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HEMDAT YAMIM

Parashat HaShavua

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On Ethics, Education of Children, and Inter-Personal Relations

Harav Yosef Carmel

Our *parasha* deals primarily with Yitzchak, the son of Avraham and Sarah, whose education was at the top of Sarah's interest. Many parents, in fact, leave no stone unturned to ensure that their children have excellent educations. They pay for good schools, look for a good atmosphere, and try to protect them from dangers of all sorts. For better or for worse, though, the most important factor in their success is the personal example the parents set.

The *gemara* (Nedarim 20b) teaches us that one can impact his children even before they are conceived, going through nine improper behaviors that can leave the resulting offspring spiritually blemished. The major theme is that the parents' relations must take place within a spirit of trust, ethics, and proper regard towards one's partner. The Shulchan Aruch (Even Haezer 25:8-9) rules that it is forbidden to have relations while withholding one's plans to get divorced or to be drunk during relations. The idea is simple. A joint life is based on trust, mutual respect, and unparalleled closeness. Someone who hides his intention to divorce and goes on in this regard as if nothing is wrong, breaks the basic trust which is at the heart of the whole relationship.

Let us bring an example of the above from *Tanach*. Shmuel I:25 deals with a severe dispute between David and Naval as to what makes one king. Avigail was Naval's wife, and the *navi* refers to her as "of good intellect." *Chazal* count her as one of the seven prophetesses (Megilla 14a) and a *tzadeket* (Mishna, Sanhedrin 2:4), and she taught David, her future husband, a lesson about the *halachot* of kingship. Despite her greatness, she did not merit being the mother of the Davidic dynasty of kings. Not only was her son not appointed to succeed David, but she is referred to as "the wife of Naval Hacarmeli" (Shmuel I:30:5) even after Naval's death and her marriage to David. Why does she receive this treatment?

The *gemara* says that her prophecy was that David would be king after the deaths of Shaul and her husband, on condition that David would not seize the throne by force. After informing David all these things, she tried to ensure a role as queen by hinting to David that he should marry her after her husband died (Shmuel I, 25:31), as David seemed to understand and accept (ibid. 35). The *gemara* (Bava Kama 92b) metaphorically identified Avigail's intention in her veiled speech. The *navi* continues that when Avigail returned home from meeting David, she found Naval drunk, and the language applies that they had relations (compare ibid. 36 to Bereishit 16:4, 29:23, & 29:30). This was inappropriate on several grounds, including that he was drunk and that she was planning to marry David. Therefore, this otherwise great woman was punished in that her marriage to David never reached its potential – she was still known as Naval's wife and did not merit being the mother of royalty. This story can thus be a source for the *gemara's* stress of proper mindsets and behavior when involved in intimacy.

May we all merit having offspring who find favor in the eyes of Hashem and man, which, we have seen, is aided when the parents have the proper relationship based on ethics and trustworthiness.

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Ask the Rabbi

by Rav Daniel Mann

Supermarket Manners or Halacha?

Question: I was in a supermarket and saw a woman take the last packages of a certain item. She then left them in her shopping cart and walked off elsewhere. Another woman saw the empty shelf and the items in the cart, and took some of them from the cart and put them in hers. Was that just bad manners or stealing (i.e., the first woman already had acquired it)?


Answer: Anything we say here is general information and does not relate in any reliable way to the specific case, whose exact details we do not know. In a case that is not *halacha l'ma'aseh*, we can have a more general discussion.

We will start with the issue you raise. Many people think that one acquires items in a store by paying for them. However, the halacha is that money is not a valid *kinyan* for movable objects (Bava Metzia 44a). Rather, one must do a physical *kinyan* to the item, which is usually *hagbaha* (lifting the objects), which woman #1 did physically when taking the items off the shelf. Classical *poskim* discuss at what point we assume that the one who performed such an action intended to acquire it (see Shulchan Aruch, Choshen Mishpat 200:8,11). However, in the contemporary context you describe, the *kinyan* is clearly not until the buyer lifts an item it after paying for it, not before he puts it in the shopping cart. I say that with confidence because it is very common for someone to put an item in the cart and continue on, only to change his mind later and return it to the shelf. If he would have acquired it, he would need the store's permission to return it. Since people do not think that way, it is a sign that taking it off the shelf is just the first step toward the likely future purchase of the object. Thus, it would not be stealing on these grounds.

There is a relevant interesting concept, which is likely to apply, which the *gemara* (Kiddushin 59a) calls *ani mehapech b'charara*. The classic case is when Reuven is in the midst of efforts to acquire something, and Shimon enters the scene later but beats him to the acquisition (see Shulchan Aruch, Choshen Mishpat 237:1). In such a case, Shimon is called a *rasha*. (There is a *machloket* whether there is any binding or practical consequence of that status – see Pitchei Choshen, Geneva 9:(29).)

There is a *machloket Rishonim* (see Rashi, Kiddushin 59a, Rosh, Kiddushin 3:2) if this affront exists only to one who buys or rents or even to one who tries to acquire something from *hefker* (a state of not being owned). Both of these opinions are cited in the Shulchan Aruch (ibid.). One is likely to have applied the distinction in the opposite direction: what's the big deal who gets to buy the object, as one can buy elsewhere, whereas acquiring from *hefker* is a fleeting opportunity, which is worse to grab? The logic of the opinion that taking from a *hefker* is not as bad is that we understand the importance to the second person to seize the opportunity. In contrast, one who seizes the sale before his counterpart is needlessly petty – he should take the time to go elsewhere to buy (see S'ma 237:2). The Rama (ad loc.) says that according to the opinion that *ani mehapech* does not apply to *hefker*, it also does not apply to an item at a unique sales price. The logic is the same – it is not petty if there is no equivalent alternative. Possibly, the event you saw involved a special sale. On the other hand, the Shach (ad loc. 3) argues and says that neither opinion of *Rishonim* distinguishes between cases of sale. Therefore, it is quite likely that there was a violation of *ani mehapech*.

One can suggest that what was done was theft for the following interesting reason. If the first shopper did not acquire the items, then the store still owned them. It is possible (in certain societies) that the store objects to one shopper taking a product from the cart of another, as it can cause a very unpleasant shopping experience, let alone if it brings on shouting matches. If this is the case, such an action is actually stealing from the store, who did not permit shopper #2 to take the items from the cart.



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Ein Ayah

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

Energy at the Intersection between the Holy and the Mundane

(condensed from Ein Ayah, Shabbat 2:278)

Gemara: [Rabbi Shimon and his son, Rabbi Elazar, left the cave after an additional stay.] As *Erev Shabbat* was turning into Shabbat, they saw an old man who was holding two fragrant branches and running during twilight. They said to him: "Why do you have those?" He told them: "In honor of Shabbat." "Why isn't one enough?" "One corresponds to *zachor* (remember Shabbat) and one corresponds to *shamor* (observe Shabbat)." Rabbi Shimon said to his son: "See how beloved the *mitzvot* are to Israel."

Ein Ayah: There are two ways in which Shabbat sanctifies Israel. One is that it sanctifies and elevates Israel through the innate holiness of the day to a level that exceeds anything that exists in the mundane world. Shabbat also takes all that is mundane and lowly within the weekdays' activities and elevates them through their connection to Shabbat.

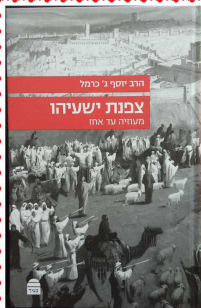
Even without any conscious awareness, the Jewish soul elevates itself even during the week by remembering Shabbat. In the process, matters that would otherwise be lowly become less lowly than they would appear to be, as they become elevated by means of Shabbat's sanctity. A person can be involved most of the time in mundane work and still have sanctity very close to his heart so that his life revolves around holiness. Thus, based on the degree to which a person is able to link his soul to Hashem and cling to His goodness and justice, we must view him in a very positive manner despite his great involvement (time-wise) in fleeting life.

Twilight is the gateway between the past and the future and between the mundane and holy. At that point, the holy can impact on the mundane by means of their connection. Mundane matters seem very coarsely material and lowly. However, they may have a subtle inner power that can only be detected by means of a sensitive feeling. This feeling is comparable to the sense of smell, which nourishes the spirit and not the body. Sanctity can provide the mundane with the power of diligence, to the point that even an old person can be filled with great energy. Even though the mundane is impacted by the holy, it is not that the holy becomes an appendage of the mundane, but rather it remains on its own level.

Let us see how these ideas connect to the story at hand, which took place as Shabbat was about to begin, the time of closest connection between mundane and holy. An old man, who should have been beyond the point where he would have the energy to run, was doing just that. That which energized him were the fragrant branches that were to be smelled on Shabbat in its honor. This showed the type of internal spiritual feeling that is associated with Shabbat.

The old man explained that he needed two branches, corresponding to *zachor* and to *shamor*. That is because *zachor* relates to the connection between Shabbat and the mundane week and *shamor* relates to observing Shabbat in regard to itself.

Rabbi Shimon was impressed and observed that the sanctity of practical *mitzvot* could be the soul that dwells in the midst of the whole of the actions a person takes, even though they look so simple. He and his son were now at ease and were no longer upset with the situation whereby eternal life (i.e., Torah study) is, for many, swallowed up by fleeting life. This is because, within Israel, even fleeting life has a strong connection to eternal life. This connection gives renewal and power to those who stumble and are tired, enabling them to be energetic in their service of Hashem even in old age. The idea of making the old youthful can only be accomplished when mundane actions leave the realm of the mundane and are connected to the sacred in an equivalent way to the interaction between eternal life and fleeting life.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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P'ninat Mishpat

Going to Beit Din After Suing in Secular Court – part I

(based on ruling 70004 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) sued the defendant (=def) in secular court. He sent a letter of claim, which made it necessary for def to hire a lawyer and write a letter of defense, but they have not yet had a hearing. Pl now says that he wants to go to *beit din* and claims that he sued in secular court just so that def would have to respond and could not continue to be elusive. Def says that he would have been happy to go to *beit din*, but since he already paid money in preparation for the secular court adjudication, he is now unwilling. He also suspects that pl changed his mind because he is afraid he would lose there, and def refuses to change venues on those grounds.

Ruling: The *gemara* (Gittin 88b) says that it is forbidden for Jews to adjudicate before a non-Jewish court even if they rule according to halacha. The Rambam (Sanhedrin 26:7) and Shulchan Aruch (Choshen Mishpat 26:1) strongly condemn such action. The consensus of the past generations' *poskim* is that the prohibition also applies to going to the State of Israel's secular courts (see Tzitz Eliezer XII:82; Yechaveh Da'at IV:65), which is what pl apparently did. Even according to pl's explanation that he did not plan to complete adjudication there, he still should have taken necessary steps according to the instructions of *beit din* (Shulchan Aruch *ibid.* 2).

Classical *poskim* discussed whether one who improperly adjudicated at non-Jewish courts and lost can subsequently force the other litigant to adjudicate again in *beit din*. The Beit Yosef (CM 26) brings two opinions on the matter and prefers the one that he may bring him to *beit din*. The Rama (CM 26:1) also cites two opinions, but he limits the opinion that he can return to *beit din* to cases in which he did not cause damage to the other side. The Rama also prefers the opinion that he cannot force him back to *beit din*.

What is the reason one could not come back to *beit din*, considering that if they do not rule, we do not know if the non-Jewish court ruling was correct? The Tumim (26:2) explains that it is based on *kiblu alayhu*, the idea that one can accept upon himself a judicial process that does not follow the standard rules of halacha. The Levush (CM 26:3) and the Netivot Hamishpat (26:2) say that it is a penalty against the one who improperly initiated the adjudication.

At what point should the halacha of not allowing a return to *beit din* set in? The Tumim points out that when one accepts something based on *kiblu alayhu* and did not perform an act of *kinyan*, he is able to back out until the ruling is finally rendered. He says that the same is true regarding adjudication in a non-Jewish court. Several *Acharonim* say that also according to the explanation that the inability to return to *beit din* is based on penalty, the penalty sets in only after there is a ruling.

Therefore, in our case, ostensibly pl should be able to return the adjudication to *beit din*, where it should have taken place originally. [Next time, we will see if pl's intentions or the fact that he caused expenses to def makes a difference.]

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