalom to fail and reach such lows? The answer is from the end of the laws of the king – “lest his heart be raised ...”; i.e., haughtiness. In order for someone to earn leadership, whether kingship or something else, he must be humble. Avshalom spent much energy, as his leadership started, working on his own honor. He assembled a special chariot, horsemen, and 50 runners in front of him (ibid. 15:1). His brother Adoniyahu used a similar formula when he tried to position himself as the next king (Melachim I, 1:5-6). These demonstrations of haughtiness only hastened their fall.

After the Torah warns – “lest his heart be raised,” no one can claim, “How was I too know?” Let us pray for brave leaders, who are bright, talented ... and humble!

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Ask the Rabbi

Ki Tetzei

by Rav Daniel Mann

Taking a Bus Instead of Driving

Question: A not yet fully Shabbat observant Jew regularly drives to (near) my shul because it is difficult for him to walk the distance. Can I suggest to him that it is better for him to go by bus, or is that fundamentally wrong or too slippery a slope to permit?

Answer: It is not possible to answer this crucial question unequivocally. Let us see basic sources and distinctions. We will indeed assume that taking public transportation is a less severe violation of Shabbat than driving, although the extent to which this is true could depend on different factors (*eiruv*, type of car, etc.).

The most direct source in favor of trying to lighten the level of violation is the *gemara* in Sota (48a). The *gemara* says that one type of male/female joint singing is worse than another and that this is notable because of “cancelling this in place of that” (*I’v’tulei ha ...*). Rashi explains that if we can only convince them to stop one, we should stop the more problematic one. Some understand Rashi as not allowing a rabbi to recommend replacing the bigger *aveira* with the smaller but just choosing on which to focus the criticism. But major *poskim* understand Rashi more broadly (see Igrot Moshe, Yoreh Deah I:53 and Yabia Omer VI, YD 3 regarding *hashgachot* that do not prevent “minor” kashrut problems but cover the main halachic issues when without the *hashgacha* people will eat full-fledged *kashrut* violations). Rabbeinu Yona (Berachot, 21b in the Rif’s pages) is a *Rishon* who explicitly allows a rabbi to allow the more lenient violation to prevent the bigger violation.

Another focal *gemara* is Chagiga 16a. It says that if someone is not able to control his *yetzer hara*, he should go to a distant place, dress in black, and sin privately rather than desecrate Hashem’s Name in public. Tosafot (ad loc.) offers two explanations whether this is the *gemara*’s advice to the would-be sinner (lessen the *aveira*’s damage) or whether it is giving a plan how to avoid the *aveira* totally.

On the other hand, a *gemara* (Shabbat 4a) could be grounds for a counterargument – we do not tell someone to do a small *aveira* in order to save another from a bigger *aveira*. Very likely, “encouraging” the smaller *aveira* is itself an *aveira* (see Yabia Omer *ibid.*).

There are different “currents” in *Rishonim* on whether to apply *I’v’tulei ha*, and while there could be some *machloket*, some discrepancies can be explained by distinctions. One is that *I’v’tulei ha* is more likely when it involves an individual or small group as opposed to a large group (see Sha’arei Chayim (Rotter) 42). Another is that it should not look as if the rabbi is permitting the small *aveira*, but only that it is better to choose the lesser evil (see Igrot Moshe, OC IV:35). Another major factor is that allowing the smaller violation should not cause people who keep *mitzvot* to mistakenly sin (see Meishiv Davar 42-43; Igrot Moshe, YD I:53). It is also better if the allowance is temporary, not an ongoing rule (see Rav Asher Sabag in Hama’ayan #246, p. 85). We will leave for now some other possible distinctions.

If you word things correctly, you will not tell him it is permitted to go by bus or that he may use it as a permanent practice, but that he should know that it is preferable. If so, your case comes up on the right side of these distinctions. On the other hand, as *poskim* point out (see Meishiv Davar *ibid.*), one should be very careful about if, when, and how to employ *I’v’tulei ha*. When you are talking about someone whose concepts of Halacha are very limited, to say that some things are important and some are less so, within the same *aveira* of violating Shabbat, you raise the possibility of confusing him and giving him the wrong impression (e.g., there is no need to do things correctly, as long as it is not “too far off”). You, as the rabbi, can also get into serious communal problems if you think it is a good idea for one and not for another; what often happens is that community members compare notes.

We wish you *hatzlacha* in inspiring and guiding your “flock” on the path to full *avodat Hashem*.

“Behind the Scenes” Zoom shiur

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

The Goal of an Agricultural Yeshiva – part II

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 263 (address at the cornerstone laying for the Yeshiva Chakla'it in Kfar Haroeh – 1938)

[Last time, in introducing a yeshiva focusing on agricultural halacha, Rav Yisraeli discussed how yeshivot in a time when people must prepare for their occupations need to adapt to this challenge, and how this was developing slowly.]

The fracture between the street and the yeshiva continually grew. The street required action, alertness, and pioneering. The yeshiva became increasingly insular. It demanded of its students to ignore the world and lifestyle of the Jewish street. It demanded tremendous dedication to the extent of forgetting one's personal nature and the interests of the general community.

The yeshiva stopped being an institution for the masses. It became a private domain for individuals whose intention was to dedicate all of their life to Torah. The life of the general population flowed outside the yeshiva, which stopped being a factor in public and social life. Most of the fathers who were interested in practicality did not send their sons to yeshiva, and adolescents who grew up without Torah study were swept up by the movements that are foreign to the spirit of Israel. The building of the land of these young men was an essential part of the undoing of the desired building.

Then, the movement of "Torah VaAvoda" was established. Those who joined it did not all get to that point in a "straight line." Every member came to it through his own personal "revolution," with hesitations and jumps. His being was caught in between the yeshiva and the street, and only after many struggles did he find the synthesis and unification of "Torah and Avoda."

However, very few who found their way to this path after wandering, did so with perfection and harmony. Most became lost along the way, and were swept away to "foreign encampments." Within the camp, things were also not in full order. At times, the internal battle left a member with an imprint of a subdued spirit; sometimes it caused him incorrect concepts and an unhealthy mixing of myriad thoughts, which are difficult to repair.

This brings us to a very troubling question: what should the approach to education be for the strictly religious Jewish community? Is it possible to suffice with the limited and disjointed Torah knowledge that children receive from the general education schools and consider this a good solution?! Could this produce the generation we have prayed for? Can they create the spiritual reawakening in the Land by reawakening Judaism's physical side?!

Perhaps it will be necessary to return the young men to the *yeshivot*, at least the organized among our group. Then our movement will continue to be fed by chance as a result of revolutionary thinkers who came to us through deeply personal doubts! Will the young generation listen to us on this matter?

The only and most fundamental solution to this question is to create a new model of a *yeshiva* – the agricultural yeshiva. This institution, when at its best, must serve the function that the yeshiva did in their previous life – a general home of education for the young generation. The job of this institution will be to educate a youngster and prepare him to fulfill a wonderful role that is awaiting him – building the nation in the material and spiritual sense.

The yeshiva will be built on two foundations – study and action. It will give a broad experience during the time they are there. It will be a "youth settlement," which will open for them a life of independence immersed in a spirit of Torah and fear of Heaven. The curriculum will be mainly tractates of Talmud Bavli, or parts of them, which relate to practical Halacha. The approach to the study will be to understand deeply and straightforwardly, along with clarifying the words of the early commentators in a manner that is in step with accepted halachic positions.

We will finish the address next week.

*We daven for a complete and speedy **refuah** for:*

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*Together with all **cholei Yisrael***

P'ninat Mishpat

Complaints about Contractor's Work – part II

(based on ruling 83037.1 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def), a non-profit organization, was looking to buy headquarters in a major Israeli city. The plaintiff (=pl), who works as a real estate agent, suggested a building and arranged the first meeting to see it, sending a representative in his place. Subsequently, pl communicated his willingness to help promote the deal and his expectation for a real estate fee. Def bought the property for 60 mil. NIS without pl's further involvement. Pl seeks a 2% fee on it. Def deny pl deserves it because he was not critical to the purchase, he did not have them sign a realtor's contract, and he is not an Israeli-licensed realtor (he is licensed in a European country).

Ruling: [Last time we saw that pl deserves a realtor's fee despite the lack of a signed contract.]

The question now is how much def should pay. When no rate of pay is agreed upon, a worker is paid according to the standard practice (see Shulchan Aruch, Choshen Mishpat 331:1). This is the case even if the employer claims but cannot prove that it was agreed to pay less (R. Akiva Eiger ad loc.).

Regarding real estate agents, the accepted rate is 2% of the price of the property (see Eretz Hemdah-Gazit ruling 82141). However, this is not the case when the property is much higher priced than a single-family home is. In fact, pl invoked the words of a rabbi with whom he consulted, citing him as saying that pl was the "effective factor" in the sale, without pointing out that in the same letter, that rabbi stated that pl would not be entitled to more than 1%. In several Israeli court rulings, which provide a window into the local practice, 1% is brought as the standard and highest rate for agents in large real estate deals.

There is reason to reduce the amount beneath the standard of 1%. First, in a communication that pl sent to def reminding them that he expects payment for his work, pl wrote that he would make the price fair, which implies that he would work out some sort of reduction from the maximum amount, which we have seen is 1%.

Furthermore, pl made a conscious decision, one which *beit din* discourages, not to sign his clients to a contract, which states the rate of payment agreed to. If pl were to receive the maximum fee without a signed contract, that would give him an advantage over those who follow the law, and show less "friendliness" by making people sign. Furthermore, in ruling 72059 of Eretz Hemdah-Gazit, the *dayan* pointed out that when a contract with a rate stated is used, it gives the parties opportunity to negotiate the rate, which not infrequently happens. By not having the contract signed, if the agent will receive the full amount, he can effectively prevent that negotiating from taking place, which, again, gives him an unfair advantage. Therefore, *beit din* chooses to award pl 0.82% of the price of the property.

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