



Harav Shaul Israeli zt"l
Founder and President

Can One Give a Loan to Hashem? – part II

Harav Yosef Carmel

As we saw last time, it is a *mitzva* to lend money to poor Jews or even rich Jews who have a liquidity problem. After lending the money, it is forbidden to pressure the borrower, which finds expression in multiple negative commandments (see Shulchan Aruch, Choshen Mishpat 97:1-2). We also saw how fulfilling these requirements makes one as if he is lending to Hashem! (Of course, consideration for the borrower does not reduce his important obligation to pay back.)

There was a very different social and moral atmosphere in other nations that were considered enlightened, at the time the Torah was given and many years thereafter. We will give a few examples (see a survey of societies in this regard in Menachem Elon's book, Individual Freedoms in Collecting Loans).

In the Code of Hammurabi (Mesopotamia, at the time of Avraham) it is written: "If the debt was incurred by borrowing grain or silver, one may seize as collateral: the property, servants, children, and wives, and the person himself." In other words, there were few limits to the harsh steps one could take against a hopeless debtor, in order to ensure payment. In contrast, according to the Torah, the only debtor who can be sold as a slave is a **thief** who does not return or pay for what he stole.

At the time of the four overlapping prophets – Hoshea, Amos, Yeshayahu, and Micha (toward the middle of the period of the kings of the First Temple) – the King of Egypt cancelled the punishment of sale of the debtor as a slave to pay the debt. However, he did not do this out of moral or compassionate concern, but based on consideration that if these people become slaves, they will not be paying taxes and will not be able to be drafted to the army. In Rome of the same time, if selling the debtor's wife and children did not ensure the loan's full payment, there was even a possibility to have him killed.

According to British law up to around 250 years ago, the creditor could hold the debtor in his dungeon. There were not even serious requirements for the creditor to feed him. The law states that if the debtor's family cannot feed him sufficiently, it is fitting that he should die of famine. In contrast, our prophets and *Chazal* spoke strongly about the dignity due a debtor who has not paid.

Unfortunately, at times, members of our nation learned the practices of the surrounding nations rather than the laws of the Torah. Melachim II, 4:1 talks about the widow and orphans who were in debt, and the creditors came to sell the orphans as slaves. *Chazal* identify the creditor as King Yehoram, the son of Achav and Izevel. Yehoram was soon thereafter killed by Yehu ben Nimshi, who was coronated by the prophet Yona, who was carrying out the prophecy of Eliyahu. *Chazal* say that this was a punishment for his taking children as slaves without mercy (Shemot Rabba 31:4).

In these days of Elul, we should remember that Jews are required to be merciful, as many of our forebears were. At the time of Achav, *Am Yisrael* were victorious in battle because they were unified. May we once again excel at this and have full success in fighting our vicious enemies.

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Ask the Rabbi

by Rav Daniel Mann

Omitting *Tachanun* in *Selichot* in the Presence of *Simcha*

Question: At our pre-*Shacharit Selichot* during Elul, do we omit *Tachanun* if a *chatan* or a principal to a *brit mila* is present, as we omit it during *Shacharit*?

Answer: The Shulchan Aruch (Orach Chayim 131:4) rules to omit *Tachanun* in the “house of a *chatan*,” a *shul* that will host a *brit* that day, and a *shul* which a *chatan* is attending. While the Rama (ad loc.) says that only a *chatan* on his wedding day pushes off *Tachanun*, *Acharonim* rule that it applies throughout the week of *Sheva Berachot* (Mishna Berura 131:26), which is the *minhag*. The *minhag* is also to push off *Tachanun* if the father, the planned *mohel*, or the *sandek* of a baby on the day of his *brit* is *davening* there (ibid. 22). The idea is that the *simcha* that the *tzibbur* absorbs from these people is incongruous with *Tachanun*, as we find on happy days throughout the year. While it is not fundamentally severe to say *Tachanun* anyway, we have no reason not to follow the *poskim*’s instructions.

There is more than one reason not to push off *Tachanun* in this way at *Selichot*. One applies to the *simcha* of *brit* if the *Selichot* finish before daybreak. As opposed to the *chatan*, whose halachic status of *simcha* lasts throughout the entire time period, those related to the *brit* do not have a formal status. Rather, the proximity of the important *mitzva* of *brit* conveys through them an atmosphere of joy that precludes *Tachanun*. The Pitchei Teshuva ((Isserlin) 581:1) is among those who posit that if they get up to *Tachanun* when it is too early for a *brit mila*, *Tachanun* should be recited. He is unsure what to do between *alot hashachar* and *netz hachama*, when the Torah-level *mitzva* of *mila* has begun but the Rabbis required to wait until sunrise (Megilla 20a). Machazeh Avraham (OC I:154) says that since *mila* at that time is valid *b’di’eved*, *Tachanun* is omitted.

B’tzel Hachochma (IV:146) sees the exemption as applying pre-daytime even though *brit mila* must be performed during daytime. He bases this is on the fact that the baby’s status of requiring *brit mila* exists from the beginning of the baby’s eighth day, i.e., from the previous night. Arguably, the baby’s halachic status is less relevant than the fact that people have awoken for the day on which the *brit* will take place. It is unclear if according to B’tzel Hachochma, we would omit *Tachanun* at a late-night *Selichot* when the *brit* will be the next morning.

Shevet Halevi (IV:54) succinctly presents a broader reason not to skip *Tachanun* for a *brit* or a *chatan*, upon which we will expand. Unquestionably, we do not waive the entire *Selichot* due to a *chatan* or a *brit*. He argues, then, that the role of *Tachanun* in *Selichot* is not as a relative “add-on,” like it is in during regular *tefilla*, which sometimes is said and sometimes not (e.g., Shabbat, major and minor *chagim*, *Ma’ariv*). Rather, *Tachanun* is part and parcel, in terms of structure and content, of the fabric of *Selichot*. Therefore, given we are doing *Selichot*, we cannot allow ourselves nor will we gain much by omitting *Tachanun*. Some point out that similarly while *Erev Rosh Hashana* is too festive to recite *Tachanun* in *Shacharit*, we recite it in *Selichot*.

One can argue whether this viewpoint fits well with the following general approach to *Selichot*, championed by Rav Soloveitchik (see Batei Yosef 581:2-3). *Selichot* of Elul and Tishrei have a semi-status of an independent *tefilla*, introduced with *Ashrei*, ending with *Kaddish Titkabel*, and including *Tachanun*. One can claim that *Tachanun* has a similar role in *Selichot* as in standard *tefillot*, so it can be omitted due to *simcha*. However, there is stronger logic to say that we lack precedent to amend the internal structure of *Selichot*, and also that the moods of *Selichot* and *Tachanun* are too similar to do one and not the other.

Both practical approaches have serious proponents (see opinions in B’tzel Hachochma ibid.), and each *shul*’s *minhag* is fully acceptable. Some communities have a preference to make *Selichot* short, while some communities prefer consistency; factoring in these preferences is also legitimate.

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

Responsible Innovation in the Oral Law To Learn and to Be Happy

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 27

[This is from an address at a Torah symposium at Yeshivat Bnei Akiva, 5702 (1942).]

"You shall rise and go up to the place that Hashem shall choose for you" (Devarim 17:8). "Three times a year your males will be seen before the 'face' of Hashem, your Lord" (Shemot 23:17). "You will be happy before Hashem" (Devarim 16:11). We need to learn how to learn, and we need to learn how to be happy. Not only are these two things that need to be learned, but also both have a place to do them – in the Holy Temple.

Torah is study, and study is a matter of intellect – what does intellect have to do with a specific place? A halachic decision is always made according to intellect, as we see from the following sources: "These are nothing but words of prophecy" (Eruvin 60b; this is a criticism); "[Torah decisions] are not in the heavens" (Bava Metzia 59b); "From this point a prophet is unable to bring us any new ideas" (Yoma 80a); "We do not pay attention to that which is heard from a heavenly voice" (Berachot 52a), etc. If so, why should an intellectual decision be connected to a specific place? Yet, it is!

If someone tells you there is wisdom in Edom, believe him, but if he tells you there is Torah in Edom, do not believe him (based on Eicha Rabba 2:13). Wisdom teaches how to do things, but Torah teaches what to do. Wisdom does not tell one what to want, but its job is to show how to bring the desired matter to fruition. Thousands of years of scientific development changed how war is waged, but it has not changed the purpose of waging it.

Who is a *gibbor* (brave and/or strong person)? Wisdom does not have the answer to this question. Therefore, the answer that existed thousands of years ago, "one who captures a city" (see juxtaposition in Mishlei 16:32) still exists. It is just that once, they used primitive actions, and now they have become more sophisticated. The purpose has not changed, as the point of departure is still to seek personal pleasure. Moral development has not fully kept up with the development of wisdom, and therefore, not only has wisdom not improved matters but it has, to the contrary, improved the means of causing destruction compared to that which primitive man used, and turned it into something that can destroy the world.

The Torah came to change the point of departure – "Who is a *gibbor*? One who subdues his inclinations" (Avot 4:1), and, actually, himself. This is a "Copernican revolution," which the Torah invented.

The nations of the world claimed: "What is written [in the Torah, that we may decide to accept or reject it]?" (Mechilta, Yitro 5). Interestingly, those things that prevented them from accepting the Torah (the prohibitions of stealing, adultery, and murder, respectively) are laws based on logic. The nations of the world, especially pagans, have "ritual laws," and our commentaries connect some of our *mitzvot* to an attempt to distance us from their "religious practices." Thus, even some of our *chukim* (*mitzvot* that defy logic) actually have reasons, but the *chukim* of the pagans, who started the practices we need to counter, have no reasons. People are happy to accept *chukim* providing that it does not force them to change their plans. A murderer is willing to accept anything, even to be killed himself, as long as he is not prevented from murdering others. Everything else is fine for him.

His mistake is that Torah is truly Torah only when it leads him in a way that includes changing his essence. Only Israel understood the value of the Torah and accepted it, which is why we have Torah and Edom does not. The more we see the results of wisdom (ed. note- the address was in the midst of WW II), the better we will understand the value of the Torah and the more we will thank the Master of the Universe for his good present and the eternal life He has planted in our midst.

We daven for a complete and speedy *refuah* for:

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 Ori Leah bat Chaya Temima**

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P'ninat Mishpat

Return of Down Payment Due to War – part II

(based on ruling 84044 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=pl) ordered catering services by the defendant (=def) for their son's *Shabbat Sheva Berachot* (=SSB). The wedding was to take place on Oct. 9, 2023. A party planner (=pp) found and interacted between def and pl, but pl paid def directly a down payment of 7,537 NIS. Due to the war, the wedding was delayed. Pl cancelled the order and demanded that the down payment be returned. Def agreed to give a credit of 7,500 NIS, but only if pl would hire him for an event of at least 23,000 NIS. Due to safety considerations, SSB was moved to Jerusalem, where the hotel did not allow outside catering. Pl tried to get a smaller credit for a smaller event, but def refused. Pl points out that all the other service providers gave a full refund, but def responded that the down payment covers supplies that he already bought and prepared and that pl had him give the food to soldiers.

Ruling: Should pl's partial payment for the food he did not receive, without the wrongdoing of either side, stand? The type of *oness* (extenuating circumstance) here (a war) is a *makat medina*, a problem that affects a broad spectrum of people. The difference between a *makat medina* and standard *oness* is that generally we can attribute the *oness* to the affected individual's *mazal*, whereas here the war affected a whole community in the same way.

The Rama (Choshen Mishpat 312:17) rules: "If the whole city burned down, it is a *makat medina* and [the renter] reduces the rent corresponding to the time he did not live in it, whether he prepaid or not." The Taz and Shach (to CM 334:1) say that the exemption of the renter due to *makat medina* applies even when use of the home was interrupted by the need to flee from the city due to a plague (not just when the problem was with the house), and the same applies to wartime restrictions. One explanation is that there is an implied condition that the agreement applies only if it is possible to carry it out. The Machaneh Ephrayim (Sechirut 7) argues that if a renter gave a down payment before the continuation of the rental became impossible, the renter is unable to get the payment back. Other *poskim* agree with him, and it is unclear if there is a consensus on the matter (see Shut Minchat Asher II, p. 408; Mishpat Hasechirut II, p. 1022). However, in our case the Machaneh Ephrayim probably would award pl a refund because def did not give pl the option of receiving the food. The Aruch Hashulchan (CM 334:2) rules that as long as the one who paid is not at fault, if the worker is a *kablan* (paid by the job, as def is), he gets the money back. The Netivot Hamishpat (230:1) adds another reason to refund that applies here – when the *makat medina* prevented any benefit at all, there should not be payment.

In cases of *makat medina*, our *beit din* likes to make compromises, because of the existence of different opinions and distinctions. One of the factors that plays a role is whether the government compensates the proprietor on the loss of business, and def confirmed that he received help.

These factors will affect the final ruling, which will be shared in the next installment.

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