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HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH

Noach 6 Cheshvan 5770

Home Remedy for the Survival of the Earth

Harav Yosef Carmel

Rabbinical courts are apprehensive about using coercion to facilitate a *get* out of fear that, if done improperly, it will render the *get* invalid and subject the subsequent unknowing couple that the *get* enabled, to live in sin and bear *mamzerim*. However, the courts must remember that if this concern is taken to an extreme, women will be unduly kept “in chains”, which is against the age-old rabbinic tradition to search for every validly possible measure to permit an *aguna*. The refusal to act even by a few rabbinical courts can be responsible for the ire of women’s advocacy groups and the community as a whole against rabbinical courts in general.

Let us take a look at coerced divorces in the context of our *parasha’s* main topic, the generation of the flood. The spiritual reasons that “precipitated” the vast ecological disaster were raised in *Bereishit*: “The sons of the powerful saw that the daughters of man were good, and they took women from whomever they chose” (*Bereishit* 6:2). The *midrash* (*Rabba* 26) says that this refers to the taking of married women. Ibn Ezra says that the husbands could do nothing about it because the perpetrators were the sons of the judges. Other commentators give other possibilities about the nature of this powerful group of elitists.

Unfortunately, history has shown us that there are various ways for the powerful to claim even the married women of their desire, including in “legal” ways. The powerful pressure the socially weak husband to divorce his wife or else ... Getting from there to finding a newly divorced bride is not too difficult.

To deal with cases such as this is certainly a worthy use of the restrictions on a coerced divorce. Another is to prevent a woman from abandoning a worthy husband because she has improperly fallen in love with someone else (see *Nedarim* 90b). In contrast, holding on to the claim of a coerced *get* in order to extract financial gain or to “take revenge” against a wife is against halacha. It also lends a hand to those who want to destroy the holy foundations of the Jewish, and universal, for that matter, family unit.

Noach’s ark served as a place of refuge for a normative family: father Noach, mother Naama, three sons and their wives, and even mates among the animal world. This is a message for generations. The future survival of man on our planet has more to do with our clinging to family values than to recycling and other ecological measures, which we also value. A mother, father, and upstanding children, not just for the Jewish people but for all of the nations of the world, are our security against foreboding horrible storms.

Specifically, after the “white holiday” of Yom Kippur, when we read about the prohibitions of illicit relations, and the “green holiday” of Sukkot, when we went out into nature, let us call on the rabbinical courts to strengthen the family unit. We encourage the survival of families based on the principles of mutual respect and fidelity, but not based on using elements of our system for any form of extortion.

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Ask the Rabbi

Question: I daven with a *minyán* on a train car in Israel that has become set aside for that purpose. Someone brings a *sefer Torah* (=sT) to read from on Mondays and Thursdays. I have heard that one may not move a sT from its set place to read from. Is what we are doing permitted?

Answer: The Shulchan Aruch (Orach Chayim 135:14) rules (based on a Yerushalmi in Yoma; the Zohar is apparently very strict on the subject) that people should not take a sT to a prison to read for the inmates who cannot make it to *shul*. The Mishna Berura (135:47) explains that it is a *zilzul* (degradation) of the Torah to be taken to people who need it, as people are supposed to congregate around it in its place. Some (see Biur Halacha, ad loc.) say that the *zilzul* applies only when the people in need can make it to the sT (as opposed to inmates). However, not only is the Shulchan Aruch accepted, but in your case, it is unlikely that people have a need to *lain* specifically on the train car in a compellingly pressing manner. Thus, we have to look for room for leniency.

The Yerushalmi says that it was permitted to bring a sT to the *kohen gadol* because of his stature, which the Rama (OC 135:14) extends to other "important people." The Nishmat Avraham (I, pg. 76) cites Rav S.Z. Orbach as saying that a "community" of ten probably has the stature of an important person. The Biur Halacha also says that if there are ten inmates, then their obligation to hear Torah reading makes it proper to bring the sT. However, both are talking about cases where without bringing the sT, the ten have no way of hearing *kri'at hatorah*, which is not likely the case here.

Some discuss the idea of bringing an *aron kodesh*, so that the Torah is respected and has some permanence in its temporary location. This idea is rooted in a *teshuva* of the Maharam Padova (58) but this seems to apply only along with the other factor mentioned there, that the sT will stay in that location for at least a day or two (Rama, *ibid.*, with the Mishna Berura ad loc.:49). (The Kaf Hachayim, OC135:83 says that the presence of the *aron* is enough according to the lenient opinion). We understand that the sT in question comes in and out with a passenger on his daily commute (see also Aruch Hashulchan, OC 135:32).

A more promising leniency for this case takes into consideration the context of a sT's usage. The issue of *zilzul* pertains more fully if a sT that is based in a *shul* to be used there for public reading is moved to help an individual. However, there is no problem with writing a sT specifically for the owner to take along with him to learn from in various locations. (This is the way the 613th *mitzva* of the Torah was apparently intended, as the king is described as doing). The *gemara* (Yoma 70a) tells that after the service in the *Beit Hamikdash* on Yom Kippur, many individuals would bring their own *sifrei Torah* to show how nice they were. Some *poskim* (see Torah Lishma 58; Har Tzvi OC 71 suggests it;) deduce from here that a personal sT does not have the discussed restriction. Logically (and the matter has backing in the language of some sources), the issue is less the ownership per se, and more a matter of what the sT is slated for. A privately owned sT that has been used for reading in one place might be problematic, whereas one that was made in order to be used in a roving manner (Kaf Hachayim *ibid.* 78) and perhaps even a public one that has not been used in a long time, might be permitted to be designated for reading in different places.

It is likely that some of the classical *poskim* who do not discuss this relatively new distinction do not agree with it. However, leniency on this rabbinic matter is certainly legitimate, and we have seen the *teshuva* of Rav David Spector of Beit Shemesh (perhaps the sT owner's *rav*) who has permitted it. Therefore, one should have no qualms on these grounds about joining this group. (Regarding the advantages and disadvantages of *davening* in this unique setting a separate discussion is required.)

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Ein Ayah

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

Both pieces of Ein Ayah relate to the following gemara.

Gemara: A favorite saying of Abayei was: A person should always be cunning in his fear of Hashem, respond softly and prevent anger, and speak in peace with his brothers and relatives and every person, including the idol worshipper in the market, so that he will be beloved Above and cherished below and be accepted by people.

An Intellectual Fear of Hashem

Ein Ayah: (based on Berachot 2:60)

"A person should always be cunning in his *yirah* (fear of Hashem)" - There is a difference between one who acts according to the form of fear of Hashem that the *sechel* (intellect) indicates and one who acts according to the power of *dimayon* (roughly, imagination) alone. In the first view, from the perspective of *dimayon*, fear of Hashem has to do with the fear of Hashem alone, and it has nothing to do with the ways of the world, mankind, and the dignity of human beings. Since the fear of Hashem fills his heart and all of his emotions, where will these human obligations find a place in his heart?

However, one who looks at *yirah* with his intellect will recognize that the purpose of *yirah* is to improve all of his paths in the most complete and pleasant manner and attract many to *yirah*, service of Hashem, and the path of the good. Therefore, one should not follow the form based on *dimayon* but based on the guidelines of the intellect in regards to the details of the fear. In so doing, he will realize that the great branches of true *yirah* are dignity of human beings, the ways of peace, and the way of the world. Then he will respond softly and prevent anger and speak in peace with his brothers and relatives and every person, including the idol worshipper in the market. *Yirat Hashem* will not bother him in so doing, nor will it take away from his ability to fulfill these human obligations, which is a crown of glory for a person and also serve to sanctify Hashem's name and spread the fear of Hashem in the world.

Regarding the idea of *orma* (cunning), which is built on wisdom, this has to do with the purity of the *sechel* without the outer coatings of *dimayon*. It is conceptually related to *erom* (naked), as the exteriors are removed. The tendency is that an intellectual form will immediately take on imaginary forms that will confound it and darken its beauty. Therefore, the wise of the heart will investigate the depths of the *sechel* and accept it with its purity without the coverings of *dimayon* until he is considered *arum* (with the person being called "*arum b'yirah*").

To Be Loved by Hashem and by Man

Ein Ayah: (based on Berachot 2:61)

Being "loved below" is not necessarily a praise. Sometimes a *talmid chacham* is loved by the people of his place because he does not rebuke them on religious matters. However, being loved Above comes from the essence of goodness and straightness. On the other hand, even in this world, the nature of the spirit cherishes good, even though good stands up against desires and therefore is not always loved, and a person sometimes hates the one who guides him to be good. However, this cherishing comes from a special internal recognition. This is found in one who straightens his path to go in the way of straightness with Hashem and people. He is fitting of being cherished, and in this way, everyone will get the feeling in their heart to want to follow his path and be like him. Although not everyone will actually end up following in the ways of goodness because of the power of the evil inclination, it is still a pleasant thing.

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P'ninat Mishpat

The Right to Strike – Part II

(based on Eit Ladun, Halacha Psuka, vol. 29)

[Last time we investigated opinions on whether one's agreement to work precludes his right to strike and raised the question of creating regulations that make strikes possible.]

Aseh Lecha Rav (II, 64) says that a strike because of an infringement on workers' rights is permitted within the rights of a municipality to make regulations. However, when there is a disagreement between the sides about whether there are grounds for grievances, a respected, appointed arbitrator is needed to decide. Rav Halevi reasoned that a public body, including a *talmid chacham* and public figures, is necessary. Rav Uziel and Rav Yisraeli also discuss the matter (in Techumin V).

The Igrot Moshe (Choshen Mishpat I, 59) says that the need for a *talmid chacham's* acquiescence applies only when there is a *talmid chacham* who is involved in a leadership position in regard to communal affairs. He says that in our time there is no one like that and adds that this is "certainly so in our country, as they have permission from the government" for this type of commercial activity.

A strike by teachers in religious subjects is categorized as a matter of loss (Rama, Choshen Mishpat 333:5). The Shach (ad loc.:26) explains that every moment that the youngsters continue to be idle is an irretrievable loss. Based on this concept, Rav Uziel (ibid.) says that there is no power for the "trade group" to authorize a strike of religious teachers, as it is an agreement that violates the Torah law to avoid *bitul Torah* (time unjustifiably taken away from Torah study). Rav Feinstein has a different reason to disallow a strike of Torah teachers. They are allowed to take pay only because they are being paid to not do another job. Since during their strike they will be idle at home, they are consequently obligated to teach for free.

In summary, there are two basic halachic approaches to strikes. According to Rav Orbach and Rav Halevi [see last week], there is a prohibition to strike, which is included in the lack of permission of a worker to back out of his work obligations when that causes a loss to the employer. Regarding the rights of groups within society to come up with rules and regulations, there is a question of authority when an "important person" is not involved in the decision. However, Rav Waldenberg and Rav Feinstein say that a strike is not connected to the matter of quitting a job and that there is no need for an important person in our modern situations.

We should add that according to the first approach, even if it is possible to strike based on a group regulation with an important person's acquiescence, it is considered to be against the spirit of the Torah. It is proper that when there are grievances against an employer, one should turn to a *beit din*. If the employer refuses to come to *beit din* or if *beit din* rules that the workers are right, then they can authorize the workers to strike for their just rights.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tishrei 30 – Cheshvan 6, Baba Batra 58-64

Expanding One's Home (60a)

Rav Ofer Livnat

It once was customary to live in a structure where a number of houses opened into one courtyard. The courtyard was in joint ownership between the different home owners, and had many uses. The question arose, may one home owner expand his home so that more people would be able to live in it, or can the neighbors claim that they don't want more people using the courtyard?

The Mishna (59b) states that, if one of the home owners bought a house attached to a neighboring courtyard, he may not open it to this courtyard. The Gemara (60a) explains that the neighbors can claim that he is increasing the number of people entering and exiting through the courtyard. The Gemara questions this from the continuation of the Mishna, which states that one may add another room or attic to his home, even though that will potentially add the number of people in the courtyard. There is a disagreement amongst the Rishonim as to the meaning of the Gemara's conclusion. We will mention the main opinions:

According to Rashbam (d"h Umai), an extension to a house is prohibited, because it potentially adds more tenants. However, one may change the internal structure of the house, such as dividing a room into two, even though this too can bring additional tenants, since one has the right to add as many tenants as one wishes, in its current state.

According to Ramban (59b d"h matnitin), one may build and expand one's home and even attach another house to one's home, as long as the additional building does not have a separate entrance and is open only to one's home. The reasoning is that, if the additional building has a separate entrance, then one is likely to rent it out, which would add tenants. However, if it is open only to one's home, it is unlikely that one will rent it out.

The Tur (154) explains the opinion of the Rosh to be in between the Rashbam and the Ramban; one may expand the home by adding a room or an attic, but one may not attach an entire house. The seeming logic is that when one owns a house that is attached to a joint courtyard, it is understood and accepted that he might expand his home. However, he does not have permission to add an entirely new home to open into the courtyard.

The Rishonim have a further disagreement regarding where one wants to add tenants without expanding the house. According to the Rambam (Shechenim 5, 9), the neighbors may prevent this as well. However, the Ra'avad (on the Rambam ibid) and many other Rishonim (like the Rashbam quoted above) disagree and state that, as long as one is not expanding the building, he is allowed to add as many tenants as he wishes. The Magid Mishne claims that, even according to the Rambam, if the tenants are being supported by the owner, then they are considered to be his family, and the neighbors cannot object to them.

Summary and Ruling:

The Shulchan Aruch (154, 1) rules like the Ramban, that one may expand one's home and even attach an adjoining house, as long as the addition does not have an independent entrance to the courtyard. The Ramma quotes the opinion of the Rosh, that another house may not be attached. The Shulchan Aruch (ibid 2) also rules like the Rambam, that the neighbors may object to additional tenants. However, the Ramma rules like the other Rishonim who disagree and claim that as long as one is not expanding the building, tenants may be added.

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