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HEMDAT YAMIM

Parashat HaShavua

Bo, 6 Shvat 5776

Liberation Built on Self-Sacrifice

Harav Shaul Yisraeli – based on Siach Shaul, p. 217-8

The *pasuk* in Yechezkel (16:6), which we read in the Haggada, repeats the phrase, "In your blood you shall live." The *midrash* (P'sikta 17) says it refers to the blood of *mila* and the blood of *Korban Pesach*. We are forbidden to give the *Korban Pesach* to a non-Jew or to one who does not have a *brit mila* (Shemot 12:43,48). Pirkei D'Rabbi Eliezer says: "In the merit of the blood of *brit mila* and *Korban Pesach*, they were liberated from Egypt, and in the merit of the blood of *brit mila* and *Korban Pesach*, they will be liberated at the end of 'the fourth kingdom.'"

The *Korban Pesach* represents the liberation. We are to eat roasted lamb with the whole family celebrating as a unit at an elaborate meal, on the one hand, and eat *matza* and *maror* to remember the past, as well. Only if, at the time of success, we remember the times of affliction, can we be sure that the light of success will not blind us. This is best accomplished when there is first a *brit mila*.

There are many who are ready to sacrifice for independence as long as that independence seems fit for posh festivities. At that point, one does not want to have to remember the past with its difficulties. One wants to see in the independent nation a new nation, in our case, not the same "*Yiddelach*" from the exile. A certain self-pride is born, as we see, with a hollow boastfulness, which can eventually turn into empty disregard for others. To combat that, we need the blood of *mila*. The independence of Israel is a chain of self-sacrifice, whose purpose is not to let us rest on our laurels. Indeed, one who is not circumcised cannot take part in the full Pesach celebration. Without a life of purity, independence can be dangerous.

This is what *Chazal* (Shemot Rabba 3:4) meant in saying that Bnei Yisrael went down to Egypt with the word "*anochi*," were taken out with the word "*anochi*," and will be redeemed at the end of time with "*anochi*" ("Alas, I (*anochi*) am sending you Eliya the Prophet"). Some think that one can be liberated without calling out in the name of Hashem (*anochi*), as the other nations can. Without *anochi* the hearts of the fathers are not lined up with the hearts of the sons (see Malachi 3:24). This is not only in regard to Torah observance but when things are done wrong, the younger generation will be disillusioned with that which their fathers cherished and fought for. We already see the emergence of youth who feel over-entitlement. That is because one who does not keep on a straight line, will grow increasingly crooked.

For the liberation at the end of the fourth liberation there is a need for preparation done by Eliyahu before the "day of Hashem" and "the offering of Yehuda and Yerushalyim like the days of the past." The *navi* (ibid. 4) referred to it in a double language that hints about the time of Moshe and the time of Shlomo (Vayikra Rabba 7:4). Both before the time of the particular national emergence (time of Moshe) and before the time that will usher in an era where all of mankind will learn from the Torah emanating from Zion (time of Shlomo) there is a need for Eliyahu to set the stage.

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Ask the Rabbi

by Rav Daniel Mann

Whose Responsibility is it to Make a Proper Fence?

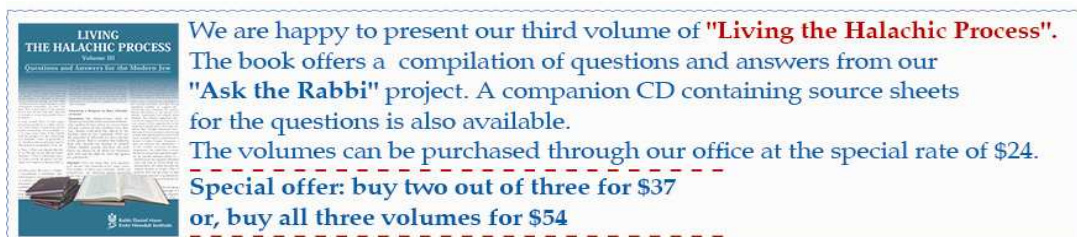
Question: The house we are renting has a somewhat elevated (up to a meter in some places) *mirpeset* (balcony), with just a 50 cm (20 inch) fence (*ma'akeh*) around it. We do not want to invest money in a house we do not own. It is our obligation to fix the *ma'akeh* or the landlord's? If it is his obligation, can we use that *mirpeset*, or is it still forbidden until it is fixed? If it is our obligation, can we simply decide to not use the balcony or would it require blocking off?

Answer: A roof requires a fence of 10 *tefachim* (approximately 80 cm.) (Shulchan Aruch, Choshen Mishpat 427:5), and any dangerous area (not just the roof the Torah refers to) requires a fence or covering, as appropriate (Shulchan Aruch, ibid. 7). Thus, the balcony in question seem to require a proper *ma'akeh*.

Who is obligated – the landlord or the renter (you)? The *gemara* (Bava Metzia 101b), regarding the question of who is responsible for seeing to a variety of needs of the house, sets a rule that that which requires expert work is the landlord's domain and simple work is the renter's. *Ma'akeh* is given as an example of the renter's responsibility. Although the Pitchei Teshuva (CM 427:2) brings two opinions, a renter's obligation is apparently of Rabbinic origin, as according to Torah law, only an owner of a house is obligated. Some explain (see Yereim 234) that the obligation was given to the renter because he is more likely to fulfill his obligation promptly. On the other hand, the Pe'at Hashulchan (ibid.) has a novel claim that the landlord is obligated, and the *gemara* refers to a case where he erected one and it was damaged. The Rama (CM 314:2) can be read as saying that who is obligated in *ma'akeh* is impacted by local *minhag*. We believe the *minhag* is that a landlord should provide safeguards for an objectively unsafe balcony (the religious obligation of *ma'akeh* when it is anyway safe might not be included). In any case, if the landlord refuses to do so, you are likely obligated.

Will setting up a situation in which you will barely use the balcony help? The Rambam (Rotzeiach 11:1) says that a *ma'akeh* is required only for a house that is lived in somewhat normally. Some want to infer that if one goes to his roof infrequently, a *ma'akeh* is unnecessary. However, that approach is correctly rejected (see Pe'at Hashulchan 2:(27)). Only when the roof is not fit for use (e.g., it is steeply slanted) do we say that it is excluded from the obligation (see Aruch Hashulchan, CM 427:5). Making it physically inaccessible would exempt.

Your decision to not use the balcony probably might not help, as there are still likely to be occasional circumstances in which you will want/need to use it, which is enough in this regard. On the other hand, a distinction we made in Living the Halachic Process (I, H:8) may help. We substantiated a distinction between a *ma'akeh* for a roof and for other places, whereby a roof has a formal obligation for a formal *ma'akeh* even if one could effectively minimize the danger in another way. Other places are treated according to the reaching of the goal of safety. Thus it is possible that a decision to rarely use the *mirpeset* along with other factors could cause a situation where there is no real danger and you might be exempt. Of course, if it is practically not safe, halacha and common sense both dictate that one cannot leave the situation, and it might be easier to pressure the owner in a way he should understand. Therefore, it seems legitimate to be lenient to just make sure you are in a safe situation even if the official heights are not present. It is likely possible to halachically raise the height in a way that is quite cheap, as the formalistic element does not have to be that strong – just enough that the fence as a whole will support the weight of a person leaning on it (Shulchan Aruch, CM 427:5).



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Ein Ayah

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

Weak Allegiance to Torah

(condensed from Ein Ayah, Shabbat 2:137)

Gemara: There was a case of a non-Jew who came before Shammai and asked him: “How many Torahs do you have?” Shammai answered: “Two – the Written Law and the Oral Law.” The non-Jew said: “About the Written Law, I believe you. About the Oral Law, I do not believe you. Convert me on condition that you will teach me the Written Law.” Shammai scolded him and sent him away angrily.

Ein Ayah: Sometimes an individual from the nations of the world who investigates the divine and has great intellect will be inspired to enter our religion because he recognizes the honor and sanctity of Hashem. Such a person will not trust anyone in regard to belief but will approach sanctity with an independent, internal recognition. Someone whose intellect is so great that his internal recognition will bring him to separate himself from foreign concepts and embrace the service and love of Hashem will also understand that the laws of G-d cannot be given to each person to interpret as he desires. Rather, there must be certain things that are accepted by all co-religionists. It will also make sense to him that those things that have been forgotten or about which there is no consensus because they concern new developments should be decided by a central authority of experts in a place chosen by Hashem. In that context, clear decisions will emerge to properly address every detail necessary on practical grounds.

In contrast, one whose intellectual powers are weak and whose attraction to the sanctity of the divine law is based only on great people who are connected to the Torah, will have a weak philosophical foundation. This will not enable him to reach a high level of belief in the Written and the Oral Laws. He will only be attracted by its glow and want to know more about it. He will not be able to comprehend why full dedication to the fulfillment of an extensive and detailed set of laws is required to attain the religion's general goals.

The non-Jew who approached Shammai had all of the problems we alluded to. Regarding the Written Law, he did not say that he independently believed in it, but that he believed Shammai, due to his fame as a great, wise person who believed in the Torah. Such a basis is insufficient to volunteer to enter the ranks of Hashem's nation.

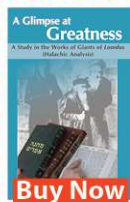
That led to the fact that he did not even believe Shammai when it came to the Oral Law. That is because external belief will only take a person part of the way, and even if a person has a strong attraction, it is limited. Only one who is drawn to the Torah because he recognizes Hashem correctly will have an endless attraction, in line with the *pasuk*: “Draw me to You, I will run after You. The King brought me into His inner chambers. We will rejoice and be happy with You” (Shir Hashirim 1:4).

With the non-Jew's weak recognition, his goals were also weak, and he did not desire that the Torah would impact on everything in his lifestyle. Rather, he was just interested in knowing the basics of that which he saw as lofty, holy, and divine. For that he realized that he would have to convert and was interested in doing so. He understood that deep things that are the domain of a special nation cannot be given over to someone who is unwilling to be part of the nation. Even someone of a simple level can understand that he has to rely on others for such an attainment.

Because of the low level of this conversion candidate, who came with a somewhat brazen approach, he deserved, on a certain level, the triple distancing from his desire, which Shammai did to him. He was scolded for lowering the Torah to being believable only because of the greatness of Shammai. He was sent away because he rejected the Oral Law, which could have a negative impact on others. He was shown anger because he wanted a conversion that would not go beyond the Written Law.

[In subsequent pieces, Rav Kook explains Hillel's decision to accept the candidate.]

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(based on Shut Noda B'Yehuda I, Choshen Mishpat 7)

Who to Pay First

(based on Shut Noda B'Yehuda I, Choshen Mishpat 17)

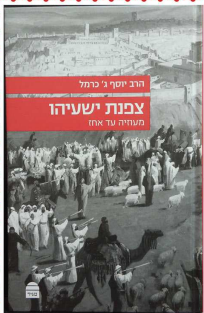
Case: Reuven, who was a business partner with his brother Shimon, died. His widow, Sarah, approached Shimon about receiving payment for her *ketuba* (the brothers shared “movable objects,” not real estate assets). Shimon said that he first has to pay debts (with contracts) that he and Reuven owe and that Sarah would be paid from that which remains. Since the debts were incurred after the *ketuba* was written but before Reuven died, does Sarah or the creditors get paid first?

Ruling: Actually, if Sarah's *ketuba* does not indicate that there was an obligation made on movable objects along with real estate, then Sarah does not have a claim regarding those objects that precede those of later creditors, even if she seized them for payment (see Rama, Even Haezer 102:2). That is regarding the basic *ketuba* obligation, but for the part of the *ketuba* that corresponds to that which Sarah brought into the marriage, she has the same status as any creditor, including precedence if she preceded them. In any case, it is quite standard to obligate payment from movable objects, in which case Sarah should have precedence.

The situation is arguably different because Shimon was holding on to the money and wants to use it to pay the other debts. The Shulchan Aruch (CM 104:5) says that if the later creditor grabs payment first, we take the payment back from him, whereas the Shach (60:8) brings proofs that we do not take it back. It is hard to extract payment (on behalf of Sarah) in the face of such an even *machloket*. An exception would be regarding assets in the form of unpaid bills of debt that others owed to Reuven, to which later creditors could lay claim. However, if the bills of debt were written with Reuven as the recipient, then since the debts were not written over to Shimon, Sarah would have precedence (see Shulchan Aruch, CM 104:3).

However, there is a different reason to empower Shimon. Specifically, since Reuven and Shimon started their partnership long ago, the merchandise Shimon possessed was not the original property of the two. Therefore, in regard to new merchandise received after all the debts were incurred, the seizing of the later creditor would work.

The remaining question is whether to view Shimon's possession as comparable to a later creditor seizing payment. After all, Reuven did not owe Shimon, just that the two together owed others, so that Shimon is like a guarantor of Reuven. Thus, Shimon cannot seize on his own behalf but on behalf of the creditors. Although it is possible for a guarantor to seize property of the borrower if he has grounds for concern that he will have to pay on the borrower's behalf and not be reimbursed, that only allows him to hold property as a guarantee, not to take payment (see Shulchan Aruch, CM 73:10). Possession in that context does not advance a late debtor to have rights before the earlier one. Therefore, Shimon's possession is significant only if Reuven owes him too, for then just as he can seize for himself he can take for others, even if he seized more for others than he had coming to himself. Otherwise, Sarah should be paid before the other creditors who borrowed money after the partnership was already obligated.



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