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HEMDAT YAMIM

Parashat HaShavua

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“A Just Judgment” – As Opposed to What?

Harav Yosef Carmel

The famous first *pasuk* of the *parasha*, commanding to appoint judges, is followed by the goal: “and they shall judge the nation a just judgment.” The idea of a just judgment seems a little obvious – did we think that we would want an unjust judgment?

We will try to explain with the help of the words of one of the great rabbis. Every *dayan* is bound by the rules of jurisprudence and Halacha, as they appear in the works of *Chazal*, and brought as *halacha* by such *poskim* as the Rambam, Tur, Shulchan Aruch, and their commentators. This is agreed among all observant Jews. However, this is apparently not sufficient – the judicial system has to also convey a message of honesty and justice. Let us give an example from a ruling from Eretz Hemdah’s court system (the full ruling can be found on our website):

A man had signed a rental agreement. The rental period ended, and a new contract was not signed. At first, the landlord agreed that the rental would continue without a contract. After a year, the landlord requested of the renter to vacate the apartment because the landlord wanted to live in it himself. The renter presented various strange claims to justify his refusal to leave, while he continued paying rent. The landlord sued for penalty payments for refusal to vacate, as had been spelled out in the original contract. The renter claimed that this provision does not apply to him because that contract lapsed.

The Shulchan Aruch (Choshen Mishpat 312:9) rules that if the parties did not negotiate after the contract was over and the renter stays in the house, we assume the intention was to continue with the old conditions. Later (ibid. 14) he rules that if the renter stayed for even one month, he is required to stay for a whole year (when that was the original rental period). In other words, not only the rate of rent stays the same, but other conditions as well.

The Rama (CM 333:8) discusses a similar situation of continuing a business relationship without negotiation, regarding employment. He says that if they renewed the agreement without mentioning its details, the conditions continue, but if he continued working without any discussion, the worker is not entitled to his original privileges. Does the Rama argue on the Shulchan Aruch above? We will cite an idea of the Netivot Hamishpat whose importance Rav Yisrael stressed. Only regarding continuing in the house, in which if there is no agreement the renter is a thief, do we say that the renter continues to obligate himself. In other words, Halacha has to work with the assumption that when the alternative to agreement is that someone finds himself in an unethical situation, the pursuit of just judgment means that we have to assume that the ethical solution is the correct one.

At the time of *Mashiach*, a major part of the world leadership that we will be able to achieve is not only in the spiritual realm but also in adjudicating between the nations. This is described as leading to turning swords into plowshares (Yeshayahu 2:2-4). May we merit not only to see it but also to help it occur.

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Eretz Hemdah
Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
2 Bruraya St. corner of Rav Chiyi St.
POB 8178 Jerusalem 91080
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Ask the Rabbi

by Rav Daniel Mann

Excluding a Son from Inheritance

Question: Are there sins that would cause a son to automatically lose his share? If a father is angry at a son, is he allowed to use a device to disinherit him?

Answer: It is unclear whether this question is theoretical or practical. In any case, our answer is general.

The Torah laws of inheritance are set monetary rights that are not affected by the righteousness or sins of inheritors. In that way, it resembles the fact that the Torah does not confiscate a sinner's property. On the other hand, a person is capable of taking steps during his lifetime to effectively obviate inheritance laws. See our survey of some details in Living the Halachic Process IV, 1-9.

The main question is whether it is proper to exclude an inheritor due to his moral level. Rashbag (Bava Batra 133b) says that it is a positive thing for a father to transfer his assets to others if his sons act improperly. However, the *gemara* concludes that others disagree and cites Shmuel's statement that it is wrong to transfer one's property even from a "bad son" to a "good son." Shmuel goes beyond Rashbag, as presented. He rejects not only giving to a non-inheritor but even to one son at the expense of another and states that neither the badness of one inheritor nor the goodness of another is a satisfactory reason. The Shulchan Aruch (CM 282:1) *paskens* like Shmuel.

There is discussion as to whether this rule is a Torah-level law (difficult), a Rabbinic binding law, or Rabbinical guidance (see S'dei Chemed, vo. IV, p. 27). One reason given for it is that we cannot know what will be with the offspring down the line (Ketubot 53a). The Tur (Choshen Mishpat 282) gives another reason – it causes jealousy and ill-feeling within the family. These are apparently not the primary reasons behind the *halacha* but the secondary ones, as we will explain. On the basic level, the Torah says that the proper thing is to give as the Torah prescribes (Aruch Hashulchan, CM 282:2). Inheritance is one of the tools of Divine Providence as to a person's financial resources. A person may ask: "If I can halachically and (ostensibly) morally devise systems that seem more equitable in this specific case than Hashem's general system, shouldn't I do that?" The answers are: you cannot know what is truly equitable, as Hashem knows what will happen down the line, and you do not; you have to consider the negative of your plan (i.e., jealousy).

Poskim discuss different cases where it is arguable that the indications for "playing favorites" may be compelling. There is a *machloket* whether the *halacha* applies to one whose behavior and the way he raises his children is antithetical to Torah Judaism (see Pitchei Choshen, Yerusha 4:(4)). It is not simple if one must give a full inheritance to one who mistreats his parents (Rambam, Nachalat 6:11 seems to indicate that he should still receive) or tried to oust his siblings from inheritance (see S'dei Chemed, IV p. 34). There is also a *machloket* if he can keep everyone as an inheritor and only give more to one than to another (see Rashbam, Bava Batra *ibid.*; Sdei Chemed, IV p. 33).

While the Rambam (*ibid.* 13) urges to give children equal financial treatment throughout life and the *gemara* (Ketubot 53a) indicates that large gifts to one of the children during his lifetime could be wrong, one must put things in perspective. One may use his money during his lifetime for any reasonable need, desire, or *mitzva* cause, as long as it is not exaggerated in a way that fundamentally alters inheritance (see our column, Mishpatim 5779). Therefore, a parent may give somewhat more to some children based on need. He can also earmark money in a way that benefits those with similar values to the parents (e.g., pay for grandchildren's day school education), and if a child chooses not to take advantage of such resources (e.g., sends to public school) that is his decision.

To summarize a general answer on a sensitive family issue, we urge to listen to this *halacha's* "voice": "Don't be holy; be smart"; "Don't try to 'outsmart' the Torah."

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Ein Ayah

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

Powerful Threes

(condensed from Ein Ayah, Shabbat 9:62-65)

Gemara: Blessed is Hashem who gave the three-part Torah to a nation with three groups by means of a third child on the third day of sanctification in the third month.

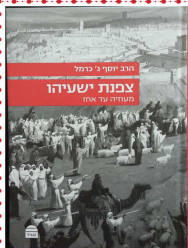
Ein Ayah: The three sections of the Written Torah – Torah (Pentateuch), Nevi'im (Prophets), and Ketuvim (Writings) – together demonstrate the richness of the all-inclusive Torah. It is the basis of a blueprint for life, a world of prophetic vision and practicality, giving spiritual insight about time and nations. It merges the practical world with the emotional world in a manner that penetrates to our internal souls.

The Torah teaches us to “choose life” (see Devarim 30:19). The Prophets saw into the depths of the world and used Hashem’s word to them to give insight about nations and kingdoms, building and destruction. They discussed that which transpired and was to come about. *Ketuvim* uses a delicate spirit to convey the ethics they absorbed with their distinct imprint. They were able to connect human life with the Eternal. All three were connected into a spirit of the life of the entire world, with nothing missing.

The highest goal of spiritual visions is to enable life to be lived in a way that Hashem’s presence will shine on those fortunate souls that are prepared for it. This, on the one hand, takes them above the myriad mundane concerns of people’s lives. Yet man is rooted within a life in which people desire to create societies, and in these too it is possible to inject sanctity from Above. The need to give expression to all of these elements of life made it appropriate for there to be three groups within *Am Yisrael*: *kohanim*, *levi'im*, and *yisraelim*, to complement each other. The *kohanim* are those whose interests go beyond the boundaries of the mundane elements of human life. The *levi'im* receive divine teachings and ideas and explain them to the people. They hear the sacred voice, appreciate its beauty and holy splendor, and desire to have it reach the broadest avenues of life. *Yisraelim* comprise the main part of the nation – they are the workers, the soldiers, the builders, and the settlers of the world. As parts of a unified nation, they are able to demonstrate the greatness of the Torah of truth.

The complete ability to lead has to be based on three parts, with the third one being built upon its predecessors. In both a family and a nation, for them to reach their full potential, they need to be built properly based upon a deep divine plan. The way a woman creates a family with her children is parallel to the formation of a nation. Aharon was the basis of the nation, as he inculcated sanctity into national life and softened the interactions between members of the nation with an approach of peacemaking. He made the nation fit for life and for sanctity, so that the people had the right characteristics to function in a pleasant manner. When the basic content of the family and the nation was set, it was possible for the most choice of the brothers to elevate the nation to be capable of serving as a “nation of priests” for the whole world. That is why the third brother was fit to accept the Torah, as he absorbed all of the eternal elements of divine light within him. He was able to stand on behalf of the nation opposite Hashem and represent them before Him (see Shemot 18:19).

In order to connect life to divine heights it was necessary to limit the animalistic elements of the people, as these elements pollute a person’s spiritual aptitude. Three steps of time need to be employed to have a significant unit of separation. Only after three days of separation from their wives were they complete enough to connect to Hashem who could then given everything that they needed.



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

Was the Site Created Fast Enough?

(based on ruling 71042 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) asked the plaintiff (=pl) to create a website to be used to raise money for a *sefer Torah* to be written to commemorate the victims of the Carmel Mountain fire. Def offered 2,000 shekels and instructed that it be done very quickly, before public interest in the matter would wane. 18 days later def canceled the project. Pl said that he worked hard to do the project quickly and indeed had sent a picture of the site to def and was waiting for def to send content. Def says that he demanded that the work be complete within a day or two and therefore offered more money than the job was worth (he claimed it was an easy project because existing sites can be used as a basis with a need of minor modifications). Def claims that pictures of the site were not enough; he needed it working on the internet so that he could show it to donors immediately. He also said that during discussions after the cancellation, pl had said: "If you don't want to pay me, don't pay me, but give me an answer." Thus, pl already waived any money due. Pl denies making such a statement.

Ruling: We showed/described the work done to two people who deal in the field of website development, and they estimated the amount of work needed at 10-25 hours (depending on the amount of professionalism needed) and its value at 2,000-4,000 shekels. Therefore, the price and the efficiency with which pl did the work was reasonable.

Based on the timeline that was presented and taking the time pressure into consideration, it is borderline as to whether pl acted swiftly enough. However, we do not accept def's claim that there was a set time limit of two days. From an email conversation between the parties after eight days, there is no indication from def that pl had broken his commitment and no ultimatum given as to exactly when the work had to be complete. Therefore, that is not grounds for foregoing payment.

There is a factual disagreement as to whether pl relinquished rights to payment. Given a case where there is an existing obligation to pay pl but with no signed document, so that def could have been believed that he paid, he can also say (based on "migo") that the other side was *mocheil* (relinquished rights to payment) (Shulchan Aruch, Choshen Mishpat 75:22). However, one has to check what language pl used, even according to def's account. The Maharam Rutenberg (IV:435) says that language such as "I will not make a claim against you" is not the same as waiving the obligation, and an obligation remains, which can be demanded later. Since we have the right to rule based on compromise, we add our impression that the claim of *mechila* was not strong, and we obligate def to pay pl 1,600 shekels if pl is willing to take def's content, add it to the site, and make it available online.

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Nir Rephael ben Rachel Bracha / Ro'i Moshe Elchanan ben Gina Devra
Meira bat Esther / Rivka Reena bat Gruna Natna
Bracha bat Miriam Rachel / Naomi bat Esther
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