



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat HaShavua

Tetzaveh, 13 Adar 5777

Too Close for Kedusha?

Harav Yosef Carmel

Several years ago on this *parasha*, we wrote about Shlomo Hamelech's building of his palace close to the *Beit Hamikdash*. We explained that this represented his thesis that one should view the holy and the mundane and the Torah and the kingdom as inseparable. When the kings of the Kingdom of Yehuda sinned, the proximity to the *Beit Hamikdash* became a sore point, as Yechezkel highlighted (see Yechezkel 43:8).

Was the approach of Shlomo's father, David, the same as his son's? The *navi* Shmuel (II,5) describes the conquer of Yevus and its transition into the eternal Israelite capital of Yerushalayim. We are told that David turned a fortress known as Metzudat David into his home and built around it, extending the city and building a wall around it (ibid. 7-10). The wall encompassed both the City of David and the Temple Mount, upon which the *Beit Hamikdash* would be built, and, in between, he left an area called the *Milo* for sleeping quarters for pilgrims to the *Beit Hamikdash*. David's palace was built in the City of David, and, apparently, parts of it have been uncovered in excavations at that site.

In so doing, David sent two messages. The *Beit Hamikdash* was to be built in a higher place than his palace. This idea is the basis of a halacha that a *shul* should be built on the highest spot in a town or neighborhood (Shulchan Aruch, Orach Chayim 150:2). If it is not the highest spot, then the *shul* should be built tall enough so that some part of it is the highest. If this is not done, there may be severe consequences for the inhabitants (see Aruch Hashulchan, Orach Chayim 150:3).

The second message is that while the palace was somewhat close to the *Beit Hamikdash*, it was not right next to it. Making it too close would cause a blurring of distinctions between holy and mundane, indicating that one does not need to distinguish between the two.

Shlomo thought that he had already fixed the world in the ways of Hashem and that the End of Days had come. This is a situation that Kabbalists call "the moon in its completeness." That is why he built a new palace, which is apparently in the area which is now known as Al Aqsa, adjacent to the *Beit Hamikdash*. Because not all the kings of Judea behaved as they should, this proximity became the source of great criticism as we mentioned before.

We should follow the lead of David Hamelech. We reject the divorcing of the holy from the mundane, but, on the other hand, we reject the blurring of distinctions that exist between them. We also should be careful to remember that the concerns of the sacred have precedence over those of the mundane, to the extent possible.

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Ask the Rabbi

by Rav Daniel Mann

Ribbit in a Loan from an Irrevocable Trust Fund

Question: My father set up an irrevocable trust fund with my three sisters, brother, and I as beneficiaries. A specialized company (probably not Jewish, although our trust is handled by Jews) serves as trustee. I "borrowed" money interest-free from the fund to buy a house, but it is unlikely I will have to return the loan, as what I received will probably end up counting as most of the money coming to me. I want to turn the loan into interest paying, so that I will, for the sake of my siblings' part, compensate the fund for the missing appreciation because I took the money. Is this a violation of *ribbit*? If so, may I use a *heter iska* to make it permitted, and with whom would I do it?

Answer: We must determine an irrevocable trust's halachic status. The trust enables your father (the settlor or grantor) to bequeath money to his children in what he views as a financially advantageous manner. He gives funds to (a) trustee(s) (the company), who legally owns the funds, which are explicitly earmarked for certain purposes, specifically to provide assets for the beneficiaries (you and siblings) at the trustee's discretion. A major halachic question is whether the trust fund obviates the *halachot* of inheritance. This would be either because money (perhaps even for a revocable trust) has been given to a third party with instructions (beyond our scope) or because, especially for an irrevocable trust, the money no longer belongs to the grantor, so that the *halachot* of inheritance cannot take effect. The emerging consensus of *poskim* seems to be that *yerusha* does not apply to the contents of the trust (see Pitchei Choshen, Yerusha 4:(34)). (If the trust is a farce, and the grantor fully controls the money, the matter is more problematic).

Ribbit exists when Jewish owned money is lent to another Jew with interest. It does not help if a non-Jew carries out the transaction as a guardian, if the financial impact relates to the Jewish owner (Shulchan Aruch, Yoreh Deah 168:24). However, in this case, assuming the trustee really controls the money, the halachic status likely accepts the legal one (based on *dina d'malchuta* and *situmta*) – that your father no longer owns the funds. It is even clearer that the beneficiaries, who never owned the money, do not own it yet. They have made no halachic *kinyan*, and the law does not recognize them as owners. When and how much they will receive depends on various consequences and the trustee's decision. Their only legal right is the ability to sue the trustee for breach of fiduciary obligations. Thus, the trustee is not merely handling the funds; it is the owner, albeit with conditions attached.

Even if halacha were not to recognize the trustee's ownership of property ceded to it, due to a lack of valid *kinyan* or because it is sometimes a farce, you probably still do not have a problem. After all, the trustee sets up a bank account which the grantor and beneficiaries cannot touch. Even if they were to sue the trustee in *beit din* and win, the trustee would owe money, but the value (theoretical not coins or property) in the account is likely the trustee's. Therefore, the actual money you received as a loan, was the trustee's.

What is the *ribbit* status of the trustee company? The great majority of *poskim* (see Torat Ribbit 17:52), say that the laws of *ribbit* apply to a lender who is a corporation. However, most *poskim* (see Brit Yehuda 30:16; Torat Ribbit 17:64) rule there are no *ribbit* problems if Jews own a minority share, irrespective of the workers who handle a given fund (see Shulchan Aruch *ibid.*). Therefore, if the company is mainly of non-Jewish ownership, you have no problems. If you are concerned with possibility of Jewish ownership, you can do a *heter iska* with them. This is slightly more complicated than usual because you need to convert an existing loan into an *iska* investment (see Brit Yehuda 40:23), and we are willing to guide you through the process. (Even if you avoid *heteri iska* when they obviate the spirit of the law, this case is unobjectionable.)



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Ein Ayah

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

Gemara: That which it says in the *mishna* that there are thirty-nine categories of work that are forbidden on Shabbat – what does the number correspond to? Rabbi Chanina bar Chama said: It corresponds to the work done in constructing the *Mishkan*.

Looking with Confidence for Parallels

(condensed from Ein Ayah, Shabbat 4:3)

Ein Ayah: Anything that can be used to stimulate the mind and bring new ideas into the world must have come into existence because Hashem wanted it that way. The ideas are always reminiscent of things throughout the physical and spiritual world, and therefore the comparisons can inspire people's spiritual side.

When many specific elements fit into one inclusive set, it must be that there is some piece of logic that unites them all, and this unifying force must be connected to something else in existence. The connection should not just be technical but should have a logical element to it so that finding the similarity will give a positive result. That is why the *gemara* raised the question, with the expectation of a good answer: What do the thirty-nine *melachot* correspond to?

Preparing the World for Completeness

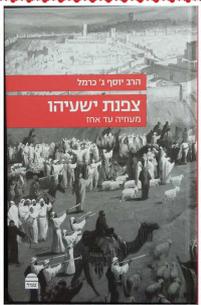
(condensed from Ein Ayah, Shabbat 4:4)

Ein Ayah: The rest and the sanctity that are part of the experience of Shabbat engender blessing and sanctity in the world because they emanate from the ever-existing Master of All, Hashem, who is complete to the fullest degree. Certainly, then, the goal of that which He created must be complete.

The leading element of all existence is the point of sanctity, which is the center of the life of everything that exists. The point of the divine plan is that the greatest projects should be prepared and completed and there should be no need for further actions to deal with that which is missing or lacking.

When Bnei Yisrael needed to create a center of sanctity, there were many types of work that needed to be done because this is what was dictated by the fact that the world was in a lowly state. If not for the triumph of overcoming the obstacles that can destroy an elevated life of sanctity and closeness to Hashem, the collective cannot reach its goal.

Shabbat raises a person to the heights that resemble that which will be in future, ideal times, when all days are like Shabbat. In those times, one will not have to teach his counterparts about Hashem because all, whether young or old, will know about Him. Therefore, the elements of ceasing from work on Shabbat are parallel to the work that is needed to be done to prepare the *Mishkan*.



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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Backing Out of Joint Building Plans – part II

(based on ruling 75013 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) both wanted to extend their apartments, which were one on top of the other, and decided to do so cooperatively, sharing an architect (=a#1) and preparing and paying for the various elements of obtaining a municipal building permit. In the midst of the process, pl convinced def to discard a#1's plans and hire a new architect (=a#2). Pl decided to extend his addition with a balcony. Later in the process, def became concerned that this would compromise his apartment's privacy. When the two sides failed to agree on how to solve the privacy problem, def appealed to the municipality to disallow the extension. Pl is suing def for the expenses, over 24,000 shekels, which are now wasted (both architects' plans and fees for various stages of applying for a building permit).

Ruling: [Last time, we saw that pl cannot claim payment due to their being partners.]

Do we accept damage claims based on the fact that Reuven relied on Shimon and lost when Shimon reversed his commitment (*histamchut*)? The Rambam (Zechiya 6:24) says that if, after a *chatan* spent a lot of money for the betrothal party, the *kalla* breaks the betrothal, she has to pay the party's expenses because she caused him to waste that money. The Ra'avad argues based on the *gemara* (Bava Batra 93b) that if one sold defective seeds that did not sprout, he does not have to pay the buyer for wasted expenses in planting them.

The Maggid Mishneh answers for the Rambam with the following distinction. The *gemara* exempts when the buyer invested in order to profit, whereas the Rambam obligates when the *chatan* acted to conform with local expectations based on the *kalla's* assurance. The Taz distinguishes based on the timing of the damage. The *gemara* exempts because the damage is realized after the planting, whereas the Rambam obligates when the loss is directly when the *kalla* backs out. The Shulchan Aruch (Even Haezer 50:3) rules like the Rambam, and we accept the Maggid Mishneh's approach to it. Thus, in our case, since pl acted in order to benefit, he is not entitled to compensation from def.

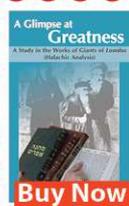
There are additional reasons to exempt def. In classic cases of *histamchut*, the assurance made (e.g., the *kalla* will go through with the marriage) is a clear one. There is a *machloket* whether the obligation in the Rambam's case applies only to betrothal or even to *shidduchin* (equivalent to our engagement), where the level of commitment is lower (depending on the existence of penalties for backing out). In this case, neither side gave a full assurance they would follow a given plan to the end. In fact, even pl refused to continue with the plans, as presented by a#1, in which they invested money.

Finally, in a case where the one backing out has strong justification for doing so, there should be no payment. The Rambam refers to a case where the *chatan* has something objectively wrong that is grounds to not marry him (see Divrei Malkiel V:125). In our case, the complaints about privacy, which pl did not agree to take seriously, are further grounds not to obligate def.

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