

Tonight, Friday evening, May 15, we will count day 37, which is 5 weeks and 2 days of the omer.

Jerusalem Post :: Friday, May 15, 2009

LAG B'OMER AND THE POPE :: Rabbi Berel Wein

This week the Jewish people commemorate the thirty-third day of the omer – Lag B'omer with bonfires, a festive meal, parades, music, haircuts and beard trims. The day commemorates the end of a tragic period of Jewish history when the disciples of Rabi Akiva in the second century CE stopped dying of a mysterious plague that decimated them.

Another opinion that has some traditional backing is that these disciples of Rabi Akiva followed their mentor in supporting the rebellion of Bar Kochba against the Roman emperor Hadrian. This revolutionary war ended disastrously for the Jews with enormous amounts of Jews killed by the Roman legions during the rebellion and afterwards as well.

Somehow all of these deaths ended on this thirty-third day of the omer and the mourning for those killed was suspended for that day. Over the centuries the day also came to symbolize the day of death of the great second century CE scholar and holy man, Rabi Shimon ben Yochai who is buried in Mount Meron in the Upper Galilee.

A pilgrimage of hundreds of thousands of Jews on Lag B'omer is also a traditional event on that day here in Israel. Because of the numerous bonfires enthusiastically fueled by the young children of Israel on Lag B'omer the country is covered by a haze of acrid smoke. It is environmentally challenging but somehow vaguely reassuring as well. Custom and tradition as usual mark this historic date as one that is embedded deeply in the collective Jewish memory.

This week in the modern State of Israel, the Pope of Rome is coming to visit. All visits of popes to Israel – I believe that Benedict is the fourth prelate to do so – arouse great interest and an undercurrent of controversy. The Vatican has not been a traditional friend of the Jewish people over its long history – to put the case in its mildest form possible.

Nevertheless it is an occasion of note to realize that the Vatican actually recognizes the State of Israel as a legitimate nation – something which most of the Moslem world has yet to do – and has gone to some lengths to attempt to rectify its teachings, liturgy and theology regarding the Jews.

The revelations after the Holocaust, the apparent silent complicity of the Vatican and its then pope Pius XII, and the emergence of a more liberal strain within Catholicism on many issues have all contributed to a new interaction between Jews and the Vatican. The Church elevated us to the status of “elder brother,” officially stopped specific missionary activities against Jews, and has attempted what in its eyes is an even handed policy towards the State of Israel.

The Church certainly has a long way to go to make proper amends for its brutal behavior towards Jews over the centuries but it is clear to any unbiased observer that the attitude of the Church towards Jews today is the most benign that it has ever been in its long history. The mere presence of the Pope in Israel this week is an event that should be appreciated for its historical significance.

The Pope will undoubtedly notice the smoky haze over Jerusalem on Lag B'omer. His retinue of advisers and experts may have already explained to him why this peculiar event of bonfires is occurring. But to me there is a symbolism in the confluence of the Pope's visit and Lag B'omer.

The Church absorbed the Roman Empire within its culture, ritual and society. The Jews continued to battle against Roman culture, practices and ways long after they were seemingly defeated by Hadrian and his legions. There are no pilgrimages to the grave of Hadrian. What is truly vital and long lasting within Church doctrine is what is borrowed and adapted from Judaism. The Pope's visit here in Israel this week vindicates this truth.

Our ancestors who lived in the dark exile of millennia under Church domination would be amazed and wondrous that the Pope of Rome is making an official visit to Jewish Jerusalem and Israel. As we do with all

of the wondrous historical events that surround the return of the Jewish people to their rightful homeland, we take the Pope's visit in stride as being somehow at worst a nuisance – the traffic in Jerusalem will be unbearable during his visit – and at best a gesture of true historic good will and reconciliation.

The words of the prophets of Israel that many nations will come to Jerusalem to seek God and His spiritual sustenance continue to resonate in our world in spite of all of the dangers and problems that surround us.

Happy Lag B'omer

Shabat shalom

Weekly Parsha :: B'HAR – BECHUKOTAI :: Rabbi Berel Wein

These two parshiyot together form the final bookend of the book of Vayikra. This conclusion of Vayikra is a rather somber one, what with the dominant theme being the prediction of Jewish dereliction from Torah values and practices and the resultant exile from their land and sovereignty. Yet in these parshiyot there are also promises of prosperity and well being and successful general Jewish life.

The Torah generally conforms to such a pattern of great blessings and stern warnings. It really allows the Jews very little middle ground in which to maneuver the private and national lives of Israel. Our entire history is one of great vacillation between exalted and miraculous moments and dire events and forebodings.

This certainly is true regarding the story of the Jewish people and the Jewish State over the past century. Our tears are always mixed with joy and our joy is always laden with a heavy dose of accompanying tears. The Torah's message to us is that life constantly presents different emotions and scenarios that are rarely if ever completely positive or completely negative.

Perhaps this is one of the meanings of the words of the rabbis of the Talmud that everything that Heaven does has good within it. Even if the general event may be deemed to be a negative one, there always lies a kernel of good buried within it. So, therefore, our parshiyot reflect this duality of blessing and accomplishment as well as of defeat and hardship.

This duality of view regarding our national life also applies to our dealings with others on a daily basis. To try and see the good lurking within another person whenever possible – and I will admit that there are situations that make it look impossible to do so – has always been a premier Jewish trait. The rabbis in Avot taught us that every person has his moment so to speak. Seizing and exploiting that moment is the main accomplishment in life.

But that requires a sense of realism. We cannot fool ourselves to think that everything is always correct and well with ourselves and our society, nor can we always be so pessimistic and down on the situation that we find ourselves in that we preclude honest attempts to improve it. The balance of hope and warning that these concluding parshiyot of Vayikra exude is an important lesson and guidepost for our daily lives.

This lesson lies embedded in another teaching of the rabbis in Avot: “It is not incumbent upon you to complete the entire task at hand but then again neither are you free to discard it entirely.” Reality dictates to us that we face our world and its dangers squarely and honestly. But we should not abandon hope and effort to improve our lot.

We believe that positive effort and wise decisions, coupled with faith and tradition allow us to survive and prosper. Therefore at the conclusion of the public reading of these mixed messages at the end of the book of Vayikra we rise and strengthen ourselves “Chazak chazak v' nitchzeik.”

Shabat shalom.

TORAH WEEKLY—Parshat Behar – Bechukotai
For the week ending 16 May 2009 / 21 Iyyar 5769
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by Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com

OVERVIEWS

Behar

The Torah prohibits normal farming of the Land of Israel every seven years. This "Shabbat" for the Land is called "shemita". After every seventh shemita, the fiftieth year, yovel (jubilee) is announced with the sound of the shofar on Yom Kippur. This was also a year for the Land to lie fallow. G-d promises to provide a bumper crop prior to the shemita and yovel years. During yovel, all land is returned to its original division from the time of Joshua, and all Jewish indentured servants are freed, even if they have not completed their six years of work. A Jewish indentured servant may not be given any demeaning, unnecessary or excessively difficult work, and may not be sold in the public market. The price of his labor must be calculated according to the amount of time remaining until he will automatically become free. The price of land is similarly calculated. Should anyone sell his ancestral land, he has the right to redeem it after two years. If a house in a walled city is sold, the right of redemption is limited to the first year after the sale. The Levites' cities belong to them forever. The Jewish People are forbidden to take advantage of one another by lending or borrowing with interest. Family members should redeem any relative who was sold as an indentured servant as a result of impoverishment.

Bechukotai

The Torah promises prosperity for the Jewish People if they follow G-d's commandments. However, if they fail to live up to the responsibility of being the Chosen People, then chilling punishments will result. The Torah details the harsh historical process that will fall upon them when Divine protection is removed. These punishments, whose purpose is to bring the Jewish People to repent, will be in seven stages, each more severe than the last. Sefer Vayikra, the book of Leviticus, concludes with the details of erachin - the process by which someone vows to give the Beit Hamikdash the equivalent monetary value of a person, an animal or property.

INSIGHTS

Keeping Up With The Kohens

"Do not make for yourselves idols." (26:1)

A prince living in the lap of luxury two hundred years ago felt that he had everything that money could buy.

Take that prince and transfer him to 2009 and he would be far from happy. He has no car, no air-conditioning, no elevator, no microwave and no computer. He would compare his 'luxury' to the ordinary life of the modern world, and his happiness would evaporate. He would feel deprived.

Luxury is relative.

Greed is not based on any absolute desire for a specific thing. It is all about having more than everyone else.

According to the Chovot Levivot the first cause of not recognizing G-d is that we focus on what we don't have and take what we have for granted. We fail to see that our lives are a twenty-four-hour-a-day gift.

In this week's Torah portion the Torah seems to write a random list of laws: Shemita, laws of sale of moveable objects, laws of sale of land, sale of one's house, laws of interest, the redeeming of a Hebrew slave and the redeeming of a Jew sold as a slave to a non-Jew. Rashi explains that the Torah is warning us of an inevitable progression.

What stops a person from keeping Shemita properly?

Greed.

If we don't keep Shemita properly we won't profit from the sale of Shemita products. Quite the reverse. We will find ourselves short of money to the extent that we will have to sell our moveable property. If that doesn't wake us up, the next step is we will be forced to sell our real estate. Then the house we live in. If that doesn't bring us back, then we will commit the sin of lending money to Jews for interest. If we don't stop there and repent, the next step is that we will have to sell ourselves to a fellow Jew as a servant, and if that doesn't bring us to our senses, eventually we will be sold to a heathen and end up indulging in immorality, worshipping idols and breaking Shabbat.

"Do not make for yourselves idols."

The main idol of the modern world is conspicuous consumption and material success.

Doctors now recognize stress as one of the single greatest causes of chronic disease in our society.

And amongst the main causes of stress is maintaining a lifestyle that demands keeping up with the Kohens.

If it weren't for envy and greed we would all be happy with the sufficiencies of existence. A modest and simple way of life.

In fact we'd be much happier.

Written and compiled by Rabbi Yaakov Asher Sinclair

Peninim on the Torah by Rabbi A. Leib Scheinbaum

PARSHAS BEHAR

If your brother becomes impoverished and sells part of his ancestral heritage. (25:25)

David HaMelech says in Tehillim 41:2, Ashrei maskil el dal, "Praiseworthy is he who contemplates the needy." The Midrash Tanchuma submits a number of expositions concerning the meaning of "maskil", contemplating the plight of those in need. Rabbi Yonah notes that the pasuk does not say that one should "give" to the needy, but rather, one should "contemplate" their situation. This means that one should look at the individual in need, appraise his circumstances, and see how to share with him in his plight. Horav Chaim Zaitchik, zl, explains that when one contributes to the poor, it should not be only with his wallet, but with his whole heart. When one gives with the heart, the contribution has greater and deeper meaning and value. Furthermore, it is not enough simply to give; one must empathize with the pain, sense the bitterness, feel the loneliness, and even, in some way, experience the need, the want, the lack from which he is constantly suffering. Indeed, it should be as Rashi comments on the pasuk in Shemos 22:24, "When you lend money to My People, to the poor person who is with you - view him as if you are the poor person." The man standing at your door is none other than you. How would you like to be treated? Well, that is exactly the manner in which you should act towards others.

Let us go a step further. Being poor means physical deprivation, as well as the emotional pain and humiliation that are engendered by such dire circumstances. By giving the poor person a check, we alleviate his hunger, but what about his pain? What about the humiliation of being different, of being poor in a society which is, by and large, affluent in comparison? How does one remove the poor person's feeling of insecurity, shame, helplessness? This is what Rashi is suggesting when he says that we are to view him from our perspective. It is essential that the benefactor erase the boundary, the gap, the chasm, that glares out between him and the poor fellow who is seeking his assistance. We must give in such a manner that the poor person actually feels that he is doing us a favor. He should sense that Hashem stands at his side and supports him in his quest for assistance. He is not alone. In fact, he is more privileged than his benefactor. One who gives in such a manner understands that he is not giving; actually, he is taking. He is the beneficiary - not the poor person. If anything, the poor person is enabling him to achieve merit.

Rav Zaitchik adds that the mitzvah of tzedakah is unique in the sense that simply contributing money without giving of oneself does not fulfill the spirit of the mitzvah. One who gives generously, but without emotion, empathy and love, does not complete the mitzvah. Does he continue to feel the poor man's pain after he has left his home? When he leaves the hospital, does he sense the anguish and fear that courses through the patient's mind? Do his cries of pain still ring in his ears, or did they dissipate as soon as he left? The rule is simple: It is the heart that counts most. To give without feeling is to miss the essence of giving.

This is the meaning of "contemplating" the needy. It means crying with the fellow, sensing his pain, and feeling his anguish. A young man once came to Horav Shlomo Zalman Auerbach, zl, seeking his blessing. Apparently, his wife had been experiencing great difficulty conceiving. After spending some time with Rav Shlomo Zalman, pouring out his heart's pain to the sage, he left with little hope. Rav Shlomo Zalman told him that it did not appear that he was destined for this elusive blessing. He felt bad for him,

but, regrettably, could not offer his help. The young man returned home with an empty heart, depressed and hopeless. He felt that his last hope had dissipated.

About two hours later, the young man heard a soft knock at his door. He arose to answer the door and was shocked to see the gadol hador, preeminent leader of the generation, Rav Shlomo Zalman himself, standing in his doorway. "Rebbe, come in. To what do I owe this honor?" he asked. Rav Shlomo Zalman replied, "I could not give you a brachah, because I did not "see" it achieving fruition, but I could not allow you to cry alone. I am here to share in your pain." Rav Shlomo Zalman proceeded to sit down with the young man and his wife, to cry with them and to offer his solace. This is the meaning of contemplating.

Rav Chaim Zaitchik cites the Kav HaYashar who relates an incident which is cited by the Baal HaChareidim. A distinguished, righteous Jew had the exalted opportunity of hosting the Arizal in his home. Obviously, he spared nothing in his appreciation of and reverence for the eminent mekubal, mystic. Prior to leaving, the Ari acknowledged the kindness of his hosts and asked, "What can I do for you? How can I repay you for your outstanding hospitality?"

The host replied, "When we were first married, my wife and I were blessed with children, and then she suddenly became infertile. We have not had a child in a number of years. Will you pray for us?"

The Ari revealed the following to the host, "At one time, there was a ladder that was at the side of your house, which the chickens conveniently used as a means for reaching the water bucket that was on the shelf near the top of the ladder. One day, your wife instructed the maid to remove the ladder. Certainly, her intention was not to cause any pain for the chickens, but, inadvertently, this is exactly what occurred. Their access to water was cut off. Ever since that day, as a result of the moved ladder, they have been miserable. Hashem Yisborach has compassion for all of His creations, and, therefore, the pain of these chickens did not go unanswered."

As soon as the host heard this, he immediately returned the ladder to its original place. Shortly thereafter, the couple was blessed with a child. How careful we must be to take the "feelings" of every creature into consideration.

If your brother becomes impoverished and his means falter in your proximity, you shall strengthen him. (25:35)

Jews are well known for the charity they give. Indeed, the concept of charity plays a central role in all of Jewish ethical behavior. It goes far beyond writing a check and donating food. This broad concept encompasses everything from contributing money, to giving assistance, offering words of encouragement, and judging people in a favorable light. It is far more than an act of compassion. It is a religious activity like that of any other mitzvah. Thus, it is governed by the structures of halachah. It is Hashem's mitzvah, and, as such, is not defined by man. It is the Almighty Who determines the priorities for tzedakah - not man.

Halachah determines: who is to be the recipient of funds; who and what takes priority; how to maintain the recipient's self-respect; who is considered in extreme need; and who is needy. The bottom line is that all Jews, regardless of background or position, deserve assistance. This applies even to those Jews who have erred and placed themselves in situations in which they have hurt others, as well as themselves. At times, it is difficult to help such an individual. After all, he has asked for it. Who asked him to act in a foolhardy manner? The Bostoner Rebbe, Shlita, notes that sometimes the recipient's cause seems so unworthy that only a religious genius, who stands on a sublime level in his relationship with Hashem, can pierce through the obscurity that clouds every human failing in order to view the faltering soul, who needs help to escape the self-imposed muck which is drowning him. Horav Avraham Kalmanowitz, zl, the legendary Mirer Rosh Yeshivah, who guided his students from Europe-- through Shanghai-- to America, was such a genius. He succeeded in rebuilding his beloved yeshivah on these shores. He was asked to come to Boston in the early 1950's to assist in the mitzvah of Pidyon Shevuyim.

A poor, immigrant rabbi fell into the clutches of temptation by attempting to smuggle valuables out of this country. He was apprehended in Boston, and the judge, not known as a friend of religious Jews, was about to throw the book at him. When he realized that he was dealing with a member of

the clergy, he asked his friend, a non-Orthodox Jewish clergyman, for advice. The "clergyman," whose opinion of his observant co-religionist was far from favorable, agreed that the rabbi should be punished to the fullest extent of the law. The judge acquiesced and he sentenced the rabbi to a lengthy term at a local correctional facility.

Rav Kalmanowitz heard about the travesty of justice, and, while he did not condone the Jew's actions or the ensuing chillul Hashem, desecration of Hashem's Name, he could not allow a fellow Jew to languish in prison. He implored the Bostoner to join him in meeting with the clergyman who was undermining the Jew's application for a reduced sentence. The fact that they would have to meet with him in his temple bothered them, but, if that were the only way to help a fellow Jew languishing in prison, so be it. They visited with the clergyman and listened to him expound on his religiosity and extol his temple's commitment to the "furtherance" of Judaism in the modern world. Finally, after he finished patting himself on the back numerous times, they pleaded with him to arrange an appointment with the judge to help them free a fellow Jew.

This was a difficult defense by any measure. There was no question concerning the convicted smuggler's guilt. What could Rav Kalmanowitz say in his defense? When Rav Kalmanowitz was asked to approach the bench, he came over and drew himself up to his imposing height. Standing there, with his long, white beard flowing down his majestic face, he told the judges, "Your honor, there is no question regarding the facts. This has already been confirmed. There is a question, however, concerning the underlying rationale which led to this act that must be brought to the attention of the court. I feel it has bearing on the case and the defendant's culpability.

"The defendant lived in Austria prior to World War II. He was there during the Anshluss, when the Nazis degraded the Jews in the most inhuman manner, making them clean the public streets. This man tried to escape the country. There was only one way: smuggling himself from one hostile border to another. He succeeded in saving himself, but, unfortunately, smuggling lost its degree of iniquity. Rather, it became for him a way of life, an avenue for survival. Can you blame him for smuggling? He did not see the crime in his actions."

The judge was reasonably impressed by this line of argument, and, after a short interval, he reduced the original sentence. This was the length to which Rav Kalmanowitz was willing to go to save his fellow Jew. It also gives us an idea of the various perspectives we must utilize in order to perceive the "other side of the story," so that we are able to judge our fellow Jew in a favorable light.

Parashas Bechukosai

He shall distinguish between good and bad, and he shall not substitute for it. (27:33)

Rashi explains that it is forbidden to arrange the animals in such a manner by which the choicest animal will emerge the tenth one. This is unlike all of the other sacrifices which demand that the individual only use his best as a sacrifice. This law begs elucidation. If one may not arrange the animals before the tenth one is designated, he surely may not substitute another animal to take the place of the tenth one once it has been designated. Why does the Torah find it necessary to state the halachah of V'lo yemirenu, "He should not substitute it," when it is so obvious?

Horav Moshe Feinstein, zl, sees in this halachah a powerful lesson concerning the sanctity of the individual. While it is clear that the world cannot exist without people who serve as its working force, one might be led to think that, since the individual does not see himself personally as capable of studying Torah, he must decide to go to work. This person has just made a personal judgment call, determining that others are more suited for Torah learning than he, so why should he bother? This is a common error made by those who lack the self-confidence, or are just simply seeking an excuse, a way out, a validation. The impropriety of this attitude is underscored by the rule of V'lo yemirenu, not distinguishing between the good and the bad. The yetzer hora, evil-inclination, will always find some way to convince a person that he is not suited for learning; he is just not destined for it.

The Torah informs us that when one is young, he should not make the foolish error of distinguishing between himself and others. He should not

say, "I am not as capable as others. I am not as smart. I do not have the ability to apply myself diligently to Torah study. Learning is not for me." Moreover, a father may not take it upon himself to distinguish between his sons, determining which one he feels is destined for Torah eminence and which one is not, who should receive the extra tutorial assistance and who should be encouraged to take up a sport. Yes, there are fathers who have this illness. On the contrary, says Rav Moshe, one must learn, regardless of his ability, and one must teach each and every one of his sons, because, in this matter, one may not make any distinctions.

Interestingly, everyone "seems" to have sufficient intelligence for what he deems important and "happens" to forget only those things that are of minor importance to him. After all is said and done, it is clear that one who acknowledges that studying Torah is the most important thing in life will understand what he learns and will remember it. He understands that all he can do is endeavor. Hashem will do the rest. Torah is the result of Divine authorship and is, thus, not subject to the criteria of other forms of erudition. This attitude should prevail, guiding the individual even after he has achieved and been sanctified by the Torah he has studied. It is never enough. Regardless of how much knowledge one has gained, he must continue in his quest to acquire more knowledge and deeper understanding of the Torah's profundities. He should not feel that he can now engage in other disciplines, since he has already learned as much as necessary. There is no such thing as "enough." We have no definition of the word "sufficient" in regard to Torah study.

The Torah also prohibits substituting hekdedeh, consecrated, animals. This halachah, likewise, provides us with a practical lesson. At times, one feels that learning is not his cup of tea, and he will instead persuade someone else to study Torah, while he engages in other pursuits. This is one case in which delegating to others is very wrong. He must maintain himself on the level of sanctity which he achieved when he was learning. He must learn; others must also learn. Their learning does not take the place of his learning. The Torah alludes to this idea when it says *V'lo yemirena*, "and he shall not substitute for it."

And if you then despise My statutes and utterly reject them (or those who interpret My laws) (to the point that you) prevent all My commandments from being carried out, (thereby) nullifying My covenant. (26:15)

Sforno interprets this pasuk in the following manner: "If you despise My statutes" - if you not only disobey My statutes, but are disgusted by them. "And (if you) utterly reject them (or those who interpret My laws) - like a person who deliberately vomits, without any reason to be sickened by them, since they are known to be good. The term *mo'es*, which is translated here as, "despise," is applied to *chukim*, statutes, laws which are beyond human comprehension. Because the individual cannot understand these laws, since he cannot rationalize them in his limited mind, he deems this genre of laws to be despicable. It may sound petty and irrational, but that is how some people are. The next term, *tigaal*, which is translated as reject, is applied to *mishpatim*, laws that we understand-- or at least which we find rational. These are laws that are necessary to maintain society's infrastructure. Sforno adds the notion of rejection to the point of vomiting, similar to the Roman practice of eating and vomiting, so that they could consume more food. One who loathes *mishpatim*, laws which are sensible and usually palatable and agreeable, does so artificially and intentionally, as a result of his own volition.

In the Torah's recording of the retribution for those who despise and reject *mitzvos*, it employs a reverse phraseology in relation to the two types of commandments, "But the land will be left bereft of (its people) and will appease (G-d's anger on account of) its (unobserved) *Shemittah* years, while it lies desolate of (its people); and they will gain appearance for their transgressions. This is redress (for that) they despised My law and redress (for that) they utterly rejected My statutes." (Ibid 26:43, 44)

Here we see the *chukim*, which man does not comprehend, described as *goalah nafsham*, "loathsome," while the *mishpatim*, rational laws, are termed as *moasu*, despicable. In this case the *chukim*, which had originally been described as despicable, are now described in the term implying intentional hatred, artificially spewed out and rejected. The *mishpatim* which previously had been defined as rejected-- and artificially and

intentionally vomited out-- now have the word *mo'es* applied to them, implying that, by their very nature, they are intolerable. How can there be such a discrepancy between the actual sin and its retribution?

The Alter, zl, m'Kelm, explains that no physiological difference takes place when one performs *chukim*, in comparison to when he carries out *mishpatim*. He writes: "When one is involved in injunctions which he does not understand, he often experiences a deep love and ardor. An example of this principle is the recitation of the service performed in the *Bais Hamikdash* on *Yom Kippur*. People lack an understanding of the basic meaning of the procedure, with its many details and enigmatic rites. Yet, the words are uttered with profound devotion and enthusiasm. People accept their lack of understanding, content with the knowledge that comprehension is beyond the scope of human intellect and comfortable with the realization that many mysteries and holy secrets lie in the command."

The Alter posits that people carry out acts which they do not understand with greater devotion than acts about which they have some level of comprehension. According to Sforno, however, the hatred that people show to *mishpatim* is artificial, sort of forced loathing. Apparently, he feels that people perform *mishpatim* with greater satisfaction, since they understand them. Veritably, man should recognize that just as *chukim* are Divinely ordained and, thus, filled with unfathomable depth, so to are *mishpatim* dictates of the Almighty which contain within them profundities that the human mind cannot comprehend. How are we to reconcile these two approaches?

Horav Mordechai Miller, zl, explains that actions stemming from a Divine source must contain infinite wisdom and depth. Thus, when one has the correct and proper approach towards *mitzvah* observance, he views *mishpatim* as profound as *chukim*, and he will concomitantly perform the *mishpatim* with the same fervor as he performs *chukim*. Sforno is referring to one who is involved in the initial stages of observance, when he appreciates *chukim* in relation to *mishpatim*, in accord with his level of human comprehension. Such a person does not yet see the depth of *mishpatim*. Therefore, he perceives *chukim* to be naturally repellent, while he must force himself to loathe *mishpatim*.

At a later stage, one is inspired by the enigmatic nature of *chukim*, their mystique shrouded in secrecy. One is motivated to perform these *mitzvos* out of enthusiasm and love - specifically because of their hidden nature. This engenders a deeper understanding of *mishpatim*, since he now understands that they all are derived from the same Source and are, thus, all impenetrable. The love that he now has for *mishpatim* is profound, as he realizes how little he actually understands of G-d's Torah.

In summation, the incongruence between *mishpatim* and *chukim*, as interpreted by Sforno and the Alter, is the result of two disparate levels of appreciation of *mitzvos*: initial and advanced. This also resolves the discrepancy in the *pesukim*. In the first set of *pesukim*, *chukim* are naturally despised. In the retribution, *chukim* are described as loathsome, the subjects of intentional and artificial hatred. It all depends on what level one stands in his approach to-- and understanding of-- *mitzvos*.

Teitzeih rucho yashuv l'admaso bayom hahuh avdu eshtnosav.

When his spirit goes out, he returns to his own earth; on that day, his big plans are lost.

Horav S.R. Hirsch, zl, explains that the only piece of earth that one really owns, and with which he is identified, is the four amos, cubits, which become his burial place. This can be called *admaso*, his earth, which is waiting for him from the day of his birth. Any other parcel of real estate which he thinks he owns does not truly belong to him. As Horav Shimon Schwab, zl, explains, ownership of property is determined by one's ability to alter, dispose of, or destroy it. This power does not apply with regard to real estate, since the property had been there before him and will survive him. This is why the Hebrew word used to describe real estate is *achuzah*, which means "to hold on to." In truth, one only "holds on" to his real estate. He does not actually "own" it.

Horav Avigdor Miller, zl, explains that trust in man is actually trust in "earth," because no man knows his end, when his spirit will suddenly leave him, and he immediately becomes "earth." Thus, the trust one places in man is actually trust in earth, because that is all he really is.

Rabbi Yissocher Frand on Parshas Behar - Bechukosai

Your Customer Has A 'Famous Father'

The pasuk [verse] in Parshas Behar says, "When you make a sale to your fellow or make a purchase from the hand of your fellow, do not aggrieve one another." [Bamidbar 25:14]. When we sell an object to our brother, there is a Biblical prohibition against cheating him. Three pasukim later, the pasuk says: "Each of you shall not aggrieve his fellow, and you shall fear your G-d, for I am Hashem your G-d." [25:17].

The Sforno offers an insight into the connection between the warning against cheating and the statement "For I am the L-rd your G-d." Obviously, such a statement could be attached to any prohibition in the Torah: Do not eat pig for I am the L-rd your G-d. Do not wear shatnez [linen and wool mixtures] for I am the L-rd your G-d. Why is this statement specifically mentioned in connection with the prohibition of cheating?

The Sforno explains: It is as if to say: "I am the G-d of the purchaser and I am the G-d of the seller and I am particular about either party being cheated." In other words, if someone comes to purchase an item from a store and the storekeeper is debating whether to cheat him or not, G-d is telling the storekeeper: "Remember, this customer is my son."

If someone comes into a Jew's store and the storekeeper notices that it is a simple person who is not keen in the ways of business, he may be tempted to take advantage of the customer. If however, if the customer happens to be the son or grandson of a great Rosh Yeshiva, the storekeeper might hesitate before trying to pull a fast one. "I'm not going to cheat the son of Rabbi Ploni. That would just not be right!"

That is exactly what the Almighty is telling us here. Do not cheat your fellow Jew, because I am the L-rd your G-d. "It is My son who is buying that suit from you. Do not cheat him!"

A Consoling Interpretation To A Scary Pasuk

There is a very scary pasuk in Parshas Bechukosai. In the midst of the terrible tochacha [curses], the pasuk says: "And you will eat the flesh of your sons; and the flesh of your daughters will you eat." [Vayikra 26:29]

The Medrash in Eicha Rabbah (Chapter 14) gives a different interpretation of this pasuk than the literal one. The pasuk in Eicha states: "The hands of merciful women boiled their children; they became their food (hayu levoros lamo) in the ruination of the daughter of my people." [Eicha 4:10] This is really a restatement of the same idea that we find in the tochacha, quoted above.

The Medrash interprets homiletically: The Almighty said, "I was prepared to destroy the world and My own children did not let me do it. Because of their activities, I could not do what I wanted to (so to speak). In what sense is this true? A woman had a single loaf of bread that would last for her and her husband and children one day only. But when this couple saw that their next door neighbor's child died out of starvation, they took their own bread – literally out of the mouths of their own children – and took it next door to their neighbors, thereby providing them with a meal of consoling (seudas hav-ra-ah), to console them for the loss of their child. [According to the laws of mourning, the first meal partaken of by a family returning from the funeral of a loved one should not be their own food but should be provided by their friends and neighbors.] The Medrash compares the root of the expression in Eicha – hayu levoros lamo [they became their food] to the root of Seudas hav-ra-ah [the meal of consoling].

When the couple that barely had enough bread for their own family saw what happened to their next door neighbor, took their meager rations and provided their neighbors with the Seudas hav-ra-ah, to help them get over their terrible loss. The pasuk credits such a sacrifice with that of boiling their children. When G-d saw such sacrifice, He concluded: Such a (wonderful) nation I cannot totally wipe out.

Juxtaposition of Eruchin With Tochacha

Immediately following the tochacha is the section about Valuations (Eruchin): "Speak to the Children of Israel and say to them: If a man articulates a vow to Hashem regarding a valuation of living beings..." [Bamidbar 27:2] The chapter then enumerates the "worth" of each person based on age-gender considerations as it impacts the amount of their assessed valuation when someone pledges to donate a person's worth to the Temple.

The late Rabbi Moshe Sherer once gave the following insight on the proximity of this chapter to the tochacha: The Torah is alluding to the fact the time when it is possible to truly determine a person's "value" is after the person goes through a crisis such as the tochacha.

When we speak about the merciful women, who, under the worst of conditions, took bread away from their children and gave it to their less fortunate neighbors, we truly begin to appreciate the worth of such people. It is only after hearing of some of the heroic acts during the Holocaust and similar incidents throughout Jewish history that we can determine and appreciate the true value of such people.

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

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Rabbi Michael Rosensweig

The TorahWeb Foundation

Intensity in Torah Study

Rashi, citing the Sifra, interprets the opening words of parshat Bechukotai – "Im be-hukotai teileichu" as a reference to undistracted, intense Torah study (ameilim ba-Torah). It is noteworthy that focused Torah study, notwithstanding its cognitive character, is perceived as an expression and perhaps a method of cultivating a commitment to chukim, generally associated with dimension of surrender and pure commitment in religious life.

We can comprehend this equation and its significance by appreciating the importance of "ameilut" (toil) in concentrated Torah study. While superficial study may be an exclusively cognitive act, comprehensive and concentrated Torah learning, which seeks mastery over the vast and profound halachic corpus (see Kidushin 30a), demands total commitment, entails intellectual and spiritual surrender to the inner logic of halachic thought, and is particularly conducive to shaping a Torah personality. Hence, ameilut in Torah study is identified with the observance of chukim.

The midrash Tanhuma (beginning of parshat Noah) asserts that the chapter of Kriyat Shema that encapsulates the theme of kabbalat ol malchut Shamayim relates specifically to "amalei torah she-baal peh" (to those devotees of intense Torah studies, especially focusing on the vast and intricate oral tradition)! This comment reinforces the idea conveyed by the Sifra that intense study reflects and engenders absolute religious commitment.

In a passage in Massechet Shabbat (88a), the gemara further alludes to the interrelationship between concentrated study and the singular character of halachic commitment that transcends logic and obvious self-interest. The gemara relates that Rava was so engrossed and immersed in his studies that he was oblivious to the fact that his posture (his feet resting on his tightly gripped hands) had generated a bleeding wound. A certain Saducee (denier of the oral tradition), upon witnessing this phenomenon, began to agitate about the shortcomings of a people that could naively proclaim naaseh venishmah (we will act, and we will understand), thereby unqualifiedly committing to a way of life without prior comprehension of the scope or content of that commitment. It is likely no coincidence that the agitator was a denier of the oral tradition, which forms the foundation for an expanded halachic corpus, and which according to the Tanchuma (supra) constitutes a linchpin for kabbalat ol malchut Shamayim. This Saducee apparently intuited the link between intense involvement in Torah study (that might even account for a state of concentration that would leave one unaware of a minor wound) and the idealistic capacity for a naaseh venishmah commitment, that is unconditional, that transcends comprehension, and that embraces the inner logic and even the unsolved mysteries

(chukim) of Divine law. Thus, experiencing Rava's ameilut triggered the Saducean ideological outburst.

Rashi (26:14,15) implies that ameilut - devotion and intensity - is a sine qua non to fortify halachic commitment and to buttress scrupulous observance against spiritually challenging counter pressures. He identifies the absence of ameilut as the catalyst that triggers the downward spiral of the Jewish people chronicled in the subsequent verses in the parshah. The nation becomes vulnerable even to heresy and idolatry without the foundation of ameilut!

This seemingly harsh perspective resonates elsewhere in rabbinic literature. Chazal attribute the calamitous events that transpired in Refidim to a weakening of the intensity of Torah study (she-rafu yadam mei-talmud torah), not to its absolute neglect. Similarly, the gemara in Megilah (11a) asserts that a casual or lazy (nitazlu) attitude regarding Torah study contributed to the receptivity of Klal Yisrael to idolatry during the Purim era. The same Rava (Shabbat 88b) whose concentrated study provoked the Saducean diatribe against naaseh ve-nishma, declares that intense, impassioned Torah study energizes, elevates, and protects, but casual, perfunctory Torah study may actually prove destructive by trivializing and reducing the stature of devar Hashem ("la-meyannim bah sama de-hayay; la-masmeilim bah sama demita").

These statements articulating the importance of urgency and intensity in Torah study and the severe adverse consequences of its neglect attest to the critical spiritual therapeutic function and the transformative power of Torah study (see Kidushin 30a). Moreover, these perspectives also underscore the implied underlying values of kabalat ol malchut Shamayim and yirat Shamayim that link the concepts of im bechukotai teileichu, naaseh ve-nishma (Shabbat 88a), and Kriyat Shema (Tanchuma, Noach) with intensive and impassioned Torah study.

Indeed, the navi (Iyov 5:7) informs us that the very purpose of man's creation was to provide a proper framework for his capacity for concentrated effort ("ki adam le-amal yulad"). The gemara (Sanhedrin 99b) identifies this "amal" with rigorous, continuous Torah study (based upon the verse in Yehoshua- "lo yamish sefer ha-Torah ha-zeh mipichah ve-hagita bo yomam va-laylah". See, also, Menachot 99b and a further link to Kriyat Shema). Intense and intensive Torah study enables man to extricate himself from the mundane and pragmatic and to eschew skepticism and a narrow empiricism. It affords him the capacity to embrace transcendence, to forge a meaningful bond with Hashem by means of devar Hashem, his Revelation. This aspiration justifies his very creation.

As we move closer to celebrating the experience of mattan Torah during the Shavuot holiday, we should rededicate ourselves not only to Torah study but also to the ideal of ameilut in all of its dimensions.

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h a a r e t z

Portion of the Week / A special bond

Whereas God pledges that he will never be disgusted with Israel, the Torah speaks of the possibility that Israel might become fed up with God's laws.

By Benjamin Lau

This week's double Torah portions, the last two in Leviticus, enumerate the blessings God promises us if we remain attached to our homeland and our God. They also enumerate the curses he will inflict on us should we abandon him.

In Leviticus 26, we encounter the verb root gimel-ayin-lamed ("to abhor"). The first encounter here is surprising: In the course of a pastoral depiction of the covenant of trust between God and Israel, God promises the Jews: "And I will set my tabernacle among you: and my soul shall not abhor [tigel] you. And I will walk among you, and will be your God, and ye shall be my people" (Leviticus 26:11-12).

Later, in the passage containing the curses, this verb root reappears: "And if ye shall despise my statutes, or if your soul abhor [tigel] my judgments, so that ye will not do all my commandments, but that ye break my covenant: I also will do this unto you; I will even appoint over you terror, consumption and the burning ague, that shall consume the eyes, and cause

sorrow of heart: and ye shall sow your seed in vain, for your enemies shall eat it. And I will set my face against you, and ye shall be slain before your enemies: they that hate you shall reign over you; and ye shall flee when none pursueth you" (Lev. 26:15-17).

Although the various forms of punishment Israel might face should it abandon God's commandments are harsh, God reassures the Jews that he will never abhor them.

As a comparison of these two quotations shows, the relationship between God and Israel is asymmetrical. Whereas God pledges that he will never be disgusted with Israel, the Torah speaks of the possibility that Israel might one day become fed up with God's laws. Despite that possibility, the Torah reiterates God's position, again using gimel-ayin-lamed: "And yet for all that, when they be in the land of their enemies, I will not cast them away, neither will I abhor [g'altim] them, to destroy them utterly, and to break my covenant with them: for I am the Lord their God" (Lev. 26:44).

Even in the darkness of exile in our various Diaspora communities, we can be reassured by God's promise that his bond with the Jewish people will remain forever strong. During the bleak period Jerusalem experiences on the eve of the First Temple's destruction, when the city is under siege and its inhabitants are starving, Jeremiah cries out to God, "Hast thou utterly rejected Judah? Hath thy soul lothed Zion? Why hast thou smitten us, and there is no healing for us? We looked for peace, and there is no good; and for the time of healing, and behold trouble!" (Jeremiah 14:19)

Our midrashic literature seeks to mitigate the existential and theological pain expressed in this passage. Two midrashim (in Exodus Rabbah) provide two different responses to Jeremiah's anguished cry. The first amplifies Jeremiah's feeling that God has abandoned his people: "When Israel was exiled from Jerusalem, its enemies removed the Jews with yokes upon their necks and the nations of the world said, 'God no longer loves this nation, as it is written, "Reprobate silver shall men call them, because the Lord hath rejected them" (Jer. 6:30). When the process of purifying silver in order to make a vessel is repeated many times, this substance eventually crumbles and can no longer be used to fashion anything. Similarly, the nations of the world said of Israel that it was beyond all hope of redemption because God was disgusted with it.'"

Later in this text, we encounter yet another midrash. However, a just society seeking gender equality would probably quarrel with the interpretation this midrash offers of the passage from Jeremiah: "Here is a parable: A man who kept beating his wife was asked by a friend of hers: 'How much longer will you beat her? If you want to divorce her, why do you not just beat her to death, but, if you want to remain married to her, why are you beating her?' The husband replied: 'Even if I destroy my entire palace, I will never divorce my wife.' Similarly, Jeremiah says to God, 'If you want to divorce her [i.e., Israel], why do you not just beat us to death, as it is written, "But thou hast utterly rejected us; thou art very wroth against us" (Lamentations 5:22)? But, if you want to remain married to her, why are you beating us, why hast thou smitten us, and there is no healing for us?' God replies: 'Even if I destroy my entire world, I will never divorce Israel.'"

Protesting the humiliation of Israel, Jeremiah ends the Book of Lamentations with, "But thou hast utterly rejected us; thou art very wroth against us." The midrashic exegesis of Lamentations interprets the verse in a markedly different way from the second, violence-tinged midrash: "Rabbi Simeon, son of Lakish, says: 'If God is disgusted with us, we will not survive; however, if he is only angry with us, we will manage, because, when people get angry, they eventually calm down.'"

This midrash offers a rather unflattering depiction of the relationship between God and Israel. It is certainly not a peaceful one, rather one characterized by quarrels and bouts of anger, albeit not by disgust. In a healthy conjugal relationship, the partners know how to conciliate each other.

For centuries, when we suffered persecution in the lands of our exile, we echoed Jeremiah's cry, and theologians like St. Augustine of Hippo (4th century) had a dismal view of our relationship with God. However, as the modern return to Zion and the establishment of the State of Israel in the ancient Jewish homeland prove, our relationship with God has become much closer; despite the quarrels, we now live in harmony with him.

Pope Benedict XVI's visit to Israel is a development of immense theological importance, and Christianity must reassess its historic attitude toward Judaism and the Jewish people. As we read in this week's Torah portion: "And yet for all that, when they be in the land of their enemies, I will not cast them away, neither will I abhor them, to destroy them utterly, and to break my covenant with them: for I am the Lord their God."

Rav Kook List

Rav Kook on the Torah Portion

Bechukotai: Prophetic Letters

Five Double Letters

Of the 22 letters in the Hebrew alphabet, five are called "double letters," as they take on a different form when appearing at the end of a word. The five letters are Mem, Nun, Tzadi, Pay, and Chaf. When placed together as one word, they spell M-N-Tz-P-Ch.

According to Talmudic tradition [Shabbat 104a], the dual form of these letters goes back to the prophets. The abbreviation M-N-Tz-P-Ch can be read as Min Tzophim - 'from the prophets.'

From the Prophets

This claim - that the special form of these letters originated with the prophets - needs clarification. The Torah of Moses is complete and whole in itself. Even a prophet is not allowed to add or invent a new mitzvah. The Torah explicitly states,

"These are the decrees, laws and codes that God set between Himself and Israel at Mount Sinai, through the hand of Moses" [Lev. 26:46].

The phrase "These are the decrees" indicates that only the decrees that Moses set down in the Torah are in fact between God and Israel. How could the prophets change the Torah by adding new shapes of letters?

The Talmud explains that the prophets did not actually introduce anything new. There always existed two ways to write these five letters. With the passage of time, however, it was forgotten which shape belongs at the end of the word, and which at the beginning and middle. The prophets did not devise the two forms; they merely recovered the lost knowledge of which letterform belongs at the end of the word.

Why Two Forms?

Still, we need to understand: why do these letters have dual forms? What is the significance of their relative position in the word? And why were the prophets (and not the sages or the grammarians) the ones who restored this knowledge?

Letters are more than just elements of speech. They are the building blocks of creation. The Sages taught, "The universe was created with ten utterances" [Avot 5:1]. Each letter in the alphabet represents a fundamental force in the world.

Rav Kook explained that the 'final forms' - the shape that these letters take at the end of words - are the holiest. The final forms most accurately portray the sublime essence of each letter, fully expressing its ultimate purpose. To better understand this statement, we must analyze the morphological differences between the two forms of these letters.

With four of the letters - Nun, Tzadi, Pay, Chaf - the regular form is smaller and more cramped. The 'leg' of the letter is constrained and bent upwards. The form appearing at the end of the word, on the other hand, allows the 'leg' to stretch and extend itself fully. It is the final form that truly expresses the full content and power of these letters.

The two shapes of the letter Mem are distinguished in a different fashion. The regular Mem has a small opening at the bottom. It is called the Mem Petuchah, the Open Mem. It is open and revealed to all.

The final Mem is closed off on all sides. It is called the Mem Setumah, the Sealed Mem. Or perhaps - the Esoteric Mem. This form of Mem is more sublime than the regular Open Mem. Thus, the holiest written object, the stone tablets engraved with the Ten Commandments, contained only Sealed Mem's, with the center part of the Mem hanging miraculously in place. The final Mem is closed off and concealed. It guards its inner secret, which due to its profound holiness may not be revealed to all.

Why is the more elevated form used at the end of the word? A hidden light appears at the ultimate vision of every noble matter. The hidden light of the M-N-Tz-P-Ch letters belongs to the end. The beginning and middle appearances of these letters are open and revealed. Their light steadily increases, until it brings us to the final, sublime conclusion.

The prophets are called tzofim, visionaries, as they were blessed with prophetic vision. Their greatness was that they could perceive the final outcome while still living in a flawed present. Understandably, it was these tzofim who sensed that the more elevated letterforms belong at the end.

[Gold from the Land of Israel, pp. 221-223. Adapted from Rosh Millin pp. 35-36; Ein Eyah vol. IV, pp. 247-249.]

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YatedUSA Parshas Behar-Bechukosai 21 Iyar 5769

Halachah Discussion

by Rabbi Doniel Neustadt

Everyday Cases Involving Interest

Part II

Question: Although it is explicitly forbidden for an individual to charge or pay ribbis, does the prohibition of ribbis apply also to borrowing from or lending money to a corporation?

Discussion: There is some misunderstanding regarding this issue. A lenient ruling by Rav M. Feinstein¹ holds that a corporation may pay ribbis for deposits, loans, or credits which it receives, even if the corporation is totally owned by Jews. The reason for this is that a "borrower" is halachically defined as someone who has personal responsibility to repay a loan. When a bank or another corporation is the "borrower," the loan is guaranteed by the company's assets, but not by any individual. Thus there are no Jewish "borrowers" and ribbis may be paid by the bank or the corporation.

This ruling of Rav Feinstein has been accepted by some poskim and rejected by others.² Obviously, if possible, a proper heter iska should be made before drawing interest from a Jewish-owned bank.³ If it is difficult to do so, there are poskim who allow taking the interest, as per Rav Feinstein's ruling. [Note that a heter iska does not allow a Jewish-owned bank to offer free gifts to depositors if the gift is chosen and delivered at the time of deposit, since such gifts are a form of ribbis.⁴]

Under no circumstances, however, is it permitted to borrow money from a Jewish-owned bank or corporation. Since the borrower is an individual who accepts personal responsibility to repay the loan, the above leniency does not apply.⁵

Similarly, lending money to a Jewish-owned corporation with the personal guarantee of repayment by the owners would be prohibited even according to Rav Feinstein's lenient opinion.

For the above reason it is prohibited to buy shares in a publicly traded bank which has a majority of Jewish owners and does not use a proper heter iska when borrowing money from Jews.⁶ A company in which most of the shareholders are not Jewish but the Jewish minority has significant enough holdings that their opinion carries weight in management decisions, is also considered a Jewish company according to the opinion of many poskim.⁷

Question: We have mentioned the concept of heter iska several times. What is that?

Discussion: While space does not allow for an explanation of the logic behind this very complicated transaction, suffice it to say that heter iska is a tool — debated, revised, and perfected over many centuries — with which a lender may lend money to a borrower and be halachically permitted to collect interest on the loan. It is a legal document which transforms the loan [or part of it] into an investment, with a remote chance of loss of principal to the lender. Since ribbis is only forbidden when a fully guaranteed loan takes place, this tool allows the lender to earn "profits" from his "investment" as opposed to "interest" from a "loan," and it is therefore permitted. Heter iska transactions are very common today and, when done under the auspices of an expert in these matters, are used in many business dealings in a permissible manner.

We must, however, point out an important restriction on the use of a heter iska. According to the opinion of most poskim,⁸ including the foremost poskim of our generation,⁹ a heter iska is valid only if the money is being borrowed to invest in a business or in a property, or if the money being borrowed will free other money to be used for a business transaction. A person who borrows money to pay for his daughter's wedding, for instance, or for ongoing expenses, and does not have any profit-generating holdings or assets, may not use a heter iska to borrow money.¹⁰

Many people are not aware of this limitation and are constantly borrowing money, or over-drawing their bank accounts from Jewish-owned banks, relying on a heter iska which is unacceptable according to most views. Certainly, one who is scrupulous about fulfilling other mitzvos of the Torah should be aware that this transaction is not valid according to the majority opinion, and that it may be Biblically prohibited.¹¹ A rav should be consulted to determine if there is a method that could be utilized to make this transaction valid according to most poskim.¹²

Ribbis Devarim and Other Forbidden Forms of Repayment

The prohibition of ribbis is not limited to monetary payments. A favor or a benefit of any sort which the lender receives from the borrower may fall into the category of forbidden interest, since the lender is receiving an additional benefit for extending a loan. There are several basic rules which govern the extent of this prohibition:

1. A borrower may not extend a favor to a lender just because he got a loan from him. If the borrower would not have done the favor otherwise, it is forbidden to do the favor.
2. The borrower may not do a favor for the lender in public even if he would have done the favor regardless of the loan.
3. When the relationship between a borrower and a lender is long established and the borrower has previously granted public favors to the lender, such a relationship may continue even after a loan takes place.

Some applications of these rules:

- ◆ A borrower may not praise¹³ or bless¹⁴ a lender for lending him money or for extending a payment deadline. Some poskim even prohibit saying a simple thank-you,¹⁵ while others allow a simple thank-you.¹⁶
- ◆ A borrower may not buy a lender an aliyah in appreciation for a loan.¹⁷
- ◆ A borrower may not send mishloach manos to a lender,¹⁸ tutor a lender or his child in the study of Torah without compensation,¹⁹ offer him charity,²⁰ sell him goods or offer a service below market price,²¹ or buy goods from him or pay him for a service above market value,²² unless he would have done so regardless of the loan.
- ◆ A borrower may invite a lender to a wedding even if he would not have invited him were it not for the loan.²³
- ◆ Institutions, e.g., yeshivos, shuls, etc. may honor an individual who has loaned them money, provided that the honor was not a condition for granting the loan.²⁴
- ◆ It is permitted for a borrower to give a wedding gift to the son or daughter of a lender,²⁵ even if he would not have given a gift were it not for the loan. The gift must be an item which the groom's/bride's father would not normally purchase for his child.²⁶
- ◆ A borrower may extend to a lender a common courtesy, such as changing money for him. A lender, though, may not (strongly) request a favor from a borrower, even if it is merely a common courtesy.²⁷

Note: All non-financial benefits and favors described above are prohibited only while a loan is outstanding. Once a loan is repaid, this type of ribbis prohibition no longer applies.²⁸

Footnotes

- 1 Igros Moshe, Y.D. 2:63. See similar ruling in Teshuvos Maharshag 3 and 5
- 2 See the various views in Har Tzvi, Y.D. 126; Rav Y.E. Henkin in Eidus l'Yisrael, pg. 170; Minchas Yitzchak 3:1; 4:16-7; Chelkas Yaakov 3:190-191; Minchas Shlomo 1:28; Koveitz Teshuvos 3:124; Chut Shani, Ribbis 18:3; Bris Yehudah 7, note 66; Chelkas Binyamin 159:4.
- 3 One must investigate the validity of the heter iska before dealing with a Jewish-owned bank. See Chelkas Binyamin, Kuntres Heter Iska 25 for a review of the halachic problems with the heter iska of Israel's banks. Note that several Israeli banks have branches abroad.
- 4 Bris Yehudah 38, note 10.
- 5 Igros Moshe, Y.D. 2:63.
- 6 Bris Yehudah 40, note 21

7 Igros Moshe, E.H. 1:1; Koveitz Teshuvos 3:124. See Chelkas Binyamin 159:4.

8 See Bris Yehudah 38, note 18.

9 Igros Moshe, Y.D. 2:62 and 3:40; Rav S.Z. Auerbach and Rav S. Wosner (quoted in Kitzur Dinei Ribbis, Kuntres Acharon 13:3); Rav Y.S. Elyashiv (quoted in Toras Ribbis 16, note 85); Chut Shani, Ribbis 18:3.

10 Stocks, certificate of deposits, pension plans, or other saving accounts which generate a profit, are considered like a business; Toras Ribbis 16:15. The amount of money lent must be no greater than the amount of money which is generating the profit; Rav S.Z. Auerbach, *ibid*.

11 Note that there are lenient views, based on the ruling of the Sho'el u'Meishiv (Kama 3:160). See Darkei Teshuvah 177:41; Chelkas Yaakov 3:199; Bris Yehudah 38, note 18.

12 See Chelkas Binyamin, Kuntres Heter Iska 14, for a lengthy explanation of this issue.

13 Nor may he greet him in a warmer or more gracious manner than he had previously greeted him; Y.D. 160:11.

14 Even expressions like ye'yashar kochachem or tizku l' mitzvos are to be avoided; see Birkei Yosef 160:12, Minchas Shlomo 1:27-1 and Bris Yehudah 11:29.

15 Igros Moshe, Y.D. 1:80; Minchas Shlomo 2:68-2.

16 Rav Y.S. Elyashiv (Mishnas Ribbis 4, note 21); Rav Y. Roth (Questions of Interest, pg. 61).

17 Shach, Y.D. 166:1. If the lender is called to the Torah and he then realizes that the aliyah was bought for him by the borrower, he need not walk away from his aliyah; see Shevet ha-Levi 9:70.

18 Mishnas Ribbis 3, note 18.

19 Y.D. 160:10.

20 Shulchan Aruch ha-Rav, Ribbis, 14.

21 Shach 160:37.

22 Shach 173:6.

23 Rav Y. Roth and other poskim quoted in Questions of Interest (pg. 57). Several reasons are given: 1. The invitation is in recognition of their present social friendship, not an expression of appreciation. 2. A wedding invitation is not a public honor. 3. A wedding host considers the food as a gift to his guests.

24 Based on Y.D. 160:18.

25 A bar/bas mitzvah gift may be given only after the child's birthday has passed, since prior to his birthday, the item will belong to the father, who is the lender.

26 Bris Yehudah, 11, note 43; This is because if the gift is an item which the father would normally purchase, the lender is benefiting from the gift, in that he saves the money which he would otherwise have spent to buy the item.

27 Y.D. 160:12, Shulchan Aruch ha-Rav 10. See Darkei Teshuvah 160:80 and Bris Yehudah 11:14.

28 Birkei Yosef, Y.D. 160:11. See Yabia Omer Y.D. 4:9 and Chelkas Binyamin 160:99.

YatedUSA Parshas Behar-Bechukosai 21 Iyar 5769

Halachah Talk

by Rabbi Yirmiyahu Kaganoff

How Does a Heter Iska Work?

Andy Gross, a businessman who is proud that he is now observing mitzvos, is on time for his appointment. After a brief greeting, I ask him what brings him to my office on this beautiful morning.

"I recently learned that even though the Torah prohibits paying or receiving interest, there is something called a heter iska that legalizes it. How can we legitimize something that the Torah expressly prohibits?"

Indeed, Andy's question is both insightful and important, and deserves a thorough explanation. Why don't you join us!

I noted that this week's parsha discusses the prohibition of interest:

Do not collect interest from him, for you shall fear Hashem and allow your brother to live. Therefore, do not provide him money with interest (Chapter 25:36- 37).

This verse teaches three different mitzvos:

1. Do not collect interest from him. This entails a prohibition on the lender against collecting interest (Bava Metzia 75b).
2. Allow your brother to live. From the words allow your brother to live we derive a positive commandment that one who did collect interest is required to return it (Bava Metzia 62a).
3. Do not provide him money with interest prohibits creating a loan that involves interest, even if the lender never collects it (Bava Metzia 62a). A lender who later collects the interest also violates the first prohibition, and

if he subsequently refuses to return it, he violates the positive commandment.

Not only does the lender violate the prohibition against ribbis, but also the borrower, the witnesses, the broker, the co-signer, the scribe who writes up the loan document (Mishnah Bava Metziah 75b), the notary public who notarizes it, and possibly even the attorney who drafts a document that includes provisions for ribbis all violate the laws of ribbis (Bris Yehudah 1:6). Thus, anyone causing the loan to be either finalized or collected violates the Torah's law.

"The halachos of ribbis are quite complex," I told Andy. "From my experience, even seasoned Torah scholars sometimes mistakenly violate the prohibition of ribbis. For example, having a margin account at a Jewish owned brokerage, charging a Jewish customer for late payment, or borrowing off someone else's credit line usually entail violations of ribbis. I even know of Torah institutions that 'borrow' the use of someone's credit card in order to meet their payroll, intending to gradually pay back the interest charges."

"Why does the last case involve ribbis?" inquired an inquisitive Andy.

"Let me present a case where I was involved. A Torah institution was behind on its payroll, and had no one available from whom to borrow money. The director asked a backer of the institution if the institution could borrow money through his bank credit line."

"I still do not see any ribbis problem here" replied Andy, "just a chesed that costs him nothing."

"To whom did the bank lend money?" I asked Andy.

"As far as they are concerned, they are lending money to the backer, since it was his credit line."

"So from whom did the institution borrow? The bank did not lend to them. Doesn't this mean that really two loans have taken place: one from the bank to Mr. Chesed, and another from him to the institution? The loan from the bank incurs interest charges that Mr. Chesed is obligated to pay. Who is paying those charges?"

"It would only be fair for the institution to pay them," responded Andy.

"However, if the institution pays those charges, they are in effect paying more money to Mr. Chesed than they borrowed from him since they are also paying his debt to the bank. This violates ribbis. The fact that the institution pays the bank directly does not mitigate the problem (see Gemara Bava Metziah 71b)."

Andy was noticeably stunned. "I have always thought of interest as a prohibition against usury – or taking advantage of a desperate borrower. Here the 'usurer' did not even lend any money, and thought he was doing a tremendous chesed for tzedakah; he did not realize that his assistance caused both of them to violate a serious prohibition!"

"What is even more tragic," I continued, "is that one can convert most of these prohibited transactions into a heter iska that is perfectly permitted."

WHAT IS A HETER ISKA?

"A heter iska is a halachically approved way of restructuring a loan or debt so that it becomes an investment instead of a loan. This presumes that the investor assumes some element of risk should the business fail, which is one basic difference between an investment and a loan. An investor could potentially lose money whereas a borrower always remains responsible to pay.

"One is permitted to create a heter iska even when the goal of both parties is only to find a kosher way of creating a transaction that is very similar to an interest-bearing loan (Terumas HaDeshen #302). The words heter iska mean exactly that: performing an allowable business deal that is similar to a prohibited transaction. As we will see, the structure must still allow for an element of risk and loss as accepted by halacha; otherwise it fails the test of being an investment.

"There are several ways of structuring a heter iska, and indeed different situations may call for different types of heter iska. In order to explain how a basic heter iska operates, I must first explain an investment that involves no ribbis, so that we can understand how a heter iska was developed. For the balance of this article, we will no longer refer to "borrowers" and "lenders." Instead, I will refer to a "managing partner" or "manager" and an "investor."

Andy interrupts my monologue. "Was heter iska used in earlier generations?"

THE EARLIEST HETER ISKA

"The concept of heter iska is hundreds of years old. The earliest heter iska of which I am aware is suggested by the Terumas HaDeshen (1390- 1460). His case involves Reuven, who wishes to invest in interest-bearing loans to gentile customers, but does not want to take any risk. Shimon, who is an experienced broker of such loans, is willing to take the risk in return for some of the profit on Reuven's money.

"Reuven wants a guarantee that he will receive back all his capital regardless of what actually happens in the business venture. Essentially, this means that Shimon is borrowing money from Reuven and then lending it out to the gentiles; this would result in a straightforward Torah prohibition of ribbis since Shimon is paying Reuven a return on the loan. Is there any way that Reuven and Shimon can structure the deal without violating the Torah's prohibitions against paying and receiving interest?"

At this point, Andy exclaims: "Either this is a loan, and Reuven's money is protected, or it is an investment, and it is not. How can Reuven have his cake and eat it too!"

"Actually, all the attempts at creating heter iska are attempts to find a balance whereby the investor is fairly secure that his assets are safe, and yet can generate profit.

PIKADON – INVESTING

"Let me explain how a heter iska accomplishes both these goals, by developing a case: Mr. Sweat has a business idea, but he lacks the capital to implement it. He approaches Mr. Bucks for investment capital. If Bucks has sufficient confidence in Sweat's acumen to build a business, he might decide to invest even without knowing any details about it in the hope that Sweat's idea will provide handsome profits. None of this involves any ribbis issues since there is no loan and no one is paying to use the other person's capital. This business venture is called a pikadon.

GUARANTEEING THE INVESTMENT

"Your model is highly theoretical," Andy points out, "since it assumes that Mr. Bucks invests without much assurance. Few people I know would entrust someone with their money without some type of guarantee."

"You have hit on a key point – let us see how halacha deals with this. Whenever an investor entrusts someone with funds, the Torah permits him to demand an oath afterwards that the manager was not negligent. Therefore, Bucks may insist that Sweat swears an oath that he was not negligent with the money and also that he reported exactly how much money Bucks is due. The heter iska agreement may even require that Sweat swears this oath by using G-d's name and while holding a Sefer Torah in front of the entire congregation."

"That should certainly get Mr. Sweat to sweat," quipped Andy. "But then again, assuming Mr. Sweat is a frum Jew, is he going to want to swear any oath at all?"

"That is exactly the point that secures Bucks's bucks, since observant people would rather pay a substantial sum of money to avoid swearing an oath. The heter iska specifies that the manager has the option of swearing the oath and paying only what the investor is entitled. However, the manager has the option of substituting an agreed upon payment for the oath. Since observant Jews would rather pay the fixed return rather than swear an oath, we accomplish that the investor is reasonably secure, although no loan and no ribbis transpired. The result is not a loan, but a cleverly structured investment."

After waiting a few seconds and absorbing what he just learned, Andy continued:

"Is there anything else I need to know about a heter iska before I use one?"

"I need to explain one other very important detail that people often, unfortunately, overlook. Most forms of heter iska state that the investor paid the manager a specific sum of money, say one dollar, for his time involved in the business venture. It is vitally important that this dollar be actually paid; otherwise there is a ribbis prohibition involved. Yet I know that many people overlook this requirement and do not understand its importance."

"Could you explain why this is important?"

STANDARD ISKA – A SILENT PARTNERSHIP

“The standard heter iska assumes that the arrangement is half loan and half pikadon. This means that if Mr. Bucks invests \$100,000 with Mr. Sweat to open a business, Mr. Bucks and Mr. Sweat become partners in the business because half of the amount is now a \$50,000 loan that Mr. Sweat must eventually repay, and the other half is a \$50,000 outlay that Mr. Bucks has now invested in a business that Mr. Sweat owns or intends to open. Bucks may receive no profit on the \$50,000 loan he extended -- if he does, it is prohibited ribbis. However, he may receive as much profit on the investment part of the portfolio as is generated by half the business. As a result, Mr. Bucks and Mr. Sweat are both 50% partners in the business.

RECEIVING PROFIT FROM THE LOAN

“However, there is an interesting problem that we must resolve. Bucks invested a sum with Sweat, for which he received a profit, and he also loaned Sweat money, for which he may not receive any profit. However, the return on the investment was realized only because Mr. Sweat is investing his know-how and labor to generate profit for the partnership – know-how and labor that Bucks did not pay for. Why is this investment of services not considered payment for Mr. Bucks’s loan, and therefore a ribbis problem?

“Indeed this concern is raised by the Gemara, which presents two methods to resolve the problem.

“The first method is that the investor pays the manager a certain amount for his expertise and effort. As long as both parties agree in advance, we are unconcerned how little (or much) this amount is (Bava Metzia 68b). However, there must be an amount, and it must be actually paid. Even if they agree to a sum as paltry as one dollar, this is an acceptable arrangement, similar to Michael Bloomberg’s accepting one dollar as salary to be mayor of New York.”

“I now understand,” interjected Andy, “why it is so important that this amount be actually paid. If Mr. Sweat receives no compensation for his hard work on behalf of Mr. Bucks’s investment, it demonstrates that he was working because he received a loan, which would be prohibited as ribbis.”

“Precisely,” I replied. “However, there is another way to structure the heter iska so that this is not a problem. This is by having the profit and loss percentages vary. This means that if the business profits, the managing partner makes a larger part of the profit than he loses if there is a loss. For example, in the original deal, let us assume that our silent and managing partners will divide the profits, but in case of loss, our manager is responsible to pay only \$30,000. This means that Sweat borrowed only \$30,000 and therefore owns only 30% of the business, which should entitle him to only 30% of the profits. The extra 20% of the profits he receives is his salary for managing the business. He is therefore being paid a percentage of Bucks’s profits for his efforts, similar to the way a money manager or financial consultant is often compensated by receiving a percentage of the profits on the funds he manages.

“The heter iska I have seen used by the Jewish owned banks in Israel includes this method. The bank invests 45% in a “business” managed by the mortgage borrower, but the borrower is entitled to 50% of the profits. Thus, he is “paid” five per cent of the bank’s profits for his services in managing the investment.”

“Can you explain to me how the Terumas HaDeshen’s money lender would use a heter iska?” inquired Andy.

“Actually, his heter iska varied slightly from what we use today. Using today’s accepted heter iska, Shimon the manager accepts the money with the understanding that he is borrowing part and managing the balance for Reuven. He is compensated for his efforts according to one of the approaches mentioned above, and agrees in advance to divide the profits. He also agrees that he will swear an oath guaranteeing that he was not

negligent in his responsibilities, and the two parties agree that if he subsequently chooses to pay Reuven a certain amount he is absolved of swearing the oath. Thus, Reuven’s return is not interest on a loan, but the amount Shimon had agreed to pay rather than swear how much he actually owes Reuven.

“This approach has been accepted by thousands of halachic authorities as a valid method of receiving a return on one’s investment that looks like interest but is not. The Chofetz Chaim notes that if someone can lend money without compensation, he should certainly do so and not utilize a heter iska, because this is the mitzvah of performing chesed (Ahavas Chesed 2:15). Heter iska is meant for investment situations, and should ideally be limited to them.

“I would like to close by sharing with you a thought from Rav Shimshon Raphael Hirsch about the reason why the Torah prohibited interest. He notes that if the Torah considered charging interest to be inherently immoral, it would have banned charging interest from non-Jews, and also would have prohibited only the lender and not the borrower. Rather, Rav Hirsch notes, the Torah’s prohibition is to demonstrate that the capital we receive from Hashem is so that we donate tzedakah and provide loans, and thereby fulfill our share in building and maintaining a Torah community. The Torah’s goal in banning the use of capital for interest-paying loans is to direct excess funds to chesed and tzedakah.”

TALMUDIGEST - Bava Metzia 23 - 29

For the week ending 16

May 2009 / 21 Iyyar 5769

from Ohr Somayach | www.ohr.edu

by Rabbi Mendel Weinbach

THE PUNCTURING PREFIX - Bava Metzia 25b

Coins that are found may either be assumed to have been lost by their owner and therefore the property of the finder, or purposely placed at that location by the owner, obligating the finder to announce his find so that the owner may make his claim. It all depends on the manner in which the coins are found.

If coins are found in a pattern associated with the pagan idol kulis the find must be announced. The worship of this idol consisted of casting stones before it in pyramid fashion. Should one find three coins lying in such planned fashion anywhere - one placed on the halves of two below it - he must assume they were purposely placed there and must announce his find. Tosefot points out that the idol referred to in our gemara was called kulis by its worshippers, which comes from the word kilus that means praise. Our Sages, however, in the tradition of ridiculing idol worship, added the prefix mar, which means the opposite. The use of the term kulis in our gemara, which relates to a pattern rather than the idol itself, is an indication that this was the name applied to the idol by its worshippers, rather than the mocking term markulis found elsewhere in the Talmud.

WHAT THE SAGES SAY

“...and it (a found object) shall remain with you until your brother inquires after it and you return it to him.” Devarim 22:2

“You must not return it until you inquire of the claimant to determine that he is not a swindler.” Mishna, Bava Metzia 23b

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