



HEMDAT YAMIM

יְמֵי חֶמְדָּה

Parashat Hashavua

Ki Teitzei, 9 Elul 5783

Harav Shaul Israeli zt"l
Founder and President

On the Book, the Sword, and "Bots"
Harav Yosef Carmel

In the middle *parashiyot* of *Sefer Devarim*, telling of the time soon before entering *Eretz Yisrael*, the topic of war comes to the fore. We will look at one case in our history in which the "sword" was connected to the "book" in an interesting way.

There are many elements to waging war. In the battlefield, people use weapons to kill or incapacitate. Today, technology is employed against the enemy, whether operated in the battlefield from afar or by infiltrating their important systems. Psychological warfare is a modern and ancient tool. Last week, we read the Torah's instructions to soldiers not to be afraid of an intimidating army (Devarim 20:1-3).

A *midrash* (cited by Da'at Zekeinim MiBaaelei HaTosafot) highlights how the Torah regards the psychological element of battle. It compares the plagues that Hashem employed against the Egyptians to that of a king who was betrayed by a country. First, the king may attack their water supply (parallel to the plague of blood), then his forces make great noises with trumpets and shofars to scare the people (parallel to the frogs).

Let us now connect this to the book. In ancient times, few simple citizens knew how to read and write. Until the printing press, there were not many reading materials, but a small amount of parchments and even things written on earthenware materials. In Jewish tradition, though, great efforts were put into ensuring that even young children began to learn to read. The *gemara* (Bava Batra 21a) tells of how Yehoshua ben Gamla built an educational system to ensure that even underprivileged children could study Torah. (A fascinating archeological find near Rosh Ha'ayin uncovered writing in Ancient Hebrew letters that was apparently written by a young child.)

The connection between the sword and the book seems to have been employed some 2,700 years ago. After the Aramite Sargon conquered the region of Samaria from the Northern Kingdom of Israel, his son, Sancheriv, tried to conquer Jerusalem as well. As part of the effort, he enlisted the help of a Jewish apostate named Ravshakeh, who was fluent in Hebrew in addition to the international language of Aramaic. Ravshakeh approached the walls of the besieged Jerusalem to call out to the city's general populace in their language to convince them to surrender (see Melachim II, 18:17-37). King Chizkiyahu's officers tried to convince Ravshakeh to speak in Aramaic, but as part of his psychological warfare, he refused. The *navi* tells that Ravshakeh applied even more pressure by "writing books that blasphemed Hashem" and said that He would not be able to save Chizkiyahu (Divrei Hayamim II, 32:17).

We do not know definitively what was in these letters or how they were delivered. Perhaps, as part of his attempt to strike fear in the individual citizen of Jerusalem, his short words of blasphemy were written on small parchments that were attached to arrows and shot into the city. Because the entire populace was literate, it was possible to shake the confidence of more people. So went the plan to use the Jewish People's strength against them.

With Divine Mercy, the ploy did not work, unity prevailed, and Chizkiyahu survived through a miracle. May all of our present-day enemies also be thwarted.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Whose Responsibility Is Raising the Wall?

Question: I built my house years before the next-door property was developed, with an approximately meter-high wall between properties. My property is 2 meters higher than the next one; now they are excavating to build the other house, there will be a 5-meter drop, which I feel makes it dangerous for my children. [He seems to be building according to the permit he received.] My neighbor had agreed to pay for raising the wall, but now is unwilling to pay the significant cost. We cordially disagree whether it is his obligation. Have I misjudged the matter?

Answer: We praise you for asking sincerely. Generally, we do not comment on active monetary disagreements (see Rama, Choshen Mishpat 17:5). However, after hearing your situation, we felt this would be a case where it was proper to make an exception (see Pitchei Teshuva ad loc. 11; our column from Ki Teitzei 5776), which may be clearer at the end. We are neither interested nor able (due to a lack of information) to present clear conclusions but rather halachic ideas about this type of case.

One important question is whether the present wall meets safety codes for the emerging situation, as these are generally legally and halachically binding to obligate and exempt from further steps (see Emunat Itecha #139, p. 87-96). This is not unlikely considering you received a *Tofes Arba* (occupancy permit) despite a significant drop and municipal plans for a future further drop. If so, if your very understandable concern for your children makes you want more, your decision will obligate you.

Most questions about paying for a wall between properties of different elevations concern its serving as a *kir teme'ch* (retaining wall). In most cases, the wall serves both homeowners, preventing collapse of parts of the ground that support the higher property from falling into the lower property. In such cases, the two owners are to pay for it jointly (see *ibid.*). The need for benefit from a *kir teme'ch* is not always identical, which can impact on the division of payment. You have not told us how the two of you have dealt with the construction of a *kir teme'ch* and how it is connected to the wall you mention.

Regarding concern for falling, your wall was needed as a *ma'akeh*. While the formalistic *mitzva* requires a 10-*tefach* high fence for a roof (Shulchan Aruch, 427: 1,5), there is a broader and more fluid requirement to avoid danger (*ibid.* 7-8). While you seemed confident that it had been doing its job (according to most opinions, a meter is more than 10 *tefachim*), you view your neighbor's excavating as creating a dangerous situation that requires more than the existing level of caution.

Questions of damaging situations created by what neighbors do on their own property are governed by the often difficult-to-apply *halachot* of *nizkei shcheinim*. A broad question with many applications is whether the need to remove the danger/damage falls on the potential victim (*nizak*) or damager (*mazik*). Important determining factors are whether the damage comes immediately and directly (Shulchan Aruch, CM 158:32), the damage's significance (Shut HaRosh 108:10), and whether the *nizak* is capable of avoiding the damage (*ibid.*). We will not analyze your case's details in these regards because danger of falling has its own prototype – *bor* (a pit or cistern).

One whose *bor's* opening is on the border of another's property must pay for damage to those who fall in (Shulchan Aruch, CM 410:6). For you, a pertinent question is the drop's proximity to your property (see S'ma 410:7). It is also possible that the fact that the drop is a result of natural topography and permitted building removes responsibility (see Shulchan Aruch *ibid.* 9 and commentaries). Also, a 10-*tefach* wall remedies a *bor* (Bava Kama 50a). Finally, cheaper methods might be feasible to remove the danger.

Therefore, it is unlikely that your neighbor needs to pay significantly to extend your wall. We trust that these ideas will impact your conversations with your neighbor and are optimistic you will enjoy a good relationship.

“Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in Rabbi Mann's weekly Zoom sessions, analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

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

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Igrot HaRe'aya - Letters of Rav Kook

Celebration of Quarters for Yemenite Community – #162

Date and Place: 5 Tishrei 5769 (1908), Yafo

Recipient: The Council of Rechovot

Body: With a rejoicing of the heart and thanks, I received your pleasant invitation to the celebration of the cornerstone placing for the houses for our brothers, the Yemenite workers. You know how close this wonderful matter is to my heart and how happy I was when this approached fruition. You also know how much I wanted to be present at your holy celebration and take part in its joyousness – a happiness of *mitzva*. I am greatly disappointed that the eye disease that has attacked me in the last few days prevents my fulfilling my desire. Therefore, I am compelled to make due with expressing my warm blessing in writing for our celebration.

Hashem's pleasantness and blessing should be upon you, dear brothers, upon all who are involved in this important building project, and upon those who will live in the project, our dear Yemenite brothers. Hashem shall spread upon them His canopy of peace and place peace in their abodes and tranquility in their tents for all the days. May their settling of the Land be strong, and may they succeed in their work in the Desired Land, upon which Hashem's Eyes are focused from the beginning to the end of the year, for their benefit together with all the Nation of Israel forever.

Involvement in Choice of Turkish Chief Rabbi – #163

Date and Place: 5 Tishrei 5769 (1908), Yafo

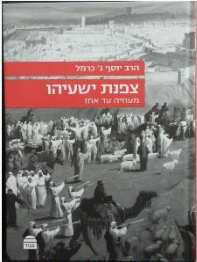
Recipient: Rav Yitzchak Isaac Halevi, author of Dorot Rishonim, an active rabbi in broad Jewish organizations. We have seen several of his correspondences with Rav Kook.

Body: I very, very much desire that the organization you head (The General Alliance for the Preservation of Matters of Torah and Mitzvot of German Jews) will not invest too much energy on the matter of the Chief Rabbinate (*chacham bashi*) throughout the Turkish Empire. I am concerned that "when you strive for too much, you do not achieve [anything]." For now, efforts should be directed to ensure that this position, vis a vis the authorities, in Jerusalem, will be in the hands of a G-d fearer. It would be worthwhile, to a lesser degree, to give a look at what is happening in other places.

It would be unwise if that involvement took the place of the main task – to raise the stature of Torah [in *Eretz Yisrael*] through good *yeshivot*, up-to-date, with the spirit of the time and the sanctity of truth; this will bring on the victory in the future, with Hashem's help.

It certainly would have been good if we could have kept the Chief Rabbinate in the hands of Torah giants, but we see that this is impossible. For the Ashkenazi community, there is almost no difference [who is chosen] except for the negative consideration – that the position not be given to a member of the group of "destroyers." The original lowering of the post already occurred – Torah brilliance is no longer a criterion for being *chacham bashi*. This has enabled other deteriorations. For now there is no one [of sufficient stature] to tell the government that the basis of the Chief Rabbinate is to solve the religious problems on matters that all the great rabbis of various countries are unclear about. The government realizes that this is already a non-issue. No one will sit on the seat of the rabbinate in Constantinople who is similar to Rav Eliyahu Mizrachi or Rav Bechor, author of the Diveri Emet, some of the *chacham bashis* of previous generations. It is now viewed as a governmental, administrative post for the needs of the citizens of that religion. How will we fight the matter?

Therefore, we must elevate the power of Torah to its highest so that in the future there will be great Torah scholars who are able to present themselves in the halls of the king. Then Hashem will be with us; we will be able to prepare a stake for our nation in His holy place.



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

Disagreement on Length of Rental Commitment – part I

(based on ruling 83043 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def), which provides communal medical services, has been renting part of the building of the plaintiff (=pl), an educational institution, for over 20 years. There have been various rental contracts (=rc) for different lengths of time; the last one, written in 2012, includes a clause enabling pl to remove def with one month's notice. Since then, some draft contracts were exchanged (including, in 2016, rejected by def), and the sides continued the rental based on general oral agreements, with some rent increases. In May 2022, pl told def to vacate their rental area by October because pl expanded their operations and needed the space themselves; def refused to leave. One solution raised was for the two sides to use the area at different hours, but def claimed it was illegal to do so. Def requested a restraining order to prevent pl from moving in. Def argues that only one agreement includes the clause of early removal of def, and it is illogical for such a complicated operation as a medical provider to relocate in a month. Rather, that contract was just a formalistic piece of paper (copied from a standard contract), that did not represent the parties' essential agreement, as many of its provisions were ignored by the sides.

Ruling: The 2012 contract is binding, as it was signed by authorized officers of each organization. The fact that other contracts (signed and proposed) do not include the clause to enable def's removal does not invalidate the contract or the clause. As the Shulchan Aruch (Choshen Mishpat 45:3) rules, one cannot deny being bound to all of a document he signed based on the claim he was not aware of its content. Although the following is not necessary to validate the clause, we point out that until the 2012 contract, the agreements were with the regional council, which paid for def to service the community at pl's auspices. The 2012 contract, the only one between these two parties, can be different than the previous ones. Later draft agreements are not an indication of an end to previous agreements if the two sides decided not to sign them.

There is more to discuss regarding the claim that since the 2012 contract expired years ago, its clauses are not relevant to subsequent, oral agreements. There is a *machloket* whether an expired contract is still relevant. The Taz (CM, 333:8) and Shach (CM 333:44), in the context of labor agreements, rule that all of the details of the old agreement that were neither renewed nor revoked continue to be in effect. The Rama (ad loc. 8) and Machaneh Ephrayim (Sechirut 11) say they do not continue. There is a further *machloket* (see treatment in our *beit din's* ruling 70024) whether those who posit that provisions continue say so when the new agreement changes other elements of the previous agreement. However, since the only explicit change was the price of the rental, which naturally goes up over time, that change is not indicative of the lapsing of the other provisions.

We will continue from this point next time.

Comments or questions regarding articles can be sent to: info@erezhemdah.org

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