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## INTERNET PARSHA SHEET ON TOLDOS - 5768

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### Einayim L'torah Parshas Toldos 5766.

**By: Rabbi Hershel Schachter**

#### **Taxation\_and\_Dina\_Demachusa'**

In the days of the Talmud taxes were collected for the purpose of enriching the king. Based on the Parshas HaMelech in Sefer Shmuel, the Rabbis formulated the principle of dina demalchusa dina, literally, the "law of the land is the law": everyone must pay taxes. In Shulchan Aruch, the Rishonim are quoted as having pointed out that if the taxes are unfair, or discriminatory (which is also unfair,) this would not constitute "dina" demalchusa – "the law of the land," but rather "gazlanusa" demalchusa – "the embezzlement of the land," and such tax laws are not binding. A system of graduated income tax is considered fair and reasonable.

There was a theory among some of the Baalei HaTosfos that the idea behind paying taxes is the principle of rent. The land of each country belongs to the ruler (or the government) of that particular country, and the owner of any real estate is entitled to charge rent from all those who want to live on their property. The one exception to this rule (according to this view) is Eretz Yisroel, which the Torah declares belongs to Hashem. Since Hashem is the true property owner, and he has encouraged all of Bnei Yisroel to live in Eretz Yisroel, no government in control there ever has the right to charge taxes (rent,) because they are not the rightful landlord. The Landlord (with a capital "L") has granted permission for all of Bnei Yisroel to live in His country (what is called the "paltin shel melech" – "the palace of the king.) This view is quoted by the Ran in his commentary to Nedarim. There are many religious people who are not that knowledgeable of any other comments made by the Ran in his commentary on Nedarim, either before or after this and are only familiar with this one position of the Ran. The truth of the matter is that not only has this view not been accepted in Shulchan Aruch, it didn't even gain honorable mention. The Shulchan Aruch quotes verbatim from the Rambam that one is obligated to pay taxes both in Eretz Yisroel as well as in other countries.

It is important to note that today the basis for taxation is totally different from what it was in Talmudic times. Today, all modern countries provide a variety of services: They provide streets and highways, and maintain forests and museums. They provide fire, police, and military protection. They collect garbage and deliver mail. They do medical research to discover cures for diseases, etc. The taxes are collected for the purpose of covering the

annual budget, which pays for all of these projects. The halacha views all of the people living in the same neighborhood as "shutfim" – "partners," sharing a common need for a shul, yeshiva, mikveh and an eruv, and therefore, the "partners" can force each other to put up the needed amount to further their partnership. So too, all people who live in the same city, state, and country are considered "shutfim" with respect to the services provided by that city, state, and country. The purpose behind the taxes is no longer "to enrich the king" in the slightest. In addition to all the other expenses, the government officials have to be paid as well, but it is because they serve as the employees of all the citizens for the purpose of looking after all these services, and seeing to it that they are properly taken care of. In our modern world, one who does not pay his proper share of taxes is no longer viewed as cheating the king (or the ruler) of the country, but rather as cheating (i.e. stealing from) his partners. The amount of money not paid by the one who cheats will have to be taken care of by having the rest of the "partners" put up more money from their pockets to cover all the expenses of the partnership. And even if much of the tax money goes towards expenditures that are not to one's personal liking and that one gets nothing out of, such is the halacha of any partnership: the majority of the partners have the right to determine what are the reasonable needs of the partnership. Therefore, this majority has the legitimate right to force the minority to contribute their share towards properly furthering the partnership.

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### **Rabbi Eli Baruch Shulman**

Toldos 5761

The charges of a stolen election electrified the atmosphere this week. By right and presumption the high calling was his, and he was being deprived of it by chicanery and deceit. He should be the elect, the one called to the bechorah; and Yaakov had tricked him out of it.

Many meforshim wrestle with the question of how Yitzchok could have been so mistaken in Esav; how could he have possibly thought that that Esav, the hunter, the man of the field, was more worthy of the mantle of leadership than the saintly Yaakov, the ish tam, the dweller in the tents of Torah?

There is, in fact, a very cryptic statement of Chazal, which Rashi quotes, which describes how Esav tricked Yitzchak; how he misled him into believing him to be worthy of the berachos. Chazal say that Esav would ask his father: How does one take ma'aser from salt and from straw? And Yitzchak was impressed with Esav's deep piety.

Now this Midrash seems very strange. Everybody knows that ma'aser is taken only from produce; from fruits and vegetables and grains. All that's impressive here is Esav's ignorance!

To understand this Midrash we need to take note of a very remarkable fact. It has been noted by many meforshim that when Yaakov disguised himself as Esav and came to his father, the blessings that his father gave him were entirely and exclusively physical ones: tal hashamayim ushmanei haaretz; the dew from the sky and the fat of the earth. But later, at the end of the parsha, when Yaakov took leave of his father and set out for Lavan's home, his father – knowing him now to be Yaakov, and not Esav – says to him ve'yiten lecha es birkas Avraham; he passes Avraham's spiritual legacy on to Yaakov.

It would seem that Yitzchak knew well that the spiritual inheritance of Avraham Avinu belonged to Yaakov, the ish tam yosehv ohelim, who dwelled innocently in the tents of Torah. What Yaakov wanted to give to Esav, what he believed would be better given to Esav, were the physical blessings, the bounty of tal hashamayim ve'shmanei ha'aretz.

Because Yitzchak knew that the spiritual pursuits to which Yaakov was called, and the cultivation of this world, could not easily be combined. A person whose energy and talents are poured into the pursuits of this world

has that much less of himself to give to Torah; the talents that worldly success requires are different and sometimes opposite to the qualities that are required for Avodas Hashem; and the allure of this world pulls in the opposite direction than does the Torah.

And therefore Yitzchak believed that he had been given two children – Yaakov and Esav – in order that they divide these worlds between them. Let Yaakov stay in his tent and live a life of contemplation and study; and let Esav, the man of the field, contend with this world and provide for his studious brother Yaakov. And in this way Yaakov would be able to devote himself fully, totally, to his spiritual calling and, at the same time, Esav's worldly pursuits would be elevated – would be given meaning and dignity and purpose – by the fact that they were being used to support Yaakov.

This was Yaakov's scheme and it was a good one; indeed, it was so good that ultimately it will come to fruition when, as the navi Yeshaya foretells, *ve'omdu zarim ve'rav tzonchem u'venei neichar ikareichem ve'kormeichem*; and strangers shall tend your sheep and farms and vineyards, and the Jewish People will devote themselves entirely to the study of Torah.

The mistake, however, lay in thinking that Esav was ready to play such a supporting role. And Esav encouraged the error, as Rashi says, by asking his father how to take *ma'aser* from salt and from straw. The meaning of this question lies in the fact that straw – the stalks of grain – are what support the fruit – the kernel – and nurture its growth. And salt, in the ancient world, was primarily a preservative, which protected against spoilage. And so Esav was intimating to his father that he was willing to play the role of straw and salt – to be the enabler, the one who would preserve Yaakov and protect him; and by doing so, he would elevate what straw and salt represent, he would elevate the pursuit of this world by giving it spiritual purpose, and bring it thereby into the realm of *keduasha*, thus allowing it, so to speak, to be tithed.

Rivka, however, saw through the duplicity. Perhaps because she had grown up in Lavan's house, perhaps for some other reason, she saw through Esav; she realized that he would never be willing to play a supporting role to Yaakov. Were Esav given the berachos, she saw, Yaakov would be left to starve. And so she saw to it that the berachos would go to Yaakov, so that he could carry both burdens; giving some of himself up to the pursuits of this world, to herds and fields and markets, even as he reserved his best energies and enthusiasm for Torah. Either Yaakov would have to divide his time between beis medrash and marketplace, or he would have to divide his children: sending Zevulun out into the world of commerce, and Yissachar off to Yeshivah. Either way would be an uneasy compromise; and either way he would have to constantly remind himself – in the words of the Mishnah - *asei Torascha kva u'melachtecha aria*, to give primacy to Torah, to remember that the burden of Torah is the one that is truly ours, while the other burden is only borrowed from Esav.

And so it is that we, Yaakov's children, find ourselves living in two worlds; coping both with the demands of physical existence and with the demands of Torah. Only on Shabbos do we have something of a respite, a time when we can devote ourselves completely to Yaakov's true calling, to Torah and avodah. But with the close of Shabbos we gird ourselves with the berachos of *ve'yiten lecha* – the berachos that should have gone to Esav – and take up, again, our double burden. But never should we forget which burden is really ours and which is the one we have only borrowed from Esav; until such time as we can lay it down again and give ourselves up completely to that which is truly ours.

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### **Rabbi Frand on Parshas Toldos**

#### **Such Is The Power of Cynicism**

The pasuk says: "And these are the generations of Avraham: Avraham gave birth to Yitzchak" [Bereshis 25:19]. Rashi is bothered by the fact that "Avraham gave birth to Yitzchak" merely restates something we already

know. Furthermore, why does the Torah go back and trace the family lineage from Avraham when introducing the offspring of Yitzchak?

Rashi answers that the cynics of the generation (*leitzanei hador*) contended that Sarah became pregnant from Avimelech. "She lived many decades with Avraham and had not become pregnant from him." To counteract this cynicism, G-d fashioned Yitzchak's appearance to be identical to that of Avraham. It was immediately obvious to anyone who saw Yitzchak that "Avraham fathered Yitzchak."

Many times children look like their parents. It is possible to meet someone for the first time and immediately recognize him as being the son of an individual who is well known to you. In this case, the identical appearance of the father– son pair was more overt than even that. The Medrash states that G-d made a "miracle" to make this happen. The appearance of Yitzchak was so exactly like that of his father that it was miraculous!

The Gemara [Bava Metziah 87a] describes that Avraham made a party to mark the occasion of the weaning of Yitzchak, to which he invited all the great men of the generation. Avraham Avinu was not just a private citizen. He was society's primary proponent of monotheism. He rejected the pagan idols of the rest of the world and proclaimed the existence of a Master of the Universe.

Avraham Avinu wanted to sanctify the Name of G-d (Kiddush Hashem) and publicize the great miracle that G-d did for him. Avraham made this big celebration for just that purpose, but the cynics were sitting there having a field day. They joked that Yitzchak could not possibly be Avraham's child. Sarah must have become pregnant from Avimelech. We know how it goes: A roll of the eyes, a twist of the nose, a mocking smile.

In truth, this cynicism was illogical. They were saying that "Sarah was pregnant from Avimelech" because he could not possibly be Avraham's child. The wonder here wasn't that Avraham had fathered a child. Avraham had already fathered a son from Hagar! The wonder was that Sarah, barren all her life, indeed conceived after she reached the age of ninety!

What then was the nature of this cynicism? Why did G-d respond in such a miraculous fashion to counteract this patently false type of mocking?

The point is that cynicism (*leitzanus*) has exactly this power. Cynicism does not need to be precise or accurate. The effect of a "one-liner" is basically that of a pin that, in a moment, bursts the balloon. The "press" will write it up. The fact that anyone with intelligence who thinks about this for 30 seconds will recognize it as nonsense is irrelevant. The damage has already been done. Such is the power of *leitzanus*.

Allowing this momentary bursting of the balloon of Kiddush Hashem would have defeated Avraham's entire purpose in making the party. Thus, G-d needed to make a miracle to restore the inspirational nature of this festive meal.

The Mesilas Yesharim writes in Chapter 5: "With the smallest joke, a person can deflect from himself the greatest amount of inspiration and enthusiasm. One joke pushes away 100 rebukes."

Consider the Biblical incident of Eliyahu at Mt. Carmel [Melachim I Chapter 18]. Eliyahu duels with the prophets of Baal. He is trying to prove that idols are false and that the Almighty is the Only G-d. He brings down fire from heaven to consume his offering, after the prophets of Baal fail miserably when calling out to their gods.

All Eliyahu had to do was to cry out "Answer me, my G-d, Answer me." (*Anneini Hashem Anneini*). Why the repetition of the word "Answer me"? Chazal explain that Eliyahu offered a dual prayer: (1) Answer me, G-d, that a fire will come down from Heaven; and (2) Answer me, that the people not say that my actions were witchcraft (*ma'aseh keshafim*). In other words, "G-d, please save me from the cynics." Save me from the proverbial guys in the back of the shul that no matter what the Rabbi says, no matter what happens, always have a "one-liner" to make a mockery out of anything inspirational or thought provoking.

Eliyahu was worried that he might be able to bring down fire from Heaven and have everyone shout "Hashem is the L-rd! Hashem is the L-rd!"... and that one cynic might undermine it all by saying: "Eh. It's magic!" That is

what Eliyahu was worried about and that is what the Almighty was worried about when he miraculously made Yitzchak look exactly like Avraham. Such is the destructive power of leitzanus. The Almighty felt that it was imperative to combat it, even at the cost of making a miracle.

This write-up was adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Torah Tape series on the weekly Torah portion. The complete list of halachic topics covered in this series for Parshat Toldos are provided below: These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape #569, Yichud With Relatives. Tapes or a complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyciel.org or visit <http://www.yadyciel.org/> for further information. Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD. RavFrand, Copyright © 2007 by Rabbi Yissocher Frand and Torah.org. To support Project Genesis - Torah.org, please visit <http://www.torah.org/support/>. Join the Jewish Learning Revolution! Torah.org: The Judaism Site brings this and a host of other classes to you every week. Visit <http://torah.org> or email learn@torah.org to get your own free copy of this mailing. Need to change or stop your subscription? Please visit our subscription center, <http://torah.org/subscribe/> -- see the links on that page. Permission is granted to redistribute, but please give proper attribution and copyright to the author and Torah.org. Both the author and Torah.org reserve certain rights. Email copyrights@torah.org for full information. Torah.org: The Judaism Site Project Genesis, Inc. 122 Slade Avenue, Suite 250 Baltimore, MD 21208

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Toldot

Around the gaps, silences and seeming repetitions of the biblical text, Midrash weaves its interpretations, enriching the written word with oral elaboration, giving the text new resonances of meaning. Often, to the untutored ear, midrash sounds fanciful, far removed from the plain sense of the verse. But once we have learned the language and sensibility of midrash, we begin to realise how deep are its spiritual and moral insights.

One example was prompted by the opening verse of today's sedra: "And these are the generations of Isaac, son of Abraham: Abraham begat Isaac." The problem is obvious. The first half of the sentence tells us that Isaac was the son of Abraham. Why does the text repeat, "Abraham begat Isaac"? Listening to apparent redundancy of the text in the context of the whole Abraham-Isaac narrative, the sages offered the following interpretation:

The cynics of the time were saying, "Sarah became pregnant through Abimelech. See how many years she lived with Abraham without being able to have a child by him." What did the Holy One blessed be He do? He made Isaac's facial features exactly resemble those of Abraham, so that everyone had to admit that Abraham beget Isaac. This is what is meant by the words, "Abraham begat Isaac", namely that there was clear evidence that Abraham was Isaac's father. (Rashi to Gen. 25: 1, on the basis of Baba Metzia 87a) This is an ingenious reading. The opening of Genesis 21 speaks of the birth of Isaac to Sarah. Immediately prior to this - in Genesis 20 - we read of how Sarah was taken into the harem of Abimelech, king of Gerar. Hence the speculation of the sages, that gossips were suggesting that Abraham was infertile, and Abimelech was Isaac's father. Thus the double emphasis: not only in fact was Abraham Isaac's father, but also everyone could see this because father and son looked exactly alike.

But there is a deeper point at stake. To understand it we need to turn to another midrash, this time on the opening verse of Genesis 24:

And Abraham was old, well advanced in years: and the Lord had blessed Abraham in all things. Again there is a problem of an apparent superfluous phrase. If Abraham was old, why does the verse need to add that he was well advanced in years? The rabbis noticed something else, that Abraham (and Sarah) are the first people in the Torah described as being old - despite

the fact that many previously mentioned biblical characters lived to a much greater age. Putting these two facts together with the tradition that Abraham and Isaac looked identical, they arrived at the following interpretation:

Until Abraham, people did not grow old. However [because Abraham and Isaac looked alike] people who saw Abraham said, "That is Isaac", and people who saw Isaac said, "That is Abraham." Abraham then prayed to grow old, and this is the meaning [of the phrase] "And Abraham was old." (Sanhedrin 103b). The close physical resemblance between Abraham and Isaac created unexpected difficulties. Both father and son suffered a loss of individuality. Nor is this pure speculation. Examine Genesis carefully, and we see that Isaac is the least individuated of the patriarchs. His life reads like a replay of his father's. He too is forced by famine to go to the land of the Philistines. He too encounters Abimelech. He too feels impelled to say that his wife is his sister (Gen. 26). He re-digs the wells his father dug. Isaac seems to do little that is distinctively his own.

Sensitive to this, the rabbis told a profound psychological story. Parents are not their children. Children are not replicas of their parents. We are each unique and have a unique purpose. That is why Abraham prayed to G-d that there be some clear and recognizable difference between father and son.

Does this have any contemporary relevance? I think it does: in relation to a new medical technology, eugenic or reproductive cloning. Cloning - the method of nuclear cell transfer pioneered by Dr Ian Wilmut in the experiment that created Dolly the sheep in 1997 - raises profound issues of medical ethics, especially in relation to humans.

It is far from certain that it ever will be. Animal experiments have shown that it involves a high degree of risk, and may always do so. Cloning apparently disturbs the normal process of "genomic imprinting" by which the genes on the chromosomes from one of the parents are switched on or off. Many scientists are convinced that mammalian cloning is an intrinsically flawed process, too unsafe ever to be used in human reproduction.

However, cloning is not just another technology. It raises issues not posed by other forms of assisted reproduction such as artificial insemination or in vitro fertilisation. Nuclear cell transfer is a form of asexual reproduction. We do not know why it is that large, long-living creatures reproduce sexually. From an evolutionary point of view, asexual reproduction would have been much simpler. Yet none of the higher mammals reproduce asexually. Is this because only by the unpredictable combination of genetic endowments of parents and grandparents can a species generate the variety it needs to survive? The history of the human presence on earth is marked by a destruction of bio-diversity on a massive scale. To take risks with our own genetic future would be irresponsible in the extreme.

There is another objection to cloning, namely the threat to the integrity of children so conceived. To be sure, genetically identical persons already exist in the case of identical twins. It is one thing, though, for this to happen, quite another deliberately to bring it about. Identical twins do not come into being so that one may serve as a substitute or replacement for the other. Cloning represents an ethical danger in a way that naturally occurring phenomena do not. It treats persons as means rather than as ends in themselves. It risks the commoditisation of human life. It cannot but transform some of the most basic features of our humanity.

Every child born of the genetic mix between two parents is unpredictable, like yet unlike those who have brought it into the world. That mix of kinship and difference is an essential feature of human relationships. It is the basis of a key belief of Judaism, that each individual is unique, non-substitutable, and irreplaceable. In a famous Mishnah the sages taught: "When a human being makes many coins in a single mint, they all come out the same. G-d makes every human being in the same image, His image, yet they all emerge different."

The glory of creation is that unity in heaven creates diversity on earth. G-d wants every human life to be unique. As Harvard philosopher Hilary Putnam put it: "Every child has the right to be a complete surprise to its

"parents" - which means the right to be no-one else's clone. What would become of love if we knew that if we lost our beloved we could create a replica? What would happen to our sense of self if we discovered that we were manufactured to order?

The midrash about Abraham and Isaac does not bear directly on cloning. Even if it did, it would be problematic to infer halakhah from aggadah, legal conclusions from a non-legal source. Yet the story is not without its ethical undertones. At first Isaac looked like a clone of his father. Eventually Abraham had to pray for the deed to be undone.

If there is a mystery at the heart of the human condition it is otherness: the otherness of man and woman, parent and child. It is the space we make for otherness that makes love something other than narcissism and parenthood something greater than self-replication. It is this that gives every human child the right to be themselves, to know they are not reproductions of someone else, constructed according to a pre-planned genetic template. Without this, would childhood be bearable? Would love survive? Would a world of clones still be a human world? We are each in G-d's image but no one else's.

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### **Heter Mehirah - Part 1** **by Rabbi Chaim Jachter**

#### **Introduction**

One of the most controversial Halachic issues in modern times has been the Heter Mehirah, the sale of Israeli farmland to a Nochri to avoid the prohibition of working the land during the Shemittah year. Since the Shemittah year of 1888-1889 (the first Shemittah of the modern return to Zion), the Halachic propriety of the Heter Mehirah has been vigorously debated by the Halachic authorities of each generation. The Beit HaLevi, Netziv, Aruch HaShulchan, Ridbaz, Chazon Ish, and Rav Yosef Shalom Elyashiv are among the many authorities who oppose the sale. Rav Yitzchak Elchanan Spektor, Rav Kook, Rav Tzvi Pesach Frank, Rav Yechiel Michel Tukachinsky, Rav Shlomo Yosef Zevin, and Rav Ovadia Yosef are among the many Poskim who approve of the sale under certain circumstances. No consensus has emerged regarding this issue. Many observant Jews rely on the Heter Mehirah and many do not. In the coming issues, we will briefly survey the major points of debate in this historic dispute. A lengthier survey written by Rav Shlomo Yosef Zevin appears in LeOr HaHalacha (pages 112-127).

It is vital to emphasize that even the proponents of the Heter Mehirah do not seek to establish it as a permanent feature of Jewish life (unlike the sale of Chameitz before Pesach). Rav Avraham Yitzchak HaKohen Kook, for example, writes:

This is merely a temporary measure (Horaat Shaah) that we implemented only because of the overwhelming need to do so. G-d forbid that one should consider annulling a great and central Mitzvah such as the holiness of Shemittah unless it is a matter of life and death, such that if we do not sell the land many will die of starvation and the fledgling new Jewish settlement in Eretz Yisrael will be destroyed. However, at a time that a competent Beit Din will conclude that the sale is not necessary and that the nation can observe Shemittah without endangering lives, then G-d forbid that the sale should take place in such circumstances.

#### **Why is the Heter Mehirah So Controversial?**

One could ask a fundamental question regarding this dispute. The Gemara is replete with examples of avoiding a Halachic prohibition by transferring title of ownership of a particular item (Maaser Shenai 4:5, Tosefta Pesachim chapter 2, Beitzah 17a, and Nedarim 48a). In fact, the Gemara (Bechorot 3b) even encourages selling an animal to a Nochri before it gives birth for the first time to avoid the restrictions regarding a Bechor (firstborn). Moreover, Mehirat Chameitz has developed into a yearly routine in observant communities.

A basic answer is that there is no explicit precedent in the Gemara for a sale to avoid Shemittah restrictions. In fact, there are at least three major points of criticism that may account for the absence of an explicit Talmudic precedent for the sale. The first is that Halacha forbids the sale of Israeli real estate to Nochrim. The second point of dispute is the contention that the sale is a charade and thus invalid. The third criticism is that a Nochri's ownership of Israeli land does not remove Shemittah prohibitions from that land.

Moreover, almost none of the sales referred to earlier have the effect of abrogating an entire Mitzvah from the Torah. Chazal encourage the sale of the animal that is about to give birth for the first time only due to the great difficulty of observing the laws regarding the Bechor today, when we do not have a Beit HaMikdash. The opponents of the Heter Mehirah argue that this sale, on the other hand, flippantly eliminates a Torah prohibition. We will now begin to examine these three major challenges to the validity of the Heter Mehirah.

#### **The Prohibition to Sell Israeli Land to Nochrim**

The Torah presents the prohibition of "Lo Techaneim," "Do not show them favor" (Devarim 7:2), concerning the seven nations that Bnei Yisrael were commanded to conquer upon entering Eretz Yisrael. The Gemara (Avodah Zara 20a) explains that this prohibition has three branches: not to extend gratuitous compliments to them (see Teshuvot Tzitz Eliezer 15:47 and Nishmat Avraham Y.D. 151:1 for further discussion of this issue), not to give gratuitous gifts to them, and not to sell them land in Israel. Tosafot (ad. loc. s.v. DeAmar) write that these prohibitions most likely apply to all Nochrim, not only the seven nations.

, the Netziv (Teshuvot Meishiv Davar Y.D. Kuntress Devar HaShemittah) rejects the Heter Mehirah because it is forbidden to sell Israeli land to a Nochri. In fact, the Netziv asserts, selling the farmland to a Nochri is a more severe prohibition than failing to observe Shemittah, because Lo Techaneim is undoubtedly a biblical prohibition, while many authorities rule that Shemittah today is only a rabbinic obligation. The Netziv described the situation as "Running from a wolf and encountering a lion." The proponents of the Heter Mehirah respond that selling farmland to avoid Shemittah does not violate Lo Techaneim. They note that some authorities (such as the Bach, Choshen Mishpat 249) rule that this prohibition does not apply to a monotheistic Nochri, such as a Moslem. I have heard that the Israeli Chief Rabbinate is particular to sell the land to a Moslem for this reason.

Another reason why the sale may not violate Lo Techaneim is that it is only a temporary one. Since the time of Rav Yitzchak Elchanan Spektor, the sale has only been for a two-year period. The proponents of the Heter Mehirah point out that the Rambam (Hilchot Avodah Zara 10:4) writes, "Why are we forbidden to sell them land? Because the Torah states Lo Techaneim, that one may not give them a resting place in the Land. If they do not have land, then their residence in Israel shall be temporary." The proponents of the sale argue that it is unusual for the Rambam to offer the reason for a Mitzvah in his Mishneh Torah. The Rambam presents the reason for this prohibition, they argue, because the prohibition applies only when the reason applies (see, however, Rav Yitzchak Twersky's Introduction to the Code of Maimonides pages 407-514 for a different appraisal of the Taamei HaMitzvot that the Rambam included in Mishneh Torah). Thus, since the sale is only temporary in nature, Lo Techaneim does not apply, since the Nochri is not presented with the opportunity to reside permanently in Israel (see Rav Kook's Shabbat HaAretz 58 and Rav Aharon Lichtenstein's thoughts presented in Tradition Spring 2007 page 23).

A precedent for this ruling is a seventeenth century responsum written by Rav M. Robbio, the Rav of Chevron (Teshuvot Shemen HaMor, Yoreh Deah 4). This responsum permitted the sale of a vineyard to a Nochri prior to Shemittah for a period of two years. It is reported that Rav Yitzchak Elchanan considered this ruling a vital precedent for his approval of the Heter Mehirah. Teshuvot Yeshuot Malko (number 55) adds that the Heter

Mechirah is in fact conducted with the intention of preserving the Jewish presence in Eretz Yisrael. When a sale to a Nochri enhances the Jewish presence in Israel, the prohibition of Lo Techaneim does not apply.

The Chazon Ish (Shviit 24:1-4) flatly rejects these lenient rulings regarding Lo Techaneim. He writes, "One cannot make exceptions to the Torah's rules." In fact, the Chazon Ish adds that since the sale is forbidden, if one appoints an agent to sell the land, the sale is void. This is an application of the Talmudic teaching "Ein Sheliach LeDvar Averiah," loosely translated as "The laws of agency do not apply to an agent who is appointed to perform a forbidden act." Accordingly, since individual farmers appoint the Israeli Chief Rabbinate as their agent to sell the land, the sale is invalid according to the Chazon Ish, since the Rabbinate is violating the Torah by selling the land to a Nochri.

There are at least three potential responses to the "Ein Sheliach LeDvar Averiah" argument of the Chazon Ish. First, the Chazon Ish assumes that Ein Sheliach LeDvar Averiah implies that the agency is invalid. Others assert that this rule implies only that the agent, but not the one who appointed him, is viewed as the sinner. These authorities claim that the agency remains valid despite the sin committed by the agent. The Aruch HaShulchan (Even HaEzer 141:139) writes that many authorities rule that the agency remains valid despite the Halachic violation and that this dispute has not been resolved and remains in doubt. (This dispute is based on the two opinions that appear in Tosafot, Bava Metzia 10b s.v. DeAmar LeYisrael.)

A second response to the Chazon Ish is that the Maharshal (cited and rejected by the Shach C.M. 348:6) rules that if the agent does not realize that he is performing a sin, the rule of Ein Sheliach LeDvar Averiah does not apply. The Israeli Chief Rabbinate obviously does not believe that it is sinning when it sells the farmland to a Nochri, and the sale is therefore valid (even if it is in fact forbidden).

A third response is that the Rama (C.M. 388:15) rules that if it is "established" that this agent will perform the transgression, then Ein Sheliach LeDvar Averiah does not apply. The Israeli Chief Rabbinate has undoubtedly established the fact that it engages in the Heter Mechirah. Although the Shach (C.M. 388:67) vigorously disputes this ruling of the Rama, one might be able combine these three arguments in addition to the possibility that the Rabbinate does not violate Lo Techaneim at all to argue that the sale of the farmland to the Nochri is valid.

Next week, we will (IY"H and B"N) complete our survey of the historic dispute regarding the Halachic viability of the Heter Mechirah.

Parshiot BeHar-BeChukotai 24 Iyar 5767 May 12, 2007 Vol.16 No.30

## Heter Mechirah - Part 2

by Rabbi Chaim Jachter

Introduction

Last week, we began discussing the controversial Heter Mechirah, the practice of the Israeli Chief Rabbinate to sell farmland to a Nochri to avoid Shemittah restrictions. We reviewed the dispute regarding whether the sale itself is permitted in light of the Torah prohibition to sell Israeli real estate to a Nochri. This week, we shall review the dispute about whether the sale is Halachically effective. We shall proceed to review the debate surrounding whether the sale can affect the laws of Shemittah. We will conclude with a discussion of how the consumer should deal with products whose Kashrut status hinges on the validity of the Heter Mechirah.

### Is the Sale Effective?

In order for any transaction to be Halachically valid, the parties to the sale must have seriousness of intent (Gemirat Daat, see Kiddushin 26b). Thus, some authorities argue, the Heter Mechirah lacks validity, since the parties are not truly serious about the sale. These authorities note that the sale is not registered with the government land registry. One of the most vociferous opponents of the Heter Mechirah, the Ridbaz of Tzefat, had the following to say about this issue:

Think about it: If the Rav of Yaffo writes on a piece of paper a bill of sale to a barefoot Arab that all the land in Eretz Yisrael that is owned by Jews is owned by the Arab, does this mean that the Arab actually owns the land and thereby removes the sanctity from the land? The bill of sale is worthless except for use as a bottle cap!

The proponents of the Heter Mechirah argue that if the sellers clarify that the sale will be valid despite the fact that it is not registered with the Israeli land registry, the sale is valid. They cite Kiddushin 26a as a precedent for this assertion. They also cite a ruling of the Teshuvot Divrei Chaim (Orach Chaim 2:37) that Mechirat Chametz is Halachically valid even if the sale is not valid in the eyes of civil law.

### The Impact of the Sale - Criticism of the Heter Mechirah

Even if the sale is permitted and valid, the Heter Mechirah still might not have impact on the holiness of Eretz Yisrael. The opponents to the Heter Mechirah point out that the Halacha (Rambam Hilchot Terumot 1:10) follows the opinion (see Gittin 47) that Nochri ownership of land in Eretz Yisrael does not affect the sanctity of the Land (Ein Kinyan LeNochri BeEretz Yisrael). Thus, even if the Nochri owns the land, all the laws of Shemittah should nevertheless apply.

### The First Defense

The proponents of the Heter Mechirah present two responses to this formidable challenge. First, they cite opinions that since the holiness of Eretz Yisrael in our times is merely rabbinic in nature (Shulchan Aruch Yoreh Deah 331:2), we may follow the opinion that believes that Nochri ownership of Israeli land does remove the holiness of the Land (Yeish Kinyan LeNochri BeEretz Yisrael). According to this opinion, Nochri ownership of land in Israel removes the Shemittah restrictions from that land. This approach is suggested by the Sefer HaTerumah (Hilchot Eretz Yisrael) and is accepted as normative by the Vilna Gaon (Beiur HaGra Y.D. 331:6).

This argument is based on the statement of the Gemara (Gittin 47a) that all authorities agree that that Yeish Kinyan LeNochri BeEretz Yisrael applies to Syrian land. Rashi (s.v. BeSuryah) explains that the reason for this is because the obligation to observe the laws contingent upon Eretz Yisrael in Syria is only rabbinic. The Sefer HaTerumah and Vilna Gaon extrapolate from the status of Syria to the status of Israel today where the obligation to observe the laws contingent on the Land is only rabbinic.

### Criticism of the First Defense

The Chazon Ish (Sheviit 20:7) notes that the Rambam clearly disputes the opinions of the Sefer HaTerumah and Vilna Gaon. The Rambam is the primary authority who holds that Kedushat Eretz Yisrael today is rabbinic, yet he never mentions that today the Halacha follows the view that Yeish Kinyan LeNochri BeEretz Yisrael. Indeed, the Rambam in a responsum (Freiman edition number 132) explicitly states that even today the Halacha follows the opinion that Ein Kinyan LeNochri BeEretz Yisrael.

The Chazon Ish proceeds to point out that the accepted practice in Israel since the time of Rav Yosef Karo (sixteenth century) has been to separate Terumot and Maaserot with a Berachah (during non-Shemittah years) from wine produced from grapes that were grown on Israeli land owned by Nochrim. This demonstrates that the accepted practice is to follow the opinion of the Rambam that even today the opinion that Ein Kinyan LeNochri BeEretz Yisrael is normative, because according to the Sefer HaTerumah and Vilna Gaon, there would be no need to tithe produce grown in land owned by a Nochri.

### The Second Defense

The second defense of the proponents of the Heter Mechirah is the opinion of Rav Yosef Karo that even according to the opinion that Ein Kinyan LeNochri BeEretz Yisrael, during the time that a Nochri owns the Israeli land, the laws that apply to Eretz Yisrael do not apply to that land. Rav Yosef Karo (Teshuvot Avkat Rochel 24 and Kesef Mishnah to Rambam Hilchot Terumot 1:10) extracts this point from the following passage in the Rambam (Hilchot Terumot 1:10):

A Nochri who purchases land in Eretz Yisrael does not annul the obligation to observe the Mitzvot [that one must observe in Israel]; rather, the land [he has purchased] remains holy. Therefore, if a Jew subsequently repurchases that land from the Nochri, the Jew is not considered to have engaged in Kivush Yachid (a private conquering of Eretz Yisrael - see Gittin 8). Rather, the Jew is Biblically required to separate all tithes and bring Bikkurim [from produce grown in this property] as if the land was never owned by a Nochri.

Rav Yosef Karo infers from the Rambam that one is obligated to separate tithes from the produce of the land only after the Jew repurchased the land from the Nochri. However, while the Nochri actually owns the land, the laws that apply to Eretz Yisrael are not operative. Thus, Rav Yosef Karo rules that the laws of Shemittah do not apply to land that is owned by Nochrim. In the time of Rav Yosef Karo, Jews did not own land in Israel, and his ruling was relevant only to the produce that Jews purchased from the Nochrim. Indeed, the Pe'at HaShulchan (chapter 23) records that the accepted practice from the time of Rav Yosef Karo has been to treat the produce grown on Nochri owned land as regular produce not endowed with Kedushat Peirot Sheviit.

This ruling of Rav Yosef Karo is the primary basis for the advocates of the Heter Mechirah. They argue that Rav Karo's ruling and the custom to follow it demonstrate that if one transfers ownership of Israeli land to a Nochri, the Shemittah laws do not apply to it.

#### Criticism of the Second Defense

The ruling of Rav Yosef Karo was vigorously disputed by the Mabit (Teshuvot 1:11, 21, 217, 336 and 3:45) and the Maharit (Teshuvot 1:43). They challenged Rav Karo's interpretation of Rambam Hilchot Terumot 1:10, pointing out that the Rambam (Hilchot Shemittah VeYovel 4:29) writes that the Gezeirat Sephichim does not apply to Israeli land owned by Nochrim. The Rambam explains that the reason for this is that the Gezeirat Sephichim was instituted to discourage Jews from violating Shemittah and thus is not relevant to produce grown in a field owned by a Nochri. The critics of Rav Karo's ruling argue that if the laws of Shemittah do not apply to produce grown in a field owned by a Nochri, why did the Rambam find it necessary to offer a rationale why the Gezeirat Sephichim does not apply to a field owned by a Nochri? The Rambam could have stated that the Shemittah laws simply do not apply to land owned by a Nochri.

Moreover, the Chazon Ish (Sheviit 20:7) challenges the assertion that the Jewish communities of Eretz Yisrael accepted the ruling of Rav Karo. He also notes that many Acharonim rejected Rav Karo's ruling. In addition, he points out that the Rambam in a responsum (number 22) clearly supports Rav Karo's critics' reading of Hilchot Shemittah VeYovel 4:29. The Chazon Ish argues that had the Pe'at HaShulchan been aware of this responsum of the Rambam, he would have realized that his understanding of Hilchot Shemittah VeYovel 4:29 was flawed and would have reversed his decision.

#### Conclusion

We have seen that the Heter Mechirah is a highly debatable leniency. Both sides of the debate present reasonable and convincing arguments. In fact, Rav Hershel Schachter and Rav Menachem Genack both informed this author that Rav Yosef Dov Soloveitchik ruled that the Orthodox Union's Kashrut department should not rely on the Heter Mechirah. Rav Soloveitchik argued that the Heter Mechirah is a highly questionable leniency upon which one may contemplate relying only in case of very great need. Since such a pressing need does not (Baruch Hashem) present itself in this country, there is no room for us to rely on the Heter Mechirah. The policy of the OU, Chof-K, OK, and Star-K is not to rely on the Heter Mechirah.

According to Rav Soloveitchik, one should not eat Israeli vegetables that were harvested during the Shemittah year or food containing grain that reached a third of its growth during the Shemittah year (see Rosh HaShanah 13b) because of the Gezeirat Sephichim. A notable exception might be produce that comes from areas in Eretz Yisrael that were not

sanctified by the Kedushah Sheniyah (those who returned with Ezra to build Bayit Sheini).

However, according to many authorities, one may eat Israeli fruit that blossomed during the Shemittah year, even if farmers who rely on the Heter Mechirah grew the fruit. The fruit, though, must be treated with Kedushat Peirot Sheviit. These authorities include Rav Moshe Feinstein (Teshuvot Igrot Moshe O.C. 1:186), the Chazon Ish (Sheviit 10:6), and Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:44). One should consult with his Rav about the issues raised in this and last week's essays.

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[http://www.yutorah.org/showShiur.cfm/712609/Rabbi\\_Josh\\_Hoffman/A\\_Grain\\_of\\_Salt](http://www.yutorah.org/showShiur.cfm/712609/Rabbi_Josh_Hoffman/A_Grain_of_Salt)

Series: Enayim LaTorah Date: November 22, 2005 Description: Einayim L'torah Parshas Toldos 5766.

By: **Rabbi Joshua Hoffman**

The Torah tells us that when Ya'akov and Eisav grew up, Eisav became an "ish yodeya tzayid" – a man who knew trapping, while Ya'akov became an "ish tam, yoshev ohelim" – a complete man who abided in tents. "And Yitzchak loved Eisav, because trapping was in his mouth, and Rivkah loved Ya'akov" (Bereishis 25:27-28). The difference between Yitzchak and Rivkah in their respective love for their children appears, at first blush, to be disturbing, and needs to be understood.

Rabbi Avraham ben HaRambam explains that Yitzchak loved Eisav because he provided him with food, as the Targum explains. R. Avraham adds that some midrashim explain "ki tzayid befit" ("because trapping was in his mouth") to mean that Eisav trapped Yitzchak with his mouth by saying things that deceived Yitzchak and led him to believe he was careful about keeping mitzvos. This midrash clarifies the flow of the passuk: Yitzchak was able to retain his natural love for Eisav (despite his general deviation from God's path) because Eisav had been representing himself as being observant of the mitzvos. Even according to the midrash, however, Yitzchak's love came as a natural result of the physical benefit that he derived from him. Rivkah, however, loved Ya'akov beyond the natural love of a parent, because he spent more time at home, being a dweller of tents, and she therefore simply saw him more than she saw Eisav.

Rashi first cites the explanation of the Targum, just as R. Avraham does. He then cites the midrash, but he seems to understand it differently. Whereas R. Avraham finds a way to reconcile the midrash with the simple meaning of the verse, Rashi seems to understand it as being in contradiction to its simple meaning. Eisav, says the midrash, asked his father how one tithes straw and salt. In point of fact, only things which grow from the ground need to be tithed, and, so, Yitzchak was impressed by Eisav's scrupulousness in trying to fulfill the mitzvos. Rashi's apparent understanding of the midrash, explaining it to mean that Eisav deliberately fooled Yitzchak, is very difficult because it is in conflict with his approach to other midrashim about Eisav, as reflected in his commentary later in the parsha.

When Eisav discovered that Ya'akov deprived him of their father's blessings, he said in his heart: "The days of mourning for my father will draw near, then I will kill my brother Ya'akov" (Bereishis 27:41). Rashi there writes that this is to be understood 'as it sounds,' meaning, in its literal sense, that Eisav did not want to cause his father pain. Therefore, he would wait to kill Ya'akov until after his father's death. Rashi then points out that there are aggadic midrashim which explain the verse in several ways.

Nechama Leibovitz, in a seminal essay on Rashi's approach to citing midrashim, points out that there are often many midrashim to any particular verse, but Rashi very seldom tells us this. When he does, he means to reject those midrashim as not being in conformity to the simple meaning of the verse. In this particular instance, the other midrashim view Eisav as representing an additional stage in the development of evil in the world. Why did Eisav wish to wait until after his father's death to kill Ya'akov? Eisav thought that when Kayin killed his brother Hevel, he made a mistake

in not waiting until their father had passed away and could not further divide his estate. Therefore, Eisav decided to wait until after Yitzchak died, and then kill Ya'akov, so he would not lose his inheritance.

Rashi disagrees in that this view of Eisav represents him solely in a negative light, as a symbol of evil. Rashi maintains that Eisav, in fact, had a variegated personality, as he really did care for and honor his father. Therefore, Rashi felt that the midrash, while important for the message it conveyed, did not reflect the simple meaning of the Torah, which presents people as human beings, with all of their complexities.

In light of Nechama Leibovitz's insight, it seems very difficult to understand why Rashi in the beginning of the parsha would cite a midrash that seems to contradict the simple meaning of the verse, and, moreover, calls into question the love Eisav had for his father.

Rabbi Yerucham Levovitz answers that, in reality, Eisav was sincere in his questions. Indeed, both Rabbi Yosef Rosen (the Rogatchover Gaon) and Rabbi Chaim Kanyevski point out that Eisav's questions were valid: there are situations in which one must, in fact, tithe straw or salt. One could add that Eisav specifically asked his father detailed questions about tithing because this was a mitzvah that Yitzchak took special care to keep, as pointed out by the Rambam in his Laws of Kings. Eisav, then, was not consciously trying to fool his father. However, one cannot ignore the fact that his scrupulousness in performing the mitzvos of honoring his father and tithing his crop were exceptions in his general demeanor.

Rabbi Levovitz says that this is the meaning of the words "ki tzayid befi" - Eisav's mouth and his heart were not consistent. When speaking to his father and tending to his needs, he did and said all the right things. However, in his heart, he did not have an overall dedication to God. Ya'akov, on the other hand, is described as an "ish tam," a complete man, in that everything he did was fitting and consistent with his overall demeanor. Ya'akov, unlike his brother Eisav, did not adopt stringencies in one area of divine service and completely neglect other areas; rather, he was a complete and integrated person, and thereby merited to be the one to carry on the tradition to future generations.

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<http://www.anshe.org/parsha.htm#parsha> Parsha Page by **Fred Toczek**  
- A Service of Anshe Emes Synagogue (Los Angeles)  
Toldos 5757 & 5762

#### **H. Living Each Week (Rabbi Abraham Twerski).**

1. Rationalization. After Esau sold his birthright to Jacob, we read that Esau "disparaged the birth". There is no indication that Esau initially belittled the birthright; only after he sold it does the Torah tell us that he despised it. We, too, often tend to rationalize our improper acts.

2. Environment can desensitize. [When Esau was forty years old, he married two Hittite women.] "They were a source of much bitterness to Isaac and to Rebecca". The Midrash states that the Hittite women were idol worshipers and this deeply aggravated Isaac and Rebecca. The Midrash notes that the order of "Isaac and Rebecca" infers that Isaac was provoked first and Rebecca was only provoked later (since she had grown up in a family of idol worshipers). Why does this Torah tell us this? To remind us of the risk of being desensitized by our environment.

3. Feelings Are Reciprocal. Rebecca instructed Jacob to flee Esau, noting "flee to Lovan - you shall stay with him for awhile, until your brother's fury dissipates until the anger of your brother dissipates from you . ." What does the seemingly redundant last verse teach us? As Solomon taught, "like one's reflection is seen in the water, so does one heart reflect another." In other words, emotions are reciprocated. The way we feel about another is often a reliable indication of how that person feels about us. This, then, was Rebecca's instruction to Jacob: when you feel your own animosity towards your own brother has left you, then you will know that he no longer hates you either.

#### **I. Torah Gems (Rabbi Ahron Yaakov Greenberg)**

1. Educating Our Children. "And the children struggled together within her." When Rebecca would pass the doors of the Torah academies of Shem and Ever, Jacob struggled to come out; when she passed the doors of idolatry, Esau struggled to come out. This teaches us the tremendous importance, both positive and negative, of our environment. It also teaches us that everything depends on the mother - if she is accustomed to come to the doors of Torah (that is, she shows a love for and appreciation for Torah and Judaism), "Jacob strives to come out" (i.e., her child will be like Jacob).

2. Correct Introspection. And Esau said, "behold, I am at the point of dying; what use will this birthright be for me?" At that moment, Esau's focus was on the physical and on the uselessness of the birthright to him. When a righteous person, however, thinks of the day of his death, it evokes in him/her feelings of repentance and fear of G-d. As the Talmud teaches, "an anecdote for the Evil Inclination is to remind ourselves of the day of our death." (Chofetz Hayim).

3. Unity. As long as we are told that "they" dug in the plural (indicating that there was no unity among Isaac's servants), the other herdsmen fought over the well. However, when they were finally united, as we see in "he dug," with all working in harmony, even their enemies were unable to quarrel with them and made peace with them. (R' A.P. Weinberger).

#### **J. Soul of the Torah: Insights of the Chasidic Masters of the Weekly Torah Portions (Victor Cohen).**

1. Torah -- Elixir of Life. "And Isaac's servants dug in the valley and found living waters." The Sfas Emes commented that the Torah is called "water" and is therefore found everywhere. As is true with seeking water, it depends upon how deep one wishes to dig and how sincerely one wants to have Torah. Just as water is the elixir of life, so is Torah.

2. Everyone Can Receive A Blessing. On the verse "so that my soul may bless you before I die," the Vorker asked why Isaac wished specifically to bless the elder son and not both his children (as Jacob blessed all his children). G-d did not want Jacob to be given the blessing because future generations would assume that, in order to receive a blessing, one must be on Jacob's level. Esau received a blessing to show future generations that no matter what one's status is, he/she can receive a blessing.

#### **K. Something to Say (Rabbi Dovid Goldwasser).**

1. Toil In Torah. "And the children agitated within her." As Rashi taught us, when Rebecca passed in front of the Shiva of Shem and Eber, Jacob would kick inside her, and when she passed in front of temples of idol worship, Esau struggled to come out. We can understand why Esau wanted to go out to indulge in idolatry. But Jacob, who loved Torah study, had every reason to remain in his mother's womb (for, as Chazal teach us, while inside the womb, an angel teaches a baby the entire Torah). If so, why would Jacob want to leave? Rabbi Ovadiah Yosef answers that Jacob wanted to learn Torah through his own toil and effort. He knew that being spoon-fed Torah does not carry with it the same value or permanence as acquiring it with our own effort.

2. Gratitude to G-d. [Leah declared] "This time let me gratefully praise Hashem. Therefore she called his name Judah". "Rashi explains Leah's reaction to the birth of her fourth son as follows: "Because I have received more than my expected share, from now on I should praise G-d." The Chiddushei HaRim comments that this is why she called her son Judah, for the root of the name Judah means thanksgiving. This is why a Jew is called Yehudi, derived from Judah (Yehudah). Thus, the name that identifies a Jew is based upon the concept of thanksgiving, because every Jew must realize that all that he or she has been given on this earth is a Divine gift. Even our name expresses the realization that everything we have is graciously bestowed upon us by G-d.

#### **L. Love Thy Neighbor (Rabbi Zelig Pliskin)**

Before Admonishing Someone, Let Them Know That You Sincerely Care About Them. "And Isaac called Jacob, and blessed him, and commanded him saying: you shall not take a wife from the daughters of Canaan." The Chofetz Chaim notes that we should learn from Isaac the most effective way of admonishing others. Before he warned Jacob what not to do, he blessed him. By showing someone first that you truly care about their welfare, such person will more readily listen your admonition.

### M. Growth Through Torah (Rabbi Zelig Pliskin)

1. Use Your Potentially Negative Tendencies In Positive Ways. The Torah tells us about the birth of Esau: "And the first came out red, all over like a hairy garment; and they called his name Esau." The Midrash relates that when Shmuel went to appoint David to be King of Israel, he saw that David was of ruddy complexion. He became frightened that David would be a murderer like Esau. G-d told Shmuel that there was no need to be afraid. Whereas Esau killed in cold blood, David would only take a life to carry out the just decisions of the Sanhedrin (court). The Midrash teaches that, while we have basic personality tendencies, we have free will to choose how these tendencies will be manifested. Esau's tendency towards bloodshed led him down an evil path. David, on the other hand, was a mighty warrior who would utilize his natural tendencies for elevated purposes. As the Vilna Gaon writes, "one should not go completely against his nature even if it is bad, for he will not succeed. He should merely train himself to follow the straight path in accordance with his nature."

2. If At First You Do Not Succeed, Keep Trying. The Chofetz Chaim explains that the Torah elaborates on the wells that Isaac found to teach us that we should not give up in discouragement when we run into difficulties. When Isaac dug and did not find water, he kept digging in other places until he was finally successful. This is a practical lesson for all areas of our lives, both spiritual and material. We must be persistent when things do not work out at first. The reason many of us fail to accomplish something is because we give up too soon. If we have the determination to keep trying, eventually we will succeed.

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<http://www.rabbiwein.com/Weekly-Parsha/2007/11/205.html>

### RABBI BEREL WEIN

Weekly Parsha

TOLDOT

Friday, November 9, 2007 Printer Friendly

The frightening thing about the struggle between Eisav and Yaakov is its apparently doomed inevitability. While yet in the womb of their mother Rivkah, they already find themselves opposed to one another. They are not only two different personalities, physically, emotionally and intellectually, but they represent two diametrically opposed worldviews. The only question that remains is therefore one of accommodating one another.

If the Lord created them so differently, their freedom of choice in life is centered on how they will deal one with another. And in that respect, the question of accommodation – of the relationship between the Jewish people and the broader, more numerous and powerful non-Jewish world - remains alive and relevant until our very day.

Eisav varies and wavers in his attitude towards Yaakov. Hatred, jealousy, scapegoating frustration are all present in certain aspects of his behavior patterns towards Yaakov. And yet there is also a grudging admiration and attempts at reconciliation on the part of Eisav. Yaakov is portrayed as reactive towards Eisav, of a more passive nature, of patiently attempting to wait out the situation and hope that Eisav will calm down and reconcile himself to Yaakov's right of existence - in what Eisav considers to be his exclusive world.

And, therefore, the question arises – in reality the question of all of the ages – is there room in the world, especially our rapidly shrinking world, for Yaakov and Eisav to coexist peacefully. One would hope so, though history belies this optimistic view of the rivalry between the brothers.

The Torah itself is pretty much noncommittal about the causes for the true source of Eisav's hatred of Yaakov. Even though Yaakov's purchase of the birthright and his subsequent preempting of his father's blessings are ostensibly the cause of Eisav's displeasure with Yaakov, these are only superficialities. For the hatred was there from the beginning, from the moment of their conception, even though no incidents between them had as yet occurred.

The Torah just seems to take it for granted that this is the way it is going to be. And this accounts to a great degree for the almost traditional Jewish attitude of fatalism regarding the behavior of the non-Jewish world towards the Jews. Rabi Shimon ben Yochai stated in the Talmud that it is a given rule that Eisav hates Yaakov. However, there are other opinions there in the Talmud that take a different tack and belie this inevitability of hatred and violence.

After the horrors of the Holocaust were revealed, Jews felt that perhaps Eisav had finally reformed and had seen the evil of the ways of hatred and bigotry. Almost seventy years later we are not so certain about this hopefully sanguine view of Eisav's reconciliation with Yaakov. Though we are certainly less accepting and passive about the situation now than we were a century ago, nevertheless there are relatively few options left to us as how to deal with the matter.

We should minimize whatever frictions possible but realize that we are dealing with a millennia-old problem that cannot be just wished away or papered over. Faith and fortitude in our own self-worth are the strongest weapons in our arsenal to bring Eisav to reconciliation and harmony.

Shabat shalom.

Rabbi Berel Wein