



HEMDAT YAMIM

המדת ימים

Parashat Hashavua Tazria Metzora, Iyar 1, 5786

Harav Shaul Israeli zt"l
Founder and President

With Trust in the "Rock of Israel and its Savior"

Harav Yosef Carmel

This coming week we will celebrate the 78th anniversary of the birth of the State of Israel. This Shabbat we will begin the Torah reading with the woman who "bore a male child" (Vayikra 12:2). The liberation of the Nation of Israel is compared to birth, as we see in Yeshayahu's final prophecy of consolation (66:7-8). The *navi* speaks of a surprisingly quick birth, comparing to it a nation that was born at one time, as Zion bore her children.

Micha, a prophet of the same generation, also uses this parable to describe the establishment of a future independent Jewish State (5:1-3). Micha invokes hints to King David, speaking of the youth from Beit Lechem. He infers that the future liberation will have similarities to the emergence of David to leadership, referring to the return to the Land after great tribulations (see Radak ad loc.).

Let us quote the preamble of Israel's Declaration of Independence: "In the Land of Israel the Jewish Nation has arisen, in the place where its spiritual, religious, and political image was forged, in which it lived as a robust kingdom and created national and universal cultural resources and enriched the world with the eternal Book of Books." It ends off "... with trust in the Rock of Israel (*Tzur Yisrael*) and its savior, we hereby sign with our hands as testament of this declaration."

There are varied interpretations of the term *Tzur Yisrael*. The religious signatories explained that it shows trust in Hashem, one of whose titles is *Tzur Yisrael*. In contrast, those who did not identify as religious explained that they were referring to their faith in the strength of the Jewish People. The fact that so many from such differing world views were able to agree on a joint text for the declaration enabled a united front at that critical juncture in Jewish history. The earliest use of *Tzur* referring to Hashem is in the Song of Ha'azinu – "The Rock whose actions are complete, for all of His paths are justice" (Devarim 32:4).

The person who especially used the title *Tzur* for Hashem was King David, as it appears ten times in Tehillim and the Songs of David in Shmuel, including "*Tzur Yisrael*" (Shmuel II, 23:3). Some of those who did not want Hashem's Name to be in the Declaration of Independence were happy to have a term coined by David, the first man after the entry to the Land who succeeded in uniting all of the tribes. A connection was felt between the state of King David and the state led by David Ben Gurion. The birth mentioned in the beginning of our *parasha* connects to the birth of the nation that left slavery in Egypt, as described in the Haggada, and the birth described by the prophets of the ultimate liberation.

This Shabbat, when we recite *Kabbalat Shabbat* and decide to sing to the *Tzur* of our salvation (Tehillim 95:1), we should also pray that all of the prophecies about the ultimate salvation, which have begun to be fulfilled, will continue to proceed along the path to the process's glorious conclusion. The more we unite and serve as people responsible for the welfare of our brethren, the greater the chance of an earlier liberation.

Hemdat Yamim is dedicated to the memory of Eretz Hemdah's beloved friends and Members of Eretz Hemdah's Amutah:

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

Tazria Metzora

by Rav Daniel Mann

Reusing a Grave

Question: I, a relatively new rabbi, was looking through the records of my community's cemetery and learned that some of the places that I thought were "available" for use have actually been used for corpses that were later removed, to be buried in *Eretz Yisrael* or a cemetery the family requested. May we use these plots, and if so, are there any conditions that must be met?

Answer: The *gemara* (Sanhedrin 47b) discusses the permissibility of using a grave and/or the material it was made of, for other purposes. In that context, the *gemara* distinguishes between a "grave that was built," which becomes forbidden, and a "grave of earth itself," which remains permitted, because one cannot make the ground forbidden. The Tur cites a *machloket* on the parameters of a built grave. R. Yeshaya reasons that since, generally, material that was detached from the ground and then becomes attached keeps the status of a detached object, the earth that was dug up and then placed back to form the grave is forbidden. The Rosh points out that the *gemara* implies that a standard grave, which is dug up from the ground, does not become forbidden, and he therefore reasons that the problem is only for mausoleum-type burial. One could understand that according to R. Yeshaya, it would be forbidden to reuse the gravesite, since much of it is soil was removed and returned, whereas the Rosh would permit it. It is not fully clear which opinion is primary as practical *halacha* (see Shulchan Aruch and Rama, Yoreh Deah 364:1; *ibid.* 363:3, 5; Da'at Kohen 207).

However, there are other grounds for leniency. The Rashba (Shut I:537) says that the prohibition on grave-related matters is on the benefit of those who are living, who are obligated in *mitzvot*, and that live people do not halachically benefit from the burial of the deceased. While the burial itself is not benefit for live people, as the fulfillment of *mitzvot* (i.e., to bury a deceased) is not halachically considered forbidden benefit, *Acharonim* wrestle with the fact that money is usually involved in the process. Some see it as a problem for the cemetery owners to sell the used grave, and thereby receive money for it (see Geshet Hachayim II, 4:3). Rav Kook (Da'at Kohen 202) recommends having the sellers stipulate that they are selling the part of the land that was not dug up and returned, but it is not unanimous that this works (see Geshet Hachayim *ibid.*). Shevet Sofer (YD 104) says that in a situation in which the inheritors would have had to pay for a burial spot, if they would receive the already used grave for free, this saving of money would be forbidden benefit.

The above complications apply only to things that were brought from elsewhere (like bricks and boards), and perhaps even the earth that was taken off and returned (see Rama *ibid.*). Therefore, it is best not to reuse these materials when using the plot (i.e., that which is beneath and to the sides of the coffin) (Bemareh Habazak III:71).

The matter is arguably more lenient when those who were exhumed were buried there with the intention that this would occur, as then the burial might not cause permanent prohibitions after the deceased is removed (see Pitchei Teshuva, YD 363:6). However, the *gemara* (Sanhedrin 48a) implies that if preparations were made for the use of the deceased [after his death – Bemareh Habazak *ibid.*] then even if the burial itself was done with the intention for him to remain temporarily, the prohibition continues after the exhumation (see Shulchan Aruch, YD 364:1). Since it appears that you do know about the history of the burials, we will not get into further details on the matter.

There is also a monetary or quasi-monetary matter of making sure that the first "owner" of the grave has no outstanding issues with the cemetery. Geshet Hachayim (*ibid.*) demonstrates why the inheritors of the deceased have halachic authority to agree to end any claims to the ground that could cause a problem.

"Behind the Scenes" Zoom shiur

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Moreshet Shaul

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

Character Refinement – part IV

Based on Siach Shaul, Pirkei Machshava V'Hadracha p.154

We continue to see Rav Yisraeli's practical ideas on education, this time focusing on Torah education.

We now take the step to the matter of Torah and *mitzvot*. Education for Torah in the Jewish People was never a secondary pursuit; it was always the most basic foundation in life. In the cradle, they put children to sleep with lullabies about Torah. It is told about R. Yehoshua ben Chananya (Yerushalmi, Yevamot 1:6) that his mother would take him at a very early age to the *beit midrash* in order that his ears should pick up the words of Torah. People's ideal was the Torah scholar. Their derogatory image was of one who was ignorant of Torah. If one of the group of students of Torah emerged as a Torah authority, then his thousand peers who started the process of scholarship did not end up ignorant. Parents would take their children to the teacher for the first time wrapped in a *tallit*, and they would make a real celebration. Torah was something that was truly loved.

A child who would see this in his father, spending his free time on Torah study. It would awaken the child's desire to learn, and he would imitate his father. One should not think that the child will receive this desire if he sees that his father never opens up a book, and if he does not see his father's dedication for scholarship. People complain that their children have no connection to books, that they cannot sit with a serious book and read it, and that most students do not finish school. They forget that, first and foremost, the parents are to blame, as the children did not see in their actions the affection for the world of books.

The world of books is just a representative example of what the child sees about the place of knowledge and wisdom in his life. For us, this is what we live for, and we need to inculcate this affection and thereby give it over to our children in a manner that it stays with them. This is critical so that they do not become overly connected to things that are a waste of time, such as thinking that football is the greatest aspiration and that kicking a ball into the net is the most important thing one can do.

A friend told me about a nice practice – every time he and the family eat, he learns a portion of Torah. This is very important so that his child will see that what the child is being told to do is not a special obligation for him but it is something that everyone needs to do. The way our lives are lived now, it is worthwhile that the mother is also involved in the study. It is an entirely good idea that every supper should include a study of the Torah portion of the week.

It is important, although not to the same degree, that the parents take interest in what the children are studying in school. It is not enough to ensure that the child is doing his homework. It is worthwhile that when he returns home from school, the mother or father will hear what he learned that day. Similarly, an oral test on the week's material is important.

Whoever has memories from *yeshiva* should tell them to the child, and in so doing excite him about his future as a *yeshiva* student. It is crucial to stress over and over the importance of his continuing to study at the older ages of *yeshiva* students, and to describe this as the ideal.

We will conclude this topic next week.

We daven for a complete and speedy refuah for:

**Itamar Chaim ben Tzipora
Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima**

**Arye Yitzchak ben Geula Miriam
Neta bat Malka**

**Avraham ben Gitel
Tal Shaul ben Yaffa
Meira bat Esther**

Together with all cholei Yisrael

P'ninat Mishpat

Undoing a Problematic Partnership – part III

(based on ruling 84061 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) started a new business together and signed a partnership agreement. When the prospects for success waned, def arranged for pl to buy out def's brother-in-law's (=bil) 40% of an existing business with def for 365,000 NIS. Pl and def added handwritten modifications to their agreement. Pl started paying in installments, and pl and def went to an arbitrator (=arb) to determine at what point in the payments pl would receive rights in the business. Arb decided that pl would have all the rights of partnership from after he paid 300,000 NIS. Soon thereafter, pl complained to def that he lost access to the security cameras, and the next day he complained to def and arb that all of the cash in a safe (appr. 30,000 NIS), to which only pl and def had keys, was missing. Arb spoke to def and after discontent with his reaction, rendered a ruling that pl could take 26,000 NIS from the company's account and hold it in a secure account until matters are sorted out. After unsuccessful attempts to improve trust, arb ruled that pl had a right to exit the partnership. Def claimed that arb was partial to pl, and the matter reached the courts, who appointed Eretz Hemdah to adjudicate. Pl demands back the money he invested (based on par. 6.7 of the contract); 21,000 NIS he spent in arranging the money to invest or 40% of the business's profits from the time of his investment; and legal fees. Def counterclaims that pl failed in his responsibilities and therefore should lose rights in the partnership (based on par. 6.8).

Ruling: We have seen that def's apparent theft of money from the safe activates pl's ability to dissolve the partnership and get his money back.

Another reason to activate par. 6.7 – Def took money from the joint account and put it in his own account. We reject def's claim that this was fine because he used that money for the company, because pl had no access to the account, which is illegitimate for a full partnership.

Claim for compensation for expenses of raising money: Beit din rejects pl's claim because pl did not directly lose money on the partnership, as he is receiving the money invested back. Had it not been for their agreement, def would have had to return the money he improperly took and the partnership would continue. The agreement that calls for return of his investment does not provide for the return of money spent on joining the partnership, which is therefore unwarranted. The alternate claim of receiving 40% of the profits during the partnership is also rejected. The provision that pl decided on is to retroactively undo the partnership, and according to this, he does not deserve profits during his involvement.

Legal expenses: The contract states that whoever wins adjudication between them will be entitled to compensation for legal expenses, and this applies to pl. Regarding the amount, beit din requested of the two sides to detail legal expenditure. Since the two sides presented similar numbers (upward of 40,000 NIS), pl's number is acceptable.

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