HEMDAT YAMIM
חמדת ימים

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This edition of Hemdat Yamim is dedicated in loving memory of **R ' Meir ben Yechezkel Shraga Brachfeld** o.b.m
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This week.....

To the Desert Once Again

Harav Yosef Carmel

In this week's *haftara*, Hoshea makes a deep, elusive statement: "The Sons of Judah and the Sons of Israel will gather together and appoint one head and go up from the Land, for the day of Jezre'el is great" (Hoshea 2:2). R. Yochanan attributes the great day to the ingathering of exiles (Pesachim 87b-88a). Rashi identifies the head as King David, and the Radak as Mashiach. The problem is that the *pasuk* refers to going up from the Land, when the ingathering exiles will be coming up from the Diaspora to the Land. Therefore, Ibn Ezra explains the *pasuk* on a sad note; the head is Sanchariv, who exiled much of the nation. However, if so, it should have said, "… go down from the Land"?

Ostensibly, there are two possible, national scenarios: 1) The people keep Hashem's *mitzvot* and prosper in the Land. 2) They sin and are expelled from the Land and dispersed. Our *haftara* provides another possibility. The Ramban connected our *pasuk* with the phrase used by Pharaoh in the beginning of Shemot, "it will go up from the land." This could refer to the Egyptian nation leaving their own land (Rashi) or to a freed Bnei Yisrael leaving Egypt for *Eretz Yisrael* (Rashbam). Actually, the generation that left Egypt did not make it to Eretz Yisrael but to the desert. The stay in the desert allowed Bnei Yisrael to properly prepare for the next generation's entrance to the Land.

We can now present the following explanation of Hoshea's prophecy, in the context of his extensive criticism of the idolatry to the *Ba'al*, which devastated large parts of Bnei Yisrael for generations. Followers of the *Ba'al* believed their worship caused rain to refresh the fields (which explains the etymology of a field that relied on rain water being called a *ba'al* field). Idolatry was accompanied by public promiscuity (see Yalkut Shimoni 675). We, *l'havdil*, believe that serving Hashem brings crucial rain to the land (Devarim 11:14) and that Hashem despises promiscuity (Sanhedrin 106a). Therefore, Hoshea proclaimed: "I will make her like a desert and an arid land, and I will have her die from thirst" (2:5). Yet he also said: "I will take her to the desert and appeal to her heart" (ibid.:16). The covenant between Hashem and Bnei Yisrael in the desert could be renewed: "I will betroth you forever … and you shall know Hashem… and the land will respond with grain, wine, and oil, and they will respond to Jezre'el" (ibid.:21-24). The liberation will come only when they "will respond as in the days of her youth and the day they came up from Egypt … remove the names of the *Ba'alim* from her mouth" (ibid.:20).

The prophet is thus telling us that after sinning, the nation will have to leave the Land and go to the desert, instead of exile. This is the going up from the Land, an unfortunate necessity, as service of the *Ba'al* is inapplicable there. While this could have happened, the nation did not accept Hoshea's rebuke and needed full exile. May our redemption from that exile continue to develop in Israel.

Question: My friend borrowed chairs for a Purim *seuda*. One of his "happy" guests jumped on a chair and broke it. Does one have to pay for damages he makes during *mitzva*-sanctioned reveling?

Answer: We must address two issues: 1) Does the damager have to pay? 2) Does your friend, who borrowed the chairs (a *sho'el*) have to pay? We must point out that we cannot rule conclusively regarding a specific case without being authorized to hear the claims of each side.

Damages on Purim: The *mishna* (Sukka 45a) tells of the practice that on the last day of Sukkot, adults would joyously grab *lulavim* from youngsters. Tosafot (ad loc.) derive that when the practice is to act out of appropriate joy (such as at a wedding) in a manner that causes damages to others, people are exempt from paying for resulting damages. The Rama (Orach Chayim 695:2) applies this rule to damages that result from reveling on Purim. Several sources explain that the key matter is that there is an accepted practice to act wildly (see Rosh, Sukka 4:4; Terumat Hadeshen II, 210). Rabbeinu Yerucham understands that this sets up an assumption of *mechila* (relinquishing of rights to payment) should damage occur. Therefore, the limitations that *poskim* place on this exemption, such as that the damage was unintentional (Mishna Berura 695:14) and not too great (ibid.:13) are logical. Although the Aruch Hashulchan (OC 695:10) says that it is no longer accepted to act on Purim in a way that justifies the exemption, this appears to be a minority opinion. In our case, therefore, the reveler who unintentionally damaged a single chair on Purim is apparently exempt.

The *Sho'el*'s Obligations- One who borrows an object is obligated to pay for it even if it disappeared or was broken *b'oness*, under circumstances beyond his control. The *gemara* (Bava Metzia 96b) posits that an exception to this obligation is *meita machamat melacha*: if the object broke (literally, [the animal] died) due to the work for which it was borrowed. One could claim that since the chair was meant to support a person and it broke under those circumstances, the *sho'el* would be exempt. On the other hand, *meita machamat melacha* applies only when the object was used responsibly, not abused (i.e. by jumping) (Shulchan Aruch, Choshen Mishpat 340:1).

We must determine the extent of the exemption of *meita machamat melacha*. The Shulchan Aruch (CM 340, 3) accepts the Ramah's approach that the main point is that the damage occured during the regular work, regardless of the cause. However, the Rama (ad loc.) rules like the Ramban (Bava Metzia 96b) that the exemption is because we can "blame" the owner of the object for giving the *sho'el* something that cannot withstand the job it was given to do. When the object does not fail to withstand its task, the borrower remains obligated to pay. The Shach (ad loc.) accepts the latter ruling. In this case, it is hard to blame the chair owner, as chairs are not meant to withstand jumping adults, so the ruling seems to depend on the *machloket* between these opinions.

On the other hand, in addressing damages during reveling, the Levush (CM 378:9) raises the possibility that when one lends something to be used for wild activities where damage is likely, *meita machamat melacha* might apply. This would be another reason to exempt your friend. However, our case is not exactly the same. The Levush is talking about a case where the borrowed object is in the "direct line of fire." In our case, while many people act uncharacteristically wild on Purim, the consequences are not usually focused on chairs used in the *seuda*.

In the final analysis, it is unclear if a *beit din* would obligate your friend, the *sho'el*, to pay. However, the apparent conclusion from the halachic sources is that he would do best to pay.

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

Non-Jewish Ownership of *Eretz Yisrael* – part II

(from Eretz Hemdah I, 5.2)

[*We saw last time that there is a* machloket *among the Tannaim on whether a non-Jew has a* kinyan *(ability to acquire)* Eretz Yisrael *in regard to removing the* kedusha *that enables the obligation of* terumot *and* ma'asrot *to take effect.*]

The Yerushalmi says that R. Meir, who says that a non-Jew does not have *kinyan* regarding *ma'asrot*, admits in regard to the eating of fruit. The Kesef Mishneh explains this statement as follows. "R. Meir said that there is no *kinyan* only in regard to a case where a Jew planted the field as a sharecropper or in a rental situation, that it remains in its sanctity, unlike the status of Suria. However, if the non-Jew planted and processed, everyone agrees that there is *kinyan*, for even if he did not acquire the land, he anyway acquires the fruit."

Some understand the Kesef Mishneh to be saying that the entire *machloket* about *kinyan* is regarding if a Jew bought back the field. If one holds that there is *kinyan*, then it is like a private conquering of the Land, which does not instate *kedusha*, whereas if one holds that there is not *kinyan*, the *kedusha* returns. According to this approach, as long as the field is under the non-Jew's ownership, all agree that its *kedusha* is removed.

However, this does not appear to be a correct understanding of the Kesef Mishneh's opinion. After all, he based himself on the Yerushalmi that said that R. Meir agreed regarding the eating the fruit. Therefore, it is difficult to say that this extends to the essence of the *kedusha* of the land. Also, from the fact that he talks about a case of a Jew who rented the land, saying that the land still has *kedusha*, it is apparent that even when a non-Jew owns the land it still can have its *kedusha*, for if it did not, a Jew's rental of it would not return any *kedusha*.

Therefore, it is clear from the Kesef Mishneh that according to R. Meir, the land's status is not removed when a non-Jew acquires it. Rather only the *kedusha* of the fruit in regard to *ma'asrot* is removed when it is under the non-Jew's control. The reason for this is that in order for the fruit to have such *kedusha*, two conditions must be met: the land must have *kedusha*, and the fruit must have *kedusha* that results from the *kedusha* of the land. According to R. Meir, the non-Jew does not impact the land but if the fruit are in the possession of the non-Jew at the time that the obligation of *ma'asrot* is supposed to take effect, which is when the pile of produce is smoothed out, the *kedusha* falls off because of his full ownership of the fruit.

Based on this, the question of the Maharit (I, 43) is not difficult. The Maharit had asked on the point that R. Meir learns that just as a non-Jew does not have a *kinyan* over a Jewish slave, so too he does not have a *kinyan* over land. The Maharit had been bothered that regarding a Jewish slave, the non-Jew does not have a *kinyan* even when the slave is under his possession, whereas the Kesef Mishneh had said that while under non-Jewish possession, we treat the field as if it is owned by the non-Jew. The answer is that even though there is no *ma'asrot* when the field is owned by a non-Jew, that is not a reflection on the status of the field, which remains unchanged, but is a result of the status of the fruit. Actually, regarding the fruit of the Jewish slave, namely, that which he produces, the non-Jewish owner indeed does have full ownership, so the comparison is apt. Along these lines, the Maharit's other questions are also solved.

P'ninat Mishpat

The Status of a Contract That Was Violated

(based on Halacha Psuka, vol. 43 - a condensation of a *p'sak* of Beit Hadin Mishpat V'Halacha B'Yisrael)

Case: The plaintiff (=*pl*) was hired to rent hotel rooms and organize an English language program at a hotel (=*def*) for a certain season for a base salary of $12,000 for 500 guests and a bonus for additional guests. The contract required *pl* to work a day and a half a week at the hotel offices and required *def* not to rent rooms independent of what *pl* brought in until a certain date. *Pl* did not work in the hotel offices and appeared to be behind schedule in finding guests. *Def* started renting rooms before the date they were supposed to and, at a certain point, informed *pl* that their deal was void. Nevertheless, the relationship went on, and *pl* ran a program for more than 500 guests, some of whom he solicited and some whom he did not. *Pl* demands payment of the full base salary.

Ruling: Both litigants violated the terms of the contract, by not working at the offices and by starting renting out early, respectively. However, this did not prompt either side to break off the working relationship. This leads to two possible solutions. One can view the matter as a worker working without a contract, which requires some objective estimation of his work's value. Alternatively, one can try to evaluate the work done with the help of the contract. *Beit din* decided on the latter.

The Shulchan Aruch (CM 331:3) says that if one hires a worker and tells him that he will be paid like the people of the city, he receives according to the average of the lower and the higher salaries. The K'tzot Hachoshen (331:3) points out that although when salary was not discussed, a worker receives according to the lowest pay scale, when they agree on the local going rate, he receives according to the average. Therefore, *beit din* can use the agreement between the parties to arrive at a model of the level of compensation that is appropriate under the circumstances. Applying this to our case, even if the contract cannot be used to determine the exact salary, as it was not complied with, it can serve as a guide to determine the worth of the work.

The contract does not delineate the breakup of the payment between solicitation and running the program, but clearly, the latter constitutes the larger part. In practice, the hotel's occupancy met the standards that were required of *pl*. The issue is that *def* obtained many of the reservations. On the other hand, part of that was caused by the fact that *def* started renting out before the contract allowed them to do so. Therefore, the reservations secured by *def* during the time of *pl*'s exclusive rights should be credited to *pl*. Since 500 guests were secured by then, *pl* met his quota. *Pl* is not entitled to the bonus for more than 500 guests since that depended on *pl*'s actual success in securing reservations. Thus, *pl* gets the full base salary and no more.