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# HEMDAT YAMIM

## Parashat HaShavua

Chayei Sara, 25 Cheshvan 5780

### Chevron or Yerushalayim?

Harav Yosef Carmel

Our *parasha* deals with the purchase of *Me'arat Hamachpela* for 400 high-quality silver coins. The halacha is that money is one of the means of acquiring land. The *gemara* (Kiddushin 26a) inquires the source for this halacha. Chizkiya answers that it is learned from the *navi* Yirmiyahu, when he was commanded to buy (it occurred with coins) land in the Jerusalem area prior to the exile to strengthen belief in the return to the Land. Tosafot (ad loc.) ask why the *gemara* did not bring as a source the *p'sukim* about the purchase of *Me'arat Hamachpela*.

One can argue, homiletically, that there are two different approaches. One is that the purchase of a field in Yerushalayim is a central matter, whereas the other posits that buying *Me'arat Hamachpela* was more central. In modern times, there was an interesting dispute that focuses around these viewpoints, about which Rav Kook's opinion was recruited in 1907, when he was Chief Rabbi of Yafo. The Jewish community of Chevron had decided to withdraw from the apparatus of collecting and apportioning financial support for fledgling communities in then-Palestine. The national organization sued the Chevron Council in *beit din*.

The people of Chevron made the following claims: 1. The forefathers chose to set up their homes in Chevron, making the community 1,000 years older than that of Yerushalayim. 2. In his battles, Yehoshua bin Nun burned Yerushalayim, and Jews did not try to move there. 3. The Midrash says that the opening to the Garden of Eden is in Chevron, as Adam was able to smell when he was looking for a burial plot for Chava. There is an opinion (Zohar Chadash II, Rut 33b) that actually Yerushalayim is home to one of the openings to *Gehinom* in the valley of Ben Hinom (Eirubin 19a). 4. The forefathers not only chose Chevron independently for a burial plot, but were following the lead of Adam. 5. *Me'arat Hamachpela* was the first place that the first forefather bought, thus making it like the "key to *Eretz Yisrael*." 6. King David chose Chevron as the first seat of his kingdom.

Next week we will take a look at how Rav Kook criticized the decision of the people of Chevron. Let us, in the meantime, pray for the strengthening of Yerushalayim as the one and only spiritual center that Israel provides to the world.

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# Ask the Rabbi

by Rav Daniel Mann

## Bankruptcy in Halacha

**Question:** I have \$30,000 of credit debt (in the US). I lost my job, and my new job pays less. I do not see how I can pay the debt. What does Jewish law say about filing for bankruptcy?

**Answer:** [We responded to the querier regarding his situation but are broadening (in brevity) the discussion. We will compare elements of bankruptcy law (focusing on the American system, which is more sweeping than many European systems including Israel) to Halacha, survey how Halacha reacts to that (this week), and relate practically to some common applications (next week).]

Of the two elements of modern bankruptcy law, one is found in Halacha. If a debtor lacks the funds to pay, he must liquidate or give many of his assets to his creditors, or *beit din* will, in many cases (depending on the type of debt and assets) oversee the seizing of assets. However, the debtor retains basic assets needed for daily living (*mesadrin l'ba'al chov* – Bava Metzia 113b). All bankruptcy systems do this and regulate the apportioning of payment among various creditors, in a way that differs from the halachic system.

The second element of American Bankruptcy is “fresh start,” which makes it unnecessary to make payments (“discharge”) beyond those prescribed by the bankruptcy court. Talmudic Halacha does not recognize fresh start. If someone originally lacks funds but acquires them later, he must pay past debts using new assets.

There are a few possible ways for fresh start bankruptcy to become halachically viable. One is that in some cases, the creditors make a settlement with the debtor over the terms of reduced payment. Agreement actually does not make the question moot, because it can be considered agreement under duress. This is because the creditors have to deal with the “threat” of a possibly more detrimental, non-halachic bankruptcy judgment or that the debtor’s remaining assets will disappear before they receive payment (the bankruptcy system takes steps to prevent such disappearances). Regarding agreement under duress, a sale is valid, but a present given under duress (i.e., without a significant return) is invalid (Bava Batra 47b). After citing various opinions and distinctions, the Pitchei Choshen’s (Halva’ah 2:(62)) approach is that the parties’ agreement is insufficient to make debt reduction binding unless finalized without an act of *kinyan* (which may or may not exist in various cases).

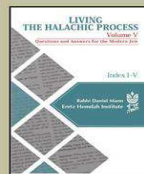
A factor that might validate even debt discharge is *dina d'malchuta* (the law of the land). There are three main approaches regarding the concept’s extent. One limits it to the direct welfare of the governmental entity (opinion cited by the Rama, Choshen Mishpat 369:8). The Rama (ibid.) rules that it applies much more broadly – to cases in which a law is made to improve society (as opposed to for the government’s perception of justice). The Shach (CM 73:39) argues that even when done to ostensibly improve society, a law that contradicts the Torah is not acceptable (between Jews). The Chatam Sofer (V:44) follows the Rama’s approach, with a slight clarification. We follow *dina d'malchuta* when it addresses a societal need in a manner that the Rabbis would have instituted the matter if they had the ability. Most *poskim* (see Igrot Moshe, CM II:62; Rav Daichovsky in Techumin XVIII) follow the Rama’s approach, and in our *beit din*, we do so with the Chatam Sofer’s addition. However, it is not always clear when a law contributes to society and/or would the rabbis agree to it. (Regarding bankruptcy, the Chelkat Yaakov, CM 32 views it negatively, and the Igrot Moshe ibid. positively.)

A related reason to accept bankruptcy is that it has become the accepted business practice, and business transactions are made with it in mind. The Maharshach (II:113, accepted by the Pitchei Teshuva CM 12:19 and others) posits that in a place where the *minhag* is to allow a majority of a person’s creditors to grant the debtor leniency in paying them back, it is binding even on those who disagree. However, not all agree that this can go as far as fresh start bankruptcy.

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# Ein Ayah

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

## Light Translated for Different Nations

(condensed from Ein Ayah, Shabbat 9:84)

**Gemara:** R. Yochanan said: The *pasuk* (Tehillim 68:12), “Hashem will give a statement that informs a great collection of people,” teaches the following: Every commandment that came from the “mouth” of Hashem was divided into 70 languages. [A similar statement of *Chazal* is that there are 70 facets to every teaching of Torah (Bamidbar Rabba 13:16).]

**Ein Ayah:** The general power to give instruction to the whole world, with differences existing according to the characteristics of each nation and language, is included in the sacred revelation of the Divine Presence, which occurred at the giving of the Torah to Israel. The entire world became prepared to receive this new light, including the light of holy life and sacred guidance, in a way that was impossible before the lofty light of the perfect Torah was given.

We learn from this that in the lofty power of the Divine [to command mankind], which rules over all the nations, there is a hidden element of recognition of wisdom that can be imparted to the nations according to their different characteristics. This special ability is not just an outgrowth of the general light of the Torah, but rather it is connected to every single commandment.

This is indicated in the words, “Hashem will give a statement...” Every statement is full of great lights and colors, which each nation can absorb. This gives great power, which comes from the divine revelation, which is lit by the sanctity of the Torah. This allows various groups to be spiritually sustained by it.

## Positive and Negative “Drugs”

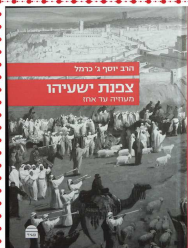
(condensed from Ein Ayah, Shabbat 9:86)

**Gemara:** The *pasuk* (Mishlei 8:6) says: “Listen as rulers I speak.” Why are the words of Torah compared to a ruler. Just as a ruler has the ability to kill or to grant life, so too the words of Torah have the ability to kill or to bring life. It is as Rava said: For those who take the correct approach to Torah, it is a drug of life; for those who take the wrong approach to it, it is a drug of death.

**Ein Ayah:** Every great spiritual vision that comes upon a person increases the scope of his spirit proportionally to the greatness of the vision. If it is adorned with sanctity, the power of life within him can be very strong and can impact all of the person’s spiritual powers. This applies to his most elevated, internal elements, indeed to all of his natural life functions. However, whether these powers will end up being for the person’s betterment or downfall depends on the internal desires of he who is exposed to them. Is he leaning toward fortunate and good things or to weakness and evil?

Dominion is by its nature the power of life that is concentrated in one individual from within a large group. When it clings to one who uses the dominion with a blessed spirit, full with righteous behavior, fear of G-d, and love of his fellow human being, it creates happy lives for all around him and lets all good things be maximized. When it clings to a haughty person, the dominion turns into a destructive force, which can cause spiritual or physical death.

This is not only true of national dominion but of personal one as well. The light of sanctity within the Torah impacts the individual’s spirit significantly, as it does for society. The life forces created by the Torah can be used for life or death. Those who approach Torah in a manner that is spiritually responsible, following its instructions properly, experience a drug of life. If one just uses it to receive power, it turns into a drug of death which is better to be avoided altogether.



### 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

## The Extent of an Inspector's Responsibility – part I

(based on ruling 78036 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) hired the defendant (=def) to serve as the *mefake'ach* (building inspector) for the house he was building along with his wife (they are now divorced). There was no contract, and his expected work hours and responsibilities were not set. The building plans called for a concrete supporting wall 12 meters wide by 6 meters high. Pl asked def for his recommendation about the *kablan's* (contractor) idea to make a wall out of large stones instead. Def answered that a stone wall is just as strong, and so pl allowed the *kablan* to do so, after receiving instructions from def. The *kablan* used smaller stones than he should have, and so after some time, the wall collapsed. It cost 160,000 shekels to remove the stone wall and build a concrete wall. Because pl is unable to sue the *kablan*, an Arab from "over the Green line," pl is suing def for his part (separate from his ex-wife) in the expenses – 80,000 shekels. Def claims that the decision to build the wall was fine, just that the *kablan* did not follow instructions, and so pl should sue the *kablan* if anyone. Pl's wife also could have pressured the *kablan* to fix the wall while he was still working on neighbors' homes. Def was not present when the bottom stones were placed, and when he came, they were covered with earth. Def was concerned that if he forced the *kablan* to dig out the foundation for inspection, the *kablan* might have quit, which would have caused losses. Therefore, he thought it was worth the small risk to leave it. Additionally, def should not have to pay the cost of a cement wall, as pl could have fixed the stone wall for a small fraction of the price.

**Ruling:** Is a *mefake'ach* responsible for damages? The Shulchan Aruch (Choshen Mishpat 306:6) rules that a moneychanger who advised one to accept certain coins which turned out to be bad ones has to pay damages unless he was both an expert and gave the appraisal for free. This is as long as the moneychanger should have been aware he was being relied upon. The *poskim* (see Shach, CM 129:8) explain that when he is paid and makes a mistake, he does not live up to professional standards; therefore, if it was based on matters beyond his control, he is exempt. In this case, a client who asks the *mefake'ach* for advice is likely to rely upon him. However, based on our analysis of the different expert testimonies the sides presented and other indications, we conclude that the advice was sound.

*Beit din* accepts the premise that def was not required to be at the site every day. The question is whether he should have made the *kablan* remove the earth to check. On the one hand, pl had not told def to be specially cautious with the *kablan*. On the other hand, def knew that the *kablan* had financial problems and could have suspected he might cut corners. The fact that he covered the foundations so quickly could have raised suspicion. But there were also reasons not to check. The Shulchan Aruch (CM 290:9-10) allows a court-appointed guardian to make choices between choices that each include risk without receiving permission each time from *beit din*.

*Next time we will explore how our case compares to that of a guardian and other issues.*

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Meira bat Esther / Rivka Reena bat Gruna Natna  
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Lillian bat Fortune / Yafa bat Rachel Yente  
Refael Yitzchak ben Chana  
Together with all *cholei* Yisrael

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