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HEMDAT YAMIM

Parashat HaShavua

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On Nationalism and Sanctity— part IV

Harav Yosef Carmel

We have asked, in previous installments, about the connection between David's ill-fated census and the silo of Aravna the Yevusi (i.e., the Temple Mount) as an antidote. We will now look at the significance of David's buying the silo.

In the days of Yehoshua bin Nun, Adoni Tzedek, the King of Yerushalayim, was the head of the treaty of the kings of the south of *Eretz C'na'an*. He tried to stop Yehoshua's conquests after he took Yericho and Ay and after he made a treaty with the cities of the Givonim. Yehoshua killed Adoni Tzedek and his friends (see Yehoshua, ch. 10); however, it does not say what happened to the city of Yerushalayim.

It is explicit in the beginning of *Sefer Shoftim* (1:1-8) that after the death of Yehoshua, the Tribe of Yehuda conquered the city and set it afire. It is clear from the context of these sources that the inhabitants of the city were C'na'anite/Emorite. However, in Yehoshua 15:63, it says that Bnei Yehuda were unable to remove the Yevusi inhabitants of Yerushalayim and that they remained there "until this day." From the list of the cities of Binyamin, we see that Yerushalayim was on the border of that tribe (see *ibid.* 18:28). This tribe, as well, did not remove the Yevusi from the city (*Shoftim* 1:21). So Judeans and Binyaminites did not enter the city, and while the C'na'anites/Emorites fled when their king was killed, the Yevusis remained.

We also see from the tragic story of *pilegish b'Giva* that Jews did not live in that city in the time of the *Shoftim*. The Levite was travelling northward with his concubine when night was starting to fall. The idea of sleeping in Yerushalayim/Yevus arose, but he said that he did not want to sleep in a non-Jewish city, and therefore they went on to Giva, where atrocity occurred (*Shoftim* 19:10-12).

The city is not mentioned again until the time of Shaul. After David killed Goliath, we see from the *p'sukim*, which mention Goliath's head being brought there (*Shmuel I*, 17:54), that it was clear to David that the city had a place in the era of national renewal that was arising from the throwing off of the yoke of Plishti domination. Even when the *navi* describes bringing the ark from Chevron to Yerushalayim, the Yevusi inhabitants of the city are mentioned (see *Shmuel II*, 6).

At the end of the historical process, Aravna had become a *ger toshav* (see *Avoda Zara* 24b), a full *ger* (Rabag), an officer (Rashi), or a monarch under David's tutelage (Radak). According to the Radak, Aravna's little kingdom was up there on the mount, as David, who did not yet realize the significance of the place, allowed him to remain there peacefully, until he had fuller understanding.

Next week, we will see how David learned the importance of the place. Hopefully soon we will see it fully rebuilt.

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by Rav Daniel Mann

Speaking to The Deceased

Question: Is there a proof from the *gemara* in Berachot 18b-19a that when people speak to the deceased in the cemetery, he hears and understands?

Answer: We will peruse some sources in *Chazal* and later authorities and try to arrive at a balanced approach.

It is a basic Jewish belief (see Rambam's principles of faith) that a person's soul exists after death. While basically static, receiving reward and punishment (see Ramban's Sha'ar Hagemul), the soul is impacted by the actions of relatives and those doing good things to elevate their souls.

There are old Kabbalistic and other sources that visiting a loved one's grave brings the deceased some sort of positive feeling (see Geshet Hachayim I, 29:1). Various texts (*hashkava*, certain *pirkei Tehillim*) are recommended; we have not found sources that talking to the deceased increases his *nachat*. There is an old *minhag*, followed by some and not others (we respect both groups) of placing a written invitation and/or orally notifying a deceased of an upcoming marriage of a close relative. This is a form of communication, but it is not a pillar of faith to believe or not believe that this makes the deceased happy or more likely to "attend" the wedding.

There is a *halacha* (Yoma 87a; Shulchan Aruch, Orach Chayim 606:2) that seems to include "communication" with a deceased. If one (seriously) insulted someone who subsequently died, he should take ten people to the grave to beg forgiveness. One might claim that this proves that the deceased is aware of the request. However, the recommended language is: "I have sinned to Hashem, and to *Ploni*, whom I damaged." It is unclear whether the deceased or Hashem is the one/One who needs to listen, or whether just making an admission in the deceased's "presence" is the important thing.

The *sugya* to which you refer contains ostensibly instructive elements. The *gemara* contemplates whether the dead are aware of what is happening in the world and tries to prove it from stories in which live people found out information from the deceased during interactions with them. (The Beit Yosef, YD 179 deals with what separates these cases from forbidden practices of attempted communication with the dead, a topic we are not broaching here). This *gemara*, though, is not a proof that one can talk effectively to the deceased. Some commentaries (see Maharasha) understand that the living did not communicate but received information in dreams. Also, "sprinkled" through Rabbinic writings are stories of supernatural events, dealt with differently by various commentaries. In any case, we know not to treat something that happened once as something that happens all the time, so we cannot learn from such *gemarot* of what to expect in our experiences. To the extent that the deceased are able to understand those who visit, it does not necessarily mean that one needs to verbalize to get the message across (their ears do not work, and we are not experts as to the tools their souls use).

A *gemara* (Sota 34a) tells (at least according to the literal reading) how Kalev spoke to the forefathers in Chevron and asked for their help. While some say one should only ask Hashem to help us in the merit of the *tzaddikim* (Mishna Berura 581:27) or use a burial place as a holy setting (Derashot Haran 8), others allow asking the deceased to beseech Hashem on behalf of those who visit and/or love them (see Geshet Hachayim I, 29:9; Pri Megadim, EA 581:16). Many good Jews have done so at *kivrei tzaddikim* and their relatives' graves over the centuries. (One must be VERY CAREFUL NOT to *daven* TO the *tzaddikim*.) One who asks the deceased to pray need not believe that the deceased hear or how. One can "speak" to Avraham Avinu in English or to "Mama Rochel" in Yiddish. It is possible (we do not know) that contemplation and/or set *tefillot* have the same results. (When we enunciate during *tefilla*, it is not because we believe that Hashem needs that to "hear us.") It is important that the experience be healthy for the visitor and respectful to Hashem, who decides everything.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.

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P'ninat Mishpat

Bad Advice Causing Loss of Mortgage Rights – part II

(based on ruling 78002 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendants are an organization formed to build a real estate development (=def1) as a *kevutzat rechisha* (a group of purchasers = *kr*) and the company that supervises the project (=def2). The plaintiffs (=p1 and p2) signed up to join def1 and become owners of apartments with only one spouse signed (for technical reasons), which def1 and def2's employees said was fine. It turns out that this caused p1 and p2 to be ineligible for special government mortgage arrangements, and they are demanding payment of the estimated 42,000 shekels apiece over the life of the mortgage this is worth. The defendants argue that they were not obligated to arrange mortgages, that at the time of the advice given, it was not expected that buyers would benefit from government mortgages or that it would make a difference if both spouses were listed as owners. Later on, switching the registry of ownership could have held up the whole group.

Ruling: [Last time we saw that def1 and def2 are not responsible for originally encouraging p1 and p2 to sign without their spouses mainly because at the time it was not a mistake.]

As of 2017, it already became evident that many people would benefit from the government mortgages, and still the defendants said it was okay that only one spouse was signed. Also, at this point, def2 was being paid to represent the members of def1 (see last week's installment), including p1 and p2. However, our inquiries have revealed that even expert mortgage advisers were unaware of the ramifications of the changes in the initial stage.

Furthermore, according to the majority of *dayanim*, pls did not prove that at that stage, it was still possible for them to have received the government mortgages. One *dayan* points out that def2 admitted that they could have received the mortgage, just that they were against it because the change of title likely would hold back the whole group. He also argues that according to the Shulchan Aruch (Choshen Mishpat 306:7), the adviser who caused damage has to prove that he was not at fault. The majority of *dayanim* respond that def2's admission was theoretical; they did not say it was clearly possible to receive the mortgage. Regarding the Shulchan Aruch, it only says that the adviser has to prove he is an expert (as most are not), not that he has to prove every element of faultlessness.

Def's claim that not receiving the special mortgage is not a loss but the lack of a special gain is not true. Not being able to reduce (financing) costs is indeed a loss. However, their claim that changing title would hold back the project is correct. Def2 was not hired by any individual but by the group as a whole, and something which is bad for the group is not something he should advocate even if it helps a few individuals. The Shulchan Aruch (CM 176:10) gives partners leeway to act in a way that people deem as advantageous to the joint project.

Def1 and def2 could be obligated based on contractual obligations, even if there was no objective damage. However, in this case, the contract states that def2 is not responsible for the financing of the members of the group's property.

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