



HEMDAT YAMIM

חֵמְדָּה יָמִימִים

Parashat Hashavua

Devarim 4 Av 5783

Harav Shaul Israeli zt"l
Founder and President

Criteria to Be Chosen
Harav Yosef Carmel

Early on in *Sefer Devarim*, we find two sections that retell episodes found earlier in the Torah with intriguing differences – the appointment of judges and the sending of the spies.

In *Parashat Yitro*, the verb used for the appointment of judges is *techezeh* (Shemot 18:21), which means to see, but is found also in the context of prophecy. It was Moshe Rabbeinu, the great prophet, who was to use prophecy to choose the prophets. This is appropriate considering that one of the major attributes needed for judges was G-d-fearers, which requires the ability for those appointing to see into candidates' hearts (see Shmuel I, 16:7).

In contrast, according to *Parashat Devarim*, Moshe told the people to bring forth the desired judges who were *chachamim* and *nevonim*, who are known according to their tribes (Devarim 1:13). Rashi explains that the point was that they needed to be known to the people of their tribe because if the people are presented to Moshe, wrapped in a *tallit*, he will not be able to know the identity and qualifications of each. Therefore, those from their surroundings in which they grew up were to choose the right ones.

The original telling of the story of the spies states that Hashem told Moshe to send them (Bamidbar 13:2). In contrast, in our *parasha*, the Torah says that the people approached Moshe with the request to send the spies (Devarim 1:22).

Much has been written in an attempt to reconcile these apparent contradictions. I ask our dear readers' indulgence and suggest a fundamental approach that addresses both issues.

Both apparent approaches are correct. Moshe needed to be involved in the processes, and the people needed to be involved in them. That was the key to success. In fact, in general, one needs to ask two questions before making decisions in life. One is whether the act we are considering will likely "find grace and intellectual acceptance in the eyes of Hashem." The other is whether the same is true from the perspective of human beings.

In regard to the judges, then, we need to consider whom we think Hashem would want us to choose, and whom people will find acceptable. It is important to accept candidates who pass both tests. The same is true regarding attempts to enter the Land: We are to ascertain what Hashem wants us to do so that we can prepare to acquire it, and what steps we should initiate as *hishtadlut* (human efforts) from our perspective.

Following these lines, we understand why in *Parashat Devarim*, the Torah adds two qualities that are not found in *Parashat Yitro* – *chachamim* and *nevonim*. *Chochma* relates to acquired knowledge, in this case, in knowing the laws of the Torah. *Tevuna* relates to being able to make proper decisions based on the known laws and rules of the Torah. This may be what R. Avraham ben Harambam says (Shut 97): The men needed to be *chachamim* and *nevonim*, as one does not work without the other. *Chochma* is remembering what was said, and *bina* is the good intellect (*sechel tov*) and the ability to evaluate.

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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

Stopping a Charitable *Hora'at Keva*

Question: A friend wants to cancel a *hora'at keva* (direct debit) to a charitable organization. He asked me to find out if he may do so or if he is bound by it.

Answer: Many factors impact this question, so it is difficult to rule on all sets of circumstances. After mapping out the factors, your friend may be able to see if his question is already answered or whether he needs to provide additional details.

Our initial focus is on the impact of the commitment's charitable context. (A *hora'at keva* (=hokv) to give a gift to a not needy person would not normally be binding – discussion is beyond our scope.) Oral commitments to donate to the *Beit Hamikdash* (Kiddushin 28b) or to *tzedaka* (Rosh Hashana 6a) are binding, and *Rishonim* disagree whether this is only for verbalizations or even for a clear intention to give *tzedaka*. The Shulchan Aruch (Choshen Mishpat 212:8) apparently says it is not binding, and the Rama (Yoreh Deah 258:13) rules that it is. Some say there must be a basic oral commitment, in which case intent can determine its extent (Pitchei Teshuva ad loc. 15). While there is a *machloket* whether, according to the lenient opinion, writing is as effective as speech (Kol Nidrei 61:22), writing a check or a *hokv* may lack the right formulation to count (ibid.). On the other hand, perhaps besides writing the *hokv*, your friend also made an oral commitment. Therefore, there may or may not have been the building block of a binding commitment.

The above applies to a *hokv* for a set number of charges. However, for an open-ended one, since few people would **commit** to a totally open-ended period of payment, the intent is usually to give until he stops it, which he can then do. The rule that one cannot take back that which he gave to a *gabbai tzedaka* (Arachin 6a) does not apply to a *hokv* for future payment.

The reason for a change of heart can make a difference. If one feels the organization deceived him (it might be difficult to ascertain), that at times could nullify the *tzedaka* commitment. If your friend's ability to donate deteriorated over time, this could be grounds for undoing the commitment with *sh'eila* (a form of *hatarat nedarim*) (see Kol Nidrei 9:7).

Another important question is what will happen with the "saved" money. There is a *machloket* whether one is allowed to switch the recipient from one *ani* to another; the matter is more lenient regarding an undefined group of recipients (Tzedaka U'mishpat 9:1). It is not clear how to view many contemporary *tzedaka* organizations (ibid. (4)).

A fine NPO which is not dedicated to *tzedaka* (i.e., the poor) but for other *mitzvot* purposes, likely lacks certain privileges of *tzedaka*. There is a *machloket* whether the latter can be taken from *ma'aser kesafim* (see Rama, YD 249:1 and Shach ad loc.), although the *minhag* is clearly to allow it. In our context, it is possible that, for a *mitzva* organization, the level of obligation based on an oral commitment and certainly based on a thought, as well as the ability to change the recipient from one organization to another parallel one, is not as it is for one of *tzedaka*.

If *hokv* draws from a *tzedaka* account rather than your friend's regular account, then your friend was not acting as a donor but as the *gabbai* of a *tzedaka* fund, who has latitude in the matter without concern for *neder* (Tzedaka U'mishpat 9:(3)). As a step to combine with other reasons for leniency, while we do not usually allow people to get out of the promise of *tzedaka* with *sh'eila*, it may be okay in some of the discussed borderline cases.

Even with room for leniency about **binding** commitment, regarding proper behavior, there are often moral expectations to keep one's word even in non-*tzedaka* contexts and in the absence of a binding *kinyan* (see Bava Metzia 49a). Therefore, in many of these cases, even when one is not fully obligated, he should still try to keep his word, including by not ending a *hokv* before its time, without very good reason (see Pri Yitzchak 1:51).

If you give more details, we can give a more precise answer.

“Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

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

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Igrot HaRe'aya - Letters of Rav Kook

Seeking the Return of Religious Aliya – #159 – part I

Date and Place: 5667 (1907), Yafo

Recipient: Rabbis in the Diaspora. We have only the first section of the letter, and it is unclear what Rav Kook was advocating. Perhaps it was to increase religious *aliya*; perhaps it was funding for projects in *Eretz Yisrael* to strengthen the religious community. In any case, the beauty of the letter's sentiment and style of writing are too engaging to skip over.

Body: It is my holy obligation to point out and try to inspire all the pure hearts of those who fear and care about Hashem's Name, whose hearts are touched by Him and think of Hashem and Yerushalayim and are connected with heart and soul to the holy belief in and love of the Land that is desired by Bnei Yisrael and Hashem. We, survivors of the sword, have been drawn individually to come to the place where we have complete lives. Hashem's Hand enabled us to extricate ourselves from impure soil; He brought us to the sanctity of the Land about whose needs Hashem always inquires, the Holy Land, may it be built soon.


We see and know that the time has come to have mercy on Jerusalem (see Tehillim 102:14). We are witnesses who have seen with our own eyes and can testify for the whole Nation of Hashem that the blossoming of the time of liberation has arrived to build Zion and its ruins. This is occurring, as the flock of members of His nation have gathered in *Eretz Yisrael* from the four corners of the earth to show love for the holy stones and see grace in the Coveted Land's soil.

At first, the divine plan was carried out by righteous individuals, the previous generation's holiest and loftiest people, who lit the holy flame of the love of the Holy Land in the hearts of Hashem's nation. Their efforts were responsible for the gathering of individuals, survivors of our nation's travails, turning parts of the abandoned Land into a Garden of Eden.

A large, distinguished influx of representative groups of the entirety of the nation has steadily increased Jewish settlement in the Holy Land. In our time, Hashem is clearly turning towards us with an interest in bringing salvation and mercy. Many difficulties and tragedies, with waves of turbulent seas and blow after blow that the House of Israel absorbed from nations that rose up to swallow, destroy, and consume the House of Jacob in any way possible. All of these matters together inspire all in whose heart "Hashem's soul" lives, to forcefully call out and fill his hands with activity for holy action for Hashem, and act to strengthen Bnei Yisrael's emerging hold on the Holy Land, using all possible energies to bring salvation to Mt. Zion and the beginning of the flowering of the horn of salvation and the blossoming of liberation.

It is very distressing that the involvement of the holiest people has decreased over time. In past generations, the generation's most righteous (likely referring to the Vilna Gaon and the Chatam Sofer, among others), whose sanctity and "fire" are the foundation of the world, were spiritually fully invested in the sanctity of building the Holy Land. It was the strength of the great sparks of light, which the loftiest holy men instilled in the hearts of the holy nation, that brought about the building of the Holy Land, as we see and rejoice in the results.

However, in recent times, one by one, the affection for the building of the Holy Land recedes in the truly great and holy rabbis, whether greatness is measured in Torah scholarship, fear of Heaven, sanctity, and understanding of kabbalistic matters. To the contrary, the holy building of the Land, which is a clear source of eternal life, for the holy nation and the whole world, is increasingly in the hands of those with a lack of wisdom and weak actions. In the process, the great grandeur of the Desired Land is being trampled due to our sins, and its aura and splendor is significantly diminished.



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 Binding Nature of the Tentative Agreement – part I

(based on ruling 82108 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) wanted to sell a house, which he expanded without a building permit. The plaintiff (=pl) agreed in principle to buy it for 3.6 mil. NIS, if def succeeded in legalizing the expansion, a process he had begun. They decided to sign a *zichron devarim* (letter of intent), but pl rejected the text drafted by def's lawyer (=zd1) because it was too obligating; pl drew up a weaker one (=zd2), which the sides signed, along with a formal handshake. Pl gave def a check for 10,000 NIS to draw only if and when the deal would come to fruition. After nine months of failure to receive a building permit, the two discussed going through with the sale "as is," but def demanded 4 mil. NIS, due to hikes in market costs. Pl expects def to go through with the sale for the original 3.6 mil. NIS, whereas def argues that the agreement did not bind him to a certain price. Pl demands that if the sale is not enforceable, def should compensate him for damages pl incurred waiting.

Ruling: Contemporary *poskim* agree that a *zichron devarim* binds one to go through with a sale (see *Mishpetei Eretz IV*, p. 119), and it appears that *zd1* was a standard one. However, pl refused to sign *zd1* because it was too binding. The *Shulchan Aruch* (*Choshen Mishpat* 61:15-16) teaches that a contract's meaning can be determined with the help of a careful look at its language and by indications of what the sides to the agreement were thinking. Regarding language, *zd2*, while called a *zichron devarim*, uses language of "good faith" to proceed with the proposed transaction without mentioning monetary obligations. Furthermore, regarding the price, it says that "*ekronit*" (in principle), it will be 3.6 mil. NIS. This extra language is hard to explain unless it means that things (e.g., passage of time/change in price) can affect it, and the *Knesset Hagedola* (CM, HBY 61:57) says that we can learn things from extra language.

Regarding intention, in an email after def raised the matter of a price increase, pl wrote to def that since the matter was one of good will, it is up to def to decide what he will do. While pl says he changed his mind about a forgiving approach when a lawyer told him the *zichron devarim* is binding, the email still is a very strong indication of what pl had been thinking when he wrote and signed it.

Pl did present an email from def in which def referred to the *zichron devarim* as binding, but this is not impactful for two reasons. For one, that was written in regard to *zd1*, which was written to be binding, but pl did not accept it. Additionally, when there are contradictory admissions, we keep the status quo. In this case, that means that we cannot use the *zichron devarim* to obligate def (*Shulchan Aruch*, CM 245:5 and *Netivot Hamishpat ad loc.*). Status quo should also be employed regarding any lack of clarity in a document (*Shulchan Aruch*, CM 42). Therefore, the *zichron devarim* does not provide pl with the ability to enforce the sale.

We will explore next time other reasons for def to keep his commitment to the old price.

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

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