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HEMDAT YAMIM חמדת ימים

Parashat Hashavua **Chayei Sarah, Cheshvan 27, 5787**

Where is *Me'arat Hamachpela* Really Found?

Harav Yosef Carmel

Our *parasha* starts with the purchase of *Me'arat Hamachpela* (the grave site of the forefathers) in Chevron. This was a monumental event in Jewish history, as the purchase of this special site opened the way to the acquisition of all of *Eretz Yisrael*. We recall that the Torah started with creation and not with the first *mitzva* given to Bnei Yisrael to stress that *Eretz Yisrael* belongs to *Am Yisrael*. Buying *Me'arat Hamachpela* created one of the places that the nations could not claim to own, which the *midrash* (Bereishit Rabba 79:7) lists along with the site of the *Beit Hamikdash* and the burial place of Yosef.

The burial cave was acquired because Avraham found the opening to the Garden of Eden nearby. Indeed, the Zohar says that when Adam buried Chava, he smelled the Garden of Eden, where he had once lived. If the location is so special, why was it not chosen to be the eternal capital of the Kingdom of Israel? The simple answer is that Jerusalem was chosen because it connects the lands of the tribe of Yehuda and the tribes of Yosef's descendants, and thereby Rachel and Leah (see Ruth 4:11). This is hinted in the *pasuk*, "The built-up Jerusalem, the city that was connected together" (Tehillim 122:3).

In order to sharpen the question of the primacy of Chevron or Jerusalem, we will share an event that took place in Rav Kook's *beit din* more than a century ago. The people of Jerusalem sued the community of Chevron because the latter opened up an independent fundraising campaign, outside the "The General Committee," which collected for all communities in *Eretz Yisrael*. Rav Kook asked the defendants to explain their brashness. They claimed three special attributes: 1. Chevron is the key to the acquisition of all of *Eretz Yisrael*. 2. The forefathers lived in Chevron and not in Jerusalem, so that our historical connection to it is over 4000 years old, as opposed to 3,000 for Jerusalem. 3. The entrance to The Garden of Eden is in Chevron, as the Zohar says, whereas Jerusalem hosts the entrance to Gehinom (Eiruvin 19a). With all of these distinctions, the community of Chevron should not be subservient to an organization in Jerusalem.

Rav Kook rejected the claims of the Chevronites based on the comments of the Zohar. The entire Land of Israel is folded up under Jerusalem, and Jerusalem is both above it and below it, as there is an Upper and Lower Jerusalem.

Rav Ashlag explains. That which *Eretz Yisrael* is folded up beneath it is the secret of the kingdom. Upper Jerusalem is insight, and Lower Jerusalem is kingdom. There are double connections between these two elements of Jerusalem, and this is related to the connection between Hashem's attributes of mercy and of judgment.

Rav Kook explained that when Jerusalem was built, *Me'arat Hamachpela* moved to Jerusalem, and the connectedness of Chevron (whose name means connected) became elevated to the connectedness of Jerusalem. It is the latter that unites all of Israel and the Upper and Lower Jerusalem. In fact, "*Yerushalayim Shel Ma'ala*" has the same *gematria* as *Knesset Yisrael*. Chevron was not downgraded, as in the physical world, *Me'arat Hamachpela* is still there, while in the hidden world it is in Jerusalem.

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Ask the Rabbi

Chayei Sarah

by Rav Daniel Mann

Tashlumin for Person Involved in *Mitzva*

Question: If a person was involved for quite some time in a *mitzva* that could not be pushed off so that he was unable to *daven Mincha*, should he *daven* an extra *Ma'ariv* for *tashlumin*?

Answer: The *gemara* (Berachot 26a) says that *tashlumin* (a makeup *tefilla*) is for those who missed a *tefilla* as *ta'ah* (made a mistake) and not for *meizid* (missed the *tefilla* on purpose). The latter does not deserve the opportunity to make up the *tefilla* he missed.

The Shulchan Aruch (Orach Chayim 108:1) adds another case which is remedied by *tashlumin* – *ne'enas* (he did not *daven* due to extenuating circumstances). At first, this looks obvious, as one who had an *oness* is more deserving of the opportunity for *tashlumin* than one who made a mistake. However, there are precedents of one who is prevented from *tefilla* in a way that there is no **need** for *tashlumin*, as follows.

The Shulchan Aruch (Yoreh Deah 341:2) rules that if an *onen* (a mourner from the time of death to the time of burial, who is not supposed to perform *mitzvot*) missed a *tefilla*, he does not do *tashlumin* in the next *tefilla* after the funeral. This is because *tashlumin* does not apply when one was not obligated in the *tefilla* he missed (ibid.).

Most *Acharonim* (Magen Avraham 93:8; Sha'ar Hatziyun 93: 9) reason that one who is exempt from *davening* due to involvement in a *mitzva* (*osek b'mitzva patur min hamitzva* – see Sukka 25a) is not a candidate for *tashlumin*. This powerful exemption makes the *mitzva* doer like one who is not obligated in the second *mitzva*, at least when the first *mitzva* does not allow for fulfillment of the second (see Tosafot Sukka 25a), in which case it can be wrong to stop the first *mitzva* (see Shulchan Aruch, OC 70:4).

On the other hand, in many cases of *mitzvot*, it can even be encouraged to take a break from the first to do the second (Mishna Berura 70:18). It is common for people intensely involved in important *mitzvot* to still *daven*, often in *shul*, despite the delay this may cause. In any case, the second *mitzva* is not totally suspended to the extent that if one performed it, he would not have fulfilled the *mitzva* (ibid.). Because the exemption of *osek b'mitzva patur min hamitzva* is not as absolute or sweeping as that of an *onen*, the Taz (OC 108:1) argues that a *mitzva* exemption from *davening* is considered only like an *oness*, and one should do *tashlumin* on the missed *tefilla*.

Despite the Taz being a minority opinion, the Mishna Berura (108:2) encourages doing *tashlumin* after missing a *tefilla* due to important communal work, but as a *nedava* (voluntary *tefilla*). Indeed, when we are torn whether to recite *Shemoneh Esrei* or not, the solution is often to do it, but to do it with a condition that if it is not called for according to regular *halachic* rules, it should count as a *nedava* (Shulchan Aruch 107:1; 108:11).

There are two possible reasons to do the *nedava tashlumin* in your case, despite it apparently not being called for. One is because of the chance that the Taz is correct that *tashlumin* is required. The second is that even if it is definitely not needed, it is still positive to add a *tefilla* in a permitted way to make up for the missing *tefilla*. The Pri Megadim (Mishbetzot Zahav 108:1) says that it is proper to do the *tashlumin* as *nedava* with a *chiddush* (to add something to the *tefilla* beyond the standard text). He explains that the Taz's opinion is rejected by too many *poskim* to create a doubt as to whether it is needed, which would justify *nedava* without a *chiddush*. Rather it is done because it is a shame to not have recited the *Shemoneh Esrei*. The halachic logic of that justification does not rise to the level to allow it without a *chiddush*.

In many cases, though, *tashlumin* will be fully required. If at some point during the time for *Mincha*, the person was not involved in the *mitzva* in a way that creates an exemption, then the obligation to *daven* took hold, and when it turned out later that he was in a situation that prevented him from *davening*, this is like the case of *oness* that requires *tashlumin* (Mishna Berura 71:4).

"Behind the Scenes" Zoom shiur

Eretz Hemdah is offering the readership to join in Rabbi Mann's weekly Zoom sessions, analyzing with him the sources and thought process behind past and future responses. Email us at info@eretzhemdah.org to sign up (free) or for more information on joining the group.

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Chayei Sarah

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

An Interview about HaTorah V'haMedina – part III

based on Siach Shaul, Pirkei Machshava V'Hadracha p. 107

[*We continue an interview with Rav Yisraeli about the halachic periodical he edited, HaTorah V'HaMedina*. *We have discussed how they approached halachic inquiries about the operation of the State. Rav Yisraeli just presented the idea that attacks from parts of the religious community and of the not religious community both begin with a premise that the State cannot be run according to Halacha.*]

Q: Please describe the authors who take part in *HaTorah V'HaMedina* and their approaches.
A: Clearly, participation in this forum demands a nice level of Torah knowledge, but this is not enough. In addition to knowledge, an author needs training and an approach to turning the analysis into sound halachic decisions. We believe that this will be the special characteristic of the Torah of *Eretz Yisrael*, which will include the different styles of learning that developed in the various centers of scholarship in the Jewish exile. It is necessary to merge the scholarly approach of the *yeshivot* with the approach that puts the stress on practical halachic rulings, so that the in-depth analysis of the topic will join with the striving to make the most of the opinions and create clear practical conclusions.

Not all Torah scholars have become accustomed to this approach. Many are able and willing to make a nice "distinction," but they become reluctant when the discussion involves a practical question. However, the approach is becoming increasingly mastered, and in our framework, we have publicized articles both from well-known scholars and from younger rabbis. We have received articles from members of the board and from members of various rabbinical research centers in Israel, and this brings honor to all of the authors. Our editorial board puts great care into the articles having an organized style, which helps those who read the articles find their ways in the intricacies of the halachic matter at hand. We have also toiled to increase the amount of Hebrew used, with reduced usage of Aramaic, and in this way have a chance of widening the readership of the periodical. There is somewhat of a new phenomenon that has made its way into the ends of articles – footnotes by the editorial staff. The editor is thereby able to use his privilege, as the first reader of the articles, to state his case. The "final verdict" [of who to agree with] is, of course, in the hands of the readers themselves.
Q: What is the main content of the articles that have been published?
A: More than 100 articles have been published to this point in *HaTorah V'HaMedina*. The topics are varied, but they all relate to life in the national, governmental, or social realm. Many analyze the root of the standing of "kingdom" that exists in our time, its authority as a legislative institution, and the status of a secular government that does not base itself on the principles of the Torah. Several issues that are connected to war have also been clarified in this platform, including the painful and "loud" topic of enlisting women in the army. In the last issue we analyzed halachically the Kibia episode (a controversial Israeli retaliatory attack), an event that caused troubling reverberations. What is important is that we know that we are capable and responsible to present a halachic position on such matters, not just as a need to say something for our conscience or for political reasons, but as a position based on firm halachic sources.

Next time we will finish the interview.

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

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Chayei Sarah

P'ninat Mishpat

Fallout from Failure to Install Elevator – part IV

(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 countersuing *pl* for incomplete rent and, if *pl* leaves the premise, for the cost of returning the property to its previous layout. [*In this final installment we deal with pl's claim that def's failure hurt the company's reputation, caused a loss in revenue, and is responsible for unsuccessful advertisement.*]

Ruling: **Reputation:** *Pl* claims to have evaluated the previous worth of the business at 1,500,000 NIS and that now it is worth only 500,000 NIS, a depreciation they attribute to the lack of an elevator, so they are suing for 1,000,000 NIS. Shevet Halevi (X:275) does assume that nowadays a business is generally considered to have a reputation that is worth money, and Pitchei Choshen (Ona'ah 9:(26)) agrees. However, in order to win an award based on the claim of depreciation, one must prove with a great degree of certainty that there has been a permanent lowering of value and that it is attributable to the other side. Considering that the business did not grind to a halt and that change of location could return the business's success, there are not grounds to obligate this.

Loss of income: *Pl* cite their accountant as asserting that the company had been seeing net profits of 70,000 NIS monthly and that now they have had 20,000 NIS deficits monthly, so they are suing for 81,000 NIS. The Yerushalmi (Bava Metzia 5:3) says that if Reuven was supposed to have invested Shimon's money and did not, he cannot be forced to pay for lost profit, as it is considered *gerama* (insufficiently direct damage). Rabbeinu Yerucham says that he does have a moral obligation to pay. In comparing the cases, in some ways our case is more lenient because *def* did not cause the business to grind to a halt, just that it was possibly less successful. On the other hand, there Reuven was not contractually obligated to work for Shimon, whereas here, *def* was required to install the elevator. *Beit din* does find it proper for *def* to fulfill a moral obligation if it pays up to 100,000 NIS for lost revenue. Although *beit din* does have the authority to obligate payment based on the moral obligation, *beit din* chooses not to do this because the level of certainty of causing the damage is not high enough.

Wasted advertising: The advertisement campaign that *pl* decided to do is not a basic enough feature of the business that we can obligate *def* for causing it to be less effective than anticipated.

Comments or questions regarding articles can be sent to:
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