HEMDAT YAMIM חמדת ימים

Parashat Hashavua

Shemot, 21 Tevet 5782

Harav Shaul Israeli zt"l
Founder and President

As a Hammer Smashes Rock

Harav Yosef Carmel

When Moshe is introduced the first time, we do not get a clear picture as to who his parents are. The story begins: "A man from the House of Levi went and married the daughter of Levi. And the woman became pregnant and gave birth to a son …" (Shemot 2:1-2). Who is the man, who is the woman? However, at the end of the *parasha*, it says: "Amram married his aunt, Yocheved, and she gave birth for him to Aharon and Moshe" (ibid. 6:20). Only by combining the two stories do we know who the parents are and what the circumstances of Moshe's birth were.

Why are so many elements in *Tanach* only clarified by connecting different sections of Biblical text? We should understand that all of *Tanach* is one book, which is composed of 24 sub-books. Therefore, a full picture is only possible after seeing all of the places in which *Tanach* deals with the event or idea at hand. *Chazal* coined the following phrase to deal with this phenomenon: "The words of the Torah are poor in one place and rich in another" (Yerushalmi, Rosh Hashana 3:5). The appearance of a certain topic in multiple sources allows us to compare and contrast them and to receive additional depth and dimension.

The prophet Yirmiyahu provided the basis for expressing and analyzing this matter: "Indeed, My words, said Hashem, are like fire and like a hammer that smashes rock" (Yirmiyahu 23:29; see Shabbat 88b; Sifrei, B'haalotcha 102). This means, in context, that due to the divine source of Torah, we are not able to absorb the whole divine message at one time, and, therefore, the Torah breaks it up into multiple appearances that enable human comprehension. The Yerushalmi (Nedarim 3:2) uses this idea to illustrate the phenomenon of different words being "spoken" by Hashem at the same moment at Sinai (e.g., *zachor* and *shamor*, and *shav* and *sheker*).

The full picture is achieved only when we learn all of the contexts in which the matter comes up, as upon making the proper analysis, the pieces form together into one complete picture. This is based on the firm belief that all of *Tanach* is one work. The first part, Torah, was given to Moshe directly by Hashem. The second part, Nevi'im, was given by means of prophecy to the prophets from the time of Yehoshua to that of Chagai, Zecharia, and Malachi. Ketuvim, the third part, was written with *ruach hakodesh* (divine spirit) and was completed with the writing of Megillat Esther. At that point, it became a closed work, not to be added on to and not to be reduced in size by even the slightest amount. However, the messages could be spread out in myriad ways throughout the unified masterwork.

The story of Moshe's birth was also broken into small pieces as it came down from the Heavens into a physical world, as it was given to human beings who were created from earth and return to earth. Delving into Torah study enables us to reunite the broken pieces of physicality into a unified spiritual concept, whose source is from the One Creator.

As we often do, we stress that the search for unity in all forms is the basis of our existence and success.

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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

Giving Away *Orla* Fruit

Question: I have a tree in its second year, so that its fruit is *orla*. Can I suggest to my non-Jewish worker to take it?

Answer: It is not only forbidden to eat *orla* fruit but even to benefit from them. The main non-eating benefits discussed regarding *issurei hana'ah* are physical (e.g., using *orla* for paint or fuel – Pesachim 22b), feeding animals (ibid. 22a) and selling.

The Rambam (Ma'achalot Assurot 8:16) forbids giving *issurei hana'ah* to non-Jews as a present. The Kolbo (92) points out that this prohibition is implicit, according to some, in the Torah's formulation of the prohibition of *neveila* (meat of an animal that was not *shechted* properly) – one must not eat it but give it to a non-Jew who enjoys special standing (*ger toshav*) or sell it to another non-Jew (Devarim 14:21). Rav Avahu (Pesachim 21b) learns, according to R. Meir, that **had it been** forbidden to benefit from *neveila*, it would have been forbidden to give it to a non-Jew.

The logic is that giving presents causes reciprocity in some way/time, making the present a cause of benefit to the giver, and this is expanded to less direct cases. The Rama (Yoreh Deah 294:8) forbids helping a non-Jew pick his *orla* fruit, even for free, because the owner will be grateful. There is more room for leniency when the benefit is indirect. For one, the Avnei Nezer (Orach Chayim 489) posits that if one did not intend to enjoy the recipient's gratefulness, it is permitted to provide him the *orla*. However, it is difficult for one who gives a present to determine he has no intention for beneficial good will, and such a situation can also create other halachic problems (ibid.), which it is unclear how easy it is to overcome (see Beit She'arim, OC 61; Chatam Sofer, Avoda Zara 64b).

The way to do things is not to present the *orla* as a gift, but to make your worker aware of the situation. Explain that you must not benefit from the fruit, that if no one takes them you will throw them out, and therefore you have nothing to lose (and even a little toil to gain) if someone, including him, takes them.

The following is the main source that allowing people to take *issurei hana'ah*, as opposed to giving a gift, is permitted. The *mishna* (Bava Kama 108b-109a) rules on one whose father used a *neder* to preclude his son from benefit from his property, and then the father died, and the son inherited the property. The son may indeed not benefit from the property, but he can direct it to his relative who may benefit from it. The Ran (Nedarim 47a) asks why this transfer of the property to the person of the son's choice is not forbidden benefit. The Ran answers that the son is not allowed to give it to them regularly. Rather, he is to explain to them that he cannot use it himself, and therefore, from his perspective, they may as well take it. The Shach (YD 223:4) accepts this Ran, including that the son must mention that he has no use for the property. If you do so regarding the *orla*, it should work for you as well.

There are times that one may not give to a non-Jew, an object that is forbidden for Jews out of a concern that it will end up in the hands of Jews who will not realize the object's status (see Avoda Zara 65b). However, this is not a broad concern, at least regarding things that people know need a *kashrut* check. Regarding *orla*, the *gemara* (Avoda Zara 21a)) and Shulchan Aruch (YD 294:14) allow people, in preparation of their trees producing *orla*, to sell or have a partnership with a non-Jew so that the non-Jew gets the fruit during the years of *orla* and the Jew gets them afterward. Rav Kook (Mishpat Kohen 6) says that such actions are permitted because they were done before the prohibited fruit existed, which would imply that at the stage you refer to, it would be a problem to make such fruit available. However, he discussed transferring an orchard of *orla*, which is meant for commercial use, which may go to Jews, as opposed to your small amount of fruit meant for personal consumption. The fact that you will mention that Jews may not eat it is also helpful.

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

SEND NOW!

Igrot HaRe'aya - Letters of Rav Kook

Looking to Retire? - #84

Date and Place: 14 Menachem Av 5667 (1907)

Recipient: Rabbi Yechiel Michel Tikechinsky (a friend of Rav Kook, Rav Tikechinsky was a great scholar, who authored the Gesher Hachayim, among other books, and was also very involved in communal affairs in Jerusalem. He is also famous for publishing the calendar with the laws and customs of the "Lithuanian-Ashkenazi" community in *Eretz Yisrael*).

Body: I find it to be an obligation for my spirit to let my distinguished colleague know the suggestion I have thought of.

It has to do with the fact that due to our great sins, the one who our eyes so enjoyed seeing, the great rabbi, Rav Yitzchak Blazer o.b.m., passed away. (Rav Blazer was a very illustrious rabbi. He was one of the principal disciples of the founder of the Mussar Movement, Rav Yisrael Salanter. He had been the rabbi of St. Petersburg, a lecturer, and had been connected to several *yeshivot*, in which he spread the ideas of *mussar* (morality in religious lifestyle). He moved to *Eretz Yisrael* in 1904 and died there in 1907.)

According to the situation, there will apparently be a need to look for a replacement who is qualified to do the work that he did for the Kollel. (The Ashkenazi members of the Old Yishuv were organized according to their communities of origin. The communities in Europe would send money to help support their former compatriots, enabling them to survive and providing merit and a connection to the Holy Land for the donors. Rav Blazer, in a state of semi-retirement, was one of the leaders of the Kollel Vilna.) This is something that I very much would like because the matter of my being a communal rabbi is contrary to my characteristics and my strengths. (This is a fascinating claim considering that Yafo was the third community in which Rav Kook served as the rabbi, and by various measures, it seems that he was very successful at it. I am not aware if something had recently occurred that had dampened Rav Kook's enthusiasm, and actually many of the letters of this period appear notably optimistic about the state of the communities in Israel.)

I very much desire to live in the Holy Land without the burden of the yoke of the masses for whom I need to render rulings. (While Rav Kook often proudly used as his description, "a servant to the holy nation in the Holy Land," it could be that he wanted to be involved not only in self-development but also in national, religious projects without the constraints of one who has to deal with myriad individual matters.) So maybe you could propose me as a candidate for the job to someone who has the ability to see the matter to fruition. If they choose me, the simple person that I am, for the work with the Kollel, in my humble opinion, I have the talents to succeed. This would fulfill a goal for me of living in the holy city of Jerusalem, without the yoke of the rabbinate and rendering rulings.

If you have some comments on the matter, I hope you will honor me with your answer without delay. If there is some impediment to carrying out my idea, may it be as if I had not brought up the matter. This would be my reward and the cause of blessing, liberation, and consolation, as Hashem liberates His nation, has mercy on His poor, and will console Zion and Jerusalem with the light of His salvation.

P'ninat Mishpat

Paying for Changes to Building Project – part II

(based on ruling 79127 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=*pl*) hired the defendant (=*def*), a contractor, to extend his home, with a 55,000 NIS contract for the frame and 21,132 NIS for the interior. The agreement was for *pl* to provide all the materials and *def* to be paid only for work, but *def* ended up providing many materials, for which *pl* paid 44,000 NIS. After the agreement, *def* asked *pl* for a 150,000 NIS short-term loan, for which he was to receive a 2,000 NIS reduction on the contract. The loan has still not been repaid, although most of it is covered by offsetting *pl*'s obligations to *def*. (*Beit din* criticized *def*'s non-payment without permission, but *pl* did not request compensation for this). During the work, *def* asked for an increase in charges due to heightening expenses, and they agreed on 6,000 NIS. A few days later, *def* reneged on that agreement, claiming that *pl*'s changes to the plans during the building require a total increase of 21,000 NIS. *Pl* disagrees because *def*'s site supervisor, who suggested the changes, implied that they would not increase the cost. Also, *def* should not have charged for transportation of materials, which should be included in his responsibilities. *Def* also claims that the materials he provided, which were not in the contract, cost 56,158 (not 44,000) NIS, as they were more expensive than he had estimated. The two also disagree about whether *def* had promised *pl* that 1/3 of the fee would be without VAT.

Ruling: Transportation of materials to build scaffold – Although the contract does not discuss transportation of the materials, logic dictates that if the scaffold was necessary for *def*'s work and will not remain with the final product, then *def* was to transport these materials like all other tools.

Reneging on the agreement of 6,000 NIS – There are two ways to look at *def* not charging more than an additional 6,000 NIS: it was *mechila* of (relinquishing rights to) that which he deserved; it was a *peshara* (compromise) as to what he deserved to receive. *Mechila* does not require an act of *kinyan* to be binding, and *peshara* does (Shulchan Aruch, Choshen Mishpat 12:7-8). The explanation is that one who is *mochel* understands better what he is doing, whereas when one agrees to *peshara*, it is more likely that he agreed based on a misunderstanding of his rights (Sanhedrin 6a). The Shach (ad loc.) says that this requirement of a *kinyan* only applies to *pesharot* upon which *beit din* presided, whereas those done by the parties are binding without a *kinyan*. Possibly, according to the Maharam Lublin, the source of the Shach, this is only when the sides give up their rights and not when they are arguing about money and either could lose. However, the Shach seems to treat our case like that of people who prefer to decide the matter themselves rather than adjudicate, so that it would be binding. Therefore, we do not allow *def* to back out of the agreement.

Reduction from VAT – the contract does not address this matter, but *pl* says that this is because they do not want in writing that *def* is granting an "exemption" from VAT. In any case, *pl* did not prove an "exemption." In practice, *def* has paid VAT on the entire sum, and the question of VAT was already on the table when the sides agreed on the 6,000 NIS. Therefore, *pl* must pay *def* for full VAT.

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