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PARASHAT HASHAVUAH

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A Parting Gift

We usually think of Yaakov, in his interaction with Eisav upon his return, to have acted meekly to avoid possible conflict with Eisav. *Anything to survive!* The *gemara* (Sota 41b) actually gives two explanations of what Yaakov meant by saying that seeing Eisav was like seeing an angel. One was (false) flattery; the other was a semi-veiled threat: I have handled your angel; I can handle you if need to. Let us explore another example in which Yaakov may have been at once conciliatory and assertive. We start with an apparent contradiction.

Where did Eisav live when Yaakov was on his way home to Chevron? The beginning of the *parasha* implies he was living in Se'ir, as that is where Yaakov sent the messengers (Bereishit 32:4). As they part, Yaakov also says that he will visit Eisav in Se'ir (ibid. 33:16). Yet, the end of the *parasha* (ibid. 36: 6-7) seems to say explicitly differently. Eisav took his family and possessions and left the Land of C'na'an because of Yaakov, because there was not enough grazing land for the vast flocks of the two brothers (ibid. 36:6). Thus, until Yaakov settled in C'na'an with his flock, Eisav was in Chevron. The Ramban (ad loc.) posits that before Yaakov's return, Eisav lived in Chevron with his family and flock, but spent significant time in Se'ir "on business," with a band of 400 armed men to exert his influence on the area. According to the Ramban, he knew that eventually C'na'an would be Yaakov's, as Yitzchak had told Yaakov (when he knew it was Yaakov – Bereishit 28:4).

From here, let us part ways with the Ramban and suggest the following approach to Yaakov's strategy. Yaakov sends his "telegram" to Eisav's Se'ir address, hinting that he knew that Eisav had a stronghold there. He said: "I have been away a long time until now; I have cattle, donkeys, flocks, and male and female servants, and I am sending you to tell you to find favor in your eyes" (ibid. 32:6). This may be a nice way of saying: Look, you have been with Yitzchak for a long time. I'm ready to take over looking out for him. Realize it is not a good idea for us to be together because of our flocks. Maybe the time has come for you to move full time to Se'ir. (Perhaps, Yaakov wanted to come with a lot of animals particularly for this purpose.) Eisav approaches angrily, and Yaakov sends him many animals as a present. The present is nice, but it won't solve the problem of lack of grazing land, as the sum total is unchanged. Eisav suggests: Let's go together. After all, I live in Chevron, and you are coming to Chevron. Yaakov answers: No, I have to go slowly; I will visit you in Se'ir, where you will certainly be living exclusively by the time I get to Chevron. Indeed, Yaakov goes very slowly, and by the time he gets there, Yitzchak alone lives there (see the language of Bereishit 35:27).

If our thesis is correct, we see that Yaakov is willing to be assertive with the powerful Eisav. While Yaakov is willing to show respect to Eisav, when it comes to the values of separating the two families and having Yaakov take over his father's spiritual legacy and hold on the future Land of Israel, he politely but firmly stands up for his rights.

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Ask the Rabbi

Question: How can it be that whether or not you wash on pizza depends on how much you eat? I would think that either it is bread or it is not bread.

Answer: The *gemara* (Berachot 42a) discusses a category of food called *pat haba'ah b'kisnin (phbbk)*, which is a baked grain-based food that shares qualities with bread but also is distinguished from normal bread. The *gemara* says that whether one recites *Hamotzi* or *Mezonot* on it depends on whether one is *kovei'a seuda* (sets a meal) on it. The Shulchan Aruch says that the other special *halachot* of bread apply to *phbbk* when one is *kovei'a seuda*, namely, that one recites *Birkat Hamazon* on it (Orach Chayim 168:6) and has to wash before eating it (ibid. 158:1). Let us now discuss pizza.

For something to be a candidate for bread status, it must be made from the five main grains and be baked or look like bread (corn bread and spaghetti are not treated like bread no matter how much one eats of them - see Shulchan Aruch, OC 168:10). Of foods that pass those tests, there are still characteristics that can make a food *phbbk* instead of bread. The Shulchan Aruch (ibid.:7) cites three opinions: it has a pocket of sweet filling; its dough contains significant amounts of ingredients such as sugar and oil, besides flour and water; it is thin and crisp. It is unclear whether these opinions are mutually exclusive or whether any significant non-bread characteristic makes it *phbbk* (see Biur Halacha to 168:8).

Pizza might be *phbbk* for one of the following reasons: 1) its dough may contain a lot of liquid other than water (e.g., oil, apple juice, milk); 2) it is baked together with pizza sauce and cheese, which make it similar to the pocket of filling above. However, it might not be *phbbk*. #1 requires that there to be a lot of other liquids (for Sephardim, enough to taste; for Ashkenazim, a majority of the non-flour element - Shulchan Aruch and Rama, OC 168). This is often not the case. Regarding #2, it is not clear that all fillings remove the bread status. The Shulchan Aruch (ibid.:16) says that a *pashtida* (knish-type food) filled with meat, fish, or cheese receives the *beracha* of *Hamotzi* on any amount. The Mishna Berura (ad loc.:94) explains that classic *phbbk* is made from sweet fillings that make it dessert-like (e.g., cake), as opposed to these that are more meal-like. The Taz (168:20) says that all fillings are the same, and the matter is usually treated like a doubt.

Furthermore, the Beit Yosef (OC 168; see also the Aruch Hashulchan, OC 168:25) says that *phbbk* is something that, because of its characteristics, one does not usually center a meal around. One can argue that people eat regular pizza as the main food for a meal, rather than as a minor part of the meal or as a snack between main meals. So, indeed, this respondent treats pizza like bread, for any amount (see Am Mordechai, Berachot 25). Many distinguish between water vs. fruit juice based dough or treat the matter as a doubt to be avoided (see V'zot Haberacha, p. 217).

In any case, according to the prevalent custom that pizza is *phbbk*, how much does one have to eat to require the *halachot* of bread? The Shulchan Aruch (OC 168:6) says that one has to eat the amount that most people consider having a meal. In another halachic context, the size of 3 or 4 eggs suffices. It is a question whether that suffices here or a full meal's worth is needed (the Mishna Berura 168:24 leaves the matter open). There is also a question whether in the meal discussed the *phbbk* by itself is filling, or whether it is sufficient for it to be a filling meal that is centered around the *phbbk* (Mishna Berura ibid.) Rav M. Feinstein (Igrot Moshe, OC III, 32) goes a step further, saying that nowadays, when bread's role in meals is less than it once was, even a small amount of *phbbk* in the midst of a meal would require washing, *Hamotzi*, and *Birkat Hamazon*. Nevertheless, the most famous practice is that only two or perhaps three slices of average sized pizza are treated like bread.

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Ein Ayah

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

Displaying the Good in Everything

(based on Berachot, 3:3)

Gemara: Whoever sees a dead person [being taken to burial] and does not escort him violates: “One who scoffs at a poor person blasphemes his Maker” (Mishlei 17:5). And if he does escort him, what is his reward? About him the *pasuk* (ibid. 19:17) says: “One who has compassion for the poor is like one who lends to Hashem” [the words for escorting and lending have the same letters] and, “One who has compassion toward the poor shows respect to Him” (ibid. 14:31).

Ein Ayah: A funeral procession teaches that the living relate to the situation of death and that the actions of the living have an impact on the situation of the dead. This will encourage one to show respect to Hashem in the actions of life, which are his to do throughout his life, as he sees that they are not actions that blow away like smoke. Rather, they take on a different form when death comes, while they continue to exist and give fruit after death.

One who does not escort the dead, even if he admits that the soul is eternal and that there will be a resurrection of the dead, is lacking in this regard. If he does not take note of the fact that all actions and ways of life have a connection even after death and that according to the way he went through life he will discover his true value at that time, then he has not fulfilled his goal in showing respect to Hashem. After all, Hashem’s main purpose [in commanding to act as He does] is that His creations should reach *shleimut* (completeness).

A funeral procession also indicates that the journey upon which the deceased embarks is to a higher level than the existence in the material world. That is why the *pasuk* attributed to the one who escorts the deceased is: “One who has compassion for the poor is like one who lends to Hashem.” Just as a lender trusts the borrower’s reliability to pay him back, even though his eyes no longer see his money, so too one believes, even though he sees his life waning away, that there is an important value to death, as he is reliant on Hashem’s justice. The believer knows that Hashem did not create him for naught and did not blow the spirit of life into him just to make him a player in a game of occurrences in a material world. Rather, he was created to reach a lofty goal, which he will realize most fully in the end of days.

There is another point in this matter. The feelings of sadness that accompany death are also for the good, in order to force a person’s heart and difficult nature into submission so that it will be able to lead him through the path of life. This has similarities to the phenomenon whereby poverty creates the attribute of mercy in the spirit of the one who is charitable. The creation of the attribute is an eternal acquisition of intrinsic good in the heart of the person.

One who uses the advantages that come from things that appear to be bad is one who shows respect to Hashem by taking the good that is hidden in that thing from the potential to the actual, as Hashem intended him to do. So too, one who escorts the deceased and succeeds in inculcating in himself the imprint of “the living will place upon his heart” (Kohelet 7:2) and straightens his path shows respect to Hashem. This is similar to one who has compassion toward the poor, thus displaying the good (i.e., compassion) that could come from anything, including something that appears bad (i.e., poverty).

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P'ninat Mishpat

Firing Teachers – part II

(based on Eit Ladun – Rav Nir Vargon - Halacha Psuka, vol. 31)

[Last time, we saw various opinions if the ruling that one may replace a Torah teacher with a better one is referring to within the period of the employment agreement and whether it is referring to firing with pay or without.]

Rav S.Z. Orbach (in Techumin V, p. 291-) gives another reason to forbid firing a teacher without a valid reason. He suggests that it is possible in our days that a teacher in a public institution has a position of honor about which the Rama (Yoreh Deah 245:22) rules the following: “He who is established as the rabbi of the city, even if he put himself in a position of authority, one should not remove him from his elevated position even if someone greater than he came to the place.”

It seems that these days, when not specified, a teacher is hired for one year at a time, unless he is given a permanent appointment. In any case, according to the Aruch Hashulchan [see last week], it is possible to replace a teacher with someone more qualified in the middle of the school year, not to mention that he does not have to be rehired for the coming year in any case. According to Rav Koltz [cited last week], even after the year, he can be replaced only with someone better; during the year, he cannot be replaced even with someone more qualified.

Regarding the pay of a teacher who was fired in the middle of the year, in general we say that one who started working and was removed is paid (at least at a reduced rate) until the end of the period if he is unable to find alternative employment (based on Bava Metzia 75b). The rate of pay depends on if the worker is the type who would rather be idle or would rather work. The *gemara* assumes that the average worker prefers to be idle but mentions the porters of Mechoza as an example of those who do not like being idle, because it weakens them. The Nimukei Yosef (Bava Metzia 47a in the Rif's pages) says that teachers are among those who receive full pay. As this is true of any profession in which those involved are weakened by idleness, this should apply to those who study Torah. However, the Rashba (Shut I, 643) says that a *beit din* should decide on an individual basis. In general, though, a teacher would be expected to receive full pay until the end of the year.

The Taz (CM 333:2) says that an idle worker gets paid only half of his normal salary. However, the Rashba (I, 887) implies that the reduction is significantly less. It is possible that the matter should be compared with the salary teachers receive when on sabbatical. After all, those teachers have the right to choose between vacation with partial pay and working with full pay; this is what we try to estimate regarding an idle worker.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Kislev 12- 18, Baba Batra 100-106

A Mistake in Measurement in a Real- Estate Transaction (103b)

Rav Ofer Livnat

This week we will continue to discuss an issue that we dealt with two weeks ago in the Hemdat Hadaf Hayomi for Parshat Toldot. There we learned that when a deal was made on a certain amount of merchandise, and the merchandise was found to be lacking, according to Rashbam the sale is void, while according to the R"l Migash the sale is valid, and the seller must complete the required amount. If he cannot complete the amount, according to the Ramban the sale is void, while according to the Rashba the sale is valid and the buyer subtracts the value of the missing merchandise from the purchase price.

This week in the Daf Hayomi, the Mishna (103b) states that when a person sells a certain amount of land, and it was stipulated that the tract is subject to an exact measurement, if the property is found to be short of the size agreed upon, even if only by a small amount, the buyer subtracts the value of the missing land from the payment. The question is, how can this Mishna be resolved according to the different opinions in the Rishonim mentioned above?

For the Rashba, this Mishna fits in perfectly with his opinion, since he claims that whenever the missing merchandise cannot be completed, its value should be deducted from the payment. However, according to the other Rishonim the sale should be void in such a case.

The Rashbam (d"h pichet) claims that a sale of real estate is different from any other sale. In other sales, even if only a small amount of merchandise is missing, the sale is void. However, the Sages assessed that, for real estate, people prefer to accept the property even if it is slightly smaller than what was agreed upon, and therefore the sale is valid and one need only deduct the value of the missing land from the payment.

The Ramban disagrees with the Rashbam and claims that there is no difference between real estate and other merchandise. He offers two explanations of the Mishna. One explanation is that indeed the buyer has the choice to either cancel the sale or accept the deduction from the payment. The second explanation is that, when a person stipulates that he wants exact measurement, his intention is that he is willing to accept a slight deviation in the size, as long as the difference is reflected in the purchase price.

The Nimukei Yosef (49b in the pages of the Rif d"h matnitin) offers a different explanation. According to his opinion, everything is dependent on the significance of the difference in amount. If the difference is large, then the sale is void. However, if the difference is small, as is in the case of the Mishna, where a large piece of land was and, the difference in size was small, then we assume that the buyer does not want to cancel the sale, and the value of the difference is deducted from the payment. According to this explanation, in every case we have to check and estimate if the difference justifies the cancellation of the sale.

Summary and Ruling:

As noted two weeks ago, the Sma (232, 2) rules like the Ramban that when the merchandise is lacking from the amount agreed upon, and the missing amount cannot be completed, the sale is void. However, in the case of a sale of real estate, when there was a stipulation that the sale is subject to exact measurement, and the land was found to be short of the size agreed upon, the Shulchan Aruch (218, 7) rules, as is stated in the Mishna, that the value of the difference is deducted from the payment. The Sma (ibid and 218, 27) explains the Shulchan Aruch like the second explanation of the Ramban, that when a person stipulates that he wants exact measurement, his intent is that if the land is found short he wants to accept the sale and revise the price.

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