We have discussed in the past the connection between the end of Parashat Ki Teitzei, which deals with the struggle against Amalek, and the beginning of Parashat Ki Tavo, which deals with the mitzva of bikurim. Both sections (Devarim 25:18-19; 26:1) include a reference to coming to “the Land that Hashem your Lord has given you as an inheritance.”

One can ask: how was Amalek able to effectively attack Bnei Yisrael as they left Egypt, considering that they were protected by the miraculous clouds that previously shielded them from the Egyptians (see Mechilta D’Rabbi Yishmael, Beshalach 4)? The Midrash, followed by Rashi, explains on the word “vayezanev” that the Amalekites inflicted wounds at the area of the tail, specifically, that they cut off foreskins and threw them up in the air. On the words “hanecheshalim acharecha,” it explains that these people were “those lacking in strength due to their sins, who were expelled by the cloud.” In other words, Amalek was able to harm only those who did not agree to perform a brit mila, which is a marking of oneself or of his child as a servant of Hashem. Another midrash, cited by the Bechor Shor, learns from the proximity of p’sukim in Ki Teitzei that the vulnerable people were those who violated the laws of honest weights. In other words, the unprotected were sinners in the realm of monetary honesty.

Rav Kook (Orot Hatechiya 20) has a very novel, related idea. He posits that evil people actually support the righteousness of the righteous. As long as they remain connected to the nation in general, one can apply to them the pasuk, “Your nation are all righteous people” (Yeshayahu 60:21), which is from this week’s haftara. The external, evil behavior actually helps the righteous, like the yeast at the bottom of a wine barrel, which protects the wine from spoilage. It is like the idea that the incense in the Temple service has to contain chelbena, even though, individually, it has a very offensive odor.

Our conclusions from this matter are thus as follows. On the one hand, the cloud did not protect the type of sinners that we discussed. On the other hands, the Land was promised to the whole nation, including such people, lacking in morality. On the way to the Land, it is not possible to give up on any Jew, even if he was expelled by the cloud. If Amalek takes advantage of their weakness and attacks them, we will remember this treachery and not forget or forgive.

Let us pray that we all be on the level of, “Your nation are all righteous people.”
Finding a Discarded Aron Kodesh

Question: I found a discarded wooden box, which someone who sold their apartment left outside a storage room. The neighbors want to throw it out. After opening it, I could tell it was used to store a small sefer Torah. What should I do with it?

Answer: The gemara (Megilla 26b) says that a tashmish kedusha (something that serves holy [scrolls]) is holy and needs geniza when one no longer uses it. One of its examples is a makṭara, which Rashi translates as the chest in which a sefer Torah is held. Usually an object must come in direct contact with a sefer Torah to be its tashmish (ibid.). Since a sefer Torah’s parchment rarely touches the aron, why should it be considered a tashmish kedusha? Some explain that it is enough that it happens on rare occasion (see sources in Yabia Omer VIII, OC 19). However, many accept the following distinction. If the tashmish provides kavod for the kedusha, it is a tashmish kedusha; if it is (only) for shemira (protection), it is not a tashmish (Rama, Orach Chayim 154:3 based on Ohr Zarua, Shut 745).

How does one know if an aron is for shemira or for kavod? The Mor U’ketzia (OC 154) says that if an aron kedosh is built into a wall, it is for shemira; if it is movable, it is for kavod, as the Ohr Zarua seems to indicate. Presumably, an aron does not have to be fancy to be for kavod, as wanting to have the sefer Torah covered is part of its kavod. Rav Ovadia Yosef (Yabia Omer ibid.) cites those who say that, if the parchment never touches the aron kedosh, we need to decide practically whether it is for shemira or kavod. (He leans toward leniency regarding a large aron with a strong lock; your case might be different.) Still the Mishna Berura (154:9) indicates that the standard movable aron is a tashmish kedusha, and this would be our basic assumption regarding the aron you discuss (see also Tzedaka U’mishpat 15:18-19).

One can make a t’nai (condition) by which kedusha will not take effect on a tashmish kedusha (Shulchan Aruch ibid. 8). Can one entertain leniency by assuming that this is what happened before this abandoned aron kedosh was used? Actually, even if one makes a condition, the object does not lose all special status. The Mishna Berura (154:34) says that while one may use it for mundane things, he may not disgrace it. We find a machloket regarding objects used in a mitzva (e.g., tzitzit), which do not require geniza (Megilla 26b). The Shulchan Aruch (OC 21:1) allows throwing them in the garbage, but the Rama (ad loc.) is somewhat more stringent (ad loc.). The halachic situation would be similar according to the lenient opinions/cases discussed above.

While we cannot exhaust all the cases and analyses, we will provide some suggestions in order of halachic preferability. The obvious suggestions are to try to find someone to use the aron for a sefer Torah or find the owner and ask him to take it.

Geniza is certainly a respectful solution without problems. If the aron is going to be permanently “retired,” it is permitted to respectfully separate the pieces of wood, so it takes less space.

Many poskim permit using an aron for storing regular sifrei kodesh. The Taz (OC 154:7) says that while there is a rule that one may not lower the level of sanctity of the use of a holy object (Megilla 25b), we prefer a lower usage related to sanctity to geniza. While the Taz’s opinion has to fend off several questions, many support it regarding an object that only serves an object of sanctity (see Yabia Omer ibid.). In a case like ours, where there are other grounds for leniency, this is a good option.

If one nominally sells the aron and uses the small amount of proceeds to adorn a sefer Torah, many posit the aron loses its kedusha status (see Shulchan Aruch, OC 153:9; Orach Mishpat 34; Tzitz Eliezer VII:7). The buyer should just be careful not to disgrace it (see Shulchan Aruch ibid.). It is questionable whether putting it in the garbage is a disgrace, and wrapping it first improves matters. Doing that without first selling it is a last resort one should try to avoid.
The Time for Accepting the Torah out of Free Will
(condensed from Ein Ayah, Shabbat 9:68-69)

Gemara: [Last time we saw the famous gemara about Hashem holding Mt. Sinai over Bnei Yisrael’s head and thereby effectively coercing them to accept the Torah.] From here there is a great moda’ah (Rashi- excuse) [for insufficient observance] about the Torah. (The way that we will see that Rav Kook explains this gemara is somewhat different from Rashi). Rava said: Even so, they accepted it once again at the time of Achashveirosh, as the pasuk says: “The Jews fulfilled(confirmed) and accepted” (Esther 9:27) – they confirmed that which they had accepted previously.

Ein Ayah: [We saw last time that the idea behind the Torah being coerced is that Bnei Yisrael were of a nature that made it absolutely necessary for the world that they accept it.] Had the Torah been given to Bnei Yisrael through their free will, then its illuminating content would not have been as connected to the essence of the nation and the depths of the souls of its individuals. Then it would have been possible for their transgressing the Torah by their choice to have erased the impact of sanctity that the Torah was supposed to have made in them. However, since Bnei Yisrael are linked to the Torah based on the necessity that it is not possible any other way, transgressions cannot alter that except on the external level. These matters are beyond any specific display of desire and apply even when actions seem to point in a different direction.

This is what the gemara means by a moda’ah – all the improper actions do not cause a ruining of the foundation of Bnei Yisrael’s level by means of bad choices. This is the highest level of moda’ah. It is not a moda’ah based on a weakening of the acceptance of the Torah (as Rashi explains), but rather a divine revelation that nothing can alter the overall relationship between Hashem and Israel, which is beyond choice.

The natural foundation that beats in the heart of Israel does not allow the element of free choice to find expression to its fullest extent. Since our forefathers stood by Mount Sinai, the natural light of a life of sanctity gained strength and became revealed, which caused the element of free choice to take a step back into darkness. Then, the only way to give the fullest expression to the free choice arose when there was a great storm of intoxication caused by the evil inclination toward idol worship. Then the nation was capable of having free will which could have allowed them to either accept or not accept the Torah. It required a high intensity of venom and power of the inclination toward idol worship to make there be such a possibility of choice.

The deterioration on a national level caused a great weakening of the light of natural sanctity. At the time of Achashveirosh, when there had already been the phenomenon of bowing down to the form of an idol and the enjoyment of taking part in the feast of the wicked Achashveirosh, all of those foreign elements penetrated into the Nation of Israel and darkened the light of natural sanctity. The light was hidden inside the soul. This was specifically arranged by Hashem so that they would be able to use the ability to make a free choice [on a broad national level]. This, in turn, brought about repentance, as there was choice to go in one direction or another, which was caused by Haman’s decree.

This is when there was an actualization that confirmed that on the level of free choice, there was also a will to accept the mitzvot. It was no longer based only on the natural level, which had been the basis previously.
Firing with Insufficient Warning? – part I
(based on ruling 75033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (="pl") worked for the defendant (="def"), an NPO, in 2012-2013, doing work on their website. In 2014, def asked pl to return in a different, expanded role to help def out of financial woes. Pl explained that he needed work stability and wrote a contract that required def to give him 60 days warning before terminating employment. Toward the beginning of pl's tenure, def replaced their director. Since pl worked closely with him, pl met with the head of def (="hdef") to ask about his future. hdef assured pl that he would not be fired. As time went on and pl felt excluded from decisions, he asked to meet with the new director (="ndir"), but this took weeks to happen. Finally, on 29.12.14, during his 6th month of employment, ndir fired him and told him he might not get paid for that month. Pl is suing for salary for 60 days after the notification, as well as for 10,200 shekels for payment for travel over the whole period per the contract, and lawyer’s fee (to be discussed in part II). Def said that the contract is to be read that the need for 60 days notice is only after the six-month trial period.

Ruling: The relevant paragraph in the contract has three sections: A. The first employment interval is 6 months. B. If the sides agree to continue, the agreement automatically renews itself for 12 months. C. Each side will give prior notification of 60 days before ending the employment.

Pl claims that C, requiring notice, applies to the entire period. Def argues that it refers only to B and that A refers to a six-month trial period that requires no warning. Beit din finds that the paragraph can be read either way. Def invokes the rule (Law of Contracts 25.1a) that when a provision has multiple understandings, is to be read to the detriment of the one who had an advantage in its formulation. In this case, pl wrote the contract. However, even according to this law, pl did not have an advantage, as he is an individual who wrote the provision without legal help, whereas def had a legal staff to review it.

The halachic sources on the matter are complicated. The Shulchan Aruch (Choshen Mishpat 61:15) says that we look carefully at the language, even if the litigants do not have great command of legal language. But he continues (ibid. 16) that some say to follow the intention rather than the written word. The Nachal Yitzchak reconciles that in order to add a provision not written, very strong indications are needed. If there is a provision, and it is unclear how broadly to apply it, we can use external indications to do so.

There are valid arguments (omitted in this presentation) whether there was a trial period and whether or not afterward formal notification was needed. However, there is no question that pl demanded to be warned before being fired. Since pl asked about his status during the six months, it was def's responsibility to give him the information he requested. Since hdef and ndir either purposely or unintentionally withheld the information and gave pl reason to believe he would continue, the requirement for 60-day notice certainly applies.

[We will continue next time with various ramifications.]

We daven for a complete and speedy refuah for:

Yehuda ben Chaya Esther / Eliyzer Yosef ben Chana Liba
Yair Menachem ben Yehudit Chana / David Chaim ben Rassa
 NETANiel Ilan ben Sheina Tzipora / NETANel ben Sarah Zehava
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