

HEMDAT YAMIM

PARASHAT VAYEITZEI

9 KISLEV 5769

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George Weinstein

As well as

R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

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This week.....

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The Tie Goes to Our Father

Our *parasha* ends on a peaceful note. Yaakov and Lavan reconciled after Lavan's anger over Yaakov's fleeing his home and the taking of his *terafim* was assuaged. They seem to be in full agreement as they make monuments to commemorate their agreement to never quarrel again. However, careful reading of the Torah's account reveals a lot of give and take... with Yaakov succeeding in obtaining more take than give.

Yaakov initiated the various symbols. First a single stone was erected to serve as a *matzeva* (monument). Next came multiple stones upon which the parties ate. This reminds us of the stones in the beginning of the *parasha*, on the night of Yaakov's famous dream of the angels and the ladder. Yaakov had taken stones, which turned into one unified stone, which became a *matzeva*. Here the order was changed. Perhaps Yaakov was indicating that, regarding his relationship with Lavan, he did not want lasting unity, just a peaceful, distant co-existence.

The eating on the pile of rocks may represent a summary of their resolved dispute. Lavan said that everything Yaakov had was his. Yaakov said that it was he who worked feverishly to ensure Lavan's well-being. Eating on the stones indicates that the two had benefited from each other. However, looking to the future, the two disagreed on the result of the past partnership. Lavan suggested an Aramaic name. This is stressed by the fact that this is the only use of Aramaic in the Torah, even though many of the recorded discussions between the two must have taken place in Aramaic. Yaakov countered with the Hebrew name Galeid. The *pasuk* (Bereishit 31:48) concludes with Lavan's agreement to that name, indicating Yaakov's control of the border crossing.

The next few *p'sukim* (ibid.:52) illustrate another victory. While Yaakov committed to not return to Lavan's land with bad intentions, Lavan committed to not coming to Yaakov's at all. Actually, Hashem had told Lavan the night before not to talk to Yaakov, neither for bad nor for good (ibid.:24). Lavan invoked the names of the two's common relatives, mentioning the god of his idolatrous grandfather, Nachor, but Yaakov got the last word in, swearing in the name of Yitzchak's G-d. Lavan is allowed to kiss his daughters and grandchildren. Yaakov was interested that this would be a good-bye kiss, not an attempt to control his descendants' destiny. Therefore, the Torah stresses that Lavan began returning home before Yaakov commenced his journey to his homeland (ibid. 32:1-2).

The "sign to the children" from these actions of our forefather seems to be in the fact that our legacy is able to ignore the fact that, genetically, we have as much Lavan in us as Yitzchak. This is because Yaakov was able to break the connection between the two - and even do so peacefully, with the help of Divine intervention.

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[The following is adapted from part of a din Torah ruling under our beit din's auspices.]

Question: Reuven hired Shimon to move household items. The large quantity of items required, in addition to the moving truck, a trailer-car pulled along. The packers improperly put more and heavier things in the trailer than in the truck, apparently beyond its legal weight. This could have caused the tires to blow out or increase the likelihood of an accident, which could have caused minimal damage to the load, considering the trailer's contents, which were mainly not breakable. During the moving, a fire broke out in the trailer, which destroyed almost all of its contents within minutes despite diligent effort to put out the fire and save items. Neither side was able to provide a logical explanation of how the fire started. Part of the question was whether Shimon's negligence (*p'shiya*) in regard to one element of his work obligates him to pay for the eventual damage.

Answer: A fire that could not have been readily anticipated and/or prevented is an *oness* (extenuating circumstance), for which a *shomer sachar* (paid watchman) like Shimon is exempt (Bava Metzia 93a). There is a *machloket*, which appears in different applications throughout *Shas*, regarding *techilato b'p'shiya v'sofo b'oness (=tbpvsbo)* - one who was negligent in his efforts but the damage eventually came through an *oness*. We rule that in *tbpvsbo*, one must pay (Shulchan Aruch, Choshen Mishpat 291:6), provided there is a chance that the damage, unexpected as its manner ended up being, would not have happened had the *p'shiya* not been done (S'ma ad loc.:10).

In our case, the fire does not seem to have been related to the overloading of the trailer. However, in regard to the extra items that should not have been added to the trailer, had they been put in the truck as they should have, rather than the trailer, they would not have been burnt. The simple rules of *tbpvsbo* would, then, seem to obligate Shimon.

One can ask, though, what the halachic logic of obligating *tbpvsbo* is. Why should one pay for damages that were related to the *p'shiya* only by chance and not logically? The two main possibilities are as follows: 1) When one is negligent, he becomes potentially obligated to pay, although he is exempt if no damage results or occurs in a manner totally unrelated to the *p'shiya*. The later is not what obligates him. 2) An *oness* that happens in the aftermath of *p'shiya* is a continuation of the *p'shiya*, which obligates him. It is, thereby, the time of damage that obligates him. The practical difference could be in a case like ours, where the damage that could have been feared to come from the *p'shiya* would have caused limited damage, whereas the eventual *oness* caused much greater damage. According to #1, the monetary obligation does not exceed that which should have come from the *p'shiya*, which in our case is minimal. According to #2, the eventual damage should be considered done by *p'shiya* and obligate Shimon fully.

Tosafot (Bava Kama 23a) posits that if one did a *p'shiya* in which he would have shared responsibility with another and then an *oness* happened that related to him alone, he pays no more than he would have for the *p'shiya*. Rav Soloveitchik (R. Reichman's Notes to Lectures, ad loc.) and Rav Charlop (Beit Z'vul, Bava Kama p. 62) say that Tosafot assumes like #1. We have not found those who argue on Tosafot. Yet, apparently others posit #2. R. Akiva Eiger (Bava Metzia 36a, 29) understands that Abayei and Rava dispute which approach is correct. Rava, like whom we *pasken*, posits #2. The Netivot Hamishpat (292:13) assumes that we estimate the damaged object's value according to the time of damage, not of *p'shiya*, which also seems to support #2.

[Further deliberation exceeds our scope. We hope you have enjoyed a glimpse at some issues.]

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Ein Ayah

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

The Function of Each of the Prayers

(based on Berachot 1:60)

Gemara: Rabbi Chelbo said in the name of Rav Huna: one should always be careful about the prayer of Mincha, as Eliyahu was answered only at the time of the prayer of Mincha, as the *pasuk* says: "And it was at the time of the afternoon offering that Eliyahu approached and said, 'answer me, Hashem, answer me.'" Rabbi Yochanan says: even at the prayer of Arvit (Ma'ariv), as the *pasuk* says: "May my prayer be accepted like incense before You, the gift of my hand as the offering of the evening." Rav Nachman bar Yitzchak says: even at the prayer of Shacharit, as the *pasuk* says: "Hashem, hear my voice in the morning."

Ein Ayah: This seems difficult, as the *gemara* seems to attribute special prominence to Mincha. Since afterward it says that the same is true of the other prayers, what is special about Mincha? The *gemara's* language implies that it is not coming just to stress prayer's value in general.

Let us compare the prayers to parts of the body. There are parts of the body that share a function with another organ. Thus, there is a backup in case one does not work or the presence of another organ improves the functioning. However, the function can be provided even if one organ is not working. There are other organs which, in their absence, no other organ can take their place. We might think that the three prayers are primarily duplicates, whereby, out of the three, at least one proper *tefilla* (prayer) will be a proper one. Therefore, our Rabbis informed us that each one has its own unique value, in whose absence, another *tefilla* cannot replace it.

It appears that three matters unique to the ethical activity of prayer are hinted at here. One is that a person's evil inclination can overcome him, with wildness and silliness that a bad environment fosters, as one is involved in the day's activities with those who throw off ethics and forget Hashem. *Tefilla* can return one's lost spirituality by "spilling forth" his speech to Hashem, thereby elevating his pure conceptions of knowledge of Hashem, pushing off the plaster of falsehood and corruption of the thoughts. That is the special place of Mincha, which comes up in the middle of the day of activity and interaction with many types of people. The proof to the efficacy in this area is Eliyahu, whose prayer at Mincha time was answered as he strove to remove the bad thoughts from the heart of the masses who were worshipping the Ba'al.

The evening prayer's special function is to elevate man's spirit so that he not lower his soul with evil and sinful thoughts that go against the Torah and ethics. That is why they bring the *pasuk* that compares *tefilla* to incense, as incense atones on the thoughts of the heart (Yoma 44a), which is concealed. Granted, another *gemara* (Zevachim 88b) says that incense atones private *lashon hara*, but this also stems from the thoughts of the heart, as the *pasuk* says: "A person shall not think in his heart of the evil of his heart" (Zecharia 8:17). Alas, all of people's faults come only from the swelling of their self-love, which breaks ethical fences. Incense comes to arouse the desire to fix one's ways in his inner chambers, in the realm of concealed matters, which is the foundation of the persistence of the ethical standing.

In the morning, although the spiritual powers are not yet armed with evil, they are still lacking completeness, as sleep was dominant overnight. The powers need to be awakened and arranged in a holy setting so that they will be prepared to think elevating thoughts, in justice and straightness, in fear and love of Hashem. This is Shacharit's special function, as the *pasuk* says: "Hashem, hear my voice in the morning; in the morning, I will arrange before you." I will arrange my spirit and look forward that You will be with me to strengthen me, for he who strives to purify himself is helped (Yoma 38b).

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P'ninat Mishpat

Mi Shepara

(based on an article in Halacha Psuka, vol. 47 by Rabbi Akiva Kahane)

The *mishna* (Bava Metzia 44a) says that although paying money for an object does not effectuate a *kinyan*, there is still some obligation to abide by the sales agreement. This is in the form of a semi-curse known as a *Mi Shepara*. Besides a moral obligation that *Mi Shepara* engenders, there are also legal ramifications. The Shulchan Aruch (Choshen Mishpat 198:15) says that until the one who backs out accepts the *Mi Shepara*, the sale is still intact and so if the money given is lost, it is the responsibility of the seller to reimburse for it.

The Rambam (Mechira 22:3) says that if someone paid for an object that the seller had not yet taken control of himself, *Mi Shepara* obliges him to obtain the object to be able to give it to the buyer. The Shach and S'ma argue if *Mi Shepara* applies only in a case where a valid *kinyan* would make a binding agreement. The S'ma (209:23) says that it is talking about a case where the object is prevalent in the market, in which case a full *kinyan* would have been binding. The Shach (209:13) says that even in a case where there is no possibility for a *kinyan* to take effect, there still could be a moral obligation to uphold it, which finds expression in the *Mi Shepara*. He models this halacha on the *gemara* that *situmta*, a certain action that shows seriousness to acquire an object, creates a *Mi Shepara* even in a case where the *situmta* does not serve as a binding *kinyan*, because a serious action was done. The K'tzot Hachoshen (209:9) rules like the S'ma. The Pitchei Teshuva (209:11) says that the matter is an unsolved question.

This *machloket* is of great importance in our times when many financial transactions, such as sales of stock options, do not lend themselves to full *kinyanim*. Often also, a retailer does not have possession of the object at the time of the sale, as he obtains it from the supplier only afterward. Often these transactions are not done with the physical transfer of cash, but with bank transfers, checks, and credit card payment. These "transactions" are not more than payments of money, so that even according to the S'ma there is no more than a *Mi Shepara*.

Another point that requires attention is the matter of a set price, which is usually needed for a *Mi Shepara* to exist. One can ask regarding times like ours when commodity prices change regularly, if a *kinyan* works for them when the seller does not yet possess the object. The Pitchei Teshuva (209:11) says that in that case, a *kinyan* will not work on an item that is prevalent in the market if it is not yet in the seller's control. (*Dina d'malchuta* does not exist in this area because the law does not determine that the payment of money is itself a *kinyan*, nor is there a clear *minhag hamakom* on the matter.)

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ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360

Tel: 972-2-537-1485 Fax: 972-2-537-9626

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