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HEMDAT YAMIM

חיים תמידים

PARASHAT HASHAVUAH

Korach, Tamuz 3, 5772

The Time and the Reason to Change Leadership

Harav Yosef Carmel

The question of initiating a monarchy, which arose at the time of Shmuel, raises two sets of issues when we read this week's *parasha* and *haftara*.


One issue has to do with the question of strong leadership in the first place. Korach and his followers claimed: "You have too much, for the entire congregation is holy, and Hashem is amongst them, and why should you raise yourselves (*hitnasut*) over the congregation of Hashem?" (Bamidbar 16:3). From Moshe's response, we can see that it wasn't that the protestors rejected Moshe's leadership in general but that they were looking for a bigger portion of the leadership pie for themselves (see *ibid.* 10). However, when Datan and Aviram entered the picture, we see that they objected to Moshe's dominion (*serara*) over the people, in general.

Let us move on to the next issue: the request of Shmuel's generation for a king. The people introduced the request with a claim to Shmuel that he was old and that his sons did not follow their father's path (Shmuel I, 8:5). They then asked for a king "to judge us like all the nations." It is interesting that the period of close to 400 years from the entry of Bnei Yisrael into *Eretz Yisrael* until the time of Shmuel was known as the Period of the *Shoftim* (usually translated, judges). There are many proofs that the term in this context refers more to leaders than to judges. Throughout *Sefer Shoftim*, we find no cases of judgments, just signs of leadership, prominent among them being waging war. What, then, is the big difference between the *shoftim* and subsequent kings? The answer is the matter of inheritance of the leadership. The only judge who was followed by his son was Gidon, and his son actually assumed leadership by force.

The term *serara*, which Datan and Aviram referred to, is used in other contexts regarding kingship and other forms of power (see Rambam, *Melachim* 1:4, regarding who is allowed to adopt such positions.) According to our mentor, Harav Shaul Yisraeli (*Amud Hay'mini* 12:5), there is a direct correlation between *serara* and the idea of inheritance of the position. Datan and Aviram, descendants of Yaakov's firstborn, Reuven, claimed that they should have inherited leadership, as Reuven had also deserved. They warned Moshe that he should not try to have his leadership transferred to his sons.

Shmuel was the first of the *Shoftim* who contemplated passing over his leadership to his sons, which the people rejected. The people said to Shmuel that if he was thinking in the direction of inherited leadership, then apparently the time had come for the related system of monarchy. Employing inheritance in leadership has pluses and minuses. If there is a lack of fear of Heaven and accountability, the system can be grossly abused. The proper time for monarchy came when David came on the scene, as he is the one who taught the crucial ability to seek repentance. Otherwise, monarchy should not be used.

We pray that the idea of readiness to seek repentance will be strengthened and, along with it, the whole idea of proper leadership will flourish.



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Ask the Rabbi

by Rav Daniel Mann

Question: I work on a campus, in a project funded by an outside foundation. As part of my employment agreement with the foundation, they rent on my behalf (I did not sign the contract, and the money did not go through me) an apartment on the campus throughout my employment (including vacations). I will be abroad during vacation and would like to make a little money by subletting the apartment (to a nice family). Do I need permission, and who should get the money: the foundation or I?

Answer: The halachic/legal status appears as follows from your description. The foundation rents the apartment from the campus and rents it out (with the campus' permission) to you (in the form of part of your compensation package).

The first question we have to discuss is whether one who rents is allowed to sublet. One who rents a movable object is not allowed to give it over to someone else (Shulchan Aruch, Choshen Mishpat 307:4). However, regarding real estate, halacha generally allows the renter to sublet (Shulchan Aruch, CM 316:1, based on Rambam Sechirut 5:5). The Rambam bases this on an understanding that there has to be a good reason to disallow a renter, during the time he has full rights of use, from renting out to someone else. Regarding movable objects, there is less of a concern that something will happen to the object, and the owner may not trust the second person's honesty. This is less of a concern regarding real estate. The Rambam makes common-sense distinctions, such as that one cannot sublet to a larger family, and further distinctions may be needed to deal with an apparent contradiction within the Rambam on this topic (see S'ma 316:1). The Rama (CM 312:7) adds that one can sublet only to an upstanding person.

In matters of this type, the local *minhag* supersedes classical halacha (Pitchei Choshen, Sechirut 4:(22)). Unless there are strong indications otherwise, we assume that a local (in this case, Israeli) law, sets the standard. Clause 22 of the Law of Renting and Borrowing states that one has to ask permission from the owner before subletting, but if the owner objects on unreasonable grounds, his objections may be ignored.

You should not sublet the apartment without discussing the matter with at least one of the parties. Both the law/*minhag* and probably the halacha mandate to give the owners (the campus) the opportunity to express any objections, which might include matters you did not consider. Furthermore, the foundation cannot give you more rights than they have themselves, and since it is common for a rental contract to disallow subletting without permission, you need to ascertain from someone what the agreement was.

The better question is if you receive permission from the campus, whether you have to get permission from the foundation, who might say that if you sublet, they want (some of) the money. It seems that as long as you are on staff, the apartment is not at their disposal for making money (i.e., they do not have a clause that if you go away, you have to allow them to rent it to others). The potential problem of subletting is a matter that affects the owner (his property could get damaged), and if the campus does not have concerns, the foundation can probably not raise issues. The question is in regard to your compensation package, as they might be able to claim that inclusion of the apartment in your salary was only as necessary and was not meant to include your making additional money off of it. We cannot tell for sure who would be right if such a claim were made without hearing both sides' claims. We also don't know if there could be any sensitivities regarding the relationship between the campus and the foundation. Therefore, even if for no other reasons than *menchlichkeit* and to maintain good favor in your employers' eyes, we feel that you should inform both the campus and the foundation of your intention to sublet and see if there are objections. (You do not have to suggest sharing the proceeds.)

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Ein Ayah

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

The Importance and Limitations of Independence

(condensed from Ein Ayah, Berachot 9:64)

Gemara: Someone who gets sick – the first day he should not reveal that he is sick, so that his *mazal* not become bad. Afterward, he should reveal to others.

Ein Ayah: One of the special attributes of the human spirit is the tendency for one to want to help himself alone rather than have someone else help him. Every healthy soul recognizes some lowly feeling from “bread of embarrassment” (the idea that man was brought into the world so that he would not have to be embarrassed that the spiritual pleasure he receives from Hashem is not earned). However, this character trait was embedded in man so that he should use it in the correct measure, namely, that a person should try to strengthen himself on his own without leaning on others, whether in physical or in spiritual matters. In that way, he will always be ready to add on to his completeness in all matters.

In the situation where one is sick, a person’s nature is to be depressed and think that he is unable to survive on his own, unless someone assists him by giving him strength and by praying for him. (The idea of someone else praying for him is based on the concept that “a captive cannot extricate himself from his captivity” (Berachot 5b).) Despite this feeling, it is important that the good characteristic, of avoiding others’ help, should have enough impact so that he at least does not seek help at the first sign of weakness. Rather he should use his self-pride to push himself to avoid needing help from other humans and strengthen his resolve to trust only in Hashem in his time of torment.

A tendency of over-ease in looking for help, whether in physical or spiritual matters, including asking for someone else to pray for him or receiving internal relief by sharing his experience of pain, can be dangerous. It can bring weakness and failure because it weakens a person’s pride in his preparedness to strengthen his resolve, which is critical for his physical and spiritual welfare.

Therefore, on the first sign of illness, one should not tell others, in order to not make his *mazal* bad [which Rav Kook apparently understood as referring to his personality makeup.] Afterwards, though, he should tell others. That is because a trait like self-reliance has to be used in moderation – in order to strengthen resolve and prepare himself for maximizing his opportunities. However, when the problem ends up being a major one, then he is in a situation for which man’s living within a society was created – so that one can help another. If a person stubbornly refuses help over time, then it is not a proper attribute but a sign of haughtiness, which brings disappointment rather than success. That is why after the first day, he should tell others and accept their physical and spiritual help.

When one asks and receives help in the proper way, it causes an emotional connection between different members of the social group. This is because the good feeling that a good person receives when he is able to show kindness and empathy to another creates feelings of love between people. This positive development is as strong as the negative one of a person asking for help too easily, thus unnecessarily placing a burden on others and creating bad feelings. Rather one should treat each situation in life in the proper measured manner befitting a person of integrity.

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P'ninat Mishpat

Transparency in Window Making – part II

(condensed from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=pl) were planning to move into a home they were building, and reached an agreement with the defendant (=def) to install special windows by a certain date. Pl paid tens of thousands of shekels – half of the order – as a down payment. Def came two months before the critical date and took measurements, yet much of the order was not ready on time. Def blames pl for not giving all the details necessary, especially the color of the internal shades. Pl responds that def never told him that such information was holding up the order. As the time to leave their old home and enter the new one approached, def agreed to provide temporary windows, but only if pl paid an additional quarter of the order, considering that half the work was already completed. [Last time we dealt with payment for temporary windows that pl had installed.] This time we will deal with the following additional claims: a penalty that pl claims to have paid their contractor for the delay in completing his work; payment for watchmen at the building site; time that pl took off to supervise the work; extra payment to extend the rental of their previous home.

Ruling: The Nimukei Yosef (Bava Metzia 46b of Rif's pages) says that in a case where a worker's refusal to complete his job caused damages and the hirer did not employ an alternative plan to avoid the damage, the worker does not have to pay for the damages. The logic is that the work stoppage is not a direct enough damage to obligate payment. The Hagoth Oshri (Bava Metzia 6:2), though, says that damage caused by the work stoppage is *dina d'garmi* (semi-direct damage) for which one has to pay. The Rama (CM 333:6) says that for a lost opportunity, there is no payment, but if the aborted work causes actual damage, the worker must pay the damages. The Shach (ad loc.) says that there is no *machloket* among the *Rishonim* and that the matter depends on whether the hirer had an opportunity to avoid the damage. (The *dayanim* disagreed on whether pl could have been expected to find an alternative faster). The Gra (333:40) understands that there is a *machloket* in this case, and the Netivot Hamishpat (333:14) says that one can not be forced to pay.

Based on strict law, *beit din* could not extract money from def on these matters. However, the arbitration agreement enables *beit din* to employ compromise, which is appropriate for the following reasons. According to some *poskim*, payment is due. Even according to the others, the exemption is because it is a case of *gerama* (indirect damage). In such cases, there is still a moral obligation to pay, and *beit din's* practice is to employ compromise in the case of moral obligations. Therefore, def should have to pay for much of the damages. This is tempered by *beit din's* feeling that pl did not make all efforts to resolve the matter, including def's suggestion to go immediately to a *rav* for dispute resolution.

Let us run through the different claims: contractor's penalty – since it is uncommon to pay a contractor for a small delay in his work, payment is not justified; payment to watchmen – 67%; time pl took off from work – too indirect to obligate in the case of unintentional damage; extending rental payment – 50%.

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