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# HEMDAT YAMIM

## Parashat HaShavua

Vaetchanan, 16 Av 5778

Praise, Supplication, and Thanks

Harav Yosef Carmel

It is impossible to understand the beginning of our *parasha* without connecting it to the end of *Parashat Devarim*. There we find Moshe giving instructions to the tribes that decided to stay in the East Bank of the Jordan: "I commanded you at that time: 'Hashem gave you this land to inherit it; you shall go forth as a vanguard before your brothers, Bnei Yisrael, all men of army age' (Devarim 3:18). It was actually Moshe's words of criticism to these tribes that gave him the resolve to beg and pray before Hashem to let him enter the Land beyond the Jordan.

Moshe's supplication served as the basis for the Rabbis who composed the main *tefillot* for *Klal Yisrael*. Rav Simla<sup>a</sup> said: One should always set out Hashem's praises and then pray. How do we know this? We learn from Moshe, as the *pasuk* says: "I pleaded before Hashem" and then it says: "Hashem, you have begun to show Your servant Your greatness and Your strong hand, as there is no god in the heavens and earth who can do like Your actions and Your valor." Only afterward, it says: "Let me pass through and see the good Land" (Berachot 32a). After the supplication comes praise.

David Hamelech requested the privilege of building the *Beit Hamikdash*, but his request was rejected. The rejection was not due to criticism of his actions but because his family monarchy was not yet "built," until Shlomo sat on his throne. First, kingdom must come, and only afterward the *Beit Hamikdash* can be built. We find this order in *Birkat Hamazon* as well: "Hashem, have mercy on Your nation Israel and on Your city of Jerusalem, on Zion, the dwelling place of Your Presence, on the kingdom of the House of David Your anointed one, and on the great and holy house upon which Your Name is called." So while David was not allowed to build the House (i.e., the *Beit Hamikdash* = The House of G-d), Hashem promised him that he would succeed in building a house of monarchy, an eternal dynasty.

If one checks carefully, he will notice that no one, from the time of Moshe to the time of David, merited having his position inherited by his son. Moshe did not merit it, nor did Yehoshua. None of the *shoftim* had a son appointed after him, not even Eili or even Shmuel, who tried but did not succeed. The first king, Shaul, desired that his son Yonatan would inherit his throne, but he understood already during his lifetime that this would not happen.

Looking at the 7<sup>th</sup> chapter of Shmuel II, we will find that the first half of the chapter contains the prophecy preventing David from building the *Beit Hamikdash*. In the second half of the chapter, we see the elements of *tefilla* that we learn from Moshe Rabbeinu. There is praise (18-24), supplications (25-26) and thanks (27-29).

David, the singer of pleasant songs in and for Israel, was able to learn from Moshe Rabbeinu how to build the structure of the proper prayer. We try to be students of both of them. (I will explain the *p'sukim* more deeply in my upcoming *sefer*, Tzofnat Shmuel.)

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# Ask the Rabbi

by Rav Daniel Mann

## Backing Out of a Bad Purchase a Little Late?

**Question:** [Adapted from part of a *din Torah*.] Reuven sold his car to Shimon (who paid immediately) and was to give the car to Shimon a week later. When Shimon received the car, the air conditioning was not working. Reuven apologized and said that his garage had promised to fix it already and that they would do so within a few days. Shimon wanted to back out, but Reuven refused to return the money, and they started exploring dispute resolution venues. In the meantime, Shimon used the car. After 16 days and aggravation for Shimon, it was fixed. Even though the car now works well enough, Shimon still wants his money back. Does he have a right?

**Answer:** The lack of an air conditioner in a car these days in a hot country is considered a flaw that is grounds for *mekach ta'ut* (misinformed sale) and *bitul mekach* (nullification of sale). However, several elements might preclude *bitul mekach*.

The Rambam (Mechira 15:3) and Shulchan Aruch (Choshen Mishpat 232:3) rule that one is not able to claim *bitul mekach* due to a flaw if he used the object after discovering it. In this case, Shimon used the car after finding out about the flaw.

On the other hand, we need to look at why using the object precludes *bitul mekach*. The Rambam (ibid.) explains the *halacha* as being based on presumed *mechila*, i.e., if he uses it, apparently he waived his right to return it. This case, though, is apparently different in that he previously stated explicitly that he wants *bitul mekach*. In fact, the Ritva (Bava Metzia 50b) says that if one grossly overcharged to the extent that the buyer can invoke *bitul mekach*, he can do so even after using the object, if he previously informed the seller of this intention. The simple explanation is that using the object is an apparent indication of *mechila*, but a clear statement that he is not *mocheil* makes that indication irrelevant. In this case, Shimon demanded *bitul mekach* and did not rescind that demand. The Pitchei Teshuva (ibid.) cites a *machloket* whether the Ritva's extension of the ability to do *bitul mekach* applies only to *mekach ta'ut* due to mischarging (Galia Massechet, CM 10) or even based on flaws (Machaneh Ephrayim, Ona'ah 5), as in our case.

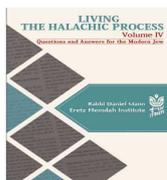
Furthermore, the Pitchei Teshuva (CM 232:1) posits that if extenuating circumstances forced the buyer to use the flawed object, he retains the right to back out later. In our case, it is unreasonable to expect Shimon, who already paid for a car and did not have the money returned to buy another, to not use the car. In a case like this, where Reuven permits Shimon to use the car even though he knows Shimon still wants *bitul mekach*, the Galia Massechet should agree (the analysis of this point is long). He clearly does not mean to be *mocheil* and he clearly is not stealing by using it.

But there is a counter indication. By the time the question reached *beit din*, there no longer were grounds for *mekach ta'ut*, as the air conditioner was fixed. Still, this does not make a difference for the following reason. When there is *mekach ta'ut* without *mechila*, the sale had never been valid (see Galia Massechet ibid.). Therefore, since there is no agreement or *kinyan* after the air conditioning was fixed, Shimon does not have to go through with such a cancelled agreement, whatever his reasons are.

Despite the above, we believe that Shimon cannot back out. The Shulchan Aruch (CM 232:5) says that a flaw that can be readily fixed does not nullify a sale; rather, the seller has the right to pay for it to be fixed. The Rama (ad loc.) elaborates on this distinction, but his language creates some confusion. He says that the seller can stave off *bitul mekach* when the flaw is not in the sales item's "physical essence" and the item does not lose its normal name. An example in which the seller cannot demand to fix a house is a when it has an insecure wall. Although one could argue the point, we posit that a car that has an air conditioner, just that it needs fixing, is one that the seller has a right to fix in a timely fashion (elaboration is beyond our present scope)..

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# Ein Ayah

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

## The Relationship between Sacred and Mundane

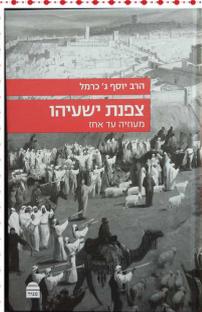
(condensed from Ein Ayah, Shabbat 6:73)

**Gemara:** The *tzitz* (plate of gold on the *kohen gadol's* forehead) had written on it in two lines: the Name of Hashem on the top and "Sacred for" below [even though it is to be understood as saying "Sacred (*kodesh*) for Hashem"]. Rabbi Eliezer the son of Rabbi Yossi said: I saw it in Rome, and it has written "Sacred for Hashem" on one line.

**Ein Ayah:** From a purely philosophical perspective, the source of sanctity must always have precedence over the sanctity itself. Realize that the foundation of sanctity is in being separate from the mundane. This demonstrates to us that the purpose of the mundane is to enable sanctity. This actually brings us to a higher level of understanding, according to which there is, in essence, no difference between sanctity and the mundane because everything reaches its purpose and the highest level does not ignore any element.

In practice, human morality cannot receive the influence it needs from the realization that there is no difference between the mundane and the sacred. [In other words, one needs to be inspired by that which is outwardly seen as sacred.] However, when he calls out with the concept of sanctity [i.e., the word *kodesh*], and he thereby intends to remove the mundane from the surroundings, he should know that the name of Hashem [which represents all of existence] is above the definition of matters as sacred. It is possible to distinguish between sanctity and its upper side, which receives its special level and value from the loftiness of Hashem, Who is above everything that is great. In that context, it is possible to distinguish and separate between sanctity and the mundane.

The fact that Hashem is above sanctity, which is a very lofty and deep realization, is greater even than the approach one needs to improve his moral level, [which requires him to focus on clearly recognizable sanctity]. This is the way it should be from the perspective of the highest level of philosophical analysis. However, the world is not on the level to appreciate this truth. We are not able to recognize matters that are beyond our level to use to strengthen our moral foundations. If we try, we can damage the moral basis of our spirit. That is why we need to connect all the levels together, even though we then lose the idea that Hashem is above everything, including sanctity. We practically need to lower Hashem to the same line as sanctity, i.e., the holy emotions that a person can feel with his heart. Indeed, it is necessary to lower the truth in favor of peace, for it is the latter that brings a person his moral success. That is why, in practice, "*kodesh laHashem*" was written on one line.



### 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

## Expenses of Using Hotza'ah Lapo'al

(based on ruling 70055 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) sublet an office from the defendant (=def) with a detailed contract. At the top of the contract, it was written: "Rental agreement – this agreement was done based on a relationship of friendship and therefore includes no clauses about breach of contract and remedies." Over time, pl fell behind in rental payments by around 8,000 shekels. Def asked for payment many times; there is a dispute whether a repayment schedule was made. After pl ignored a lawyer's letter demanding payment, def sued for payment at *Hotza'ah Lapo'al* (=HLP, an arm of the Israeli government that carries out payment from recalcitrant debtors). As a result, pl has paid, but HLP made him pay 2,359 shekels more than the actual debt, due to different charges. Pl is suing def to compensate for those charges because def went to HLP instead of to *beit din*. Pl also claims the contract is not enforceable because it says that there are no remedies because the sides are friends. Def responds that a rabbi told him that it is not necessary to adjudicate in *beit din* or get their permission to go to HLP when there is agreement on the amount of money that is due.

**Ruling:** First, despite the opening to the contract, it is not reasonable that a detailed financial agreement cannot be enforced at any point. All the clause means is that penalties and remedies will not be spelled out because it is not expected for friends to reach such a point.

[It is true that we consider going to Israeli secular court like going to non-Jewish courts because they follow other systems of law rather than Halacha.] However, there are many halachic sources about going to non-Jewish courts to enforce clear obligations. [The ruling surveys many such sources; we will not get into detail and will just mention the issues.] Generally, the problem of going to non-Jewish courts is in preferring their rules of justice (see Beit Yosef, Choshen Mishpat 26), which does not apply when one goes to enforce payment of a debt that is not in dispute.

Some have claimed that the courts do not follow the Torah rules of how to extract payment (see Shulchan Aruch, CM 97). However, HLP is actually more lenient on the debtor than Halacha requires. If pl claims that he does not have the money to pay, in our times, HLP has tools at its disposal that *beit din* lacks to make such a determination. Thus, the policy of most *poskim* is that one may go to HLP to extract payment that has been ruled on by *beit din* or when the claim's veracity is not in question, and this is Eretz Hemdah-Gazit's stated policy. There is some question as to whether one is required to get permission from a *beit din*, but the consensus on this point is also to be lenient if there is no dispute on content.

Therefore, *beit din* does not find fault in def's actions, and not only is he exempt from paying for pl's expenses but deserves a return of lawyer's fee involved in his collection effort.

.....  
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