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Rabbi Mordechai Willig
Jewish Education, Family and Community

"V'es Yehuda sholach lefanav el Yosef l'horos - He (Yaakov) sent Yehuda ahead of him to Yosef to prepare" (46:28). Rashi cites the medrash (95:3), that interprets l'horos as "to teach", i.e. Yehuda was sent to establish a place "sheyehey moreh bo divrei Torah v'sheyihyu hashevtaim lomdim bo", where Yaakov would teach Torah and the shevatim, i.e. his offspring, would learn.

The highest priority for the success and preservation of the Jewish family and community is having places for Torah teaching and learning. When the first Jewish family emigrated to Egypt, our patriarch Yaakov viewed such a place as a prerequisite for settling in their new country, which had to precede their arrival.

The Torah commands every man to teach his young sons Tanach. The Aruch Hashulchan (Yoreh Deah 245:5-11) explains that this enables the son to learn Gemara on his own after bar mitzvah. R' Yehoshua ben Gamla introduced universal Torah education for boys above age six in every Jewish city (Bava Basra 21a)[1]. Although the impetus for this takana was caring for those boys who had no father, it revolutionized Torah education for everyone. From then on fathers would teach their sons basic pesukim, such as "Torah tziva" and "Shema Yisrael", to implant emunah - faith in Hashem and Torah, and the rebbe in cheder then would teach them Tanach and Gemara.

Because a rebbe acts as an agent of the father, the father must pay him. For the orphans and poor the rebbe must be paid from a communal fund (kupas hakahal). The halacha dictates that the assessment for the communal fund is based on each person's net worth and applied even to those who do not utilize the affected institutions for their own families (see Choshen Mishpat 163: end of 3). When there were organized Jewish communities with the power to enforce halacha and communal policies, all members of the community were compelled by the gabbaim to fulfill their obligations.

In modern times, the absence of an organized community assessment has created a user's fee known as tuition. These costs have risen recently far more than average inflation-adjusted income. This discrepancy has created a tuition crisis, especially for larger families in modern communities where the tuition is generally significantly higher than in others.

Unfortunately, many families have decided not to have more children because they cannot afford the tuition (See Yossi Prager, The Tuition Squeeze: Paying the Price of Jewish Education, in Jewish Action Kislev 5766, at note 13). Ironically, then, the institution most indispensable for the success and preservation of the Jewish family has led to a reduction in family size. In Israel the government taxes individuals based on their wealth to support schools, including religious ones, so that tuition is zero or minimal, and this is a factor which encourages Aliya (note 13, above).

While all yeshivos offer scholarships, many parents fear the tuition committees which oversee these scholarships. They are loathe to divulge their income and to be grilled about expenditures which are not as essential as tuition. Grandparents bear responsibility to teach their grandchildren or pay their tuition as well (Aruch Hashulchan Yoreh Deah 245:9), but this does not always happen. Too often grandparents instead pay for family vacations which are not as essential as their grandchildren's tuition. In such situations, parents are often unable, or even unwilling, to reorder the priorities of the well-intentioned grandparents.

Recently, a very learned and pedigreed young rabbinic couple asked me about precisely this dilemma. Their two incomes suffice for the tuition for their three children but not for a fourth, and they were hesitant to add to their family and, as a result, to be "on scholarship", not "paying their way". This hesitation is based on the user's fee model. I responded that, in principle, the community is responsible to support its yeshiva. As such, one need not be hesitant or embarrassed to ask for a scholarship, rather the community should be embarrassed that it is not discharging its halachic responsibility! A young couple can and should strengthen the community by having more children. The determining factor in family size should be the mother's physical and emotional health, not the family's wealth.

Reportedly, a major community yeshiva suggested a policy to refuse to grant scholarships unless both parents earn an income. This policy, in effect compelling a mother to work even if she prefers the classic role of full time wife and mother, is another blow to the Jewish family. It prevents a mother who would like to focus completely on her young family from putting all her energy and talent into raising her children, and in certain cases reduces the number of children in the family as well.

The dramatic rise in the number of working young women in our generation has revolutionized American society in general, and the Orthodox community in particular. Many kollel wives are the sole breadwinners, lauded in some circles for their heroic efforts in supporting Torah. They are in fact heroic. However the downside of that approach is overburdened wives, and husbands who wait too long before assuming their halachic responsibility to support their wives and children. Torah study is essential for strengthening and preserving the Jewish family, but it should not be disproportionately emphasized in a way that results in an undesirable change to the essential character and structure of the Jewish family.

In more modern Orthodox circles, one can often find a strong push for advanced careers for women and a de-emphasis of their roles as wives and mothers. Yeshivos that impart this attitude and thus, in effect, promote postponing marriage and limiting family size weaken, rather than strengthen, the Jewish family.

Yeshivos, the bulwark of the Jewish family and community since the time of Yaakov Avinu, must continue to emphasize the importance of the Jewish family. Members of the each community are halachically required to finance their local yeshivas based on their wealth, and young couples who wish to have more children should not face the disincentive of a tuition crisis. If we regain the correct distribution of responsibilities mandated by the halacha, our places of Torah teaching and learning will serve the critical role of

strengthening and preserving the Jewish family and community, as envisioned by Yaakov Avinu.

[1] The Aruch Hashulchan and Rav Yehoshua ben Gamla predated the introduction of formal Torah education for girls.

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Meshech Chochmah
by Rabbi Yitzchok Adlerstein

Parshas Vayigash

In the Darkness of the Night

G-d spoke to Yisroel in visions of the night, and said, "Yaakov, Yaakov."

Meshech Chochmah: Neither of the avos who preceded Yaakov was a recipient of a nocturnal vision. This is peculiar to Yaakov – and it occurs more than once. Many years earlier, as Yaakov fled from Esav's wrath and readied himself to face the uncertainties of living with Lavan, he experienced the prophetic dream of the angels ascending and descending the ladder than connected Heaven and earth. There as well the vision occurred at night.

These two episodes share a common element, which we can assume is the reason for this unusual way of communicating information to Yaakov. In both cases, Yaakov was on the cusp of leaving the land of Israel, and exposing himself to the vicissitudes of galus. In both cases, Hashem wished to reassure Yaakov that He would be with him even in the dark night of exile. Chazal[2] state the upshot of this reassurance plainly and openly: "When the Jews were exiled to Bavel, the Shechinah went with them.

This motif in Yaakov's life explains his particular contribution to our fixed prayer. Avrohom established shacharis; Yitzchok minchah.[3] Yaakov – who gave his name to his people – ironically created the model for a davening that is halachically voluntary! Should not the name Yisrael be linked to a daily fixed prayer? Our people's self-understanding is bound up with constant conversation with G-d!

Perhaps. But a more vital understanding for that people is that Hashem will never abandon them. This is the unique contribution of Yaakov.

This contribution follows the pattern of the offering of the heavy limbs of animals slaughtered earlier in a given day. While generally the avodah of the beis hamikdosh grinds to a halt during the evening, the offering of the residual limbs is an exception. If the process of offering began by day with the animal's slaughter and application of its blood on the mizbeach, the burning of the limbs (if not completed by day) may take place at night.[4]

These halachos create an image, whose message is clear: when something is associated with Hashem during the daytime, i.e. connected to Him during times in which He illuminates our lives freely and easily, it remains attached to Him even when His countenance seems to turn away. When a curtain of darkness falls on an animal whose elevation towards Hashem began by day, the avodah of that animal may continue even at night.

Prophecy is subject to the same rule. A navi who once experienced nevuah while in the land of Israel (like Yechezkel) can continue to receive prophecy when he leaves the land.[5]

These ideas yield a crucial bit of instruction to us. When a Jew holds firm to the mesorah – when he follows the ways and lessons of his forefathers who lived at a time of the open connection between Hashem and His people that existed when the beis hamikdosh stood in its place – then he can be treated as a continuation of an ancient and venerable people. The Shechinah continues to dwell among such people. If, however, he forgets the covenant of his ancestors and does not follow in their ways, but lives as if part of a separate people, then the Shechinah is not with him in galus! He is treated with scorn and derision, no longer as part of a proud, ancient group that once saw the glory of Hashem when it was open and manifest.

Yosef's Blindfold[6]

I will descend with you to Egypt, and I will bring you up, and Yosef will place his hand on your eyes.

Meshech Chochmah: What magic is Yosef's hand working? Whatever it is doing, should it not be mentioned in its proper chronological place – sometime after Yaakov's descent to Egypt, and before his eventual rising up out of the land?

Yosef's hand is meant to avert Yaakov's intellectual gaze upon the enigmatic course of his life. Why would Hashem lead him to Egypt, only to declare from the beginning that His intention was to lead him out of it? Avrohom was instructed to turn his life around, and follow G-d's instruction to move to the land of Canaan. Once there, however, he was to remain there. Why would Hashem tell Yaakov to emigrate to Egypt, for the apparent purpose of making an eventual u-turn? If his descent to Egypt was for some good purpose, why rise up and leave later?

Hashem tells Yaakov not to peer too intently into the ways of Divine providence. Yosef's odyssey should cover Yaakov's eyes to prevent him from looking so hard, because it points to the inscrutable and elevated ways of His thought. Who would ever have thought that Yosef's travail would lead to such great good? Who could have predicted that by living in Egypt, he would become its ruler? It is Yosef's example that would help Yaakov understand the apparent paradox of being told in the same breath to go to Egypt, and to leave it as well.

In fact, the benefit of Yosef's position was not limited to providing for his family – something he perhaps could have done from a distance. Yosef's prominence and role worked in tandem with the eventual presence of Yaakov to create awareness of fundamental truths about G-d and Man. Thus, the long, hard stay in Egypt would eventually prove to be a necessary experience on the way to the elevation of the Jewish people with the Exodus. But it would also bring great promise to others. It would benefit some Egyptians in the short run – and all of humanity in its greater role. Klal Yisrael's limited stay in Egypt would eventually make sense, just as Yosef's life did.

[1] Based on Meshech Chochmah, Bereishis 46:2

[2] Megilah 29A

[3] Berachos 26B

[4] Berachos 2A

[5] Moed Katan 25A

[6] Based on Meshech Chochmah, Bereishis 46:4
Rabbi Yitzchok Adlerstein

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subject: Weekly Parsha from Rabbi Berel Wein

Weekly Parsha Blog:: Rabbi Berel Wein
Vayigash

The opening verses of this week's Torah reading are among the most dramatic and challenging in the entire Torah. Two great, powerful personalities in the house of the children of Yaakov, Yehudah and Yosef, engage in a clash and debate of epic proportions, regarding the release of their brother Binyamin.

At first glance it seems obvious that Yosef has the upper hand in his struggle. After all, he is the viceroy of Egypt, the commander of the palace guard who are armed and ready to do his bidding. On the other hand, Yehudah has very limited options as to what to say and what to do in order to obtain the release of Binyamin. Yosef's position of power appears to prevail but the impassioned plea and tone and contents of the words of Yehudah are not to be easily ignored.

So in a sense one could say that Yehudah will himself prevail over Yosef. But in a clear analysis one should come to the conclusion that neither of the two great antagonists, the leaders of the tribes of Israel, is the victor in this clash of ideas and worldview.

The true champion that will emerge from this entire baffling and fascinating story is the old hoary Yaakov, seemingly isolated back there in the land of Canaan, morning and despondent as to what has happened to his family. In anguish, he shouts: "Yosef is no more, Shimon is no more; both of them will be lost to me!"

It is that image of their father that haunts both Yehudah and Yosef. And each, in his own way, wishes to do justice to their father and to everything that he represents. And it is this image of Yaakov that brings Yosef to the climax of the story and to his ability, nay, necessity to reveal and reconcile himself with his brothers.

Jewish rabbinic thought over the ages has always attempted to make the story of Yosef and Yehudah relevant to each individual generation of Jews. I think that the most relevant message that all of us can gain from this great narrative is that it is the image of our ancient father Yaakov that truly hovers over all of our current struggles.

It is our task, not merely to win the debate with our other brothers or even with outside powers that are seemingly stronger and greater than we are, but rather to somehow remain faithful to the old man that we can no longer see but who is somehow always with us. What gives both Yehudah and Yosef troubling pause in the midst of their impassioned debate is the question as to what their father thinks of their words and their actions.

It is this unseen presence of Yaakov that drives the brothers to reconciliation and to restoring a common purpose in their lives and those of their families. In effect they are thinking: "What would our father think of this conversation and of this confrontation?" Father Yaakov has looked down at all of the generations of the Jewish people and in one way or another, every generation has been forced to ask itself what would Yaakov think of us, our words and our behavior.

It is that ever-present idea in Jewish life that has been an aid and a boon to our seemingly miraculous survival as a people and as a faith. We may not see him but we can be certain that he is there with us today as well.

Shabat shalom

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Ohr Somayach :: Torah Weekly :: Parshat Vayigash

For the week ending 19 December 2015 / 7 Tevet 5776

by Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com

Insights

The Sound Of Music

"And they arose from Egypt and they came to the Land of Canaan to Yaakov their father." (45:25)

In the 1960s a new form of advertising was discovered and made illegal almost immediately. Madison Avenue realized that flashing one single frame of an advertisement into a movie playing at 24 frames per second left a subliminal message imprinted in the mind of the viewer; a message of which he was totally unaware. Because of its extreme subtlety, the message managed to sneak under the defenses of the consumer and plant itself into his subconscious. Without knowing it, the next time he was shopping he had this overpowering impulse to buy FidoFeed over his usual brand of dog food. In fact, Madison Avenue had invented nothing new, for they were merely applying a principle that was over three thousand years old.

In this weeks Torah portion, Yosef's brothers return to their father Yaakov and have to tell him that Yosef is still alive. Naturally, they are concerned how to break the news. They feared that the shock of hearing that not only was Yosef alive but that he was now the ruler of Egypt might be too much

for Yaakov. As they approached Yaakov's tent, they saw Serach, the daughter of Asher, coming out of the house to greet them. Serach was an extraordinary person, on a higher spiritual level than her contemporaries. She also played the harp beautifully.

They decided that the best way to break the news to Yaakov was for Serach to compose and play a beautiful song whose lyrics would say that Yosef was alive and well and living in Egypt. Then, with her harp, she would slip into her grandfather's tent and begin to play and sing.

Yaakov had never recovered from the imagined loss of Yosef, and was still in mourning, till that moment when Serach began to sing. Softly she began, "My uncle Yosef is still alive; he is the ruler over Egypt". Serach's soothing music cocooned those highly-charged words. Yaakov imbibed the words, and the message, and blessed Serach, "Serach! You have revived my soul. May you live forever!" And, measure for measure, Serach's reward was that she lived until the reign of King David (another master of the harp) and was one of the few people to be taken to Gan Eden alive.

Music has charms to soothe a savage breast. It has the power to work on our emotions, to sneak below the level of the intellect and lodge its message in our subconscious. Before Yaakov could be shocked by the news that Yosef was alive, the message had already entered his consciousness subliminally, through the sound of music.

Source: Sefer Hayashar

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Rabbi Weinreb's Parsha Column Vayigash

"Wagons, Calves, and Responsibility"

I have been blessed with many fine teachers. She was one of the best.

Her name was Mrs. Lachmann. I no longer recall her first name. She taught an advanced course in world literature at the college I attended, and she insisted that we call her Mrs. Lachmann, although, as I later discovered, she had earned a doctorate with honors at a very prestigious European university. The course was an elective, and I was motivated to take it because of my fondness for literature, which I developed quite early in my childhood. I was already familiar with some of the authors of our assigned readings, all of whom were 19th century Russian or German writers, and assumed that the course would be an easy one for me.

I was a philosophy major then and was particularly impressed by her assertion, in the very first class session, that great literature is an important source of philosophical ideas. In fact, she insisted that a work of literature bereft of philosophical lessons could not qualify as great literature.

As the course progressed, two things became apparent. First of all, it was not going to be nearly as easy a course as I had anticipated. Furthermore, it was not philosophy in general that was her sine qua non for great literature. It was one specific concept that mattered so much to her. That was the concept of ethical responsibility.

I can still hear her, with her central European accent, making the case that great writers of fiction portray their characters in light of whether or not they meet their responsibilities.

"Several central questions are posed in all works of literature," she would say. She would then proceed to list those questions:

"How do the heroes or villains of the novel define their responsibilities? Do they consider the long-term consequences of their actions? Do they feel accountable to others? To what degree is their sense of responsibility central to their personalities?"

She would quote the words of Fyodor Dostoevsky, who wrote *The Brothers Karamazov*, which was, in her opinion, the greatest novel of all time: “We are all responsible for all... for all men before all, and I more than all the others.”

I remember her remark at the end of her final lecture: “The theme of all great literature is the theme of responsibility.”

Over the years, I have come to realize that Mrs. Lachmann’s insight was not limited to the Russian and German writers of the 19th century. It applies even more to biblical literature. Indeed, I am convinced that the theme of personal responsibility is the core theme of *Sefer Bereshit*, the Book of Genesis.

One example of the theme of responsibility can be found in a verse in this week’s Torah portion, *Vayigash* (Genesis 44:18-47:27), as explicated by Rashi.

In the story, Joseph finally revealed himself to his brothers. They journeyed back to Canaan and informed Jacob that Joseph is still alive. Initially, Jacob did not believe them. The verse then reads:

“But when they recounted all that Joseph had said to them, and when he saw the wagons [Hebrew: *agalot*] that Joseph had sent to transport him, the spirit of their father Jacob revived. ‘Enough!’ said Israel. ‘My son Joseph is still alive! I must go and see him before I die.’”

Rashi wonders what it was about the wagons, the *agalot*, that convinced Jacob and revived his spirit. Rashi tells us that these wagons were a sign sent by Joseph to Jacob, recalling the subject of their learned conversation when they first parted ways so long ago.

That subject is the ritual of the “calf [Hebrew *egla*] with a broken neck,” the details of which are described in the first several verses of Deuteronomy 21. Joseph was apparently confident that Jacob would see the connection between the word for wagons, *agalot*, and the word for calf, *egla*.

The reader of Rashi’s words cannot help but ask with astonishment: Is this some game, some bizarre wordplay? *Agala* calls to mind *egla*? What connection can there be between the ritual of the calf and Jacob’s parting words of instruction to Joseph before sending him off on his mission to his brothers, never to see him again until this moment?

To answer this question, we must reflect upon the meaning of the ritual of the “calf with a broken neck.” It is a ritual that is performed by the elders of the city nearest to a discovered murdered corpse, whose murderer is unknown. The elders must wash their hands over the calf whose neck was broken and declare that they did not shed this blood.

The Mishnah asks, “Can we possibly suspect the elders of the city of murder?” The Mishnah answers that they must declare that they did not allow the victim to pass through their city unfed, nor did they allow him to be part their city without escorting him along his way.

The early 17th century commentator *Kli Yakar* understands this to mean that the elders must declare that they treated the victim decently and humanely. Had they not done so, they would be, however indirectly, responsible for the murder. Their failure to treat their fellow properly would render them responsible for his tragic end. The theme of responsibility for the long-term consequences of one’s interactions is the dominant theme of this ritual.

As the *Kli Yakar* explains, if the elders of the city are not hospitable to the wayfarers who frequent the city, the criminals who populate the environs of the city will assume that this wayfarer is of no import, and they will therefore take liberties with him, even to the point of shedding his blood. Were these villains to observe that the wayfarer was significant enough to the elders of the city to be treated graciously, they would have refrained from harming him.

This is the nature of responsibility. The elders are not suspected of actual murder. But if they treat their guests improperly, they set in motion a process by which those guests are dehumanized, becoming easy prey to malicious persons. That is how far the demands of responsibility extend.

When Jacob sent Joseph on his dangerous mission, continues *Kli Yakar*, he escorted Joseph part of the way. By doing so, he was teaching Joseph the

lesson of the “calf with a broken neck,” the lesson of the importance of escorting the traveler, thus demonstrating the human value of that traveler. Joseph signaled to his father that he learned that lesson well and knew the responsibility entailed in dealing with one’s fellow.

Jacob realized that it was Joseph who personally had a hand in sending the wagons of Pharaoh, thereby escorting his brothers part of the way back to Canaan. Jacob took note of those wagons and therefore knew that Joseph had learned that a minor gesture of considerate behavior to others may have long-term consequences. He signaled that he had learned the crucial importance of taking responsibility for all one’s actions, however insignificant they may appear. And so, “The spirit of their father Jacob revived.”

Agalot and *egla* are not just words in a linguistic game. Rather, they allude to the profound lesson about personal responsibility, which is the basis of the requirement of the elders to proclaim their innocence of murder.

Let’s return to Mrs. Lachmann, may God bless her soul. The reunion of Jacob and Joseph contains the implicit theme of which she spoke with such lasting impact so many years ago.

Recall the questions that Mrs. Lachmann listed. “How do the heroes or villains of the novel define their responsibilities?” Joseph defines his responsibilities in terms of the need to be sensitive to other human beings. “Do they consider the long-term consequences of their actions?” Joseph certainly does.

“Do they feel accountable to others?” Again, Joseph can answer with a resounding “Yes.”

“To what degree is their sense of responsibility central to their personalities?” Joseph demonstrated that his sense of responsibility was part of his very essence.

If, as Mrs. Lachmann contended, a profound sense of responsibility is the test of the true hero, Joseph certainly passed that test.

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**Britain's Former Chief Rabbi Lord Jonathan Sacks
*Reframing***

Maimonides called his ideal type of human being – the sage – a *rofe nefashot*, a “healer of souls”. [1] Today we call such a person a psychotherapist, a word coined relatively recently from the Greek word *psyche*, meaning “soul”, and *therapeia*, “healing”. It is astonishing how many of the pioneering soul-healers in modern times have been Jewish.

Almost all the early psychoanalysts were, among them Sigmund Freud, Alfred Adler, Otto Rank and Melanie Klein. So overwhelming was this, that psychoanalysis was known in Nazi Germany as the “Jewish science”. More recent Jewish contributions include Solomon Asch on conformity, Lawrence Kohlberg on developmental psychology and Bruno Bettelheim on child psychology. From Leon Festinger came the concept of cognitive dissonance, from Howard Gardner the idea of multiple intelligences and from Peter Salovey and Daniel Goleman, emotional intelligence. Abraham Maslow gave us new insight into motivation, as did Walter Mischel into self-control via the famous “marshmallow test”. Daniel Kahneman and Amos Tversky gave us prospect theory and behavioural economics. Most recently, Jonathan Haidt and Joshua Green have pioneered empirical study of the moral emotions. The list goes on and on.

To my mind, though, one of the most important Jewish contributions came from three outstanding figures: Viktor Frankl, Aaron T. Beck and Martin Seligman. Frankl created the method known as Logotherapy, based on the search for meaning. Beck was the joint creator of the most successful form of treatment, Cognitive Behavioural Therapy. Seligman gave us Positive

Psychology, that is, psychology not just as a cure for depression but as a means of achieving happiness or flourishing through acquired optimism. These are very different approaches but they have one thing in common. They are based on the belief – set out much earlier in Habad Hassidim in R. Schneur Zalman of Liadi’s Tanya – that if we change the way we think, we will change the way we feel. This was, at the outset, a revolutionary proposition in sharp contrast to other theories of the human psyche. There were those who believed that our characters are determined by genetic factors. Others thought our emotional life was governed by early childhood experiences and unconscious drives. Others again, most famously Ivan Pavlov, believed that human behaviour is determined by conditioning. On all of these theories our inner freedom is severely circumscribed. Who we are, and how we feel, are largely dictated by factors other than the conscious mind.

It was Viktor Frankl who showed there is another way – and he did so under some of the worst conditions ever endured by human beings: in Auschwitz. As a prisoner there, Frankl discovered that the Nazis took away almost everything that made people human: their possessions, their clothes, their hair, their very names. Before being sent to Auschwitz, Frankl had been a therapist specialising in curing people who had suicidal tendencies. In the camp, he devoted himself as far as he could to giving his fellow prisoners the will to live, knowing that if they lost it, they would soon die. There he made the fundamental discovery for which he later became famous: We who lived in concentration camps can remember the men who walked through the huts comforting others, giving away their last piece of bread. They may have been few in number, but they offer sufficient proof that everything can be taken from a man but one thing: the last of the human freedoms – to choose one’s attitude in any given set of circumstances, to choose one’s own way.[2]

What made the difference, what gave people the will to live, was the belief that there was a task for them to perform, a mission for them to accomplish, that they had not yet completed and that was waiting for them to do in the future. Frankl discovered that “it did not really matter what we expected from life, but rather what life expected from us.”[3] There were people in the camp who had so lost hope that they had nothing more to expect from life. Frankl was able to get them to see that “life was still expecting something from them.” One, for example, had a child still alive, in a foreign country, who was waiting for him. Another came to see that he had books to produce that no one else could write. Through this sense of a future calling to them, Frankl was able to help them to discover their purpose in life, even in the valley of the shadow of death.

The mental shift this involved came to be known, especially in Cognitive Behavioural Therapy, as reframing. Just as a painting can look different when placed in a different frame, so can a life. The facts don’t change, but the way we perceive them does. Frankl writes that he was able to survive Auschwitz by daily seeing himself as if he were in a university, giving a lecture on the psychology of the concentration camp. Everything that was happening to him was transformed, by this one act of the mind, into a series of illustrations of the points he was making in the lecture. “By this method, I succeeded somehow in rising above the situation, above the sufferings of the moment, and I observed them as if they were already of the past.”[4] Reframing tells us that though we cannot always change the circumstances in which we find ourselves, we can change the way we see them, and this itself changes the way we feel.

Yet this modern discovery is really a re-discovery, because the first great reframer in history was Joseph, as described in this week’s and next’s parshiyot. Recall the facts. He had been sold into slavery by his brothers. He had lost his freedom for thirteen years, and been separated from his family for twenty-two years. It would be understandable if he felt toward his brothers resentment and a desire for revenge. Yet he rose above such feelings, and did so precisely by shifting his experiences into a different

frame. Here is what he says to his brothers when he first discloses his identity to them:

“I am your brother, Joseph, whom you sold into Egypt. And now do not be distressed, or angry with yourselves, because you sold me here; for God sent me before you to preserve life ... God sent me before you to preserve for you a remnant on earth, and to keep alive for you many survivors. So it was not you who sent me here, but God.” (Gen. 45:4-8)

And this is what he says years later, after their father Jacob has died and the brothers fear that he may now take revenge:

“Do not be afraid! Am I in the place of God? Though you intended to do harm to me, God intended it for good, in order to preserve a numerous people, as He is doing today. So have no fear; I myself will provide for you and your little ones.” (Gen. 50:19-21)

Joseph had reframed his entire past. He no longer saw himself as a man wronged by his brothers. He had come to see himself as a man charged with a life-saving mission by God. Everything that had happened to him was necessary so that he could achieve his purpose in life: to save an entire region from starvation during a famine, and to provide a safe haven for his family.

This single act of reframing allowed Joseph to live without a burning sense of anger and injustice. It enabled him to forgive his brothers and be reconciled with them. It transformed the negative energies of feelings about the past into focused attention to the future. Joseph, without knowing it, had become the precursor of one of the great movements in psychotherapy in the modern world. He showed the power of reframing. We cannot change the past. But by changing the way we think about the past, we can change the future.

Whatever situation we are in, by reframing it we can change our entire response, giving us the strength to survive, the courage to persist, and the resilience to emerge, on the far side of darkness, into the light of a new and better day.

[1] Rambam, Shemoneh Perakim, ch. 3.

[2] Viktor Frankl, man’s search for meaning, 75.

[3] Ibid., 85.

[4] Ibid., 82.

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Echoes of Eden

Rabbi Ari Kahn

Seeing a Ghost

They never saw it coming: The dramatic, unexpected end to the saga in which they were embroiled was the last thing the brothers anticipated – and that was precisely the problem. The scrutiny to which they had been subjected seemed unwarranted. Why, of all the visitors who came to Egypt to purchase food, had they been singled out? Why the interest in their family, their father, their brother Binyamin?

When they attempt to return the money that had mysteriously turned up in their bags, the brothers’ misinterpretation of the events that had transpired in Egypt becomes clear: They convince themselves that everything that had happened was part of a plot to rob them of their possessions and their freedom.

When the men [realized that] they were being brought to Yosef's palace, they were terrified. They said, 'We are being brought here because of the money that was put back in our packs the last time. We are being framed and will be convicted, our donkeys will be confiscated, and we might be taken as slaves.' (Bereishit 43:18)

Had they thought things through more calmly and rationally, they might have asked themselves why the second-most powerful man in Egypt would need some paltry excuse to seize their meager possessions; moreover, the Egyptian ruler's modus operandi – placing his own money in their bags – seems strange and counter-intuitive: Had the Egyptian wanted to keep their donkeys, he could have left all of the brothers in prison, rather than freeing them after three days, and their donkeys and very lives would have been his. Apparently, the human mind has a powerful capacity to rationalize, justify and fabricate alternative explanations to the obvious when the simple truth is too difficult to face. In flagrant disregard for Occam's Razor[1], the brothers built intricate and improbable hypotheses to explain their predicament. Had they been able or willing to open their eyes, they would have saved themselves so much confusion, fear and angst. Their adversary was not a stranger; they had known him their entire lives, but were unable or unwilling to recognize him. The obvious solution eluded them, because in their minds it was impossible in so many ways. This person could not possibly be Yosef: Yosef was a dreamer, with no grasp of reality. Yosef was probably not even alive: As a slave, Yosef must have annoyed his master to the point that he did what the brothers themselves could not. On the other hand, who other than Yosef would have cared about their youngest brother and their father? Who else had any reason to throw them in prison? Who else cared enough to carry on this protracted game of wits, to maintain contact only to continue to threaten and abuse them?

The brothers never dreamed that they would bow to Yosef; ironically, when they finally did bow before him, the brothers were unaware that Yosef's dreams had come to fruition: They did not know that it was Yosef to whom they bowed. They bowed to the man who controlled all the food in Egypt; in a very real sense, they had not bowed to Yosef, but to a strange Egyptian potentate. They never dreamed that this was their own brother.

The Midrash offers a more detailed account of the moments in which Yosef finally revealed himself to his brothers: At first, Yosef told them that their "missing" brother, the brother they had claimed was dead, was in fact very much alive. The brothers were stunned, incredulous. Yosef then assured them that this long-lost brother was in the palace; in fact, "he told them, 'I will call him and he will appear before your eyes.' He called out, 'Yosef son of Yaakov, come to me! Yosef son of Yaakov, show yourself!' The brothers scanned every corner of the room, searching for Yosef, until Yosef finally declared, 'I am Yosef' – and the brothers (almost) died. (Bereishit Rabbah 93:9)

Even when they are told that Yosef is in the room, they look everywhere – except at the man who stands before them.

Sometimes, jealousy and hatred can be so strong that we underestimate the person who is the object of our hatred. By belittling their worth, we justify our own bad behavior. Because the brothers hated Yosef, they could not see the truth – even as it stared directly at them. When they were finally forced to recognize Yosef, they were dumbfounded, shocked almost to death. As if struck by lightning or confronted by a ghost, that moment of enlightenment forced them to recognize their many crimes.

They had hated their brother for no reason. Yosef had not been suffering from delusions of grandeur; he was, and always had been, capable of greatness. They suspected him of vanity and a false sense of superiority, but it was they who suffered from myopathy: They could not, or would not, see what was, and always had been, right in front of them. In the end, they had bowed to him, just as he had dreamed they would. They relied on him for sustenance, as his dream foretold. They understood, too, that if revenge was on his mind, he was certainly in a position to do anything he wished to them, and not merely take their few donkeys.

In one dazzling moment, the brothers' world was turned upside down. They were not victims, as they had imagined, of this man's abuse; they themselves were the abusers. They might tell their story, and perhaps even garner sympathy from anyone and everyone else – but there was one person in the world who was not fooled. They might have taken comfort in self-pity and self-righteousness had they been standing before any other accuser, but the man who stood before them was Yosef, the one person who knew their darkest secret, the person who had been their victim, the brother they had put out of their minds for so many years. Yehudah's impassioned speech, so full of righteous indignation, suddenly seemed hollow, even laughable. Now, they were forced to remember: They had another brother, he was in the room, staring right at them, and he was everything they had tried to deny: Yosef was a visionary, a man of unparalleled talents and strengths, a man of the highest moral caliber. He had risen far above them in every way, but he was willing to go even further, to do the unimaginable: Yosef was willing to forgive them.

For a more in-depth analysis see:

<http://arikahn.blogspot.co.il/2015/12/audio-and-essays-parashat-vayigash.html>

[1] Occam's (or Ockham's) Razor states that among competing hypotheses, the one with the fewest assumptions should be selected. In other words, the most straightforward explanation is usually correct.

For a more in-depth analysis see:

<http://arikahn.blogspot.co.il/2015/12/audio-and-essays-parashat-miketz-chanuka.html>

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Rabbi Yissocher Frand - Parshas Vayigash

Why Did The Brothers Edit Yosef's Message To His Father?

In an attempt to reassure his brothers that he bore no grudge against them, Yosef tells them "And now: It was not you who sent me here, but G-d; He has set me as a "father" (patron) to Pharaoh, and as a master of his entire household, and as a ruler over the entire land of Egypt." [Bereshit 45:8]

There are a number of strange things about this statement. First, if I were Yosef, I would not say, "I am the ruler over the entire land of Egypt." Yosef needs to know his place. There is only one supreme leader in the land of Egypt and that is Pharaoh. [For those old enough to remember, at the time when Ronald Reagan was shot, Alexander Haig, who was the Secretary of State at that time, said, "I'm in charge here now". This was an overly bold and inaccurate statement that he was never allowed to forget in the future! This statement of Yosef seems to be the political equivalent of Haig's faux pas.]

Second, is noteworthy to see how the brothers edited Yosef's message when they relayed it to Yaakov. When the brothers return to their father in Canaan, they tell him "Yosef is still alive and he is ruler over the entire land of Egypt..." [Bereshit 45:26]. Yosef had specifically told his brothers to tell his father three things: (1) I am a "father" to Pharaoh; (2) I am a master of his entire household; (3) I am ruler over the entire land of Egypt. The brothers, in delivering the message, mentioned the third point, but not the first two. Why did they delete the first two parts of the message Yosef asked them to deliver?

Rav Moshe Sheinerman of Brooklyn, NY, in his sefer *Ohel Moshe* brings a hesped [eulogy] that the Chasam Sofer said on someone named HaGaon Rav Yosef Dovid. In his hesped, the Chasam Sofer gives an answer to this question in Parshas Vayigash.

Rav Yosef Dovid apparently had some kind of connection with Napoleon Bonaparte. (The Chasam Sofer lived during the period of the Napoleonic wars.)

To understand the Chasam Sofer's message, let us use a contemporary example. Suppose you have a Jew from Eretz Yisroel, a Jew who never left Yerushalayim – a person who sits and learns the whole day. His entire life is immersed in Jewish living (Yiddishkeit). For whatever reason, his son left Yerushalayim and went away to seek his fame and fortune in the United States of America. As it turns out, he was wildly successful and started working in the White House. He rose through the ranks and ultimately became the White House Chief of Staff. It has now been ten, twenty or even thirty years since the father and son last saw each other. When the father wants to hear about what happened with his son, he is not interested that he graduated Summa Cum Laude from Harvard Law School or that he worked his way up from being a White House intern to being White House Chief of Staff. He is interested in one thing and one thing only – is he still an ehrliche Yid [honest and upstanding Jew] or not? The halls of power are intoxicating. When a person is in Washington and in the White House and literally has his hands on the levers of power that control the world – it is very intoxicating. A person can become so wrapped up in that power that nothing else matters. For this Yerushalmi Yid from Meah Shearim, the rest of it – Harvard Law School, the White House, the money, the power, the armored limousine, does not mean anything. He wants to know one thing and one thing only – does he put on Tefillin daily; does he eat Kosher; does he learn? The rest does not mean anything to him.

That is exactly what happened over here with Yosef. He went away as a 17 year old boy. He became viceroy to Pharaoh, King of Egypt. Yosef was the second most powerful man in the world. "I became the patron of Pharaoh" "I became in charge of the entire house of Pharaoh (the White House of its time)" However, "u'moshel b'chol Eretz Mitzraim" does NOT mean, "I am the supreme leader of Egypt". That statement means, "I rule over Egypt and Egypt does not rule over me". I did not become wrapped up in the society and in the culture, and in the licentiousness and depravity of Egypt. "Egypt did not dominate me. I dominated Egypt. I am still in charge. I never abandoned my Jewish life style."

This answers both our questions. Yosef was not bragging that he ruled over all of Egypt. "I am in charge of Egypt" was a reassurance to his father that Egyptian culture had not taken over his life; rather he was in charge and was not in any way subservient to the influence of the surrounding society. The brothers came to their father and they told him "Yosef is still alive" and now we will tell you the only thing that interests you: He is moshel [rules] on Mitzraim and not vice versa – meaning he never abandoned his Judaism. This is the only thing that made a difference to Yaakov Avinu.

This is the hesped the Chasam Sofer said about the Gaon Rav Yosef Dovid: He was a confidante of the Emperor Napoleon, but nevertheless he remained an ehrliche Yid. He never lost that which is the essence. He was moshel over the entire culture of France.

The Shagas Aryeh's First Drasha Based On Pharaoh's Opening Question To Yaakov

Yosef brought his elderly father to meet Pharaoh. The first question out of Pharaoh's mouth to Yaakov was "How old are you?" [Bereshis 47:7-8]. We cannot be exactly sure about Egyptian royal protocol and etiquette of those times but it is hard to imagine in any society that when one meets a distinguished adult for the first time, the first question thrown out to initiate the conversation was "How old are you?" What prompted this question?

In previous years, we have discussed many different answers. I saw an interesting comment in a sefer called Nachlas Shivah (not the famous sefer by that name). The Nachlas Shivah says that the Torah does not go into the dialog of Yaakov's conversation with the Egyptian King, but Yaakov began telling Pharaoh about world history. He started telling him about Noach, about the Flood, about the Tower of Bavel, and the whole narration of the life stories of Avraham and Yitzchak (his grandfather and father, respectively). Yaakov told him the whole history of the world. Yaakov was so convincing that all these events occurred exactly as he was describing them that Pharaoh had to interrupt and ask, "How old are you?" He was

convinced that a person who describes these ancient events with such faith and conviction must have actually lived through all these events! The way Yaakov was speaking, Pharaoh got the impression that Yaakov must have been 500 years old or more. It seems like he must have seen all the events he described with his own two eyes.

Another answer to the question, "What prompted Pharaoh's inquiry concerning Yaakov's age?" was given by Rav Aryeh Leib ben Asher Gunzberg (1695-1785), better known to us by the name of his classic sefer, the Shagas Aryeh. The Shagas Aryeh was an amazing genius who in later life became Rabbi in the French city of Metz. He was appointed to be the Rav of Metz at the age of 70 (1765). His first Shabbos in Metz was Parshas Vayigash. People took a look at him and they thought "Did the search committee lose their minds?" "He is such an old fellow, who will lead our youth? How can he relate to our younger members?"

The Shagas Aryeh heard the murmuring about his age. On Parshas Vayigash, in the first drasha [sermon] of his tenure, the Shagas Aryeh asked this very question: How rude was it of Pharaoh to begin his conversation with Yosef's father by asking him how old he was! What kind of question is that?"

The Shagas Aryeh explained as follows: As soon as Yaakov came to Egypt, the famine ceased. Pharaoh understood – the arrival of a Tzaddik in the country was a windfall for Egypt. Pharaoh immediately started calculating – if this righteous fellow stays with us, who knows how prosperous we will be!

The only problem was that Yaakov appeared to be a very old man. Who knows how much longer we will have him? The actuarial tables were floating around in his head. Pharaoh could not help himself and he blurted it out: "How old are you?" This was the primary question on his mind – how many years am I going to get out of this fellow? Yaakov reassured him. "I am only 130 years old. I still expect to be around for a very long time. My father lived a long time; my grandfather lived a long time. I expect to be around for a long time as well. The reason I look so old is because I have had a very bitter and trying life until this point.

The Shagas Aryeh told his new congregation: "Do you know why I look like this? It is because I have been in the Rabbinat all my life! I have had to deal with Baale Batim all my life. Everyone who has had this experience looks like this, even though I am not really that old. In addition, I will tell you something. I intend to lead this congregation for at least the next 20 years! And so it was. The Shagas Aryeh lived into his nineties and was the Rav of Metz until he passed away in 1785.

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

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Rav Kook on the Torah Portion

VaYigash: The Hazards of Leadership

Joseph Dies First

The text implies that Joseph was the first of Jacob's twelve sons to die: "Joseph died, and [then] his brothers and everyone else in that generation" (Exod. 1:6).

Why was Joseph's life shorter than that of his brothers?

The Sages suggested that Joseph's early demise was due to his position of public office. When one assumes a position of authority, "one's days and years are shortened" (Berachot 55a).

Yet this hardly seems fair. Why should those who dedicate their lives to public service be penalized by having a shorter life?

Joseph's Mistake

Working for the public good is certainly laudable. However, there are certain hazards inherent in such a path. Precisely because one is busy attending to important communal affairs, one may neglect one's own personal needs. A communal leader may come to view his own needs - whether material, spiritual, or moral - as insignificant.

We may observe this phenomenon in Joseph. As viceroy, Joseph was busy supervising the national and economic affairs of Egypt. He saw his position of public office as the vehicle through which God's covenant of Bein HaBetarim - which foretold the exile of Abraham's descendants in a foreign land - would be realized.

When Joseph heard his father referred to as "your servant," he did not object to this display of disrespect toward his father. Joseph was occupied with the overall objective; he did not want it to be compromised due to his obligation to show his father respect.

Joseph's error is not uncommon. This is a universal lesson for all leaders: they should not allow any goal or aspiration, no matter how lofty, to lead them to disregard lesser obligations.

The King's Sefer Torah

We find a similar idea in the special laws pertaining to a Jewish king. The Torah instructs the king to write his own sefer Torah and keep it with him at all times. In this way, "his heart will not be raised above his brothers, and he will not stray from the Law to the right or to the left" (Deut. 17:20). The Torah specifically cautions the monarch that, despite his involvement in critical national affairs, his public service should not lead him to neglect his private obligations. He is obligated to observe the law in his personal life, like every other citizen.

The Torah promises that a king who heeds this warning will be blessed with a long reign. Unlike those who fail the tests of public office, such a king will not live a life of "shortened days and years."

Life is not just major goals and aspirations. All of us, even those serving in high public office, must conduct ourselves appropriately in all facets of life. Those who maintain their integrity in their personal lives will be blessed with success in their most important and loftiest goals.

(Sapphire from the Land of Israel. Adapted from Ein Eyah vol. II on Berachot IX: 25)

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Rabbi Yirmiyohu Kaganoff

The Halachic Ramifications of Wills **By Rabbi Yirmiyohu Kaganoff**

Before he embarked on the difficult trip to Egypt at the age of 130 years, no doubt that our forefather Yaakov made sure all his matters were in order. Thus, it is time to study:

Should an observant Jew have a will drafted? What happens if the inheritance dictated by halacha is different from that dictated by civil law? If he already has a will, how can he arrange it so that it can be consistent with halacha? May one distribute one's estate differently from what the Torah commands? In this article, we hope to clarify these shaylos that affect every one of us.

SHOULD A JEW WRITE A WILL?

The answer to this question depends on what would happen if one leaves no legally binding will. Who will become the legal guardians of one's minor children? Does one want one's property distributed according to the civil law applicable where one lives? The truth is that allowing one's property to be distributed on the basis of civil law will almost always result in someone receiving money that is not halachically his or hers! Thus, by not writing a

halachically acceptable will, one may indirectly cause someone to receive stolen property!

The following shaylah that I was asked recently illustrates this problem: Reuven Stern, who had sons and daughters, did not leave a will, and his property was divided up according to the "law of the land", without any concern about halacha. One of his daughters asked me the following: Is she allowed to keep the money that she has received? She knows that her father intended to divide his property equally among his children; however, he had never drafted a will.

I told her that she is obligated to tell her brothers that her inheritance money is not halachically hers. If they wish, they can allow her to keep the money, but if she did not tell them, she would violate the Torah prohibition of gezeilah, stealing (MiDor L'Dor pg. 2).

DON'T WE PASKEN THAT CIVIL LAW DETERMINES THE HALACHA IN SUCH CASES BECAUSE OF DINA DIMALCHUSA DINA?

This is an incorrect understanding of dina dimalchusa dina, that the law of the government is binding in halacha. Dina dimalchusa dina requires us to obey rules of the government, such as paying taxes and obeying traffic and safety laws, and prohibits us from smuggling and counterfeiting. Dina dimalchusa dina does not replace the civil laws of the Torah (the laws of Choshen Mishpat) that govern the relationships between Jews. According to all accepted opinions, dina dimalchusa dina does not apply to the laws of inheritance (Shu"t Rashba, quoted by Beis Yosef, Choshen Mishpat end of Chapter 26, and by Shach, Choshen Mishpat 73:39).

IS A TYPICAL WILL VALID IN HALACHA?

Shimon had his lawyer draft a will. He instructed his lawyer to have certain bequests made to specific tzedakos, and to divide the rest of his estate equally among all his sons and daughters. Is this will halachically valid? If it is not, what are the halachic ramifications?

According to civil law, a person has the right to choose one's heirs and thereby to choose to whom one distributes one's earthly wealth, after one passes on. However, according to the Torah, a person does not have the ability to choose one's heirs, nor can one give away property after one's death. When a man dies, the Torah has a formula for distributing his assets. If a person cannot designate his heirs, does this mean that it is impossible for one to determine who owns one's assets after one's passing? No. In this article, we will present different methods whereby one can make a civil will enforceable according to halacha. However, it is important to ask a shaylah to make sure that one's will is indeed valid, according to halacha.

Here is a case of someone who drafted a will without first asking a shaylah. Mrs. Goldstein promised her nephew Yitzchak that she would support him in kollel. She told Yitzchak that she would make sure that he was provided for, if anything happened to her. Her own children were financially well-established but, unfortunately, non-observant. Any money she left them would be insignificant to them in terms of their own means. By supporting her nephew Yitzchak's learning, Mrs. Goldstein felt that she would be ensured of a good reward in Olam HaEmes. However, when she had a will drafted, she failed to make any provisions for it to be halachically binding. After Mrs. Goldstein's passing, Yitzchak researched the halachos about wills and realized that the property left to him might not be his, from a halachic standpoint. According to many poskim, taking this money without the consent of his non-observant cousins would be stealing, so Yitzchak decided to take no money without his cousins' willing consent (cf., however, Shu"t Igros Moshe, Even HaEzer 1:104). This consent was not forthcoming, and consequently, Yitzchak was unable to benefit from his aunt's estate. Unfortunately, even frum attorneys are often unaware of the halachic ramifications of drafting a will. Mrs. Goldstein's estate could have been divided according to her wishes, if she or her attorney had only consulted a rav.

ONE METHOD OF MAKING THE WILL EFFECTIVE

One method of making a civil will halachically effective is to have ownership of the property transferred while the testator (the person making the will) is still alive. Thus, there is no need for the beneficiary of the will, called the legatee, to be a halachic heir since he/she is receiving ownership of the property as a gift, not as an inheritance.

However, most people do not want to give away all their properties until their last moment, since they may still have a need for them. Therefore, the date that the gift takes effect is delayed until immediately before the testator passes away. Thus, the testator may still use all his assets, without any hindrance, until the point at which he no longer needs them.

Based on the above, a will can be rendered halachically effective by making a kinyan that transfers assets to the legatee. There are many acts of kinyan recognized by halacha that transfer ownership. For the purposes at hand, the simplest kinyan is what is usually called kinyan sudar, the same type of kinyan that is used to authorize one's rav to sell chametz. The testator lifts up a pen or any other utensil owned by someone else which thereby transfers the ownership of the estate to the beneficiaries of the will.

Although the act of kinyan is performed at the time the will is signed and witnessed, its effective date is delayed until shortly before the testator's death. At that moment, it takes effect automatically, because of the kinyan that was performed previously. Thus the legatee will not own the legacy (the property given away in the will) until a few moments before the testator passes away.

Making the will halachically effective by using a kinyan does not require making any change in the will itself. After the will is drafted, one renders it halachically effective by making the kinyan described above.

Although technically not required, it is advisable to have the kinyan witnessed by two adult males, who sign a statement that they observed the kinyan. This statement can then be filed together with the will. Otherwise, halachic heirs can protest that no kinyan was made and refuse to hand over properties.

Although the above method is halachically binding, it has several drawbacks. According to halacha, one can transfer property only if it already exists and is already owned by the person transferring it. Furthermore, one can only transfer property to someone who is already born. Thus the kinyan will transfer only property that the testator owns at the time that it is made, and will be effective only for legatees who are already born.

Since people generally purchase new properties and investments, earn more money, and include as yet unborn children and grandchildren in their wills, the kinyan should be periodically renewed. Although this is possible, most people generally forget to take care of it.

A more serious problem is that many of the items included in most people's portfolios, such as bonds, bank deposits, and cash, are neither transacted according to halacha via kinyan sudar, nor through most other standard kinyan methods (Choshen Mishpat 203:1; 66:1). Thus, although the kinyan will work to transfer to the legatee real estate, ownership in businesses, chattel, and stocks, a significant percentage of the assets may not have been transacted in a binding way. As a result, the halachic heir could claim that the legatee did not acquire these items, and therefore that they are not included in the will according to halacha.

WHY ISN'T THE WILL VALID IN HALACHA BECAUSE OF THE MITZVAH TO FULFILL THE WISHES OF THE DECEASED?

It is true that there is a halachic principle called mitzvah l'kayeim divrei hameis, which literally means that it is a mitzvah to fulfill the directives of a deceased person. Thus, it would seem that the heirs are obligated to follow the directives of the will and distribute the property according to the instructions of the deceased.

However, the principle of mitzvah l'kayeim divrei hameis is extremely limited in its application, as we will explain. Relying on mitzvah l'kayeim divrei hameis does not guarantee the fulfillment of the terms of the will, for several reasons. Firstly, the Shulchan Aruch rules that mitzvah l'kayeim divrei hameis applies only when the property is handed over to a third party

for the purpose of fulfilling the testator's instructions at the time the instructions are received (Choshen Mishpat 252:2).

If this condition is not fulfilled, the heirs are not obligated to carry out directives of the will. Obviously, the implementation of these conditions is impractical in the vast majority of wills. Furthermore, even if every condition is fulfilled, if the heirs sell the property before the legatee receives it, the legatee will have no halachic recourse to claim his property (Rama ad loc.). In essence, mitzvah l'kayeim divrei hameis is a mitzvah that the heirs should perform, but it is not binding on them.

Furthermore, according to many poskim, mitzvah l'kayeim divrei hameis applies only if the instructions are given directly to the halachic heirs, which is not typical in most wills (Shach, Choshen Mishpat 252:7). Thus, mitzvah l'kayeim divrei hameis is not an effective means of forcing the halachic heirs to fulfill one's will.

CAN'T THE TESTATOR TRANSFER THE PROPERTY THROUGH THE LAW OF METZAVE MACHMAS MISAH?

The words metzave machmas misah are the approximate equivalent of the English term "last will and testament," meaning the instructions made by the testator for the distribution of his assets upon his passing. However, according to most poskim, metzave machmas misah has halachic validity only if made by a shechiv meirah, a deathly ill person (Rema, Choshen Mishpat 250:25). Thus, according to most opinions, it will have no validity in most contemporary wills that are drafted when the testator is healthy. There is a minority opinion that metzave machmas misah takes affect even for a healthy person, provided he gives away all his property (Mordechai, Bava Basra #591). Based on this minority opinion, some poskim rule that if the legatees have already received the property, they may keep it (Gesher HaChaim 1:6, see Shu"t Maharsham 2:224). If faced with this question, one should ask his rav a shaylah.

DOES USING A TRUST OBTAIN THESE YERUSHA PROBLEMS?

I have seen poskim recommend the use of trusts to avoid some of the problems we mentioned above. However, I do not see any advantage in using a trust over simply making a kinyan. In the cases where the kinyan will not work, the trust will not work either, and the trust can create problems that the kinyan does not. Therefore, using a trust to assure that the will functions according to halacha is usually not warranted.

A MORE EFFECTIVE APPROACH - CREATING AN INDEBTEDNESS

There is a tried and true method that has been used for hundreds of years to guarantee that one's will is upheld. The testator creates a large, theoretical indebtedness on his properties in favor of the beneficiaries of the will. This means that he creates a lien on all his property that is payable to the intended legatee, who is not a halachic heir. (In halacha, a person can create indebtedness against himself and against his property, even if there is no preexisting debt or obligation.) The debt the testator creates should be much greater than what he actually expects the legatee to receive, and may be larger than he estimates the value of his entire estate.

There is one important condition made on this debt – that it will be null and void if the heirs honor the conditions of the will. However, if the heirs refuse to honor the will, the lien becomes payable, thus depriving them of their inheritance; instead, the estate, or a significant part of it, is awarded to the legatees as payment of the debt. In reality, the indebtedness is never really used; its sole purpose is to enforce the terms of the will.

An example of how this method works will explain it better. Using our earlier examples, Reuven Stern wanted to leave property to his daughters, and Mrs. Goldstein wanted to leave property for her nephew. In both instances, the testator failed to arrange clear ownership of the legacy for the intended legatee.

What the testators could have done is to create a large, personal debt against their property to the benefit of the intended non-heir legatee. Thus, Reuven would have created a large indebtedness against his own property for the benefit of his daughters, and Mrs. Goldstein would have created one for her nephew. A condition would be placed on this debt that it is null and void if

the conditions of the will are met and the heirs, in this case the sons, do not contest the will.

Both Reuven and Mrs. Goldstein would also have left a small but respectable legacy for their sons, something they should have done anyway, as will be explained later.

When the testator's will is executed, the sons, who are the halachic heirs, have the option to ignore the terms of the will. However, by doing so, the estate now owes the full indebtedness. The result is that the sons will end up with no inheritance at all, since the debt might be greater than the entire estate. Thus, it is in the heirs' best interest to obey the will, and at least receive the small inheritance specified for them.

Although this method may seem like a modern gimmick, it has been in use for hundreds of years. It was commonplace to write a halachic will to provide daughters with part of the inheritance together with their brothers. The father achieved this by creating a lien against his own property for an amount of money that made it worthwhile for the sons to fulfill the conditions of the will (see Rama, Choshen Mishpat 281:7).

It should be noted that because of reasons beyond the scope of this article, the indebtedness made against a wife's properties would not be valid (see Kesubos 78b; Even HaEzer 90:9). However, the method of creating an indebtedness can still be used by placing the lien for the wife's will against her husband's properties. For this reason, when a couple has their wills drafted, the indebtedness for both of their wills should place the conditional lien against his estate, not hers. (This approach is suggested and described in detail by Rav Feivel Cohen in his sefer MiDor L'Dor).

IS IT PERMITTED TO DISTRIBUTE ONE'S ESTATE DIFFERENTLY FROM WHAT THE TORAH INSTRUCTS?

The Gemara tells us that Shmuel instructed his disciple, Rav Yehuda, to avoid becoming involved in situations where the Torah's laws of inheritance would be overruled, even to transfer property from an evil son to a good son, or from a son to a daughter (Bava Basra 133b; Kesubos 53a).

Does this imply that all property should be inherited only by the halachic heirs? If this is so, why was there a widespread custom of providing daughters with an inheritance to which they are not entitled according to Torah law?

There are several approaches given to answer this question.

Some poskim rule that it is permitted to give away a large part of one's estate, provided the testator makes certain that each of the heirs receives at least some inheritance (Tashbetz 3:147; Ketzos 282:2; see Shu"t Chasam Sofer, Choshen Mishpat #151 who disagrees).

Others explain that one should provide inheritance for one's daughters as a means of encouraging their shidduchim, attracting potential husbands by the expectation that they will eventually receive an inheritance (Shu"t Maharam Mintz #47, quoted by Nachalas Shiva 21:4:2).

Others contend that when the accepted practice is that all children inherit equally, one should follow this custom to make sure that a machlokes does not result from unrealized expectations (Gesher HaChaim, 1:8; cf. MiDor L'Dor pg. 31 who seems to disagree).

Gesher HaChaim records a story of a great talmid chacham who wanted his estate divided exactly as the Torah instructs. Thus, he arranged legally that his bechor should receive a double portion, and that only his sons should receive inheritance and not his daughters. Unfortunately, the result of this distribution was a legacy of machlokes that created a tremendous chillul Hashem. For this reason, Gesher HaChaim strongly recommends that a person divide his estate according to what is the expected norm in his community.

It is important to realize that legal rights and responsibilities are never governed by secular law. A Torah Jew realizes that Hashem's Torah is all-encompassing, and that every aspect of one's life is directed by Torah. Thus all financial aspects of our lives are also governed by halacha, and one should be careful to ask shaylos about one's business dealings.

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Putting Red In The Blue Label

Halachic Musings

By Rabbi Yair Hoffman

The Product

Its origin is in Kilmarnock Ayrshire, Scotland, but it is the most widely distributed brand of blended Scotch whiskey in the history of mankind. It is sold in almost every country in the world, with sales approaching some 150 million bottles each year. It is known as Johnnie Walker Scotch whiskey, and it comes in many versions.

Red Label is 80 proof and is a blend of 35 grain and malt whiskies. It is intended for making mixed drinks. Black Label is 80 proof, a blend of about 40 whiskies, each one of which is aged for at least 12 years. Blue Label is Johnnie Walker's premium brand 80-86 proof blend with no age statement. Bottles are numbered serially and sold in a stunning silk-lined box accompanied by a certificate of authenticity. It is one of the most expensive blended Scotch whiskeys on the market, with prices of about \$200 to \$300 per bottle.

The Problem

Alas, it seems that some people may have the practice of putting the Red Label in the Blue Label bottle. Even if there is no monetary gain made here whatsoever, from a halachic view, this practice could possibly be as treif as the worm in a margarita.

The Prohibition

The prohibition is known as geneivas da'as, fooling or deceiving others in physical practice. The Gemara in Chulin (94a) cites Shmuel as saying that the prohibition applies to everyone.

The Gemara in Chulin 94a cites a beraisa which discusses four examples given by Rabbi Meir of things that are forbidden on account of the issue of geneivas da'as. 1) It is forbidden to repeatedly invite someone to a meal when you know that he will refuse; 2) It is forbidden to repeatedly offer gifts when you know that he will refuse; 3) It is forbidden to appear to open a new barrel of wine (when one is actually opening it for a previous sale) unless one informs him of the real reason he has opened it [the underlying issue is that the wine will not last as long now that the barrel is open and it is a big favor to the guest, much like opening a brand-new bottle of Blue Label would be nowadays]; 4) It is forbidden to offer someone oil from an empty flask to anoint oneself when one knows full well that the person will refuse it. If, however, he is offering the oil to show (others [Rashi]) his fondness for the person, it is permitted.

We see, therefore, that geneivas da'as is violated even if there is a non-financial deception. This is true in the case of dressing up Red Label in Blue Label packaging at a Kiddush or simcha.

Worse Than Lying

In regard to the verse of mi'dvar sheker tirchak, stay away from a false matter, there is a three-way debate as to how we understand this pasuk. The Chofetz Chaim rules in his Ahavas Chessed that there is an out-and-out prohibition to lie. This is in accordance with the view of some Rishonim. Other Rishonim hold that the verse is merely good advice, but not halachah. A third opinion holds that it is applicable to judges adjudicating law. Generally speaking, the view of the Chofetz Chaim is normative halachah. The prohibition of deceiving, however, is a clear prohibition according to all opinions. According to the Sefer Yereim and the Ritva, it is a biblical prohibition. According to the SMAK the prohibition is d'rabbanan. But all hold that it is a full-blown prohibition.

Similar Case Of Geneivas Da'as

The Mishnah in Bava Metzia (59b) tells us that it is forbidden to mix older produce with newer produce and sell them together as one package. This is a parallel to our case, but our case regarding the whiskey is worse since only the inferior product is being presented. The Gemara in Bava Metzia 60b has more cases where a seller makes animals and animal skins look newer

through artificial means. These, too, are forbidden on account of geneivas da'as. It is true that these cases in Bava Metzia are dealing with a sale, but if we combine this with the beraisa in Chulin, then we have a parallel.

Does everyone agree to this? It would seem that it may well be a debate in the Rishonim. The Rashba in Chulin (94a) and the Rosh (Perek 18) hold that if the item is a matanah, a gift, there is no prohibition of geneivas da'as.

Tosfos (Chulin 94b "Amar") and the Ritva (Chulin 94b "Rav Ashi") hold that it does apply even to a free gift. How do we understand the distinction between the cases of the beraisa and the free gift according to those authorities who hold that it is not considered geneivasda'as? It would seem that since the deceiver is giving something to the person, that makes up a bit for the deception.

Other Applications Of Geneivas Da'as

There are a number of other contemporary applications of this prohibition that apply according to all Rishonim. These applications apply across the board in numerous industries.

Sockpuppeting. In the age of the Internet, a number of people adopt other identities. While anonymity is permitted, when it is used to give off the impression that person X is really someone else, this is clear geneivasda'as.

There are magazines and newspapers that do this as a matter of course, where letters to the editor are printed by an author of an article that he himself had penned.

False Headlines. Sometimes a news magazine or paper will create a false headline to get the reader to read the story. This, too, is a violation of geneivasda'as. It further causes the reader to waste time, if that is not what he or she would have wanted to read. In the modern Internet age or on Facebook, there is something called "click-bait." Headlines are designed to lure the reader into clicking and reading. This is permitted as long as there is no geneivasda'as involved.

Phony Amazon Reviews. If a company produces a product, they will often be tempted to write their own reviews and post them on Amazon.com. This too would clearly be a case of geneivasda'as. It falsely gives off the impression that there are more buyers, as well as falsely inflates the rate of satisfaction.

Falsely Reporting Internet Hits. There are websites and papers that falsely report their Internet traffic or distribution. This is also geneivasda'as, deceiving those who think that the site receives more visitors than it actually does, or deceiving its advertisers. Falsely inflating how many issues are printed is geneivasda'as as well.

Serious Issue

There is a fascinating Shaarei Teshuvah (3:181) which states that the leniency of "Mutar l'shanos mipnei ha'shalom, sometimes it is permitted to tell a white lie to maintain peace" does not apply to geneivasda'as.

Geneivasda'as is an important and essential value in Torah Judaism.

Whether it is pouring Red Label into a Blue Label bottle, or inflating web hits, printing numbers, or using false e-mails to create wrong impressions, we must realize that it is a serious halachic issue that should not be ignored or trampled upon.

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