HEMDAT YAMIM חמדת ימים

Parashat Hashavua

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Harav Shaul Israeli zt"l
Founder and President

David's Falling Sukka and its Connection to Noach's Ark – part I

Harav Yosef Carmel

The *gemara* speaks of human history consisting of 2,000 years of confusion, 2,000 years of Torah, and 2,000 years of *Mashiach* (Avoda Zara 9a), and the first transition is in our *parasha*, as Avraham ushered in the age of Torah by teaching Torah and belief in Hashem to thousands. Moshe is the most connected to Torah, and we will connect David as well.

In *Birkat Hamazon* of the recent Sukkot, we asked the Merciful One to erect the falling *sukka* of David. The phrase comes from the promise in the prophecy of Amos (9:11) that Hashem will do just that. It is unclear what the *sukka* has to do with David and why it is called falling (*nofelet*)?

In discussing when *Mashiach* will come, an *Amora* called him the son of *nofel* (Sanhedrin 96b). He explained that the name, which sounds negative, is justified due to the aforementioned *beracha*. It is also possible to connect David to the root *nafol*, as follows.

The famous *midrash* (Yalkut Shimoni, Bereishit 41) tells of Adam being shown all of the generations and seeing the soul of David, which was palpably and powerfully special. Hashem confided in him that this soul would live only three hours, and Adam requested and received permission to gift the soul 70 of his own years. This connects David to the root *nafol* because a *nefel* is a non-viable baby, who lives less than a month. After all, this was David's original status, before Adam's help (see more in my new *sefer*, Tzofnat Shmuel). This still, though, does not explain the connection between David and a *sukka*.

Targum Yonatan (Amos, ibid.) understands that the *sukka* of David is the monarchal dynasty of David. He does not explain how David's dynasty is a *sukka*. The Radak says that it is like a *sukka* because it is *sochech* (provides protection from above) on the nation. If *sukka* just means protection, then there is no connection between David's "*sukka*" and the holiday of Sukkot, so why do we invoke it as a supplication on Sukkot? The Alshich explains that it is the Divine Presence, which acts as a canopy over His children. This nice idea does not explain the connection to David or to Sukkot.

The Maharal of Prague (Netzach Yisrael 35) provides a more involved approach. First, we must realize that every monarchal dynasty is called a house. In Sota 11b, in reference to the houses that Hashem made for the midwives in Egypt (Shemot 1:21), *Chazal* attribute them to "houses of priesthood and of kingship." This is because a house is something strong and permanent. Priesthood is more permanent, but kingship is stronger while it is in place. The reason that David's dynasty was called a *sukka* is because it was a house that had a G-dly element to it, as opposed to all other monarchies. Only physical things are considered permanent in the physical world, whereas spiritual things are considered transient (like the *sukka*) in this world. This explains the *pasuk* in Amos.

These beautiful ideas of the Maharal explain a lot but not why the prophet chose a metaphor that comes from the holiday of Sukkot. We will deal with that next time.

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Ask the Rabbi

by Rav Daniel Mann

Who Deserves the Change?

Question: I was on a bus, and someone did not have enough money on their Rav-Kav (transit card) to pay. He asked if I could pay for him and pay me back in cash. The bus fare was 14.50 NIS, and neither of us had enough small change to work out exact payment, so he handed me a 20 NIS bill and send "It's fine," and he indeed did not seem to care much. I am a 12-year-old, and my parents put the money on my Rav-Kav. Can I keep the extra money he gave me, as I was the one who made the deal, or do I have to give it to my parents?

Answer: Since you ask a precocious question, I can give you a serious answer with the basic halachic analysis and sources – a full treatise would be too long.

The *gemara* (Ketubot 98b) discusses a case where Reuven gave Shimon money to buy something for him and the seller purposely gave Shimon more of it than the normal price indicates. The *gemara* says that if the price of the commodity is fluid, all that was given goes to Reuven. If the price is set, the extra received is split between Reuven and Shimon. Rashi (ad loc.) explains that if the price is fluid, we view the ostensible extra as an integral part of the sale, and the sale of course was done on Reuven's behalf. However, if the price is set, the extra is viewed not as part of the sale but as a present. The reason the clear extra is divided between Reuven and Shimon is that we do not know who the intended recipient is.

The Rif (ad loc.) explains differently. He views Shimon as the natural recipient when the price is set, but since he was only able to make the deal due to Reuven's money, Reuven deserves half of the extra produce. The Rama (Choshen Mishpat 183:6) prefers Rashi's approach (which surprised the Shach, CM 183:12) and therefore says that if the seller said he intended the extra for Shimon, Shimon receives it all.

The simple application of this rules is to say that validating a fare has a set price, which is why your acquaintance looked for 14.50 NIS. This would make the extra 5.50 NIS a present, either to you as a helpful young man or to your parents, who trained you to use their money to help someone; you would thus split the 5.50 NIS. However, it is also possible your acquaintance did not intend for a present but to save the time/embarrassment of trying to get change. Under the circumstances, this would be a natural way of buying the fare or reimbursing the money (one could argue either formulation), so the whole 20 NIS would go to your parents. So, the halachic picture is murky.

According to the strict Halacha, parents who support their child are entitled to claim the objects their child finds (see Bava Metzia 12b). This *halacha* is true for a gift a supported, minor child receives as well (Rama, CM 270:2). Therefore, even if you deserve some of the extra money, as a present, your parents are able to take it from you. It is true that it is very common nowadays for parents to waive this right. However, you should not necessarily assume that regarding the money in question, for which there are strong indications that your parents have a claim irrespective of your relationship, your parents would waive their halachic right.

Let me give you advice about handling questions of permission needed from someone who has asymmetrical authority (e.g., parents, employers), who, due to legal, halachic, and/or practical reasons, have the right to decide. People often ask whether they may assume implicit permission for this or that. My frequent advice is – it is more respectful and you are more likely to receive the permission if you ask them. In this case, (parents, see Fifth Commandment) I suggest that instead of asking, "Can I keep the money?" announce "Here is the 20 *shekels* I got for use of the Rav Kav." If your parents take it, they deserve it for all they do, and that might be the best *chinuch*. If they return the difference, you will have a nice feeling. If you discussed it, and your parents suggested seeking out the Halacha, that is wonderful.

Best wishes for continued personal growth, and mazal tov on your upcoming bar mitzva.

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

Connection and Essence

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 799

All doubts about feelings have been erased due to the horrible Holocaust. Our heart pains us over those who were distant from us like those who were close to us. We did not ask the martyrs how they behaved before they were martyrs. They are all holy and dear. We are in pain and mourn for all.

We did not search for the halachic source for our reaction, which did not interest the heart. But there is precedent in the Torah. War and hatred against Amalek are because it ambushed those who were lagging behind (spiritually); *Chazal* say that "and it did not fear Hashem" (Devarim 25:18) refers to the idol worshippers among Israel (Tanchuma, Balak 28). Although victims were guilty of a capital crime, their murder prompted the commandment to hate Amalek for posterity. Indeed, our national existence and religious status emerge from our being family, members of the covenant of the "seed of Avraham." The Torah was not given to a random group, but to those about whom it says, "They became [in Egypt] a nation" (Devarim 26:5). The foundation of the Torah is that we are "the nation of the G-d of Avraham" (Tehillim 47:10); we open our prayers with "the G-d of Avraham, Yitzchak, and Yaakov."

Treating the whole nation equally starts from the root, and the differences between us are layers built upon the equality. "All of Israel are the sons of kings" (Bava Metzia 113b); "You will not fulfill your obligation to them, as they are the sons of the forefathers" (*mishna*, Bava Metzia 7:1). This is irrespective of level of behavior or knowledge.

This relates to our concept of those of a "higher level" and those of a "lower level." Bnei Yisrael are compared to a grape vine – the scholars are the clusters and the ignorant are the leaves (Chulin 92a). The *gemara* concludes that the clusters should pray for the leaves, for without them, the clusters would not exist. In other words, national growth depends on unity within the whole nation. This is the thrust of the Rabbis of Yavneh's statement: "I am a live creature, and my friend is a live creature, I work …" (Berachot 17a). In other words, we are distinguished just by the roles we play. It is known that Moshe was told "Go down" [from his status, after the Golden Calf] (Shemot 32:7), as even his stature was only on behalf of Israel.

On the other hand, "our nation is a nation only due to its Torahs" (Emunot V'deot 3). This seems to contradict and make membership in the nation conditional, as opposed to the statement, "Even one who sins is a member of Israel" (Sanhedrin 44a).

Here is the explanation. A sinner's membership in the nation relates to national **connection**. The Torah is the heart of national **essence**; it defines us. Loving one's neighbor like himself (Vayikra 19:18) is not [only] a *mitzva*; it reveals a situation that captures the heart of the family/nation. Whereas the Torah appears to be the path of the individual to completeness, it is actually a way of dividing work to complete the broad community. Mutual responsibility within the nation, even for the private sins of others, only makes sense if one can make another desist from sin. In this way, the *mitzva* to rebuke is a *mitzva* between man and man, not between man and Hashem.

Isolationism is antithetical to Judaism, as Judaism focuses on completing the community rather than the individual. Therefore, Moshe, at the Golden Calf, was willing to give his life, saying: "Moshe and a thousand like him should be destroyed, and not one from Israel" (Tanchuma, Vaetchanan 6). Hashem had plans to turn Moshe into a great nation, as Moshe was fit for it, for his closeness to Hashem and for his pain over Israel's spiritual fall. He received everything imaginable but still descended the mountain and dealt with the small problems of every individual. Moshe could have accepted Hashem's offer of further greatness; no *mitzva* focused on the individual prevented it. Moshe sacrificed his spirit, with all its potential, due to his love of Israel, because he understood the importance of national unity. He did not separate himself, but went down in dirty trenches to raise others gradually, so that they could progress.

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

Itamar Chaim ben Tzippora
Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima
Arye Yitzchak ben Geula Miriam
Neta bat Malka
Avraham ben Gitel
Tal Shaul ben Yaffa
Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

Fallout from Failure to Install Elevator – part II

(based on ruling 85007 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=*pl*) rented commercial space from the defendants (=*def*) for their retail business for 38,000 NIS a month. The agreement obligated *def* to install an elevator to the store, which was critical to attract sufficient clientele. Installing the elevator was more difficult than expected, and *pl* did most of the work instead of *def*. In the interim, *pl* reduced, only partly by agreement, the rent they paid. After several months without progress in installing the elevator, *pl* declared the rental agreement void and sued for approximately 2 million NIS. This includes return of rent paid and damage to the young business's prospects. *Def* responded that the elevator was delayed for several reasons: *pl* failed to leave security checks, pay full rent, and pay on time; there were also technical constraints beyond *def*'s control. *Def* are suing *pl* for incomplete rent and, if *pl* leaves the premises, for the cost of returning the property to its previous layout. [*This time we will deal with def's justification for not arranging the elevator*.]

Ruling: **Technical Constraints:** All agree that difficulties became known after the rental because of the makeup of the existing shaft. The contract does not put a cap on the amount that *def* has to pay for the elevator. However, if there were a reliable estimation that he would not have entered the agreement had he known the higher cost, this is grounds for *mekach ta'ut* (agreement based on incorrect information). First, the claim of *oness* (extenuating circumstances) does not exempt *def* because the problem existed before the agreement with *pl* (Erech Shay 312:17). Also, *oness* that comes upon a person from his own side, in this case, because of the difficulty with financing, is not halachic *oness* (see Aruch Hashulchan, Choshen Mishpat 205:12). This is in addition to the fact that the claim of *oness* came up inconsistently and as one of a few partially contradictory excuses, which makes it difficult to accept. Finally, it is clear from *def*'s statements that they realized they need to get an elevator at some point, irrespective of cost. Therefore, this excuse is rejected.
Pl's failure to give security checks: According to the contract, *pl* were supposed to give twelve checks for a year's rent, as one of the contracts guarantees. They did not do so, whereas they did provide the private note of obligation of one of *pl*. This failure could have been the basis for a material breach of contract, which would undo the agreement. However, *def* admitted that they barely complained about the lack of checks, apparently accepting *pl*'s excuse that as a new company, they did not yet have checks. *Def* admit that they never threatened that they would not proceed with the elevator without the checks, and there is documentation of several promises that *def* will imminently sign a contract with the elevator company, without mentioning conditions. Therefore, while they did not waive the demand for the checks, they temporarily waived it as a material breach, which would have exempted them from providing the elevator (see Divrei Malkiel IV:144).

Therefore, *def* was in material breach of the agreement due to their lack of effort to install the elevator.

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