

*Mazal Tov to Barbara & Mickey Wohl on the upcoming marriage of Zach & Daniella Kaufman*

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**RAIN :: Rabbi Berel Wein**

This article is being written in New York on a raw, very rainy day. Rain in New York is a regular happening. However, in Israel rain is a relatively rare occurrence. For seven months of the year it hardly ever rains and the other months of the year rainfall is irregular and uncertain. Israel has suffered from meager rainfall over the past number of years and the government has instituted water conservation measures to attempt to hoard the water that the country does possess.

The Torah itself addresses this issue. It describes the Land of Israel as being far different than the Land of Egypt, the place of residence of the people of Israel for centuries. Egypt has the great Nile River that irrigates its fields and provides water to its population. There are no great rivers, in physical terms, in the Land of Israel. The Torah points out that the Land of Israel is almost wholly dependent upon rainfall – upon clouds, low pressure fronts, winds – all conditions over which we humans have very little control and even some difficulty in predicting and identifying.

There is, therefore, very little doubt that heavenly intercession and benevolence is not a matter of spiritual luxury but a vital necessity where rainfall in the Land of Israel is concerned. And thus rain becomes a contentious issue amongst Jews. What is it in our behavior that causes abundant rainfall and what is it that has such an opposite, negative effect upon rainfall? And then there are those who blithely ignore the issue completely and ascribe the problem to fate, weather patterns, global warming and other symptoms that do not deal with the root causes of the problem. Rain is somehow the testing ground for Jewish success in the Land of Israel.

The daily prayers of the Jewish people year round always include prayers for bountiful rain to fall in the Land of Israel. During the rainy season, those prayers change in their intensity and language. Jews living in New York, huddled under their umbrellas and wrapped in protective headgear, pray for rain in the Land of Israel because that is the location where rainfall is essential for survival and success.

On Shmini Atzeret, Jews the world over pray for a rainy season in the Land of Israel. In the springtime, during the holiday of Pesach, the prayers are for dew in the Land of Israel. Consciously or subconsciously Jews are always concerned about the situation in the Land of Israel. The Land of Israel for Jews is comparable to the statement of the great Chasidic rebbe of Berdichev regarding God Himself, so to speak. He said: "One can be for God. One can be against God. But no one can be without God!"

The individual Jew can be for the Land of Israel. He can also be, for whatever reason, against the Land of Israel. But he cannot be without the Land of Israel. And therefore Jews are not only concerned about security, prosperity, social conditions, political developments and governmental policies in Israel – they are concerned about the weather there as well.

Their prayers and their conscience force this concern upon them without forethought. There is no way to be a truly traditional Jew without thinking constantly about rainfall in the Land of Israel. We are truly a uniquely strange and wonderful people!

The great miracle workers recorded for us and immortalized in the Talmud are almost all rainmakers. The great Choni was even able to fine tune and adjust the fall of rain so that it would be completely beneficial but not disruptive of normal human life. He was criticized for his temerity in being so insistent regarding Heaven but Heaven itself, so to speak, appreciated his efforts on behalf of the people and the Land of Israel and blessed him and his efforts.

Heaven always sees things differently than do we humans. Rain is the symbol of Heavenly interest and beneficence to human life. All of us are

aware of the necessity of rain for life to continue. On the calendar, the rainy season has now officially begun in the Land of Israel.

Whether the clouds have looked at the calendar is yet a matter of debate and mystery. But our prayers remind us of the season and that the Land of Israel desperately needs rain. People begin to realize that Heaven needs to help us, certainly in regard to rainfall in the Holy Land. May the coming rainy season be a blessing for all of us.

Shabat shalom.

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### **Weekly Parsha :: NOACH :: Rabbi Berel Wein**

The rabbis were not so much critical of Noach – as he is paid the highest of compliments, throughout the Torah as a righteous person – but they were wary of him. I have often felt that this attitude is born of the idea that Rashi himself states in commenting upon the origin of Noach's name. Rashi makes a point that the name Noach should not be construed as a derivative of the Hebrew word "nacheim" – meaning to comfort - but rather it is derived from the other Hebrew word "noach" – meaning, rest, leisure, comfortable but not comfort as in consolation.

Rashi attributes this understanding of Noach's name to the fact that he was the father, so to speak, of modern agricultural technological advancement and progress. The iron plow, the first great essential tool for farming developed for humans, enabling settlers to abandon a nomadic existence, was an invention of Noach. This was his great contribution towards the advancement of human technology.

Noach therefore becomes the source of human technological progress which grants us leisure, eases our physical workload and gives us many physical comforts in life. However, technology alone with all of its attendant blessings does not guarantee us any sort of mental, spiritual or social comfort. It does not console us in our hour of grief nor does it strengthen our spirit in our moments of self-doubt and personal angst.

If Noach could have achieved these goals then Rashi points out that his name would have been Menachem – the one who brings true consolation and comfort to troubled souls. Hence Noach is viewed in tradition as being incomplete – technologically advanced but spiritually wanting – in short a pretty accurate description of our current human society.

The Rabbis of the Talmud taught us that if "one tells you that there is wisdom, knowledge and skills present amongst the nations of the world you should believe him." However, if one tells you that there is Torah amongst the nations of the world, then do not believe him." Judaism and Jewish society has no basic argument against the advance of technology. We are not the Amish nor are we willing to be consigned a back seat in the drive to physically improve the human condition of life on this planet. Yet Judaism realizes that true psychological and spiritual comfort cannot be found in the latest version of the iPod.

Noach's technology can be enormously beneficial in a society that adopts Avraham's values and beliefs. But bereft of any spiritual focus or restraint, technology run wild makes our world a more fearful place to inhabit and forces many to yearn for the good old, less technologically advanced, eras that preceded us. Noach's grand technology could not save the world from the ravages of evil that brought upon humankind the great flood described in this week's parsha.

Avraham's grand values and holy behavior almost saved the seat of world evil, Sodom. The world is Noach's world but its survival is dependent upon the survival and eventual triumph of Avraham's children, ideas and beliefs.

Shabat shalom.

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by Rabbi Yaakov Asher Sinclair - [www.seasonsofthemoon.com](http://www.seasonsofthemoon.com)

## Insights

### A Window on the World

#### "A window you shall make for the Ark..." (6:16)

The three fundamentals of real estate are, as any real estate agent will tell you, Location. Location. And location.

One of the things you can't change about a property is the view. A room with a view is a precious jewel.

When G-d instructed Noah to build the Ark, He included specific instructions to include a tzohar. Tzohar has two possible meanings. It can mean either a precious stone or it can mean a window. A precious stone might fill the Ark with a beautiful light as the sun's rays were refracted, bathing the inside of the Ark with a multicolored glow. A precious stone is to let the light in. A window is to look out. But what were they supposed to look out at? An empty waterscape of gray in every direction?

G-d wanted Noah to have a window on the world to see the world's destruction and have a feeling of pity.

In life, it's easy to think if I'm okay then the world's okay. Life's biggest jewel is to look out of our own arks and take up the yoke and the heartaches of others.

•Sources: Rashi, Rabbi Rafael Stephansky

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## Peninim on the Torah

Rabbi A. Leib Scheinbaum - Hebrew Academy of Cleveland

### PARSHAS NOACH

#### These are the offspring of Noah - Noah was a righteous man, perfect in his generations. (6:9)

The commentators have all offered their own definitions of the terms, tzaddik and tamim. They have even offered various interpretations for b'dorosav. What about the word ish, man? It must mean more than a tzaddik who happens to be a male. Horav Baruch Mordechai Ezrachi, Shlita, cites a pasuk in Melachim I, 2:2, V'chazakta v'hayisa l'ish, "Be strong and become a man." David Hamelech is approaching his mortal end and issues his charge to his son, Shlomo. Implicit in his words is the idea that ish, man, is a goal in itself. Just as there is a tzaddik, so, too, is there an ish. Radak explains this to mean one who is: zariz, ready, willing; u'moshel b'nafsho, who rules over his spirit; and koveish es yitzrecha, conquers his (evil) inclination. In other words, an ish is an individual who is in control, who dominates over himself.

Essentially, the primary difference between an animal and a human being is the ability to assert self-control. There are other differences. A human being: speaks; thinks logically; has common sense; has a spiritual and emotional dimension. These are all realms from which animals are excluded. While animals do not speak, they have other methods of communicating with one another. Likewise, while they do not possess clear cognitive ability like humans, they are not completely devoid of the thinking process. Some aspects of emotion play a role, even in the life of an animal. The one area, however, in which man and animal are clearly distinct from each other, is mastery over their will. We can call it will-power, discipline, self-control, single-mindedness; it all means the same. A human being is in charge; he has control. An animal is controlled. Animals cannot contend with - and prevail over - their natural desires. Only one who is an "ish", a man, possesses that ability.

Thus, explains the Rosh Yeshivah, Noah earned all three appellations. He was an ish, tzaddik, tamim. The fact that he was first and foremost an ish empowered him, paved the way for him to become a tzaddik and tamim. First, he had to be an ish - a man in control.

A similar idea can be used to explain the pasuk in Shemos 32:1, Ki zeh ha'ish Moshe asher he'elanu mei'eretz Mitzrayim lo yadanu meh hayah lo, "For this Moshe, the man who brought us up from the land of Egypt - we do not know what became of him." Moshe Rabbeinu's distinction, his ability to lead the Jewish nation throughout its sojourn in the wilderness, with all of the issues and challenges that this presented, derived from his ishiyus, his being a "man." One who is not in control of himself is unable to govern others.

Mordechai HaYehudi is referred to as ish Yehudi, ish Yemini, a Jewish man, a man from Binyamin. Mordechai's various attributes and his success as a leader were the result of his being an ish. This quality defined his character and acted as the primary catalyst for his success as Klal Yisrael's leader during a critical juncture in their history.

We can pose one question to help us to understand this thesis. In the beginning of Parashas Toldos, the Torah describes both Yaakov and Eisav as ish: Yaakov ish tam yosheiv ohalim; Yaakov was a wholesome man, abiding in tents; Eisav ish sadeh; Eisav... a man of the field. This does not present a problem with regard to Yaakov Avinu. Indeed, he was an ish tam, wholesome and perfect man. This enabled his eminence in the tents of Torah. How are we to understand Eisav as an ish sadeh? He certainly was not a disciplined person. In fact, he manifested the antithesis of self-control, indulging in every whim and desire.

We suggest that the concept of ish can be a double-edged sword and, thus, may be viewed from two perspectives. Some evil people are not evil incarnate. They simply have no control over themselves, submitting to their evil-inclination and acting out whatever role it chooses for them. In other words, there are weak people who follow the sordid script of their yetzer hora, evil-inclination. There is another type of evil, whereby the individual exhibits complete self-control in purporting and carrying out evil, not because he must, but because he wants to; he enjoys it. This is the ish sadeh, man of evil, the individual who controls evil, disciplining himself to channel all of his natural forces to produce evil. This characterizes Eisav, the ish sadeh.

#### Noach was a righteous man, perfect in his generations. (6:9)

The Torah uses two adjectives to describe Noah's character: tzaddik and tamim. In his own manner, each commentator offers definitions for these terms. Rabbeinu Bachya defines tzaddik as a person who is careful with other people's property, distancing himself from any vestige of thievery. The members of Noah's generation were derelict in this area, as the Torah writes, Vatimalei ha'aretz chamas, "The land was filled with robbery (Ibid 6:12)." Tamim is defined as, shaleim b'chal midosav, perfect in all of his character traits. Tamim is sheleimus, perfection; one who is ethically flawless. Noah did not just excel in just one area of his behavior; every aspect of Noah's demeanor exuded impeccability. In grappling with the concept of ethical perfection, one wonders what quality is most necessary to achieve such eminence. What ingredient must one possess in order to realize this distinction?

I think that in order to wear the mantle of tamim, one must first be a vatan, acquiescent and compliant. One who is demanding can never achieve ethical perfection. The mere fact that he is not flexible excludes him from this goal. Horav Yitzchak Zilberstein, Shlita, relates a story about a young talmid chacham, Torah scholar, who fits this criterion. There was a young, wealthy widow who was sadly called to her eternal reward at a young age. Prior to her passing, she told her only daughter, who was of marriageable age, "I am leaving you my entire fortune on the condition that you approach the Rosh Yeshivah of a certain yeshivah and ask him to suggest to you his very best student as a husband." Of course, everything was contingent upon the boy and girl being attracted to one another, but the mother was just attempting to establish criterion for her daughter: he must be the very best.

The daughter followed her mother's will, seeking out the Rosh Yeshivah who suggested a certain young man who was certainly on the road to eminence in Torah. They met, liked each other, and became engaged shortly thereafter. A few weeks later, the kallah heard a rumor claiming that indeed, her chassan was not the number one student in the yeshivah. There was someone else who was better. Actually, it was either only a rumor - and she should have trusted the Rosh Yeshivah - or maybe in certain areas the other young man excelled over her chassan. Hearing this, the girl became distressed. Perhaps she was not carrying out her mother's wishes. Either the kallah was not quite ready to make a life-altering decision, such as marriage, or her sense of values in defining the "best" student was confused and sorely lacking. It became evident to her chassan that she had issues.

The chassan was an ish tzaddik in the true definition of the term, and he refused to benefit from what might not rightfully be his. He "suggested" to

his kallah that perhaps it would be best for her to pursue whom she felt was the best student in the yeshivah. He was willing to comply with her wishes. The two parted on good terms, and the kallah arranged to meet with the other "best" student. It soon became a shidduch, and the young couple was married.

Fast forward six months, and the Rosh Yeshivah of a preeminent yeshivah in Yerushalayim went to visit the original "best student's" yeshivah and asked its Rosh Yeshivah for his top student. He was searching for someone young with exceptional potential upon whom he could entrust the future of his yeshivah. In other words, he was seeking a successor for his mantle as Rosh Yeshivah. Of course, the Rosh Yeshivah suggested his prize student, who by now had also developed a reputation for his high ethical standards. For what more could one ask? The young man was being offered an unparalleled opportunity to be marbitz, disseminate, Torah. This was every yeshivah student's dream. When the suggestion was presented to the young man, he demurred.

After much prodding by his Rosh Yeshivah, he finally explained the reason for his decision. While he knew this was a once in a lifetime opportunity, he could not accept for fear that his original kallah, who was now married, after hearing of his new position, might have second thoughts concerning her present husband. Maybe he is not as good as everybody says he is. Perhaps my first chassan is better. "I cannot allow this to occur," he said. Therefore, I am mevater, graciously refusing, the position, rather than in some way aggrieve my original kallah."

This story provides us with an insightful perspective concerning the definition of tamim.

#### **Noach walked with G-d. (6:9)**

Rashi notes that concerning Avraham Avinu, the Torah writes, "Walk before Me and be perfect" (Bereishis 17:1). He explains that Noach "walked with G-d," needing the Almighty's support to maintain his spiritual status quo, while Avraham walked alone, resolute, and with fortitude in his commitment to Hashem. The Midrash Tanchuma explains that Hashem protected Noach, not allowing him to falter and fall into the spiritual abyss created by the wicked of his generation. This is compared to a king who sends his son, the crown prince, on a mission. Along the way, he must traverse an area inundated with quicksand. The king provides support for his son, protecting him from falling into the quicksand. Avraham, on the other hand, walked alone, without the need for support.

Horav Moshe Shmuel Shapiro, zl, observes that the Midrash distinguishes between the prince who is on a mission for his father, the king, and the individual who, like Avraham, is on his own performing the will of the king. One who is sent on a mission will invariably cancel the mission when he encounters a challenge. This is not part of the deal. One who is on his own, who acts on behalf of the king, because he seeks to perform his will, is not overcome by challenge. He proceeds on, treading slowly and carefully, never faltering from his self-proclaimed goal. Noach considered himself as nothing more than Hashem's emissary. When the going became rough, when he was confronted with the spiritual pitfalls of living in a generation of degenerates and thieves, he could not handle the challenge. He needed Hashem's support.

Avraham did not view himself as an agent. He was on his own, taking his own initiative, going forward and acting in the manner which he believed was necessary. Nothing was going to prevent him from achieving his goal. Nothing was going to stand in his way.

Rashi writes that Avraham was different in that "he was michazek," strengthened, himself. This teaches, explains the Rosh Yeshivah, that although Avraham did not need Hashem to support him, he did require chizuk, strengthening. It is just that he did it on his own. He did not sit back waiting for Hashem; he took the initiative. Even the great Patriarch could not have achieved spiritual endurance without calling upon his own reserves. The Avos, Patriarchs, were constantly strengthening themselves.

The area in which one requires the greatest chizuk, and which, if he succeeds, will greatly enhance his chances of achieving spiritual perfection, is time. Applying every waking moment to important spiritual endeavors - either directly or indirectly - is a most significant undertaking, one that marks the difference between one who is growing spiritually, and one who is spiritually stagnant. Many of us have the proper motives, but

we get bogged down with foolishness and end up wasting the most precious commodity that we possess: time. It is the one sphere in which many are unknowingly derelict. We fail to recognize the significance of time and the extent to which it affects every aspect of our spiritual lives. A minute wasted is a minute lost forever. One who fails to respect this idea cannot possibly aspire to earn the mantle of tzaddik.

#### **Of the clean animal, of the animal that is not clean. (7:8)**

The Talmud Pesachim 3a derives an important moral lesson from the Torah's use of the long expression, "that is not clean," rather than the abbreviated single term, ha'temeiah, unclean. One should never utter a gross expression. The Torah, which is unusually brief in expressing itself, added several letters to the Hebrew text, rather than using an indelicate expression. When we think about it, the Torah added eight letters, since ha'temeiah is five letters and asher einenah tehorah is thirteen. This is a wonderful and important lesson, but it is inconsistent, since there are many places in the Torah where the word tamei and temeiah are written. Why the discrepancy?

The Maggid, zl, m'Dubno explains this, in his inimitable manner, with an analogy. There lived in a small village a Torah scholar who was equally refined and cultured. A simple, illiterate farmer, who was a very physical person, lived nearby. Culture was the farthest thing from his mind. He was rightfully called, "Reb Getzel der poier, the farmer," a far from complimentary nom de plume. One day, a man arrived from a distant community in search of "Reb Getzel." He knocked on the door of the scholar's home, and, when he asked the servant for Reb Getzel, the servant replied, "You probably mean Getzel the illiterate farmer."

When his master heard his response, he immediately chastised his servant: "Why did you refer to our neighbor in such a degrading manner? How dare you belittle another Jew?"

A few months later, a shadchan, matchmaker, visited with the Torah scholar and suggested Reb Getzel's daughter for the scholar's son, who was a brilliant student in a prominent yeshivah. When the Torah scholar heard the suggestion, he immediately became upset and declared, "How dare you suggest the daughter of that crude, illiterate farmer for my brilliant son!"

The shadchan left quite upset and very embarrassed. He had no idea that Getzel was such a boor. The servant, however, had been privy to what he felt was a clear double standard. When he spoke negatively of Getzel, his master berated him, but this did not prevent his master from sharing his negative opinion concerning Getzel with the shadchan. He immediately conveyed his feelings to the master, feeling that he deserved an explanation.

The master turned to his servant and gave the following reply. A few months previously, when a visitor from another town inquired concerning Getzel, there was no compelling reason for the servant to give a negative response. This person could care less about Getzel's profundity in Torah. He just wanted to know where Getzel was to be found. This time, it was a completely different story. The shadchan was looking to match the Rav's son with Getzel's daughter. The Rav asserted that he had other available matches for his son. He felt that he owed it to the shadchan to explain why he was rejecting the shidduch. He felt that Getzel was not the kind of person his son was looking to have as a father-in-law. He had no other recourse but to tell the shadchan the truth concerning Getzel.

A similar thought may be expressed concerning the animals entering the Ark. It was not necessary to spell out clearly which ones were unclean. It was sufficient to allude to the fact that certain animals were einenah tehorah. The precise word which denotes a stronger form of uncleanness, tamei, was simply not necessary. The fact that the Torah went out of its way to use a "cleaner," more appropriate word, despite its length, underlines the importance of the lesson of not using gross language.

However, when the Torah discusses kosher and non-kosher animals with regard to what one may eat and what is forbidden, there is no place for allusions. The Torah tells it like it is: this animal is tamei, ritually defiled/unclean. One cannot be subtle concerning issurim, prohibitions. If something is forbidden to be eaten; if a given activity is categorically prohibited; if it is wrong to take part in a specific endeavor, or attend a questionable function, then the message concerning its impropriety must

be conveyed emphatically and without embellishment, so that people get the message clearly.

### **Haran died in the lifetime of Terach, his father, in his native land, in Uvr Kasdim. (11:28)**

Sefer Bereishis is referred to as Sefer Hayashar, the Book of (the) Just, because it recounts the lives and experiences of the Avos Hakedoshim, Holy Patriarchs, who exemplified yashrus, justness, and perfection in their commitment to Hashem. Thus, the Torah relates their stories so that we, their descendants, will learn from their example and follow suit. The Torah also writes about individuals who did not attain the status of tzaddik, righteous person. Nonetheless, their stories, which are filled with both failures and triumphs, impart important lessons for us.

The above pasuk tells us about Avraham Avinu's brother, Haran, a decent - but weak - individual, who died during the lifetime of his father, Terach. A seemingly innocuous pasuk, it alludes to a powerful story which serves as the background for Haran's premature death. Apparently, when Avraham took it upon himself to shatter all of his father's idols, word got back to Nimrod, the king and chief pagan, who took this act of "treachery" as a personal affront. He immediately sentenced Avraham to be consumed in a fiery cauldron. Haran witnessed the entire debacle and was determined to make a decision concerning his own level of commitment. Being a simple person who was not willing to gamble and make a major commitment to something which was unknown, he decided to be "flexible" in his decision. He said, "If Nimrod succeeds in killing my brother, then I am putting my money on Nimrod. If, however, my brother emerges unscathed, then I will commit to Hashem. Well, we all know what happened: Hashem miraculously spared Avraham, after which Haran came forward, defied Nimrod, and committed himself to Hashem. He was flung into the fire and died. Apparently, he was not worthy of the miracle that spared Avraham. So seems to end the story of Haran, brother of Avraham.

To the reader it is a story of two brothers - one deeply committed to Hashem, the other who vacillates - one miraculously escaped harm due to his total devotion, the other died in a fiery death. Horav Shimshon Pincus, zl, feels that there is more to the Haran story which, from a superficial reading, we fail to take into account. Haran did allow himself to be thrown into the fire. He did acknowledge monotheism, and he emphatically rejected idolatry. His willingness to die for what he believed was the true religion is evident. Perhaps, his intentions were not pure - or not as pure as those of Avraham, but he did give up his life for Hashem. He could have just as easily committed to Nimrod and his pack of idols - but, he did not. Is it possible that Hashem ignored this act of self-sacrifice and withheld the opportunity for him to receive reward for his actions? It just does not seem right.

Regrettably, this is how one who studies the Torah perfunctorily can err. It may appear that Hashem ignored Haran in terms of receiving a reward, but if we just look a few pesukim further and take note of his offspring and descendants, we realize that Hashem certainly did not spare him any reward.

In fact, he was handsomely compensated with a very special distinction: Sarah Imeinu was his daughter, and Lot, from whom descended Rus and Naamah, was his grandson. This is all because he acted faithfully and willingly risked his life. While it is true that his intentions were indecorous, he was rewarded for his actions. Hashem remunerates everyone for his positive actions - even if his intentions are inconsonant with his actions.

Rav Pincus observes that, on occasions when some of us might take issue with the contribution offered by someone to a shul, school or yeshivah, suspecting that the reason for his generosity is only for the attention that he receives. Some of us get involved in various chesed projects only because of the accolades that will follow or because it nurtures our lack of self-esteem. While the motivation for joining or involving ourselves might be somewhat lacking, the positive actions and ensuing results are beneficial to others and, thus, sufficient reason for reward.

Chazal teach us in the Talmud Sanhedrin 105b, "One should occupy himself in Torah (study) and mitzvah (observance), even if he is doing so shelo lishmah, not for the sake of the mitzvah, because good work, although misapplied in purpose, will lead to lishmah." For as reward for

offering forty-two sacrifices to Hashem, Balak merited that Rus was his descendant. His intentions were not only wrong; they were outright evil. Yet, he did achieve some merit. Thus, he was privileged with being the ancestor of the progenitor of Malchus Bais David, Kingdom of the House of David.

This teaches us a valuable lesson in self-motivation for mitzvah observance. It happens that one is reluctant in undertaking to perform a specific mitzvah, spiritual endeavor, or act of loving-kindness, because he lacks the proper motivation. He feels that he is not on the lofty spiritual plane required for such a venture. Nonetheless, he should go forward and act assertively, because eventually his mind will be clarified and sublimated to a higher cause and his intentions refined. Mitoch shelo lishmah - ba lishmah.

### **Rotzeh Hashem es yireiav, es ha'meyachalim l'chasdo.**

### **Hashem takes delight in those who fear Him, and (in) those who wait for his loving-kindness.**

What does it mean to fear Hashem, and how does one become G-d-fearing? Horav Avigdor Miller, zl, observes that the word yireiav, those who fear Him, is closely related to the word re'eh, see. Indeed, the true concept of fear of Hashem is the awareness (seeing, recognition) of Him. Thus, the yud of yira and the hay of re'eh are not fundamental consonants, making the root of both words the same: r'a. We now understand that those who fear Hashem are those who recognize and trust solely in Him. They are acutely aware that all help comes directly from Hashem. This knowledge brings about absolute fear of Hashem. In addition, whatever matters generate fear within others will not engender fear in the G-d-fearing Jew, since he fears only Hashem. Furthermore, one cannot simply pay lip service to fearing Hashem. He who fears Him trusts Him in his heart. Hashem knows who really fears Him and who does not. He takes delight only in those who are sincere in their belief.

Sponsored in loving memory of our beloved sister/sister-in-law Amelia Gluck Malka Feiga bas R' Akiva a"h niftar erev Shabbos kodesh 3 Menachem Av 5769 t.n.tz.v.h. Rabbi and Mrs. Yisroel Willner

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### **Rabbi Yissocher Frand on Parshas Noach Experiencing 3 Worlds**

In the opening pasuk [verse] of our parsha, the name Noach is mentioned three times: "These are the offspring of Noach - Noach was a righteous man, perfect in his generations; Noach walked with G-d." [Bereshis 6:9]. The Medrash Tanchuma takes note of this strange sentence structure and comments that the pasuk alludes to the fact that Noach is an individual who had the distinction of seeing three different worlds: He saw the world when it was settled; he saw the world when it was destroyed; and he saw the world when it was settled once again.

Rav Simcha Wasserman expressed the thought that anyone who lived in Europe before the Holocaust, who lived through the Holocaust, and then merited to come out of the Holocaust and settle either in the United States or in the Land of Israel may also say about himself that he saw three worlds: He saw a settled world, a world in destruction, and a world once again settled.

To have seen Europe in its final days of Jewish glory - the great Yeshivos, the great Jewish communities that existed there - this was to see a "settled world". To have witnessed what Rav Simcha witnessed, including the death of his father, Rav Elchonon Wasserman (may Hashem revenge his blood) at the hands of the Nazis and to have seen the desolation and destruction that he witnessed was to have seen a world in destruction. To have then come to the United States and settle in Los Angeles California and try to build Torah there and to have then resettled in Eretz Yisrael and have established a Yeshiva there too - he saw a world resettled once again.

Rav Simcha Wasserman commented that he learned in the Telshe Yeshiva in Europe. Telshe was in Lithuania, which is very far North. In the summer the days are extremely long and the nights are extremely short. He remembers walking in the city of Telshe in the summer time and he looked to the North and saw a sky that was pitch black and full of stars. As he looked to the southwest he saw a beautiful red sky in which the sun was

just beginning to set. As he looked to the East he could already see the rays of light before the moments of dawn. On one day, in one moment, he saw a sunset, he saw pitch darkness, and he saw the beginning of another sunrise. This memory became the metaphor for him of what he witnessed later in his life. He witnessed the sun setting on the European Jewish community; he witnessed its darkest night; and he witnessed the new sunrise that occurred after the war. This thought does not only apply to Rav Simcha Wasserman, but to all Jews whose lives spanned World War II.

Rav Simcha Wasserman continued his comments by quoting a pasuk at the end of Parshas Noach: "And Noach, the man of the earth, debased himself (vaYachel Noach) and planted a vineyard. He drank of the wine and became drunk..." [Bereshis 9:20-21]. The Sages criticize Noach for planting a vineyard as his first act of planting after the Flood. "He should have involved himself in other types of planting." This act made him somewhat pedestrian (vaYachel comes from the same root as chullin = mundane).

Rav Simcha Wasserman commented, what do you want from this fellow? The man literally just saw the destruction of the world! He came out of the Ark to find a totally desolate world. It is understandable in those circumstances that a person should be depressed. It is also understandable that a person would want to deal with his depression. In those days, the way one dealt with depression was "Give wine to those bitter of spirit" [Mishlei 31:6]

The answer is that the Torah does not say that Noach became a wicked person. He did not do something bad or evil. It was understandable. But the Torah comments that he made himself "chullin" [mundane, pedestrian]. If a person has seen an entire world destroyed and he merits to be among the very few who are saved, there is no time for depression or to worry about one's own emotions. Such a person has a job to do. He must rebuild, pick up, and start over.

There are some situations in life where a person does not have the luxury to think about himself. In such circumstances a person cannot wallow in his sadness and depression. The person must deal with it: If the Almighty picked me and saved me from among all those who did not make it, it must be because the Almighty wants me to do something with my life.

Such was the philosophy of Rav Simcha Wasserman. He saw his father and his father's entire Yeshiva in Baronovich destroyed, but he came out of the Holocaust, dusted himself off so to speak and became a disseminator of Torah in his own right. He not only preached the above thought, but he practiced what he preached. It is because of the amazing strength of character of individuals like himself and like the Roshei Yeshiva and the Chassidic leaders who were saved and came over to America and started over, rather than wallowing in their depression that we now are the recipients of their contributions and can enjoy the fruits of a spiritual world that is once again blossoming.

#### **Noach Had Children Late In Life**

The pasuk at the end of Parshas Bereshis [5:32] says: "And Noach was 500 years old and he gave birth to Shem, Cham, and Yafes". Rashi asks why others of Noach's generation gave birth to children at the age of 100 on average while Noach did not have any children until much later in life. Rashi answers that G-d did Noach a favor, so to speak. If he had children at a normal age and they turned out to be wicked, G-d would have had to kill them out with the rest of their generation. If, on the other hand, they were righteous, then by the time of the Flood they in turn would have already had several generations of descendants and Noach would need to build several Arks to house all his descendants. Therefore, Noach's children were born close in time to the Flood, such that Noach's oldest son was not yet a "bar onshin" [at the age when he would be subject to Heavenly punishment] when the decree concerning the Flood was issued.

Let us put ourselves in Noach's shoes for a minute. Noach was the greatest Tzadik in his generation. Everyone else was having children and grandchildren. Noach was infertile and childless. Where is there justice in this world? Noach must have had such thoughts for 400 years! He must have been asking himself "What does G-d have against me? What does he want from me? Why is he doing this to me? I am the most righteous person of my generation!"

The answer is that the Almighty has His calculations. He knew that there would be a Flood and everyone would be destroyed. He knew that it was best for Noach that he not have children for those 400 years. So the Almighty does Noach a favor and makes him infertile.

Our own perceived misfortunes are one of the hardest things for any of us to understand. We are limited by time and space and can only see what is happening in front of our eyes. There are times when we can't believe the things that happen to us and we perceive them as the greatest punishment. We must have this bedrock faith, which is so much easier to preach than to integrate into our psyche. This is the true Jewish outlook on life. If we could all know what the Almighty has in mind for us, we would understand that G-d is not doing us a disservice, but He is doing us the greatest favor!

Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD

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#### **Rabbi Benjamin Yudin The TorahWeb Foundation Let's Cut to the Chase**

The wise King Solomon in Mishlei (3:17) informs us that "His ways are ways of pleasantness and all its paths are peace". I'd like to share several insightful observations of our Chazal as to just how pleasant and sensitive is our holy Torah.

In the opening part of Parshas Noach, Hashem informs Noach of the impending almost total destruction and the remnant that will be spared and perpetuated via the ark. Eight humans were invited to enter the ark, and a pair of species of the wide variety of the animal kingdom that successfully passed the "moral detector" of the ark were also invited. These animals came miraculously on their own to perpetuate their species after the flood, and Noach did not have to travel to great distances or exhibit prowess in hunting them.

Then the Torah teaches that Hashem tells Noach (7:2) "Take seven pairs of every clean animal. Hashem does not tell Noach why he is to take these additional animals, later to be pronounced kosher to the Jewish People (Zevachim 116A). The Medrash (Braishis Rabbah 34:9) tells us that Noach on his own reasoned that their purpose was for offerings. What is fascinating, notes the Ramban in 6:20, is that these clean animals Noach had to hunt and bring himself to the ark, and they did not participate in the incredible Divinely orchestrated parade of all other animals into the ark. The reason being that those whose purpose was pure physical salvation were invited and assisted by Hashem in coming to the ark. The other seven pairs that were to be offered on the altar, Hashem did not bring them to the slaughter, rather Noach had to take the initiative, for after all this was for his benefit.

It is exciting to note that the effect of these offerings was most positive and beneficial to mankind. Following his offering them (8:41) "Hashem smelled the pleasing aroma and said 'I will not continue to curse again the earth because of man'. Moreover, Noach's taking them on the ark extended their lives by a year. Still, because of their ultimate end - being slaughtered - Noach had to take the initiative. (The Ramban suggests a second reason and that is to enable Noach to gain more out of the mitzvah of offering these animals by involving him in the tirsch preparation- or hechsher mitzvah.)

It is interesting to note that the Meshech Chochma in Parshas Noach (9:7) comments on the command to Noach and his sons of "Procreate and multiply" - the mitzvah of procreation - that this is the source of the Talmudic teaching (Yevamos 64b) that man is commanded with the first mitzvah of the Torah "Procreate; and not woman. The Ramban in the beginning of chapter 15 of the laws of Ishus codifies this as law. The Meshech Chochma explains that in chapter 1 in Beraishis when Hashem blesses the first couple and directs them to be fruitful and multiply, that is before the sin of eating from the forbidden fruit and its consequence of "You shall be in pain in giving birth. Having undergone this change in nature, the Torah which personifies "His paths

are paths of pleasantness- could not and does not legislate to womankind that she subject herself to a painful situation of childbirth.

The Meshech Chochma further suggests that the Torah, whose ways are pleasant, only imposes one fast day- Yom Kippur - during the entire year. Moreover, it legislates as a caring mother that we eat in preparation for the fast on the day preceding the fast (not leaving it to chance or probability).

Continuing this theme of sensitivity we (Ashkenazic Jewry outside of Israel) do not recite the bracha of Shehechyanu at the occasion of a bris milah. Despite the fact that the Talmud (Shabbos 130a) attributes the verse from Tehillim (119:162) <sup>ו</sup>ֶשׁוּס אֲנֹכִי אֶל־מִרְסַעְחָהּ כִּי־מֹתֵזִי שְׁלָל רָב- I rejoice over your word (commandment) as one who finds abundant spoils<sup>ו</sup> to refer to the mitzvah of milah, thus teaching us that aside from the criteria of a mitzvah that is performed from time to time, or certainly if this is the first child that the father is circumcising the blessing Shehechyanu should be recited as found in Ramah Yoreh Deah (28:2) that the first time one performs a mitzvah Shehechyanu is said. The answer is provided by the Meiri (Shabbos) that since the baby experiences pain (tza<sup>ו</sup>ֶאֱרָא ד<sup>ו</sup>ִּינִיכָהּ) no Shehechyanu is recited. Similarly, as a display of sensitivity to the discomfort of the baby- the Talmud Kesubos (8a) teaches that we do not include <sup>ו</sup>ֶשְׁחָהּ שִׂמְחָהּ ב<sup>ו</sup>־מִן־הַמִּצְוֹת- included at the Grace After Meals during the week of sheva berachos, following the bris.

The book of Beraishis is referred to in the Talmud (Avodah Zarah 25A) as Sefer HaYasher- the book of the upright . Not only because of the Avos-the Patriarchs- who lived a life of yashrus, but because of the incredible sensitivity that Hashem teaches us as taught by our Chazal.

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**Rabbi Dr. Abraham J. Twerski**

**The TorahWeb Foundation.**

**The Lesson of Noah**

The Torah is not a history book. "Torah" means "guide", and everything in Torah is intended to guide us.

After emerging from the Ark, "Noach debased himself and planted a vineyard. He drank of the wine and became drunk" (Breishis 9:20-21). What does this teach us?

"Noach was a complete tzaddik?" (ibid. 6:9). How does a "complete tzaddik drink to intoxication?"

The commentaries say that Noah knew how much he could drink safely without the wine affecting him, but that was before the flood. What Noah did not consider is that the world had undergone a radical change, and it was not the same world he had known. In a new world, old rules may not apply. What was tolerable in the old world may not be tolerable in the new world.

In the 16th century, Rebbe Chaim Vital, chief disciple of the Ari z"l said "Given the pollution of the environment, our only hope is prayer.[1]" He was not referring to carbon dioxide pollution, because there were no automobiles then, but rather to the spiritual deterioration. If the spiritual atmosphere of the 16th century was polluted, what can we say about our current environment, when the airwaves convey gross immorality, violence and corruption into our living rooms. Every trace of decency has been eroded. Every day, new scandals about people in positions of leadership are revealed.

Our world has undergone a radical change. Not only is it not the world of yore, but it is not even the world of decades past. The old rules are not adequate. Some human foibles were tolerable in the old world, but today we must live by higher standards. In past generations we could live as Shulchan Aruch yidden, and that was good enough, but today we must be Mesilas Yesharim yidden to give ourselves and our children the spiritual capital needed to survive the current spiritual atmosphere.

Rebbe Chaim Vital felt that prayer was a solution. Perhaps we should become a bit more sincere about our prayer. Prayer requires meditation, but how much can one meditate when the most desirable minyan is the one who finishes fastest?

In the past, young people married, raised families, and for the most part, families were stable. Today we have a divorce rate that is alarming, and

children are affected by the deterioration of shalom bayis. Our young men and women are marrying without the slightest concept of the responsibilities that marriage brings about, and that consideration for one's partner must override one's own wishes. There is an unprecedented hemorrhage of our children deviating into drugs and other destructive life styles. Parenting by instinct is not acceptable. Young people, single and married, should be educated about marriage[2] and parenting[3].

Most parenting is done by modeling. We must work diligently on refinement of our middos in order to resist the noxious effects of today's hedonistic world, in which we are essentially trying to go up on the "down" escalator.

While the challenges presented by today's world are daunting, we are assured that "ha'bo litaheir misayein oso – one who tries to purify himself will receive [Divine] help." Hashem helps us overcome all challenges, and thus no challenge is insurmountable. But to merit that help, we have to be "bo litaheir" – we must do our best to purify all aspects of our lives.

The lesson of Noah is that when the world has changed, we cannot afford to continue "business as usual." We must take concrete steps to improve ourselves, our tefillah, our marriages, and our children's spiritual environment and opportunities.

[1] Yesod Veshoresh Ha'avodah 2, end of p.89.

[2] See my book The First Year of Marriage, published by Shaar Press

[3] Planting and Building in Education: Raising a Jewish Child, By Rav Shlomo Wolbe, available from Feldheim Publishers in both Hebrew and English

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**Portion of the Week / For those who need the rainbow covenant**

**By Benjamin Lau**

Parashat Noah, the annual cycle's second weekly Torah reading, confronts us with the ugliness of human nature, which corrupts the entire universe: "The earth also was corrupt before God, and the earth was filled with violence [or robbery]" (Genesis 6:11).

Rabbi Yochanan bar Nappacha, one of third-century Palestine's greatest amoraim (teachers of the Oral Law during the late Talmudic period), notes that, of all human evils, robbery is the most serious, because it corrupts all other positive human qualities: "Rabbi Yochanan says: 'Here is proof of robbery's destructive power. The generation of Noah's Flood committed every possible transgression; however, their doom was sealed only when they began engaging in robbery, as it is written, "... for the earth is filled with violence [or robbery] through them; and, behold, I will destroy them with the earth" [Gen. 6:13]' (Babylonian Talmud, Tractate Sanhedrin, p. 108).

The midrash views robbery through the eyes of Job, who claims his innocence before God: "Job declares: 'Not for any injustice in mine hands: also my prayer is pure' [Job 16:17]. Is there such a thing as impure prayer? When those whose hands are sullied by the sin of robbery pray to God, he does not answer their prayers. Why? Because their prayers are impure, as it is written, 'And God said unto Noah, The end of all flesh is come before me; for the earth is filled with violence [or robbery] through them,' whereas the prayers of Job, who never robbed anyone, were pure." Robbery creates a double barrier - a vertical barrier between human beings and a horizontal one between humanity and God.

After the Flood, God resolves never to curse the earth because of human sins and never to destroy humanity again with a deluge: "... for the imagination of man's heart is evil from his youth; neither will I again smite any more every thing living, as I have done" (Gen. 8:21). This divine promise is formally established through the rainbow covenant: "I do set my [rain]bow in the cloud, and it shall be for a token of a covenant between me and the earth. And it shall come to pass, when I bring a cloud over the earth, that the [rain]bow shall be seen in the cloud: And I will remember my covenant, which is between me and you and every living creature of all flesh; and the waters shall no more become a flood to destroy all flesh" (Gen. 9:13-15).

The rainbow causes great excitement when we see it in the sky. When describing the vision of God's chariot, Ezekiel alludes to the rainbow's emotional impact: "As the appearance of the [rain]bow that is in the cloud in the day of rain, so was the appearance of the brightness round about. This was the appearance of the likeness of the glory of the Lord. And when I saw it, I fell upon my face, and I heard a voice of one that spake" (1:28). The rainbow moves William Wordsworth, as he tells us in his poem "The Rainbow": "My heart leaps up when I behold / A rainbow in the sky: / So was it when my life began; / So is it now I am a man; / So be it when I shall grow old, / Or let me die! / The Child is father of the Man; / I could wish my days to be / Bound each to each by natural piety."

On the rainbow's essence, I heard a fascinating explanation from Michael Kagan, a dedicated environmentalist, who describes the world God created as black and white in its nature - with diametrically opposed elements: good versus evil, righteousness versus evil, etc. Today's world, argues Kagan, lacks sharp contrasts; it is not black and white, but reflects relativity, partial answers and a harmony stemming from our living in an all-encompassing entity.

The midrash (Bereshet Rabbah, section 35) focuses on the rainbow's significance: "It is written, 'And God said, This is the token of the covenant which I make between me and you and every living creature that is with you, for perpetual generations [ledorot olam]' [Gen. 9:12]. Rabbi Yuden says that dorot is written without the letter vav (pronounced as "o") after the initial consonant dalet and without a vav before the final consonant tav. This means that the rainbow has appeared in every generation, except for two: King Hezekiah's and that of Anshei Haknesset Hagedola, the members of the Great Assembly. Rabbi Hizkia says the second excluded generation should be Rabbi Shimon Bar Yochai's, not that of Anshei Haknesset Hagedola."

The midrash's message is clear: A generation with righteous individuals needs no rainbow; the righteous provide the protection from annihilation that the rainbow usually provides.

The midrash includes a passage graphically illustrating this message. Rabbi Joshua ben Levi and the prophet Elijah study Torah together regularly. In the course of their study, they encounter a saying uttered by Rabbi Shimon Bar Yochai, who died many years before. Rabbi Joshua and Elijah decide to ask him what the saying means. Rabbi Joshua is a righteous Jew who energetically tries to help lepers and other seriously afflicted persons. However, when Elijah requests that Rabbi Shimon Bar Yochai explain to him and Rabbi Joshua the saying's meaning, Rabbi Shimon asks: "Was a rainbow seen in the sky in Rabbi Joshua's generation?" Elijah replies: "Yes," whereupon Rabbi Shimon retorts, "If that is the case, he is unworthy of hearing an explanation from my mouth." To be worthy of living in a generation that does not need the rainbow's protection, your prayers must be pure - not just because you yourself are righteous but also because you have established a clean, pure world.

Tomorrow we will read Parashat Noah in the synagogue. Teva Ivri (Jewish Nature), an organization dedicated to making Jews aware that Judaism's principles require them to take responsibility for their environment, has declared this Saturday the Sabbath for renewing the post-deluge covenant with God. God has fulfilled his obligations under that covenant's terms; now humanity must meet its obligations and commit itself to preserving our world and its inhabitants.

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## Rav Kook List

### Rav Kook on the Torah Portion

#### Noah: Permission to Eat Meat

After God destroyed His world by water, making a fresh start with Noah and his family, God told Noah, "Every moving thing that lives shall be food for you. Like plant vegetation [which I permitted to Adam], I have now given you everything. .. Only of the blood of your own lives will I demand an account." [Gen. 9:3,5]

Up until this point, humanity was expected to be vegetarian. But after Noah and his family left the ark, God allowed them to eat everything - except other people. Why was permission to eat animals given at this time?

#### Temporary Allowance

Given the violence and depravity of the generation of the Flood, it was necessary to make allowances for humanity's moral frailty. If mankind was still struggling with basic moral issues - such as not murdering his fellow human - what point was there in frustrating him with additional prohibitions on less self-evident issues?

After the Flood, God lowered the standards of morality and justice He expected of humanity. We would no longer be culpable for slaughtering against animals; we would only be held accountable for harming other human beings. Then our moral sensibilities, which had become cold and insensitive in the confusion of life, could once again warm the heart.

If the prohibition against meat had remained in force, then, when the desire to eat meat became overpowering, there would be little distinction between feasting on man, beast, and fowl. The knife, the axe, the guillotine, and the electric pulse would cut them all down, in order to satiate the gluttonous stomach of 'cultured' man. This is the advantage of morality when it is connected to its Divine Source: it knows the proper time for each objective, and on occasion will restrain itself in order to conserve strength for the future.

In the future, this suppressed concern for the rights of animals will be restored. A time of moral perfection will come, when "No one will teach his neighbor or his brother to know God - for all will know Me, small and great alike" [Jeremiah 31:33]. In that era of heightened ethical awareness, concern for the welfare of animals will be renewed.

#### Preparing for the Future

In the interim, the mitzvot of the Torah prepare us for this eventuality.

The Torah alludes to the moral concession involved in eating meat, and places limits on the killing of animals. If "you desire to eat meat", only then may you slaughter and eat [Deut. 12:20]. Why mention the 'desire to eat meat'? The Torah is hinting: if you are unable to naturally overcome your desire to eat meat, and the time for moral interdiction has not yet arrived - i.e., you still grapple with not harming those even closer to you (fellow human beings) - then you may slaughter and eat animals.

Nonetheless, the Torah limits which animals we are allowed to eat, only permitting those most suitable to human nature. The laws of shechitah (ritual slaughtering) restrict the manner of killing animals to the quickest and most humane. With these laws the Torah impresses upon us that we are dealing with a living creature, not some automaton devoid of life. And after slaughtering, we are commanded to cover the blood, as if to say, "Cover up the blood! Hide your crime!"

These restrictions will achieve their effect as they educate the generations over time. The silent protest against animal slaughter will become a deafening outcry, and its path will triumph.

[Gold from the Land of Israel pp. 31-33. Adapted from Talei Orot, ch. 8 (quoted by Nechama Leibovitch, "Iyunim Besefer Bereishit", pp. 55-56). See also Otzarot HaRe'iyah vol II, pp. 88- 92]

Comments and inquiries may be sent to: RavKookList@gmail.com

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## YatedUSA Parshas Bereishis 28 Tishrei 5770

### Halachah Discussion

#### by Rabbi Doniel Neustadt

#### Competition between Stores: When is it Proper?

Question: Is it permissible to open a competing store or business in the same vicinity as an existing establishment owned by another Jew?

Discussion: When dealing with the delicate issue of competition, Jewish law takes into account both the consumer and the proprietor. For the consumer's protection, the law encourages fair competition to keep the prices down and to ensure a plentiful supply of high quality goods. To protect the proprietor, the Halachah prohibits unfair business practices and

puts limits on competitors who would wish – in halachic terms – to “enter their boundary.” The following is a general description of the halachos governing competition. In reality, however, each situation is unique. When a dispute arises, it must be brought before a local beis din for resolution.

#### The Basic Halachah

Any local resident<sup>1</sup> may open a competing store or business, even if the two establishments are next door to each other and the new one will cut into the old one’s profits.<sup>2</sup> The competing business may lower its prices or advertise in order to lure customers away from the existing business.<sup>3</sup> If a customer, however, has already entered a competitor’s store, one is not allowed to lure him to his own establishment.<sup>4</sup>

Although it is permitted to compete this way,<sup>5</sup> some poskim<sup>6</sup> mention that it is middas chasidus (an act of piety) not to ruin another person’s livelihood even when it is permitted according to the basic halachah. In larger cities and in growing neighborhoods, however, it is not middas chasidus to refrain from opening a competing business when there is room for both businesses to prosper.<sup>7</sup>

A non-resident may not compete with an existing business.<sup>8</sup> However, there are several exceptions to this rule:

If the non-resident’s competition will result in prices being lowered or in superior products being provided to the local populace, competition is allowed.<sup>9</sup>

Wholesale mail order and Internet businesses, or any business which does not serve the local population exclusively but attracts customers from afar, may compete anywhere.<sup>10</sup>

If the local beis din has no control over the situation and the field is rife with competition, then all competition is permitted.<sup>11</sup>

#### Limitation to the Basic Halachah

There is an important restriction that pertains to the basic halachah outlined above which allows competition between local residents [or non-residents, when they are allowed to compete]:

A competitor may only open a store or a business if he will not cause the existing business to go under. If opening a second store, however, would result in putting the established store out of business, then the second store may not open its doors.<sup>12</sup> Even if the owner of the existing store has another business that could support him, and even if he is independently wealthy, it is still prohibited to compete against him if it would force this particular business of his to shut down completely.<sup>13</sup> This is the consensus of the majority of the poskim,<sup>14</sup> and the local beis din is empowered to censure any business person who does not adhere to this ruling.

If, however, the new store is offering better prices, better service or a broader selection, etc., then most poskim allow the second store to open its doors. They maintain that the uppermost concern is the welfare of the consumer and time will tell which of the stores will survive.<sup>15</sup> A minority opinion in the poskim, however, puts the welfare of the vendor first and prohibits the opening of the second store even though the public would have benefited from the new store.<sup>16</sup>

Practically speaking, therefore, a final decision on this issue would depend on the circumstances. If opening the new store will truly and unquestionably benefit the local population, then we cannot and may not object to the opening of the new store.<sup>17</sup> But sometimes the benefit to the local population is not very real or very clear, and in such a case it may be strictly forbidden to open a store or a business that will result in the closing of an existing establishment. Since it is almost impossible for one to be objective about such a decision, a beis din must be consulted.

All poskim agree, however, that in the following cases, it is prohibited for a competing store owner to open a business – even if he offers better prices and better service – if it will result in forcing out the existing establishment:

If the intent of the competing store owner is to exact revenge, etc.

If the intent of the competing store owner is to shut down the existing business and then, when the competition is gone, to raise his prices. This is prohibited because in the long run the public good will not be served.

The competing store may undercut the existing business only by using methods which are considered normal and legal business practices, such as

buying in bulk or cutting operating costs, etc. The competition may not use illegal, unethical or reckless methods in order to offer cheaper prices and thus force the existing store out of business.<sup>18</sup>

#### Footnotes

1 A local resident is anyone who lives in the area or who pays taxes to the local municipality in which the store is located.

2 C.M. 156:5, based on Bava Basra 21a.

3 C.M. 228:18.

4 Chasam Sofer, C.M. 79; Pischei Teshuvah, C.M. 237:3. [Several contemporary authorities debate whether it is permitted for a taxi or a car service to pass by a Jewish-owned company’s bus stop in order to solicit passengers; see Pischei Choshen, Geneivah, pg. 272; Even ha-Mishpat, pg. 460; Meishiv B’halachah, vol. 17, pg. 13; Kol ha-Torah, vol. 43, pg. 263, for a full discussion of the various cases and opinions.]

5 Even l’chatchilah; Chasam Sofer C.M. 61.

6 Shulchan Aruch Harav (Hasagas Gevul 13), based on Rambam, Hilchos De’os 5:13. See also Teshuvos Maharam of Rothenberg 677.

7 See Chelkas Yaakov 2:65 and Pischei Choshen (Geneivah, pg. 262). Note that concerning all of these halachos, there is no difference whether the competitor is an observant or a non-observant Jew; Kesav Sofer C.M. 20.

8 C.M. 156:7, Sma 20, and Pischei Teshuvah 9.

9 Rama, C.M. 156:7 and Aruch ha-Shulchan 11.

10 C.M. 156:7.

11 Maharshdam C.M. 407 and 451; Beis Efrayim, C.M. 27; Divrei Chaim, C.M. 1:18.

12 Teshuvos Rama 10, based on the view of Aviasaf; Chasam Sofer C.M. 61 and 118 and many other poskim, quoted in Pischei Teshuvah C.M. 156:3; Igros Moshe C.M. 2:31. [Note that whenever competition is clearly prohibited, it is also prohibited for anyone to patronize that establishment.]

13 Chasam Sofer, *ibid.*; Igros Moshe C.M. 1:38 (see also C.M. 2:40-2) concerning a case in which members of a shul broke off from an existing shul and established their own minyan. This action proved disastrous to the livelihood of the rabbi of the existing shul and radically lowered his shul’s property value. Rav Feinstein ruled that it was forbidden for anyone to establish another shul in the same neighborhood, even if their reason for breaking away was because of a difference in nusach or style of davening, and even if they disliked the practices of the present rabbi.

14 It remains unclear whether there is even a minority view which opposes this ruling. [See Chelkas Yaakov 2:65; Piskei Din Rabbaniyim, vol. 4, pg. 9; vol. 8, pg. 82, and Yashiv Moshe, pg. 228, quoting Rav Y.S. Elyashiv. See also Minchas Tzvi, Sechirus Poalim 5:21.]

15 See Teshuvos Lechem Rav 216; Beis Efrayim C.M. 27; Teshuvos Parashas Mordechai C.M. 67 and many other poskim quoted in Even ha-Mishpat, pg. 450.

16 This seems to be the view of the Chasam Sofer C.M. 79, quoted in Pischei Teshuvah 156:8. It is possible that this is the view of Teshuvos Rama 10 as well. See also Teshuvos Ma’amar Mordechai 10, who rules this way.

17 Indeed, in the opinion of some poskim, we should encourage the opening of such a store.

18 Teshuvos Chasam Sofer C.M. 79; Aruch ha-Shulchan 156:11. See also Pischei Choshen (Geneivah, pgs. 270-272), quoting from Divrei Chaim 1:19 and Maharam Shick C.M. 20.

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### YatedUSA Parshas Noach Parshas Noach 5 Cheshvan 5770

#### Halachah Discussion

by Rabbi Doniel Neustadt

#### Competition for Clients

Question: How does the Halachah view an insurance or travel agent who tries to wrest away an established client from another Jewish agent? Is it proper for a Judaica store owner, a wig stylist, or a kosher caterer to recruit the established clients of his or her Jewish competitor?

Discussion: Many poskim maintain that it is prohibited to actively pursue a client or a customer, Jewish or non-Jewish, if the client has developed an ongoing business relationship with a competitor. The classic case quoted in Ramal is that of a medieval tailor who for many years had an exclusive account with a local non-Jew. When another Jewish tailor actively sought the non-Jew’s business, the dispute between the two tailors was brought before the Rashba. The Rashba ruled that the second tailor was acting improperly and that the account should remain the exclusive right of the first tailor.

The Rashba explains that his ruling is based on the following halachic concept: The long-term business relationship and apparent commitment between the tailor and his client gives the tailor a certain sense of *semichus da'as*, a well-founded assumption and expectation that this particular account is his. Even though there was no explicit verbal or contractual agreement between them regarding future business, still it was clearly understood that he will continue to be the tailor for this non-Jew. No other Jew is allowed, therefore, to infringe on that existing relationship and understanding, and one who does so is acting improperly and should be censured.<sup>2</sup>

Nevertheless, rules the Rashba, if by the time *beis din* was notified the second tailor had already succeeded in wresting the account away from the first tailor, *beis din* is powerless to force him to relinquish it, since in a very literal sense the second tailor did not actually take something which is not his. Technically speaking, the account was not signed and sealed and, therefore, it was open to bidding from competition. [This is especially true when dealing with a non-Jewish customer, since more often than not, non-Jews do not have a sense of loyalty towards their Jewish tradesmen and will readily drop one business relationship in favor of another.]<sup>3</sup>

Indeed, the Rama quotes opinions which disagree with the Rashba altogether and permit – or at the very least, do not object to – the second tailor's actively pursuing any account that he can, regardless of any long-term relationship his competitor may have had with an existing account.<sup>4</sup> In the years since the Rashba's ruling, various customs evolved in European communities regarding this issue. Some communities strictly forbade their members from pursuing each other's steady business accounts, going so far as to invalidate such contracts and returning the accounts to the original vendor or tradesman.<sup>5</sup> Other communities prohibited such dealings but did not invalidate them if they already transpired, while yet others allowed such competition and did not restrict it in any way.<sup>6</sup>

Although today a clear-cut custom does not exist, the opinion of the majority of the *poskim*<sup>7</sup> is to follow the middle-of-the-road ruling of the Rashba, which is to prohibit and discourage this type of competition whenever possible,<sup>8</sup> but not to invalidate a business deal once it has been transacted.

Based on the above, the answer to our original question concerning the insurance or travel agent, Judaica store owner, wig stylist, and caterer should be very clear: If a Jewish vendor or tradesman has a long-term<sup>9</sup> steady customer with whom he assumes and expects to continue doing business, another Jew is not allowed to lure that customer away. If, however, the competitor was ignorant of – or disregarded – this rule and succeeded in collaring the account, he cannot be forced to give it up, nor is one allowed to refer to him as a *rasha*, a wicked person.

There are, however, two very important considerations which may drastically affect the halachah in several of the cases mentioned above.

It is obvious that one is restricted from soliciting another person's steady business only if all other competitors will also restrict themselves from soliciting established accounts. If, however, the particular business field is full of non-Jewish or non-observant salesmen who will not restrict their customer-baiting activities, then the restriction is lifted.<sup>10</sup>

The insurance field, for instance, is filled with agents who are constantly attempting to lure established accounts from other agents or agencies. This is a legal procedure and considered normal business practice. There is no restriction, therefore, on an observant Jewish agent soliciting business from another agent's established accounts, since, as explained, even if he will not solicit the account, others surely will. There is no requirement for the observant agent to place himself at a disadvantage.

The halachah is different, however, in regard to Judaica store owners, wig stylists, or kosher caterers. These types of businesses are generally run by observant Jews who follow the dictates of Halachah. Consequently, when a particular vendor regularly assumes and expects that a steady long-term account will remain his for the foreseeable future, one may not pursue that account.

Ultimately, therefore, there is no blanket answer. The halachah will depend on the type of business and on the general business climate in that particular field. If, as is the case in many service-type businesses,

customers are generally not pursued by others in the field and are usually loyal to their provider, then the observant businessman may not compete for their business. On the other hand, the observant businessman is unrestricted in competing for business in a field where competition is the norm (e.g., commission-based businesses).

Another important point to remember is that the restriction applies only to a businessman soliciting or enticing a client to buy his product over his competitor's. It is permitted, however, for the client or customer to solicit a different provider or agent, even though he has been doing steady business with a particular concern for a long period of time.<sup>11</sup>

Note: As in all matters of Halachah, one should consult a *rav* before deciding how to approach a questionable situation. Especially in regard to business-related issues, where it is almost impossible for one to be completely objective as it is his livelihood which is at stake, the halachic perspective of a competent authority is imperative.

#### Footnotes

1 C.M. 156:5, based on Teshuvos Rashba 6:259.

2 Rashba offers two Talmudic sources for this ruling: a) Bava Basra 21a, concerning fish which were almost netted by a fisherman and then swept away at the last moment by a competing fisherman; b) Gittin 30a, concerning the laws of *makirei kehunah*, which give a Kohen the right to claim his steady stipend from the Yisrael because of the assumption that they are his, based on their long-term relationship.

3 Indeed, some *poskim* are of the opinion that the Rashba's ruling applies only to competitors pursuing a non-Jew's business, as in the case of the two tailors. If the tailors were competing for a Jewish customer, the first tailor would have an even stronger case, since Jewish customers have a greater degree of loyalty and commitment to their service providers, tradesmen, etc., and the first tailor would have had a firmer assumption that the account would remain his; Chasam Sofer, C.M. 79; Beis Efrayim 29; Maharsham 1:151. See Seridei Eish 3:66 for a different approach.

4 The logic behind this view may be explained in one of two ways: a) *Semichus da'as*, assumptions and expectations, are neither legally nor halachically binding (Beir ha-Gra, C.M. 156:5; Aruch ha-Shulchan, C.M. 156:18); b) In a fiercely competitive business world, there are no assumptions and expectations since the threat of competition is always present (Teshuvos Maharshal 36).

5 Teshuvos Maharshal 36 as explained in Masa'as Binyamin 27 and Chasam Sofer, C.M. 61.

6 The various views are quoted in Rama C.M. 156:5 and Be'er Heitev 12. See also Chavos Yair 42.

7 Chasam Sofer, C.M. 61; Beis Efrayim 27; Yeshuos Malko, C.M. 19; Maharil Diskin (*pesakim* 1); Minchas Yitzchak 2:94; 3:127; Minchas Tzvi, Sechirus Poalim, 5:24. See also Shulchan Aruch Harav (Hasagas Gevul 13), that a God-fearing person should be stringent in this.

8 Even if the competitor is offering the potential client a lower price, still he may not pursue a client who "belongs" to his competitor; Teshuvos Lechem Rav 216. See also Teshuvos Beis Shlomo, Y.D. 19.

9 The exact length of the relationship is not clearly defined, although some *poskim* suggest three years (or three deals) as a rule of thumb; see Chavos Yair 42.

10 See Teshuvos Kol Aryeh 135 and Yeshuos Malko, C.M. 19 for an explanation of this issue.

11 Sma, C.M. 386:10.

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## YatedUSA Parshas Bereishis 28 Tishrei 5770

### Halachah Talk

by Rabbi Yirmiyahu Kaganoff

### Meet the Adams Family

#### The Man

Today I will be meeting someone who is extremely concerned and knowledgeable about halacha, yet doesn't even keep a kosher home. Neither has he ever observed Shabbos. On the other hand, he is meticulous to observe every detail of Choshen Mishpat.

Who is this individual?

Allow me to introduce you to John Adams who is a practicing Noahide, or, as he prefers to call himself, an Adamite.

Adams claims descent from the two famous presidents, a fact I have never verified and have no reason to question. Raised in New England and a graduate of Harvard Law School, John rejected the tenets of the major Western religions but retained a very strong sense of G-d's presence and

the difference between right and wrong. Study and introspection led him to believe that G-d probably had detailed instructions for mankind, and sincere questioning led him to discover that of the Western religions, only Judaism does not claim a monopoly on heaven. A non-Jew who observes the Seven Laws taught to Noah and believes that G-d commanded them at Har Sinai has an excellent place reserved for him in olam haba.

John began the practice of these laws. He is quick to point out that, with only one exception, these laws were all commanded originally to Adam. Since John is proud of his family name and lineage, he likes calling himself an Adamite.

What are the Basics of Noahide Practice?

We all know that a gentile is required to observe seven mitzvot, six of them prohibitions, to avoid: idolatry, incest, murder, blasphemy, theft, and eiver min hachai (which we will soon discuss), and the seventh, the mitzvah of having dinim, whose nature is controversial. The Sefer HaChinuch (Mitzvah #416) and others note that these seven mitzvot are actually categories, and a non-Jew is really required to observe several dozen mitzvot.

Kosher, Noah style

I asked John if eating meat presents any religious problems for him.

“Well, you know that Noah was prohibited from eating meat or an organ that was severed before the animal died, a prohibition you call eiver min hachai,” said John, obviously proud that he could pronounce the expression correctly. “So sometimes I come across meat that I may not eat. The following question once came up: Moslem slaughter, called halal, involves killing the animal in a way that many of its internal organs are technically severed from the animal before it is dead. Because of this, we are very careful where we purchase our organ meats.”

May a Noahide Eat Out?

“This problem went even further,” John continued. “Could we eat in a restaurant where forbidden meats may have contaminated their equipment?”

I admit that I had never thought of this question before. Must a gentile be concerned that a restaurant’s equipment absorbed eiver min hachai? Does a Noahide need to “kasher” a treif restaurant before he can eat there? Oy, the difficulty of being a goy!

“How did you resolve this dilemma?” I timidly asked.

“Well, for a short time our family stopped eating out,” he replied. “You could say that we ate only treif at home. My wife found the situation intolerable – no MacDonald’s or Wendy’s? Although I know that observant Jews do not understand why this is such a serious predicament, but please bear in mind that we made a conscious decision not to become Jewish. One of our reasons was that we enjoy eating out wherever we can. “So I decided to ask some rabbis I know, but even then the end of the road was not clearly in sight.”

“Why was that?”

“I had difficulty finding a rabbi who could answer the question. From what I understand, a rabbi’s ordination teaches him the basics necessary to answer questions that apply to kosher kitchens. But I don’t have a kosher house – we observe Adamite laws. As one rabbi told me, ‘I don’t know if Noahides need to be concerned about what was previously cooked in their pots.’”

“How did you resolve the predicament?”

How Treif is Treif?

“Eventually, we found a rabbi who contended that we need not be concerned about how pots and grills were previously used. He explained that we could assume that they had not been used for eiver min hachai in the past 24 hours, which certainly sounds like a viable assumption, and that therefore using them would only involve the possibility of a rabbinic prohibition, and that we gentiles are not required to observe rabbinic restrictions. The last part makes a lot of sense, since there is nothing in the Seven Laws about listening to the rabbis, although I agree that they are smart and sincere people.

“The result is that we now go out to eat frequently, which makes my wife very happy. It was a good decision for our marital bliss, what you call shalom bayis. Although I understand that this is another idea we are not required to observe, it is good, common sense.”

Milah in the Adams Family

When John’s son was born, he raised an interesting shailah. To quote him: “Circumcision as a religious practice originates with G-d’s covenant with Abraham, the first Jew. But my covenant with G-d predates Abraham and does not include circumcision. However, even though there was no religious reason for my son to be circumcised, my wife and I thought it was a good idea for health reasons. On the other hand, I know that many authorities forbid a gentile, which I technically am, from observing any commandments that he is not specifically commanded (see Rambam, Hilchos Melachim 10:9).”

John is a very gregarious type, and loves to explain things fully. “We actually had two concerns about whether we could circumcise John Jr. The second one was that many authorities contend that the seventh mitzvah of instating ‘Laws,’ which you call ‘Dinim,’ includes a prohibition against injuring someone (Ramban, Genesis, oops, I mean Bereishis 34:13). According to this opinion, someone who hits someone during a street fight may lose his world to come for violating one of our seven tenets. I have come too far to risk losing my share in the world to come, so I try very hard not to violate any of the laws. I called some rabbis I know to ask whether there was any problem with circumcising my son for health reasons. The rabbi I asked felt that since we are doing this for medical reasons, it is similar to donating blood or undergoing surgery. The upshot was that we did what no self-respecting Jew should ever do: We had a pediatrician circumcise John Jr. on the third day after his birth, to emphasize that we were not performing any mitzvah.”

No Bris

Proud to show off his Hebrew, John finished by saying: “So we had a milah, but no bris. We also decided to skip the bagels and lox. Instead, my wife and I decided it was more appropriate to celebrate with shrimp cocktails, even though primordial Adam didn’t eat shrimp. All types of meat were only permitted to Noah after the Deluge, which you call the mabul. I believe that some authorities rule that Adam was permitted to kill and was only prohibited from slaughtering, while others understand he had to be strictly vegetarian. My wife and I discussed whether to go vegetarian to keep up the Adams tradition, but decided that if meat was ‘kosher’ enough for Noah, it is kosher enough for us. We decided we weren’t keeping any stringent practices even if they become stylish.”

Earning a Living

“Have you experienced any other serious dilemmas due to your being an ‘Adamite?’”

“Oh, yes. I almost had to change my career.”

I found this very curious. As John Adams seemed like an honest individual, it seemed unlikely that he had made his living by stealing or any similar dishonest activity.

Non-Jews are forbidden to perform abortions, which might affect how a Noahide gynecologist earns a living, but John is a lawyer, not a doctor. Even if John used to worship idols or had the bad habit of blaspheming, how would that affect his career?

May a Gentile Practice Law?

John’s research into Noahide law led him to the very interesting conclusion that his job as an assistant district attorney was halachically problematic. Here is what led him to this conclusion.

One of the mitzvot, or probably more accurately, categories of mitzvot, in which a Noahide is commanded is the mitzvah of dinim, literally, laws. The authorities dispute the exact definition and nature of this mitzvah. It definitely includes a requirement that gentile societies establish courts and prosecute those who violate the Noahide laws (Tosefta, Avodah Zarah 9:4; Rambam, Hilchos Melachim 9:14). Some authorities contend that the

mitzvah of dinim prohibits injuring or abusing others or damaging their property (Ramban, Bereishis 34:13).

However, this dispute leads to another issue that was more germane to John's case. There is a major dispute among halachic authorities whether Noahides are governed by the Torah's rules of property laws, which we refer to as Choshen Mishpat (Shu"t Rama #10), or whether the Torah left it to non-Jews to formulate their own property and other civil laws. If the former is true, a non-Jew may not sue in a civil court that uses any system of law other than the Torah. Instead, he must litigate in a beis din or in a court of non-Jewish judges who follow halachic guidelines. Following this approach, if a gentile accepts money based on civil litigation, he is considered to be stealing, just as a Jew is. This approach is accepted by many early poskim (e.g., Tumim 110:3). Some authorities extend this mitzvah further, contending that any mitzvah that applies to the establishment and functioning of courts and civil laws applies equally to Noahides (Minchas Chinuch #414; 415). Following this approach, enforcing a criminal code that does not follow the Torah rules violates the mitzvah of dinim.

As John discovered, some authorities extend this idea quite far. For example, one of the mitzvos of the Torah prohibits a beis din from convicting or punishing someone based on circumstantial evidence (Rambam, Sefer HaMitzvos, Lo Saaseh #290; Sefer HaChinuch #82). If the same applies to the laws of dinim, a gentile court that uses circumstantial evidence would violate Noahide law. Thus, John was faced with an interesting predicament. According to these opinions, a gentile who prosecutes because of circumstantial evidence violates the Seven Mitzvos of Noah even if the accused party appears to be guilty. It is understood that according to these opinions, one may not prosecute for the violation of a crime that the Torah does not consider to be criminal, or to sue for damages for a claim that has no halachic basis.

#### Napoleonic Code and Halacha

On the other hand, other authorities contend that non-Jews are not obligated to observe the laws of Choshen Mishpat; but instead the Torah requires them to create their own legal rules and procedures (HaEmek Shailah #2:3, which is, by the way, in his commentary on this week's parsha; see also Chazon Ish, Bava Kamma 10:1). These authorities rule that gentiles perform a mitzvah when creating a legal system for themselves such as the Napoleonic Code, English Common Law, or any other commercial code. Following this approach, a non-Jew may use secular courts to resolve his litigation and even fulfill a mitzvah by doing so. This approach contends that John could certainly continue his work as a D.A. and that it would be a mitzvah for him to do so.

It is interesting to note that following the stricter ruling in this case also creates a leniency. According to those who rule that a gentile is not required to observe the laws of Choshen Mishpat, a gentile may not learn these laws, since the Torah prohibits a gentile from studying Torah (see Tosafos, Bava Kamma 38a s.v. karu; cf.; however, the Meiri, Sanhedrin 59a, rules that a gentile who decides to fulfill a certain mitzvah may study the laws of that mitzvah in order to observe it correctly.) However, according to those who contend that the mitzvos of dinim follow the laws of Choshen Mishpat, a gentile is required to study these laws in order to observe his mitzvos properly (Shu"t Rama #10)).

#### John's Dilemma

The rabbis with whom John consulted felt that a gentile could work as a district attorney. However, John had difficulty with this approach. He found it difficult to imagine that G-d would allow man to make such basic decisions and felt it more likely that mankind was expected to observe the Torah's civil code. He therefore gravitated to the opinion of those who held that gentiles are required to observe the laws of Choshen Mishpat. As a result, he felt that he should no longer work in the D.A.'s office, since his job is to prosecute based on laws and a criminal justice system that the Torah does not accept.

To quote him: "It is rare that they have witnesses to prove that the defendant performed a crime. I got involved in the question of whether taped conversations are circumstantial evidence or as good as testimony.

Some rabbis were lenient on this one, which was helpful, since my last couple of cases before I quit as a D.A. involved taped evidence. It soothed my conscience to get a guilty plea out of the guy based on taped evidence. But I knew that I would eventually have to prosecute cases where the accused pleaded innocent and we had no acceptable witnesses who saw the crime."

"What did you do?"

"I decided to 'switch sides' and become a defense attorney, which has a practical advantage because I make a lot more money."

"How do you handle a case where you know that your client is guilty?"

"Firstly, is he guilty according to halacha? Did he perform a crime? Is there halachically acceptable evidence? If there is no halachically acceptable evidence, he is not required to plead guilty. Furthermore, since none of my clients are Noahides or observant Jews, they can't make it to heaven anyway, so let them enjoy themselves here. Even if my client is guilty, the punishment determined by the court is not halachically acceptable. It is very unclear whether jail terms are halachically acceptable punishment for gentiles. Philosophically, I was always opposed to jail time. I think that there are better ways to teach someone to right their ways than by incarceration, which is a big expense for society."

#### Interesting Noahide Laws

"Have you come across any other curious issues?"

"Here is a really unusual question I once raised," John responded. "Am I permitted to vote in the elections for a local judge? According to some authorities, the Torah's prohibition against appointing a judge who is halachically incompetent applies equally to gentiles (Minchas Chinuch #414). Thus, one may not appoint a judge to the bench who does not know the appropriate Torah laws, which precludes all the candidates. When I vote for one of those candidates, I am actively choosing a candidate who is halachically unqualified to judge. I therefore decided that although there are authorities who rule this is permitted, and that therefore it is permitted to vote, I wanted to be consistent in my position. As a result, I vote religiously, but not for judgeships.

#### Becoming Jewish

"John, did you ever consider becoming Jewish?"

"First of all, I know that the rabbis will discourage me from becoming Jewish, particularly since I don't really want to. I know exactly what I am required to keep and I keep that properly. I have no interest in being restricted where and what I eat, and I have no interest in observing Shabbos, which, at present, I may not observe anyway, and that is fine with me (Gemara Sanhedrin 58b). I am very willing to be a 'Shabbos goy'— and I understand well what the Jews need -- but it is rare that I find myself in this role. Remember, I do not live anywhere near a Jewish community.

Although I have never learned how to read Hebrew – why bother, I am not supposed to study Torah anyway – I ask enough questions from enough rabbis to find out all I need to know.

#### In Conclusion

Although it seems strange for a non-Jew to ask a rav a shailah, this should actually be commonplace. Indeed, many non-Jews are concerned about their future place in Olam Haba and, had the nations not been deceived by spurious religions, many thousands more would observe the mitzvos that they are commanded. When we meet sincere non-Jews, we should direct them correctly in their quest for truth. Gentiles who observe these mitzvos because Hashem commanded them through Moshe Rabbeinu are called "Chassidei Umos HaOlam" and merit a place in Olam Haba.

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#### YatedUSA Parshas Noach Parshas Noach 5 Cheshvan 5770

##### Halachah Talk

##### by Rabbi Avraham Rosenthal

##### Noisy Neighbors and Gezel Shainah

Concerning the dor hamabul (the generation that lived during the time of the flood), Chazal tell us (Pesikta Zutrasa, Bereishis 6:5; Rashi, Bereishis 6:13) that the reason it was decreed that it should be destroyed was because

of gezel, theft. Of course, the issur of gezel is a very broad topic and it encompasses many facets. In this week's article we will discuss one of the lesser known aspects of this prohibition, the issur of gezel shainah, or stealing someone's sleep. I say "lesser known," because although just about everyone has heard about this prohibition, most are unfamiliar with it, as there is not too much written about it.

#### Some Common Shailos

Question #1: What type of noise is one permitted to make in his home and what, if anything, is forbidden? Can one sell things out of his apartment, thus causing an increase in noise level to the neighbors due to the customers? Is a drummer permitted to practice in his living room, even though this disturbs the neighbors?

Question #2: Before going out to teach her morning class, Mrs. Stein instructs the babysitter, Hadassah, that she is not to let the baby sleep for more than an hour. This is so that when she comes home from school and her husband from kollel, the baby will lie down for another nap at the same time when the parents want to rest. Is Hadassah allowed to wake up the baby, or does this constitute gezel shainah?

Question #3: Is one allowed to wake someone so that he should perform a mitzvah whose time will soon elapse, e.g., krias Shema or tefillah?

#### Permitted and Prohibited Noise

Before discussing the issur of gezel shainah, let us first see what types of noise producing activities one may or may not do in his home.

The Shulchan Aruch (Choshen Mishpat 156:2) writes that if a person wishes to open a store in his dwelling, the other residents of the courtyard (chatzer) can prevent him from doing so with the argument, "we cannot sleep due to the noise of those entering and those leaving." Even if one previously received permission from all the residents to open the store, they always maintain their right to complain and prevent the storeowner from continuing to sell out of his home. This is because the right of a householder to be able to sleep in his dwelling is integral to home ownership. Therefore, since the disturbance is being generated by an outside factor, i.e., the customers, the storeowner may not infringe on that right.

However, if a person only wishes to use his dwelling as a workshop to manufacture a particular item, but sell the merchandise elsewhere, the halachah is different. In this scenario, the noise is being generated directly by the homeowner, either due to some type of machinery or other tools, as opposed to the previous case where the noise came from customers. On this, the Mechaber and the Rama are divided:

1) According to the Mechaber: Before the craftsman opens the workshop, the residents of the courtyard can prevent him from doing so. On the other hand, once he has opened it, and they did not complain, they have forgone their right to protest, and the workshop can remain open, even if the residents change their minds in the future. In this case we say that the owner of the workshop has a right to use machinery that makes noise in his home. Had the other residents found the noise disturbing, they should have complained immediately (see Sema ad loc.).

2) According to the Rama: As long as the dwelling is not used to sell merchandise and there are no customers, the residents of the courtyard cannot prevent the homeowner from opening a workshop in the courtyard, even if the machines or tools make noise. The only exception to this is where one of the other residents is ill and the noise of the machinery affects his health. This is because in this case the noise of the machinery is having a direct negative effect on the ill resident, and therefore, it is viewed as the craftsman doing him damage (see Shu"t HaRivash #196, the source of the Rama's ruling).

#### Common Household Noises

The poskim maintain that this whole discussion, whether or not residents or ill people can complain about the noise level of a particular dwelling is where that particular noise is not common to the homes in that location. Since generally, most people do not have workshops with loud machinery running in their homes, they are doing something unusual, and the

neighbors have a right to put a stop to it. However, average household noises that are generated by normal, accepted activities are considered to be acceptable, and the other residents may not complain.

The poskim explain that it is obviously permitted for a person to build a house next to his neighbor's dwelling, and move in with his large family. Even if the babies and toddlers wake up crying at night, causing a disturbance, the neighbor cannot protest, as the homeowner is not expected to move out of his house (Chazon Ish, Bava Basra 13:11).

As we said, a person is allowed to make noise in his home as long as that noise is being generated by normal activities for that area. This is true, even if the noise disturbs the sleep of his neighbors. Therefore, it would seem that since it is common for people to play the drums in their homes, one may do so. However, one may not connect it to an amplification system in a residential area if this disturbs the neighbors' sleep, as this is something unusual. Other common household noises, such as stereo systems, food processors, vacuum cleaners and air conditioners would be permitted (Halichos Bein Adam Lechaveiro 13:4).

Determining the hours that one may or may not make unusually loud noises is dependant on local custom. In some places, such as many areas in Eretz Yisroel, it is accepted practice for people to rest between 2:00 and 4:00 in the afternoon. Also, some apartment buildings might have a rule that tenants cannot make unusually loud noise after 11:00 p.m. These local customs must be taken into consideration (Chazon Ish, Bava Basra 13:11; Shu"t Chasam Sofer, Choshen Mishpat #92). Therefore, when planning any type of event in one's home, such as a sheva brachos meal or a Chanukah party, one must see to it that it does not carry on past the accepted time for that area.

#### Ve'asisa hayashar vehatov

The Torah commands us: "Ve'asisa hayashar vehatov be'einei Hashem Elokecha" – "You shall do what is just and good in the eyes of Hashem, your G-d" (Devorim 6:18). Chazal understand this to mean that although a particular act might be completely permissible, nevertheless if one determines that someone might be hurt or might lose as a result, it is preferable to avoid the situation (see Bava Metzia 16b; Ramban, Vayikra 19:2).

Contemporary poskim point out that although there may be situations where one is allowed to make a particular noise at a particular time and place and the neighbors have no halachic right to complain, nevertheless a person should keep in mind "ve'asisa hayashar vehatov" and try and work out some type of compromise (see Halichos Bein Adom Lechaveiro 7:9-10).

Some common examples of this include:

1) One is certainly permitted to rearrange the furniture in his house. Nevertheless, one should refrain from doing so in the evening hours when it is possible that the downstairs neighbors have gone to sleep. Even though it might be accepted practice in that locale to allow normal household noise until 11:00 p.m., nevertheless, one should consider the possibility that the neighbor was exceptionally tired and went to sleep early (Pischei Choshen, Hilchos Geneivah v'Ona'ah, chap. 15, footnote #3).

2) The same applies to using machinery, such as a drill, for household repairs. Consideration should be given to a neighbor who retired early (ibid).

It was related that at the funeral of Rebbetzin Elyashiv, a"h, which took place at night, as per minhag Yerushalayim not to delay funerals unnecessarily, at one point Rav Elyashiv, shlit"a, instructed that they desist from using the sound system for the hespedim. He explained that all of her life, the Rebbetzin was careful not to hang laundry after 10:00 p.m. This was because the pulleys upon which the laundry lines were suspended were rusty and tended to creak. She was concerned that perhaps the noise would wake up a neighbor who had gone to sleep (Halichos Bein Adom Lechaveiro chap. 7, footnote #16).

3) Many people are often unaware that their normal household routine is disturbing their neighbor, and the neighbor is embarrassed to say anything. This could include the type of house-shoes one wears, as there are some types that, unbeknownst to the wearer, make a tremendous racket in the

downstairs apartment (Pischei Choshen, Hilchos Geneivah v'Ona'ah chap. 15, footnote #3).

### Household Noises versus Gezel Shainah

It must be pointed out that there is a major difference between what we have been discussing until now, i.e., which types of noises can or cannot be made in one's home, and between gezel shainah. When it comes to what types of noise, the issue does not revolve around whether the noisy party can or cannot make noise, for if we were to forbid him from making normal household noises that disturb a neighbor's slumber, in all likelihood, he would have to move out – something that we will not make him do, as he will not be able to live anywhere. Rather, the issue is whether the inconvenienced neighbor has a right to protest against the racket.

Concerning gezel shainah, however, where the raucous neighbor is intentionally making noise in order to wake someone, it would seem that that is forbidden. The question that we must discuss now is: what is the source of this prohibition?

### The Source of the Prohibition

The issur of gezel shainah is not mentioned anywhere in Shas, Rishonim or Shulchan Aruch. Rather, the Acharonim find basis for this prohibition because of four reasons:

1) “V'lo sonu ish es amiso, v'yorasia mei'elokecha, ki ani Hashem elokeichem - Each of you shall not aggrieve his fellow, and you shall fear your G-d; for I am Hashem, your G-d” (Vayikra 25:17). This is a mitzvah in which we are warned not to say or do anything that might cause pain, discomfort or embarrassment to another Jew. Although the Gemara (Bava Metzia 58b) specifically mentions that this mitzvah is referring to ono'as devorim – causing discomfort through speech, it is logical to assume that actions that cause distress are forbidden as well (Pischei Choshen, Hilchos Geneivah v'Ona'ah 15, footnote #3).

2) “V'avavto l'rei'acho komocha - You shall love your fellow as yourself” (Vayikra 19:18). As is well-known, this mitzvah precludes us from doing anything to someone else that we would not want done to ourselves (see Shabbos 31a and Maharsha ad loc.).

3) The Gemara states (Shabbos 128b) that it is forbidden min haTorah to cause unnecessary pain to animals. It goes without saying, then, that one may not cause pain to a human being (see Torah Temimah, Bamidbar 20:8, footnote #10).

4) By disturbing someone's slumber, one is preventing that person from receiving a particular benefit. In order to understand this, a brief introduction is required.

The Shulchan Aruch (Choshen Mishpat 420:11) discusses a situation where someone forcibly prevented another person from going to work. For example, he grabbed him, threw him into a room and locked the door. In this situation, the perpetrator must reimburse the fellow who he locked up for his lost wages. However, if the person was already in a room, and someone merely locked the door, preventing him from leaving, he does not have to reimburse him monetarily, but there will be a settling of accounts in Beis Din shel Maalah. The reason for the distinction in the two cases is because the second case is a situation of “grama,” or an indirect method of causing damage.

Additionally, there is another concept called “mevatel kiso shel chaveiro,” which literally means to cause someone's money to remain idle. One of the situations that this refers to is where Reuven gives Shimon a sum of money and instructs him to buy particular merchandise, and Shimon does not fulfill the instructions. If that merchandise's price were to go up, Reuven would suffer a loss of potential profit due to Shimon's laziness. Unfortunately, Reuven cannot claim anything from Shimon, as the loss was indirect (gramma) [see Yerushalmi Bava Metzia 5:3].

A person who has had a good night's rest is more alert and productive than someone who has not. Thus it would seem that although disturbing someone's sleep is not exactly the same as mevatel kiso or locking him in a room and thereby preventing him from going to work, the cases are similar. And although no monetary remuneration can be demanded, as it is indirect, Beis Din shel Maalah will definitely have something to say on the

matter (see article on Gezel Shainah by Rav Akiva Moshe Sheinberger, Otzros Yerushalayim, vol. III, 5761, pp. 125-133).

### Applying the Reasons

Let us now discuss in which situations the above-mentioned reasons apply. Concerning the prohibition of not causing someone aggravation or pain, it would seem obvious that if someone does something to his friend, not to aggravate him, but rather for his friend's benefit, the prohibition does not apply. This is evident from a statement of Rashi. The pasuk commanding this mitzvah states: “And you shall fear your G-d” (Vayikra 25:17). In explaining why the Torah needed to add these words, Rashi comments that if one will ask, “Who knows whether I had ill-intent [in causing pain]?” For this reason the Torah adds, “And you shall fear your G-d,” as Hashem knows one's intention. It is apparent from this that one can cause aggravation with a positive intent as well.

In defining the parameters of the mitzvah to love one's fellow as oneself, the Sefer Hachinuch (#243) mentions that one may not “knowingly” cause pain to his friend. This would seem to imply that in order to transgress this mitzvah one must cause pain for the sake of causing pain. However, if he has another intent in mind, e.g., for the other person's benefit, he may do so.

The third reason we cited why it is forbidden to wake someone up is because of tzaar baalei chaim, i.e., if it is forbidden to cause pain to an animal, it is certainly forbidden to do so to a human being. It must be noted that the entire rationale of applying the concept of tzaar baalei chaim to humans is based on “ve'avavta lere'acha kamocha” (see Shu"t Radvaz, vol. II, #728). It follows then, if one wishes to cause pain to someone for a positive purpose, and not for the sake of causing pain, the prohibition of tzaar baalei chaim does not apply.

Concerning the fourth and last basis for the prohibition of gezel shainah, preventing someone from receiving a particular benefit, it is obvious that this does not apply where there is a greater benefit to be gained.

### The Bottom Line

Based on the above, we can say that waking up an adult needlessly runs afoul of all four reasons that we cited. When it comes to waking up a child, only the first three reasons are applicable, as he is not employed and one is not preventing him from having a productive day.

If one wishes to wake up someone for a particular purpose, it will depend on how great the benefit in waking up is. If there is a great benefit and the one woken up will definitely be happy that his benefactor helped him, none of the reasons apply, and one may wake him. However, if there is a benefit (either for the one sleeping or for someone else), but not necessarily a great one, and the one sleeping would rather remain asleep, although the first three reasons do not apply, the fourth does, and it is forbidden to wake him.

### Instructions to the Babysitter

It would seem, then, that the babysitter is allowed to follow the mother's instructions and wake up the baby. Since this is being done for the benefit of the parents, the first three reasons do not apply, and as we have said, the fourth reason does not apply to children. Additionally, it must be pointed out that the parents' being able to have a nap, not only benefits them, it benefits the baby as well, as they will be calmer and more able to deal with the child (see article on Gezel Shainah by Rav Akiva Moshe Sheinberger, Otzros Yerushalayim, vol. III, 5761, pp. 125-133).

### Waking up for a Mitzvah

Many of the poskim write that it is permissible to wake someone up in order to perform a mitzvah. Not only is this true for the sake of a mitzvah mid'oraisa, such as krias Shema, but also for a mitzvah derabbanan (Shulchan Aruch Orach Chaim 63:5; Mishnah Berurah 55:34).

In Hilchos Chanukah, the Mishnah Berurah takes this one step further. The halachah is that if one comes home late at night on Chanukah and he has not yet lit the Chanukah candles, he may light even though there is no one awake. However, the Mishnah Berurah maintains (672:11 and Shaar Hatziyun ad loc.) that he is allowed to wake up his family in order to

perform the mitzvah in the best possible way. The assumption is that they will be happy to join in and thereby allow their family member to perform the mitzvah beiddur.

If we all try and be more considerate of our neighbors' slumber, then we will all sleep soundly.

This writer found the article on Gezel Shainah by Rav Akiva Moshe Sheinberger, (Otzros Yerushalayim, vol. III, 5761, pp. 125-133) helpful in the preparation of this article.

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**Talmudigest :: TalmuDigest :: Bava Batra 64 - 71**  
**For the week ending 24 October 2009 / 5 Heshvan 5770**  
**by Rabbi Mendel Weinbach**

The Attitude of a Seller - Bava Batra 65a

"In place of your fathers shall be your children" (Tehilim 45:17).

This promise of King David to all of his people is cited as an argument in a dispute between two brothers who divided the estate inherited from their

father. They each took one of the two adjoining fields. In his lifetime the father had access to the inner field through a path in the outer one. The heir of the outer one now wishes to deny his brother that same access unless he pays him for this right to trespass on his property.

It is suggested in our gemara that the reasoning of the Sage Rav in championing the right of the brother to access through the other brother's field is based on the claim that he wishes to use that field in the very same fashion that his father did, a privilege indicated in the above-cited passage.

The conclusion of the gemara, however, is that Rav's position is actually based on an assumption which extends to other forms of litigation. This assumption of human nature is that one who sells property does so with a "good eye" – a generous attitude. Just as when one sells to another a cistern in his field we can assume that he also grants him free access to it through his field, so too do we assume that brothers who divide their inheritance also generously grant access to one another.

What the Sages Say

"When one gives a gift he does so with a 'good eye' – a generous attitude."

•Gemara - Bava Batra 65a