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HEMDAT YAMIM

PARASHAT HASHAVUAH DEVARIM

4 Av 5769

Who Asked and for What Purpose? Harav Moshe Ehrenreich

In this week's *parasha*, Moshe recounts some of the major events that transpired during Bnei Yisrael's stay in the desert, including the sending of the spies. There are differences between Moshe's presentation of the events (in Sefer Devarim) and the narrative's (in Sefer Bamidbar), when the event took place. The most famous one is that Moshe relates the initiative for the mission to the people (Devarim 1: 22-23), whereas Hashem (in Bamidbar 13: 1-3) presents it as His idea. What actually happened?

The Ramban says that the people first suggested sending spies, Moshe liked the idea, and finally Hashem mandated it with His guidelines. Thus, Bamidbar brings the true, final part of the story, while Devarim goes to the root in order to rebuke Bnei Yisrael for the problematic nature of their involvement. The Malbim explains similarly that the people did ask, but that was not pertinent in Bamidbar, which was related right after the matter had occurred, when there was no need to tell the people that which they already knew.

There is another difference between the presentations, which is less famous but perhaps just as significant. The verb used in Bamidbar to describe the function of the spies is *latur* (perhaps best translated as to spy). In Devarim, the verb used is *lachpor*, which, while meaning something similar, literally means to dig. The *gemara* (Sota 34b) connects this with the *pasuk* (Yeshaya 24) "V'chafra halevana u'vesha hachama" (the moon and the sun were disgraced). Rashi says that the request to send the spies was a disgrace to Hashem. The Maharsha explains that Hashem had already told the people that the Land was very good, and therefore He did not think they needed to check if it was indeed good. After all, would Hashem give a sub-par Land to His chosen nation?

It is true that in the wars that Bnei Yisrael waged upon entering the Land, serious war efforts were expected to be used despite Hashem's ultimate responsibility for their victories. Hashem was in full agreement that the two spies that Yehoshua sent undertake their mission, which was much more technical: to recommend where they should start their campaign. The people in the desert, though, wanted to determine whether the Land was good or not. Moshe had not understood that this is what the people wanted but Hashem, of course, did. Hashem told Moshe that he should send according to his understanding.

We see from here that even when we legitimately attempt to see how we should naturally go about settling in Eretz Yisrael and when it makes sense to take what steps, we should always remember that we are talking about the Land that Hashem chose to give to His nation, Israel.

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Ask the Rabbi

Question: We are doing remodeling work on our kitchen. My wife ordered and signed a contract for work to be done on cabinets and other things that is supposed to start on July 15. May work continue during the Nine Days [before and including Tisha B'Av] or must it be stopped?

Answer: The *gemara* (*Yevamot* 43b) says that from the beginning of Av until Tisha B'Av, one should lessen his business dealings and his building activities. The *gemara* does not say specify the type of transaction and building it refers to, nor does it explain what it means to lessen. However, in the context of similar restrictions on fast days called to deal with drought, the *gemara* (*Taanit* 14b) refers to "building of joy" and gives the example of the house where one's son will be getting married and living in. The *Yerushalmi* gives a counter example of a type of building that is permitted: when one's wall needs support so that it does not cave in. What happens in between these two extremes?

The *poskim* come to the following basic consensus. If there is fear of collapse, one can do what is needed even for the needs of a joyous building (*Shulchan Aruch, Orach Chayim* 551:2). In general, though, any type of building whose purpose is to enhance and not for necessity should not be done during this time (*Mishna Berura* 551:12). This would apply to most cases of kitchen renovations, which usually take a functional kitchen and make it more attractive or more convenient. There are opinions (against the simple reading of the classical sources) that this is forbidden even from the beginning of the Three Weeks (which start this year on July 9th) (*Biur Halacha, ad loc.*) but one has the right to be lenient on the matter, especially if he already made an agreement with workers.

This brings us to what may be a major point of leniency in this case. Several *poskim* (including *Eliya Rabba* 551:3; *Mishna Berura* 551:12 – based on the *Maharil*) say that if one hired a non-Jew before the Nine Days to do the work in a manner that he is paid by the job (and not by the hour), the work relates to the non-Jew and may be done during the Nine Days. However, they say that if the worker will accept a small fee to delay the work, the owner should prefer that option. Another case where it is not be required to push off the work during this time is when the delay will cause a significant loss (*Mishna Berura* 551:13). Some examples include: the work or materials will be more expensive later; given that the work has begun, the interim setup is a difficult one to maintain.

In general, there are three ideas behind refraining from certain types of acquisitions and building during the Nine Days. One is that it is a time when the *mazal* of Bnei Yisrael is low (which is something you may want to consider). The other is that it is a time when it is inappropriate to do things that are in a category that is considered too happy. There is a third idea, that the entire period of the Three Weeks is a time that is historically tragic and we are, therefore, not supposed to say *Shehechiyanu* about "hazeman hazeh" (this time) (*Shulchan Aruch, OC* 551:17). If you plan to make *Shehechiyanu* on the renovations (which is a good question that is beyond our present scope- see *Mishna Berura* 223:12), it should not be during this time. This would make it problematic to have the job finished until the middle of the 10th of Av (see *Igrot Moshe, OC III* 80). Even if you will not make the *beracha*, it still is better that the finished product not be ready during the Nine Days, as this is a greater joy than the interim progress on the work. So even if you have little choice but to have the workers do the bulk of the work during the Nine Days, still try to have the entire overall job finished afterward. Work should also not be done on Tisha B'Av itself.

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Ein Ayah

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

Actions and Understanding Gemara

(based on Ein Ayah, Berachot 2:5)

Gemara: He saw that he was dragging out [the saying of the word "echad" in *Kri'at Shema*] to an extreme. He said to him: "Since you have declared His kingship above, below, and to the four directions of the Heaven, you do not need to do any more."

Ein Ayah: Knowing Hashem includes the following two elements: the true knowledge that is needed to straighten and elevate one's actions; the knowledge that is needed to elevate the spirit itself with the knowledge of truth, the grandeur of the pleasantness of the lofty things related to the knowledge of Hashem.

The knowledge of Hashem that is for the needs of a positive *mitzva*, in this case, *Kri'at Shema*, is what is related to actions and their being done in the proper way. The attainments in the intellectual sphere, are connected to Torah study. The general foundation in the acceptance of the yoke of the Heavenly kingdom is that one should recognize that Hashem's Hand has dominion over all, in all stages of life's activities [represented by "above, below, and to the four directions of the Heaven"].

However, in order to know the value of the preparations and of the goals and how they are connected to each other, one needs to develop greatness of the spirit, above and beyond the value of the individual actions he takes. This goes beyond the realm of *Kri'at Shema* but rather the understanding of Hashem and His truth, which is transmitted to us through the truth of Torah.

The Significance of a Person's Physical Position

(based on Ein Ayah, Berachot 2:6)

Gemara: A *prakdan* [Rashi- someone lying on his back] should not read *Kri'at Shema*.

Ein Ayah: A person should train himself that all lofty learning and clear contemplation that comes to his soul should encourage him to awaken to do good things. It is very bad for one to make himself accustomed to being callous in regard to his study. In other words, he should not be in a situation where he thinks and contemplates and yet still does not budge from his involvement in physicality and earthly tendencies, even those that are antithetical to wisdom and justice.

When a person raises his eyes, he should have a spiritual experience, as the *pasuk* says: "Lift your eyes to the Heaven and see Who created all of this" (Yeshaya 40:26). He should be filled with emotions of the sacred and justice filled with life, with a desire to do that which is good and straight. Being in a position of *prakdan*, where he looks to the sky above yet his physicality is not moved and he is not aroused to move from his place, gives the mistaken impression that the goal of contemplation is not to straighten one's path in accordance with the lofty values that his intellect grasps.

This inappropriate combination is very corruptive. It is a factor that weakens the main force in a person's completeness, which is his intellect, preventing it from standing in its position and having the impact it is designed to have. It is generally negative to lie on one's back. *Kri'at Shema*, though, is something whose main idea is to help realizations impact on one's actions. This is why it includes both the acceptance of the Heavenly yoke and, in close proximity, the acceptance of the yoke of *mitzvot*. Therefore, it is particularly severe to lie on one's back during *Kri'at Shema*.

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P'ninat Mishpat

Laws of *Shomrim* (Watchmen) – part I

(based on Sha'ar Ladin - Halacha Psuka, vol. 60)

In general, when an object is damaged or disappears under the watch of a *shomer*, if it occurred due to an *oness* (extenuating circumstances) all types of *shomrim* except for a *sho'el* (borrower) are exempt. The *gemara* (Bava Metzia 42a) deals with the case of a *shomer* who put a sum of money and in a wooden structure so that the money was well protected against thieves but not against fire. Because of the possibility of fire, the *shomer* was guilty of *p'shi'ah*, which could obligate him to pay. Instead of fire destroying the money, thieves stole it. The *gemara* brings an opinion (which we accept) that the *shomer* must pay because in a case *techilato b'p'shi'ah v'sofo b'oness* (=tbpvbsb) (the makings of negligence that end up with damage of *oness*), one is obligated.

Acharonim present two explanations for this rule: 1) Since the *shomer* was to a significant degree negligent, he cannot claim exemption due to *oness*. 2) At the time that he was negligent, the *shomer* became provisionally obligated to pay unless he would succeed in returning the object intact. Upon failing to do so, even if it ended up being due to *oness*, he pays based on the earlier obligation.

To better understand the explanations, we will discuss two Talmudic cases in this context. The *gemara* (Bava Metzia 36a) deals with a *shomer* who allowed an animal to run free, but instead of being stolen, it died of natural causes. Although this seems like a classic case of *tbpvbsb*, the *gemara* cites different opinions on the matter. Abayeи said he is obligated because "the air of the meadow killed it." Rava says he is exempt because "the angel of death does not care if it is here or there." It follows that, according to Rava, there has to be some circumstantial connection between the negligence and the eventual death.

The *gemara* (ibid. 93b) discusses a shepherd who left his flock and came to town, during which time wild animals killed some sheep. The shepherd must pay because of *tbpvbsb*. The Rif says that this *gemara* follows Rava's approach. Abayeи would not agree with this conclusion because the shepherd's absence did not have an impact on the outcome, even coincidentally. The Ra'avad says that even Abayeи would agree with the latter *gemara* because, had the shepherd been there, he might have been possessed with a spirit of bravery and saved the sheep (see Rosh, Bava Metzia 3:9).

The Gilyon Maharsha (CM 291:9) says that the above *machloket* depends on the two approaches to *tbpvbsb*. If the idea is that we consider that there was *p'shi'ah* based on what he did in the beginning, this would apply only when there is some connection between the original *p'shi'ah* and the eventual damage. If the idea is that an obligation is created that remains until the object is returned safely, then even if the cause for it not returning is unrelated to the *shomer*'s negligence, he still must pay.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tamuz 27 – Av 4, Baba Metzia 85-91

Obligation to Pay "Latzet Yedei Shamayim"(to fulfill one's obligation toward Heaven)

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara deals with the prohibition of preventing an animal from eating while it is working. This prohibition states, that if the animal is doing work which involves something edible, one may not keep it muzzled but must instead allow the animal to eat. The punishment for transgressing this prohibition, as for most prohibitions, is lashes. What happens if one rented an animal and kept it muzzled while working with it? The Gemara (91a) quotes a Berayta (Tanaic source) that states that the renter receives lashes, and, in addition, he must pay the owner of the animal for the food that the animal would have eaten. The reason for this is that a person who rents an animal is obligated to feed it, and part of the food that he is obligated to provide, is the food that the animal eats while it is working. Therefore, if he prevented the animal from eating, in addition to the transgression, he did not fulfill his obligation towards the owner of the animal, and he must compensate him.

The Gemara questions this Berayta, since it is against the principle that a Beit Din does not both punish with lashes and obligate payment for the same action. The Gemara offers several resolutions to this question. One of the answers is that although Beit Din does not obligate payment, the person is still obligated to pay "Latzet Yedei Shamayim."

We find in several places in the Gemara that a person is not obligated to pay by the laws invoked by the human courts, but is still obligated to pay "Latzet Yedei Shamayim." However, the Ktzot Hachoshen (87, 23) claims that the obligation in our Gemara is different from the other situations. In the other cases, according to the strict monetary law, one is not obligated to pay. However, if one wants to have a clean slate before Hashem, he should pay. But, in our case, one is theoretically obligated to pay even according to the monetary law. It is only that Beit Din does not force him to pay, since a Beit Din does not both give lashes and obligate payment for the same action.

There are several ramifications to this distinction, such as the following: What happens if the one to whom money is owed "Latzet Yedei Shamayim" somehow received money that belongs to the person who owes him, is he permitted to take it? The Ketzot explains that, in most cases, one is not allowed to take the money, since there is no monetary obligation towards him, and if the person does not want to clean his slate before Hashem, then he has no right to take the money. However, in a situation similar to the one in our Gemara, he would be allowed to take the money, since, in truth, there is a monetary obligation, but it is only that Beit Din does not enforce it.

Summary:

There are two types of obligations "Latzet Yedei Shamayim." One is only a moral obligation; if one wants to have a clean slate before the Heavenly courts. The second is a monetary obligation, which, for certain reasons, the Beit Din does not enforce. This too is termed as an obligation "Latzet Yedei Shamayim," but has more power in various cases.

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