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PARASHAT HASHAVUA

Balak, 7 Tamuz 5774

A Head of State and a Rabbi?

Harav Yosef Carmel

Bilam's last speech is a prophecy of events that were yet to come in the history of *Am Yisrael*, which he used to warn Balak, who hired him, what to expect. One of the things, which Bilam said was beyond the near future, is: "A star will surge forth from Yaakov and a staff (i.e., a leader) will arise in Israel" who will defeat various enemies of Israel (Bamidbar 24:17)

In the Yerushalmi (Ta'anit 4:5), Rabbi Shimon quotes his rebbe, Rabbi Akiva, as saying that this refers to Bar Kochva (Kochva), and that when Rabbi Akiva would see him, he used to announce: "He is the King *Mashiach*." Bar Kochva's major activity was developing the military capabilities of the nation, which was critical in securing political independence. Bar Kochva was not a leader who was involved deeply in the study and certainly not in the teaching of Torah. We find no accounts as to his spiritual proclivity. (We do have historical evidence that he was Torah observant, and for example we find that he made sure that the people who were encamped with him in Ein Gedi received sets of *lulav* and *etrog*). We do not even find that those who disagreed with Rabbi Akiva's conviction that Bar Kochva was *Mashiach* used Bar Kochva's less than stellar religious level as justification of their skepticism.

The Rambam (Melachim 11:1) prefers the approach of the Midrash Aggada (Balak 24:17) that breaks the *pasuk's* introduction into two, whereby it is a reference to David and to *Mashiach*. This implies that not only does *Mashiach* have to be a biological descendant of David, but he should also be a spiritual giant like his forebear. It also describes him as one who fought against the nation's enemies like David. The Rambam (ibid. 4) lists as a condition for one's emergence as *Mashiach* that he must be one who delves into matters of Torah and occupies himself in *mitzvot*. We see that according to the Rambam the situation we await is that *Mashiach* will combine political, military, and Torah greatness.

The Ra'avad (ad loc.) sees *Mashiach* as a figure who is separated from a natural life of mundane activities. *Mashiach* is not described in the Torah (including our *p'sukim* in Balak) but in the works of the Prophets. While the Rambam (ibid. 3) says that there will be no need for a candidate to be *Mashiach* to perform miracles to prove himself, the Ra'avad said that he will have to do so. He bases himself on the *gemara* (Sanhedrin 93a) that attributes to *Mashiach* the *p'sukim* (Yeshaya 11:2-3) that he will be imbued with a spirit of wisdom, bravery, knowledge, and fear of Hashem, and that he will be able to "smell" the truth (in judging between people – Rashi ad loc.). The *gemara* continues that the Rabbis tested to see if Bar Kochva had the ability to smell in this way and he failed. Thus, we have a third approach: *Mashiach* will function only within the spiritual realm.

Until *Mashiach* emerges, may we be blessed with leaders who excel in the physical realms and leaders who are great in the field of Torah and are connected to the practical world.

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Ask the Rabbi

by Rav Daniel Mann

A Fading Ketuba

Question: In our *ketuba*, the witnesses' names have faded over the years to the point that they are barely legible. Is this a problem (we got married in Israel, so the *Rabbanut* has a copy of the *ketuba*)? Can I (the husband) ask the witnesses to resign their names? If not, what should be done?

Answer: It is forbidden for a couple to be together without the husband's basic *ketuba* obligation to the wife, which includes a lien on his property so that the wife can feel a certain level of security (see Ketubot 39b & 56b). While ideas are raised to minimize the need for a *ketuba* document in our days (see Rama, Even Haezer 66:13; Shulchan Aruch, EH 66:1), practically we require that a valid *ketuba* exist.

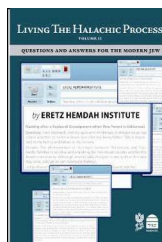
The *Rabbanut's* practice to hold a copy of the *ketuba* makes one's "home *ketuba*" much less critical, but it was not intended to be relied upon by itself *l'chatchila*. The existence of two documents for one obligation is problematic, as it may enable one to collect double. While some thus opposed making "copy" documents (Shut Harosh 68:21), others permitted it if proper precautions are taken (Shut Mahari Ibn Lev 55 based on Sefer Haterumot), as Rav Z.N. Goldberg rules (Techumin XXVI). A copy document probably only prevents a full denial of the obligation, but without the original document, the debtor could still claim he already paid (Urim 41:28). Likewise, one could not extract payment via the lien.

If so, does the *Rabbanut ketuba* give the woman the level of protection that permits the couple to live together? Indeed, some say that if the main *ketuba* is lost, the one at the *Rabbanut* is insufficient (see Teshuvot V'hanhagot, I:760; Ketuba K'hilchata, p. 163, in the name of Rav Elyashiv – no convincing reason is provided). Nitei Gavriel (33:6) argues cogently that since it is rare in our days (certainly in Israel) for the wife to be paid her *ketuba* without *beit din's* involvement, the husband cannot make that claim, and the *Rabbanut ketuba* is effective. Therefore, he and Nisuim K'hilchatam (11:225) say that one may rely on the *Rabbanut* copy until the couple has an opportunity to remedy the situation, and we concur.

There is a special document called a *shtar ketuba d'irchasa* that a couple can ask a rabbi to create when a *ketuba* is lost. It tells the story of the past obligation and the loss of the *ketuba*, and the new document replaces the lost one from the time of its issuance. This is done with the husband's involvement. The *gemara* (Bava Batra 168b) and Shulchan Aruch (Choshen Mishpat 41:1) discuss a replacement document produced by *beit din* for one who possesses a document that has become (or is becoming) illegible. Even the witnesses themselves of the original document may not reissue an identical copy of the old one (Shulchan Aruch *ibid.*) because their authorization to produce a document ceased when they signed the first one (see S'ma *ad loc.* 5). Even with the lender's (or, in this case, the husband's) reauthorization, the lien stemming from a new document would be valid only from the time of the reissuance (Shach, CM 41:3).

Your idea of resigning the document (which is parallel to rewriting other parts of the *ketuba* that faded) is interesting, but since it is not raised in all the discussions of the parallel cases, it is apparently not feasible. If the rewriting replaces something that is illegible, it is like writing a new document, which, as stated, cannot be done with the old date (a predated document is invalid – Shvi'it 10:5). Even if it is legible, it is still apparently a problem to write over it because people will be reading the new writing that covers the original (making it different from the discussion in Gittin 19a).

We suggest you find an opportunity to ask a rabbi with experience with such documents to prepare an appropriate new *ketuba*. In the meantime, you can rely on the *Rabbanut ketuba*. (If your wife is troubled by the situation, you should act immediately.) If you want to fix the old *ketuba*, you can make any changes you like after you mark clearly (if discreetly) as not for payment.



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Ein Ayah

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

Unspoken Mechila

(based around Shut HaMaharit 45)

[This piece does not seem to be related to a specific *din Torah*. On the other hand, it is the main source upon which one of the most famous pieces in the *K'tzot Hachoshen* (12:1) is based.]

[The rabbi who asked the question wanted to prove from the *gemara's* discussion regarding *chezkat habatim* (the assumed ownership of one who has occupied a property for three years) that unspoken *mechila* is valid. Rava explains (Bava Batra 29a) that up to but not including three years, we may assume that the owner was *mochele* use of his field and eating of its produce. The *gemara* asks that this assumption is contradicted by the halacha that if the owner protests within three years, he receives back the produce that was harvested. While the *gemara* rejects the involvement of *mechila* in *chezkat habatim*, it seems to accept the possibility that *mechila* could have been effective, even though there was no spoken *mechila*. (A technical analysis of the *sugya* in Bava Batra ensues.)]

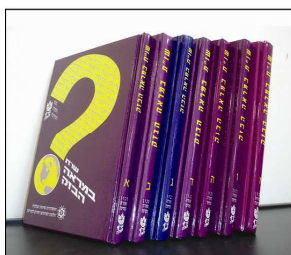
In any case, it is clear from several *sugyot* that unspoken *mechila* is effective [and we will mention a few.] If one blocks the light entering someone's house and he does not protest, we assume he was *mochele*, even without a claim that there had been an agreement on the matter (Bava Batra 60a). If one could have made claims of mispricing and a certain amount of time went by during which he did not protest, he is assumed to have been *mochele* (Bava Metzia 49b). If a widow did not ask for payment of her *ketuba* over 25 years but received support, she is assumed to have been *mochelet* the *ketuba*.

It is worthwhile to investigate whether in a case where one cannot assume *mechila* but the recipient of the obligation knows he had intention to be *mochele*, the thought of *mechila* is effective and morally prevents him from demanding payment. The broad rule that matters of the heart are not significant (Kiddushin 49b) seems to indicate that such thought is not relevant. For example, if one stipulated that his *kiddushin* is conditional on some factor for his wife's benefit and the conditions were not fulfilled, the *kiddushin* is not valid even if she knows that she personally was *mochelet* the conditions. Similarly one who sold property upon preparing to move to *Eretz Yisrael* and then ended up not going, who may back out of the sale, may do so even if he did not originally intend to back out. [The *Maharit* brings several other examples.]

The rule is as follows. When the *mechila* is something that the average person would be able to assume with confidence, then the *mechila* is as if it was verbalized even if it was not. Regarding the original example of *chezkat habatim*, originally the *gemara* assumed that the reason that the owner did not say anything was *mechila*, but the *gemara* eventually says that it is entirely possible that he figured he could leave the person to work and harvest the field and later demand back the produce. Once that is how a *beit din* would analyze matters, then even if the owner admits that he was *mochele* the produce, he can demand it back later anyway.

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Mechila that May Be Lacking

(condensed from *Shut Hamaharit* 118)

[*Reuven rented a house to Shimon for a year. Reuven swore he would not remove Shimon from the house during that time, and Shimon swore he would not leave it unoccupied. The two got into an argument, in whose course Reuven told Shimon to vacate the house. Now Shimon wants to end the lease, and Reuven has retracted his statement, which he claims was not said seriously.*]

First we must analyze Reuven's statement (literally, "empty the house"). Vacating the house would seemingly indicate an exemption from paying rent, and an oral *mechila* (relinquishing rights) is binding. (See Sanhedrin 24a, regarding one who was obligated to swear to be exempt and his counterpart lowered the severity of the required oath). On the other hand, Reuven did not explicitly relinquish rights to rent. It is possible that he demanded that Shimon move out and yet continue to pay [even if this sounds like an unreasonable demand].

We find cases where one party makes a demand which seems to imply exemption and yet an explicit expression of exemption is needed. For example, when a lender tells his borrower to throw him the money he owes, the borrower is responsible for subsequent loss of the money unless the lender states he will be exempt as a result (Gittin 78a). In order to reconcile this with a *mishna* (Bava Metzia 98b), which says that when one returns money per instructions he is exempt, we must distinguish between repaying a loan and returning one's object. A loan creates a monetary obligation that must be actually paid or relinquished. In contrast, when one is watching an object, as long as he follows the object's owner's instructions, there is nothing to obligate him. Another *sugya* where we see that *mechila* of payment must be explicit is Bava Kama 93a, where it says that it is not enough to tell someone, "Rip my garment," but he has to say, "Rip my garment on condition that you are exempt."

Furthermore, even if Reuven intended that if Shimon vacates he will be exempt from rent, that would only take effect if Shimon would have vacated before Reuven rescinded his statement. If this is not so, then Shimon would have been able to decide whether he wanted to continue the lease or break it, and it is unlikely that Reuven would allow Shimon to decide what he prefers.

Another factor is that when one does *mechila* that can be explained in different ways, we accept it as *mechila* only regarding lesser matters (see Ketubot 83a). In this case, the oath implied that Shimon originally was not permitted to vacate the house even if he were to continue to pay rent. Therefore, in the face of lack of proof, we will understand that the *mechila* was to allow him to move out but only if he is willing to pay.

Yet another factor is that binding decisions can be made without an act of *kinyan*, but at times there are reason to suspect that they do not represent the thought out decision of the one who uttered the statement and require confirmation (see Rambam, Mechira 5:13). The case of *mechila* made in anger is an example of something that is not binding without making sure that it represents his rational position.



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