



KOVETZ

Heoros Hatmimim V'Anash



Issue 3 (144)
Purim



Published by the Shluchim
Yeshivah Gedolah
Melbourne, Australia

5776 - Shnas Hakhel



מוקדש

לכ"ק אדמו"ר נשיא דורנו
יה"ר שירוזה נח"ר רב מבניו־התלמידים השלוחים,
בתוככי כלל התמימים ואנ"ש שיחיו
ונזכה לגאולה האמיתית והשלימה
ויוליכנו קוממיות לארצנו תיכף ומיד ממש



מוקדש ע"י ולזכות
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לזכות

החתן התמים ישראל ברוך שיחי' לעבענהאלץ

והכלה המהוללה מרת ברכה שתחי' ארון

לרגל בואם בקשרי השידוכין

יה"ר מהשי"ת שיבנו בנין עדי עד

על יסודי התורה והמצוה

כרצון ולנח"ר של כ"ק אדמו"ר נשיא דורנו

לאורך ימים ושנים טובות



נדפס ע"י ולזכות

הורי הכלה שיחיו

הרב רפאל יונתן וזוגתו מרת שושנה פייגא שיחיו

ארון

לעילוי נשמת
התמים אורי ניסן ע"ה
בן יבלחט"א
הרב מנחם מענדל שליט"א
גורארי'

נקטף בדמי ימיו
ביום חמישי פ' תשא
פורים תשע"ה לפ"ק
ת' נ' צ' ב' ה'



נדפס ע"י ולזכות
התלמידים השלוחים
לישיבה גדולה

Foreword

With joy and gratitude to Hashem, we are pleased to present the next edition of the Kovetz “Heoros Hatmimim V’anash”, issue 3 (144), a scholarly journal with original insights in all areas of Torah, Nigleh and Chassidus, Halacha and the Rebbe’s Torah, put together by the Shluchim to Yeshivah Gedolah, Melbourne.

The Kovetz is being printed in honour of Purim and as our Chachamim teach us, this Yom Tov has a special connection to Torah, for the verse in the Megillah which says “the Jews had light etc.” is understood as being a reference to Torah.

In the spirit of the day, we have published a letter as well as a short Sichah of the Rebbe with two important lessons from the Purim story for us today.

This Kovetz also contains a special section, featuring a compilation of Shiurim given by Bochorim in Yeshiva Gedolah.

May we merit that one redemption lead to another, the true and complete redemption of all of Bnei Yisroel from Golus, with Moshiach Tzidkeinu leading us all to Eretz Yisroel, to the Beis Hamikdash Hashlishi, speedily in our days, now!

The Editors

The next issue of the Kovetz Heoros
will iy”h be published
in honour of Yud Alef Nissan.

Please submit Heoros no later than Monday, 3 Nissan

B”H

Purim 5776

Shnas Hakhel

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Dvar Malchus

The children's self-sacrifice

By the Grace of G-d

7 Adar, 5712

Brooklyn, N.Y.

The Eleventh Annual Convention
of The Committee for Furtherance of
Jewish Education, under the auspices
of the Merkos L'Inyonei Chinuch, Inc.
G-d bless you all

Shalom U'vracha:

On the occasion of your Eleventh Annual Convention, taking place on Sunday, the eve of Erev Purim, 5712, I send you all – members, instructors and friends, my heartfelt greetings and best wishes.

I have followed with profound interest the work of your Committee, ever since its foundation by my father-in-law of sainted memory. I am glad to know that it has grown from year to year, in scope and quality, for in growth lies the sign of life. I trust it will continue to grow and at an accelerated pace, in accordance with the wishes of the great founder, and commensurate with the need of the hour.

Your convention taking place so close to Purim is full of significance and should set the tone for it.

Our Sages say that the Miracle of Purim, which rescinded the Heavenly decree for the Jews from death to life, physically and spiritually, was brought about by the fact that Mordechai had gathered 22,000 Jewish children,

whom he taught the Torah and with whom he prayed for G-d's mercy. He imbued them with the spirit of self-sacrifice so that they declared unanimously, "In life or in death we will not part from Mordechai!"

Let us remember that Mordechai was one of the heads of the Sanhedrin, the greatest Jew of his time in scholarship, piety and all possible attributes of greatness. Nevertheless, he set everything aside in order to strengthen the foundations of education, actually going in person to teach the holy Torah with piety and *Mesiras Nefesh*, to small children.

The profound message for us is this: No matter what one's station in life is, or how important one's activities seem to be, one must, first and foremost, dedicate at least some part of his time and efforts to the most important of all causes – saving our young generation through implanting into them devotion to all that has been holy to us ever since our ancestors received the Torah at Mount Sinai, devotion to the point of self-sacrifice. Only in this way can we make sure that the young generation will remain with us, and, as a matter of course, ensure the existence of our people. Moreover, herein lies our strength against all Hamans, and our security under G-d's protection.

Wishing you success in increasing the number of your co-workers and instructors and, above all, the number of children under your influence.

[The Rebbe's signature]

What's with the Wine?

The¹ Talmud prescribes, "A person must become drunk on Purim." Rashi comments that he must drink wine. What is the reason for this law? One of

1) This is the first Sicha of the Purim Farbrengen, 5739. The Rebbe opened this farbrengen in a very unique manner: citing the (Rabbinic) law to drink wine on Purim, The Rebbe told all those present to say L'chaim on wine four times, all the while encouraging the singing of joyous Niggunim.

the answers usually given is that the miracle of Purim is closely connected with wine. Many of the crucial episodes of the Megillah happened at wine-parties.

That answer merely shifts the question on to the Megillah. Everything that happens is controlled by G-d and G-d does not create anything without a purpose. Since the purpose of a Jew's life is the service of G-d, it follows that G-d directs everything that happens to him. Therefore, everything which a Jew sees or hears must serve as a lesson for him in his service to G-d. Since we see the correlation between the Purim miracles and wine, we must immediately search for a conceptual understanding of that relationship, asking ourselves, "Why is it important? What lesson can it teach?"

This question can be answered by posing another question. Three people attended the wine party described in the Megillah: Haman, Achashveirosh, and Esther. Of those three, Haman and Achashveirosh were both in high spirits, yet Esther had to beg for her life. Was this just? Particularly after Esther had demonstrated her dedication to her people, should she have been subjected to such circumstances: How could the Jews – particularly after they had attained the spiritual level of "Yehudi" (the term with which they were referred to in the Megillah) be threatened by a decree calling for their total extinction?

Wine provides us with a lesson which answers these questions. The Torah regards wine very highly. Psalms describes wine as "rejoicing both G-d and man." It was considered an honored drink in Persia, as well. Due to that importance, Achashveirosh felt it appropriate that Esther tell him her request at a wine-party.

Wine is not found naturally. Wine is contained in grapes and released when the grapes are squeezed. If the grapes are of high quality, they produce wine after only slight pressure. If they're of a lower quality, you have to squeeze harder to extract the wine. Of course, the squeezing is not intended

as a negative action, but rather to elevate the grapes to a higher state. Grapes do not have the qualities of “rejoicing G-d and man,” only wine. Therefore wine requires a different and special brocha. This added quality is produced through taking the grapes and squeezing them.

The above serves as a parable explaining the position of the Jewish people. What was the purpose of Haman, Achashveirosh, and the entire decree? To squeeze the grapes, to bring out the “wine” held within each and every Jew. Then the Jewish people showed a complete and total dedication to G-d, to the point of self-sacrifice. Our Sages considered their level of service then to be higher than at the time of Receiving of the Torah at Mt. Sinai, as the Gemorah comments, “They affirmed (at Purim) what they accepted before (at the Giving of the Torah)”.

To emphasize this idea, the celebration of Purim is connected with wine. From then on Purim is celebrated with much happiness, and will continue as a festival forever. So shall it be for us. May the Jews have “light, happiness, joy, and honour.”

Shiurim

Introduction

In Kislev of 5719 (November 1958), during his monthly Yechidus with the faculty of Tomchei Temimim – 770, the Rebbe expressed his desire that the Hanhala select seven Bochorim in the Yeshiva who excelled in their study of Nigleh and seven who excelled in their study of Chassidus. These Bochorim were then called into a special Yechidus with the Rebbe, during which he informed them of the great merit and responsibility they had, to influence their peers to increase in their Limmud Hatorah. They were named “שבעת קני המנורה” [the seven branches of the Menorah] – “Kanim” for short.

The day after the Yud Tes Kislev Farbrengen of that year, the Rebbe wrote a note to the Hanhala, with the request that the Kanim begin delivering Shiurim once a week to the rest of the Yeshiva. The custom was then established in 770, that every Friday morning, a Shiur in Nigleh was given by one of the Kanim, were given, and on Friday nights, before Kabbolas Shabbos, one of the Kanim would give Shiur in Chassidus.

After a few months, the Rebbe requested that all the Shiurim should be compiled into a Kovetz and printed. The first Kovetz was printed on 4 Sivan 5719, two days before Shavuos, and it received a special mention from the Rebbe during his Shavuos Farbrengen that year. A few days later, the Rebbe sent the Kovetz to other Yeshivos, requesting that they too, institute this system with their Bochorim.

Boruch Hashem, Yeshiva Gedolah has been privileged to fulfill this directive of the Rebbe, albeit not as often: every second Thursday night, a Shiur in Chassidus is given by one of the Talmidim, and every

second Friday, one of the Talmidim delivers a Shiur in Nigleh. A special thank you goes to the Shluchim **Shlomo Chaim Kesselman** and **Mendy Wineberg** for making this possible, spending countless hours learning with the Bochurim and preparing them to give the Shiur in the best possible manner.

As per the Rebbe's directive mentioned above, we are including in this Kovetz some of the Shiurim given throughout the past semester.

May we merit to give the Rebbe continued Nachas, thereby hastening the coming of Moshiach Now!



Echad vs. Yachid*

Hatomim Menachem Mendel Hakohen Feldman

Talmid in Yeshivah Gedolah

We know that Hashem not only created the world and is the only G-d, but He is also the only existence, the only true thing that exists. Hashem is One and nothing exists besides for him. This concept is known as Achdus Hashem, the Oneness of Hashem

In experiencing this idea there are two levels, i.e. two ways in which the world is nullified to Hashem. The lower level is called Yichuda Tata'ah [The Lower Unity] and the higher level – YichudaHla'ah [The Higher Unity]:

1. Yichuda Tata'ah means that the world exists, but its whole existence is thanks to, and completely depends on Hashem: this is analogous to when a person throws a stone and the stone flies; the stone has not been transformed into a “flying stone”, rather, the energy that the person has invested in it is propelling it forward. If and when the force stops, the stone will fall to the ground. The same is with the world. The world's existence is constantly dependent on the energy it receives from Hashem. Thus, the world exists, but it is completely dependent on the one true existence, namely, Hashem. This is also referred to as Bittul Hayesh.
2. Yichuda Hla'ah means that world is absolutely nullified, and it does not exist. Just like a ray of the sun while in the sun has no existence of its own, and is completely subsumed up by the

*) Compiled from the following sources: לקו"ש ח"א שיחה א' לפ' שמות, ד"ה גדול יהיה תשכ"ב, ד"ה האומנם תרמ"ג.

incredible sun. Because Hashem is everywhere and His existence is the only true one, nothing else exists besides for Him and his expressions (גילוי). Period. The world and everything inside of it are all just meaningless expressions of Hashem's infinite ability to express Himself however He wants and they therefore do not exist. This is also referred to as Bittul Bi'metzius.

During Davening we say the Possuk of "Shema Yisroel". The point of Shema is to internalize the reality of Achdus Hashem. The oneness of Hashem referred to in the verse "Shema Yisrael" is Yichuda Ila'ah and the oneness referred to in the passage "Baruch Shem" is Yichuda Tata'ah.

In Lashon Hakodesh, There are two words that mean "one": אחד and יחיד. More accurately, יחיד means "single", the only one. אחד means "one," yet gives room for a "two", a second being. [this is why in Hebrew, an only child is called a "בן יחיד", not a "בן אחד", for although בן אחד also means "one son," it doesn't exclude the possibility of there being a second. The word יחיד though, means "only one" and completely negates the notion of there being anything else].

Now, if the whole point of Shema is to say how Hashem is the only one and absolutely nothing exists besides for Him, why don't we say "ה' יחיד"?

The question is strengthened when we take into account that Halacha requires that while saying the word "Echad" one should think about the three letters of the word and their connotations: "א" – Hashem is one, in "ח" – the seven heavens and the earth, and "ד" – the four directions. This seems to be completely opposite to the whole idea we're trying to bring out with the Possuk "Shema Yisrael," i.e. that Hashem is the **only** existence and nothing at all exists besides for Him?

The explanation is as follows:

In truth, the very need to negate the world's existence, doesn't bring out the true oneness of Hashem. If, in order to show how Hashem is the only Existence, we have to say "the worlds do not exist", then that's not the ultimate in Achdus Hashem. Because the ultimate expression of the Oneness of Hashem is to show and understand how even when the worlds **do** exist, nevertheless at the same time they're completely nullified/unified with Hashem.

The real Achdus Hashem is when we realize that the worlds do exist; yet, at exactly the same time Hashem is the only absolute existence. When we realize how even when there are seven heavens and a world and a lot of different creations in the world, and nevertheless, Hashem still remains the only existence, that's the ultimate in Achdus Hashem.

This can be understood by bringing a mashal from the Aron in the Beis Hamikdash. We know that "מקום הארון אינו מן המדה" "the **place** of the Aron didn't take up any **place**." Meaning, if one would measure the width of the Kodosh Hakodashim it would measure 20 amos. Then if one would measure the width of the Aron itself it would measure two and a half amos. But, measuring the space between the Aron to the wall would get 20 amos, 10 on each side. Thus we see that the Aron took up space and didn't take up space at the same time.

This was because in the Kodosh Hakodashim, the essence of Hashem was revealed. And therefore, the Aron could contain 2 opposites, on the one hand it took up space and on the other hand it didn't.

In other words the space of the Aron existed and didn't exist at the same time.

So too it is with the world. The ultimate in Achdus Hashem is when we realize that the worlds exist 100 percent, yet Hashem still remains the only existence. This is through realizing that yes, everything exists, but **why** does it exist, only because Hashem, who is the only existence, gives it existence. Similar to the Aron which took up space and didn't at the same time, so too the world exists, yet at the same time Hashem remains the only existence.

This then, is the true meaning of "Hashem Echad." Even when there are seven heavens, a world and four directions, (i.e. all different creations), nevertheless Hashem remains "Echad" the One only existence.



Explanation of the Machlokes Rishonim about "שכוני גוואי"

Hatomim Levi Yitzchak Ulman
Talmid in Yeshiva Gedolah

The Gemara in Maseches Bava Basra (29b) speaks of a case where one man confronted another, asking him what he is doing in his house. The man responded that he had bought it from him and established a Chazaka, to which the מערער replied that he had been residing in "שכוני גוואי" and therefore did not protest. In court, an argument between Rav Nachman and Rava ensued, with Rav Nachman placing the burden of proof on the מחזיק, and Rava putting it on the מערער, on the basis of the Halacha that "המוציא מחבירו עליו הראיה".

There are various approaches to our Gemara put forth by the Rishonim, we will focus on two of them:

Tosafos explain the term “שכּוּנֵי גּוּאֵי” as “inner rooms”, i.e. the מערער had witnesses that he was in the inner rooms of the house the whole time (in addition to the witnesses that he is the מרא קמא) and he is claiming that he had a “derech” – a path through the outer part of the house. The question then is whether the מחזיק needs to bring witnesses of his own, to prove that the מערער did not in fact have “derech” (Rav Nachman), or whether we consider the מערער to be extracting the property from the established rights of the מחזיק, which would require **him** to prove that he did have “derech”, on the principle of “המוציא הראיה מחבירו עליו הראיה” (Rava).

Meaning, that the מערער’s presence in the house during the time of the מחזיק’s Chazaka is undisputed, and through his claim of “derech” he is casting doubt on the whole Chazaka of the מחזיק, saying in effect that the מחזיק accomplished nothing by being there for three years, as he himself had been walking through all this time. However, we are unsure if he, in fact, had derech.

In other words: if the מחזיק made a Chazaka and the מערער comes after three years and claims that the Chazaka was made improperly, or he justifies his lack of מחאה, but without witnesses, everyone will agree that the burden of proof is on the מערער. In our case, where the מערער is claiming that the Chazaka never began and he has witnesses to prove it, we are in doubt as to who must prove their rights. The Ramban explains our case in a different manner entirely: he interprets the term “שכּוּנֵי גּוּאֵי” as a faraway place (specifically, the settlements of Teiman – Nemukey Yosef). the claim of the מערער was not that he was present in the inner rooms of the house, rather that he was in a faraway place and therefore could not protest.

It is the validity of **this** claim that Rav Nachman and Rava dispute: According to Rav Nachman, with the מערער's explanation of why he didn't protest, he is calling the entire Chazaka into question, hence, it is up to the מחזיק to disprove his claim with witnesses. Whereas Rava holds that since the מערער agrees to the fact that the מחזיק was there for three years, he must bring the witnesses to hold up his excuse for not protesting.

This would imply that they only argue with regard to a justification made by the מערער for his lack of protest. However in a situation where the מערער seeks to undermine the very Chazaka of the מחזיק, even Rava would agree that the מחזיק must bring witnesses to prove his claim.

it thus emerges that these 2 opinions are fundamentally opposed: In a situation where the מחזיק definitely established a Chazaka, yet the מערער seeks to justify his lack of protest, Tosafos maintain that everyone agrees that the מערער must bring the witnesses, as per the din of "המוציא מחבירו עליו הראיה". whereas the Ramban holds that it is this very case which Rav Nachman and Rava argue about.

Similarly, in a case where the מערער makes a claim which compromises the whole Chazaka, Tosafos hold that it is here where Rav Nachman and Rava disagree, while according to the Ramban, everyone would agree that the מחזיק must bring the proof.

This difference of opinion between Tosafos and the Ramban will be better understood upon examination of their respective explanations of the logic behind the concept of Chazaka - the rights established on a property by living there for three years:

The Ramban explains, that after three years go by without a מחאה from the מערער who has seen/known that someone has been living in his land, there is reason to believe that he was quiet all these years because he had in fact sold the land and it no longer belongs to him.

Essentially, the fact that he didn't make a מחאה on the land is proof that he sold it. Therefore, when he comes after these years and claims that he really didn't sell it, we don't believe him.

If however the מערער can prove to us that his silence was due to a different reason (e.g. he was overseas and he knew that making a מחאה would not reach the מחזיק anyway), we no longer assume that he sold it, and the land returns back to him.

Tosafos and the Rambam learn that the idea of Chazaka is a special Takanah made by the Chachamim, that after 3 years of a person using a property and the owner not protesting, the land is established as being his. However if the original owner can prove with witnesses that there was an issue with the way the מחזיק made the chazaka, the Takana doesn't go in to effect, for lack of proper demonstration of ownership on the מחזיק's part.

Based on the above, we now understand why they differ when it comes to understanding our Gemara:

According to Tosafos, the Chazaka is not inherent proof of purchase, nor is the lack of protest inherent proof of sale. it is simply a Takana enacted by the Chachamim, that after three years of one having a property undisturbed, the property is kept by him. Unless, that is, he didn't make a proper Chazaka (e.g. he didn't plant anything etc.). it is therefore clear to Tosafos, that our Gemara cannot be discussing a claim of justification made by the מערער for not protesting, because everyone agrees in such a case that the מערער must prove his claim, seeing as the Takana of Chazaka has gone into effect immediately after three years passed. the only situation which would pose a doubt (Which is the Machlokes between Rav Nachman and Rava) is where the מערער is making a definite claim that the Chazaka wasn't proper and therefore the Takana of the Chachamim did not go into effect. The Ramban, however, who holds the three years of Chazaka akin to

proof of sale and purchase, a simple justification from the מערער of his lack of protest will suffice to put us in doubt as to who must prove their claim, and this is the argument in our Gemara.



The מחזיק's admission: prior knowledge or not?

Hatomim Boruch Eliezer Shpiegelman
Talmid in Yeshiva Gedolah

The Gemara in Bava Basra (30a-b) discusses a case where a מערער came to the מחזיק and asked him what he is doing in this field, to which the מחזיק responded that he bought it from a מוכר who told him that he bought it from him. The מערער then said: "don't you admit that the land was originally mine and that you didn't buy it from me (and as for the מוכר, you have no idea if he really bought it from me)? If so, leave! You are not my litigant!". Rava remarked that the law is with the מערער and he gets the field.

There are 2 ways to understand the response of the מחזיק:

1. The Rashbam (ד"ה אמר ליה) and Tosafos (ד"ה לאו קמודית) explain (at first glance) that all of the מחזיק's information (that the מערער owned it originally and that the מוכר then bought it from him) came from the מוכר at the time of the sale. Meaning, the מחזיק had no previous knowledge as to the rights to this field.

However, this explanation presents a difficulty: In this case the מערער did not have עדים supporting his claim. If the lawsuit were to

have taken place between the מערער and the מוכר and the מוכר would have claimed that he bought it from the מערער, he would be believed on the basis of a מיגו, had he wanted to lie he could have said להד"ם (it never belonged to the מערער). In our case, where the מערער is confronting the מחזיק, the מוכר's abovementioned power of מיגו should be transferred to the מחזיק, and Beis Din should believe the מחזיק. Why then, does he lose the lane to the מערער?

2. It is apparently this question that prompted the Rambam (Hilchos To'ein V'nitan 14:14) and many others to learn that in our case the מחזיק is actually admitting that he had **previous** knowledge of the מערער's original ownership of the land (**without** the מוכר telling him that piece of information), just that at the time of purchase the מוכר **also** told him that he bought it from the מערער. But there was never a question in the מחזיק's mind that the מערער owned it².

Therefore, the מחזיק loses the מיגו of להד"ם, because he has himself agreed that the מערער was the original owner of the land. The indefinite claim of the מוכר that he bought it from the מערער is not powerful enough to keep the land by the מחזיק, for his own definite admission to the מערער's prior ownership overrides that. This is the rule of אין ספק מוציא מידי וודאי: The ספק, the unsubstantiated claim that the מוכר bought it, cannot take away from the וודאי, the definite fact that the מערער owned it. It is now understood why the land returns to the מערער.

Many explanations of our Gemara have been suggested by the Mefarshim that are consistent with the opinion of Rashbam and Tosafos that the מחזיק never openly admitted on his own accord that it belonged to the מערער originally.

The Rosh (Siman 7) offers one of them:

2) accordingly, it would seem that in the Rambam's edition of our Gemara, the מחזיק's admission was recorded explicitly.

The question on Rashbam mentioned above is based on the premise that the מחזיק had the ability to claim להד"ם, which should give his current claim legal force, on the principle of מיגו. However, this assumption is inherently wrong, for in truth the מחזיק would never claim להד"ם, knowing that the מערער could very well refute his claim by producing עדים who will testify to his ownership of the land. The מחזיק would rather make a claim which he could easier get away with, and which the מערער is unlikely to disprove, i.e. the claim about somebody else being involved. If so, it is obvious that there are no grounds on which to believe the מחזיק, and he loses the land.

[This answer of the Rosh also explains another difficulty (raised by the Chiddushei Reb Nochum) with the words of the Rashbam, where he writes that even if the מחזיק claims קמי דידי מוכר ["the מוכר bought the land in my presence"] or brings עדים that the מוכר lived in the land for one day, he will still not be believed unless he has had it for three years. The above question arises here as well: the מחזיק has a מיגו of להד"ם and should therefore now be believed as well, for the מערער has no עדים to disprove this?

Bearing the Rosh's explanation in mind, the question is readily understood: the מחזיק would rather not say להד"ם, for with that he puts himself at risk of being refuted by witnesses. To claim להד"ם would therefore not be a better lie, it would in fact be a worse lie, vulnerable to being easily disproven]

Rabbeinu Yonah explains that although at first glance it would seem that the Rashbam holds that the מחזיק did not have any prior knowledge of the land's ownership (which would then raise the question posed above), in truth even Rashbam is of the opinion that the מחזיק agreed on his own accord that the מערער originally owned the land (and then he claimed that the מוכר said he had in turn bought it from him)

It would seem that besides intending to avoid the abovementioned question on the Rashbam, Rabbeinu Yonah avoids with this explanation another question that comes up upon the simple reading of the Rashbam:

The Rashbam explains the claim of the מחזיק in our גמרא to be comparable to the case in Maseches Bava Metzia (15b) of הכיר בה בשדה [a prospective buyer who knows that the field he is about to buy is not the seller's].

The Chiddushei Reb Nochum asks, that this Gemara seemingly has no relevance to our discussion, for in that case the buyer knew forsure that it didn't belong to the מוכר, Whereas as a cursory reading of the Rashbam implies that in our Gemara the מחזיק had no idea about the fact that the land belonged to the מערער or that the מוכר bought it from him if not for the מוכר telling him, which itself is an indefinite claim. How can we call this הכיר בה בשדה שאינו שלו – that he **definitely** knew it belonged to the מערער?

According to Rabbeinu Yonah's explanation, this question falls away: for even according to the Rashbam, there is indeed a ודאי in the מחזיק' mind, because he knew the whole time that it belonged to the מערער, and when the מוכר tells him at the time of the sale that he bought it, **that's** a ודאי מידי וספק מוציא מידי ודאי! It is therefore appropriate to call this situation הכיר בה.

[This also answers the question of why the מחזיק isn't believed to say קמי דידי even without a Chazaka of three years, with a מיגו that he could have said "it never belonged to you". The answer is: Of course the Rashbam doesn't hold of this מיגו, because the מחזיק himself is agreeing that it belonged to the מערער, and therefore cannot claim "להד"ם].



Halacha

Loans and currency - keeping within the guidelines of the Laws of *Ribis*

Rabbi Shabsi Asher Tayar

Anash

In order to understand the issues at hand, we must first introduce certain basic principles of *hilchos ribis*.

Ribis that is prohibited *min haTorah* is generally referred to as “*ribis ketzutzah*,” meaning that the interest was set at the time the loan was initiated or extended (*Shulchan Aruch* HaRav, Laws of *Ribis* par. 4). However, in order to safeguard against violating *ribis min haTorah*, *Chazal* extended these prohibitions to certain other transactions and loans. There are many forms that are included in this category, but one in particular is applicable to the issue at hand:

Seah B’seah (Measure for a Measure)— Although lending out goods for repayment in kind is perfectly permissible according to Torah law (since the lender is receiving the same quantity of goods that he lent out), *Chazal* forbade such transactions. The reason for this prohibition is that if the price of the goods has appreciated by the time of repayment, the lender will profit from the transaction. For example, if someone lent 1000 ounces of silver when it was trading at 10 dollars an ounce, and was repaid in kind when it was valued at 12 dollars an ounce, the lender will have earned two thousand dollars from the transaction, despite the fact that he received the same weight of silver he initially lent. Although the profit was a result of a price fluctuation,

and the price was just as likely to decrease, nevertheless *Chazal* prohibited such a loan.

Currency or Commodity

In the times of the Gemara, currency in most countries consisted of gold, silver, and copper coins. These coins, even if minted in the same country, constantly fluctuated in their relative values. For example, the exchange rate of copper coins to silver coins would vary on a regular basis. The question that arose was which coins were considered currency — the gold coins, the silver coins, or the copper coins? The Gemara tells us that silver coins were the most stable and therefore they were considered currency whereas the gold and copper coins were considered fruit/goods in relation to silver coins.

The Halacha (see Shulchan Aruch HaRav par. 33) is that the prohibition of *seah b'seah* does not apply to **local** currency: If a person in Australia borrows one hundred AUD dollars, he may repay the same hundred dollars even if there was deflation and the purchasing power of the money increased by the time of repayment because the prohibition of *Seah B'seah* only applies to items defined as "*peiros*" (literally, fruits), i.e., goods. **Local** currency on the other hand is treated in halacha as having a fixed value. Therefore, when prices increase, we view the increase as a change in the value of the *peiros*/goods, and not as a decrease in the value of the currency. By this definition, a lender who receives the same amount of local currency he lent out is not considered to have made any profit from the transaction. On the other hand, if the person lent out **foreign** currency with the stipulation that he be repaid the same amount in that currency, the principle of *Se'ah B'se'ah* would apply, and the transaction would only be permitted if the borrower already possessed some of this currency that he is about to borrow, even if this amount is minimal (ibid par. 30). [An additional allowance for *Seah B'seah* of "*peiros*" is where a universal price exists allowing the borrower to easily replace the material before the price

appreciates. This leniency would not apply in cases of currency transactions because prices vary between banks. Additionally, since the banks charge a conversion fee, the lender would have to cover the cost of the conversion.]

As a general guide:

1. A loan **may** be advanced in **local** currency with a stipulation that it be returned, without interest, in the **same** currency.

2. A loan **may** be advanced in **foreign** currency with a stipulation that it be returned, without interest, in the **same** currency, if the borrower already **possesses**, when receiving the funds, **at least something** (one dollar or even one cent) in that currency.

3. A loan **may not** be advanced in **one currency** with a stipulation that it be returned, without interest, in a **different currency** if the stipulated exchange rate is the one current at the **commencement** of the loan.

4. A loan **may** be advanced in **local** currency with a stipulation that it be returned, without interest, in a **foreign** currency if the stipulated **exchange rate** is the one which will be current when the loan is **repaid**.

5. A loan **may** be advanced in **foreign** currency with a stipulation that it be returned, without interest, in a **different** currency if the stipulated **exchange rate** is the one which will be current when the loan is **repaid**, if the borrower already **possesses**, when receiving the funds, **at least something** (one dollar or even one cent) in that currency.

6. The above notwithstanding, if the contract is worded in such a way so that the terms used between the lender and borrower do not imply an explicit loan and could be understood as a purchase of foreign

currency conversion, then the “loan” **may** be advanced in **one currency** with a stipulation that it be returned, without interest, in a **different currency**, even if the stipulated exchange rate is the one current at the **advancement** of the funds, so long as the “borrower” already **possesses**, when receiving the funds, **the entire amount of currency** that s/he will be obligated to return on the due date.

7. For actual currency conversions, that is, not a loan, one **may always purchase** currency if the buyer **does not have to wait** to receive the funds he purchased, even if the buyer or seller profits from the transaction.