

Torah Thoughts from the YIGC Community

Lessons in Asset Acquisitions: A Torah Perspective

Alan Schabes

The first *perek* in Kiddushin describes the methods by which one can acquire various assets. One class of assets discussed is land or real property. The Mishna (1:5) states that property with respect to which a creditor would have recourse (i.e. land/real property) can be acquired through *kesef* (money), a *shtar* (document, or deed), or *chazakah* (an act of possession). The Gemara learns from Devarim 11:31, “the land which Hashem, your G-d, gives you, and you will inherit it and dwell in it,” that a piece of land can be acquired by dwelling on it (an act of possession). Other acts of possession include digging up a part of the land, erecting a fence, or locking up or breaching an enclosure around it, in the presence of the seller. Rav Ovadiah Bartenura, commenting on *mishna 6*, adds that real property can also be acquired through *chalifin* – an act of exchange which, according to *mishna 7*, can be either equal (a cow for a sheep) or unequal (a *kinyan sudar*, acquisition by handkerchief – or pen – such as is often used when selling *chametz*).

The Or Hachaim Hakadosh shows how these *halachos* were put into practice by Avraham Avinu when he acquired Maarat Hamachpelah at the beginning of Parshat Chayei Sarah.

First, the Or Hachaim asks why the Torah specifies “After this, Avraham buried Sarah, his wife...” (23:19) – isn’t the sequence of events obvious without that phrase? He also wonders about the repetition of “*vayakam hasadeh* – the field was established [as Avraham’s] in v. 20. He quotes Rambam (Hilchos Zechiah u’Matanah 1:14) that if a non-Jew receives money for land, he relinquishes his title but the Jewish buyer does not acquire it until he receives a *shtar* from the non-Jewish seller or until he performs an act of *chazakah*. The Or Hachaim explains that when Avraham paid 400 pieces of silver to Efron, he successfully divested Efron from ownership but did not receive ownership himself until he performed an act of *chazakah* – by burying Sarah there.

The progression of events was as follows: (1) Avraham paid Efron; (2) “after this,” Avraham also performed an act of *chazakah* by burying Sarah; and then (3) “ויקם השדה” – ownership was transferred to Avraham Avinu.

The Or Hachaim addresses two other questions along the same lines. In 23:9, Avraham asks that Efron “give me” the cave – but why say “give” if he was paying for it? Second, why does Avraham specify “בתוככם” – that Efron should give him the cave “in your midst”? He explains that these words indicate how Avraham ensured his title to the land would be absolutely bulletproof from a legal standpoint, leaving no chance of future dispute.

First, based on a passage from the Zohar that says Efron was unaware of the value of his property, the Or Hachaim explains that Avraham was concerned Efron might discover the true nature of the cave and claim he was a victim of *ona’ah* (price fraud), which could be grounds to nullify the sale. (He suggests Avraham took into account a view in the Yerushalmi (quoted by Tosfot, Kiddushin 42b) that applies the law of *ona’ah* to land, though the Bavli (B”M 56a) says it does not apply.) In order to prevent

such a claim, Avraham used a *kinyan chalifin* – which, as mentioned above, can be effected through an equal or unequal transfer, so the value of the property would not matter.

However, the Gemara in Kiddushin 28a says coins or currency cannot be used for a *kinyan chalifin* – yet Avraham used 400 pieces of silver! The Or Hachaim explains brilliantly that while most instances of the word “*shekel*” in the Torah refer to a type of coin, the Gemara in Bechoros tells us the *shekel* in our story was קנטרין – simply an amount of silver. By using silver as an object, not as a coin, Avraham was able to secure ownership of the cave through a *kinyan chalifin*.

The Or Hachaim also explains that Avraham specified the *kinyan* take place “בתוככם” to forestall claims by adjoining landowners or by secured lenders who may have a lien against the cave. Avraham made sure the *kinyan* was effected in front of the Bnei Chet to give full notice of the transaction. Any claim would need to be voiced then.

We see that Avraham used a “belt and suspenders” approach to his acquisition of Maarat Hamachpelah. On one hand, Avraham used a *kinyan chalifin* in front of Bnei Chet, transferring the title while providing adequate notice to anyone who might object. On the other hand, just in case there was some question about whether the 400 pieces of silver counted as a currency and would disqualify the *kinyan chalifin*, Avraham also made a *chazakah* on the land which unquestionably transferred its title to him and to Bnei Yisrael in perpetuity.

The Meshech Chachmah also raises interesting questions regarding real estate acquisition by Avraham. In 13:15, Hashem tells Avraham “all that you see, to you will I give it, and to your descendants forever” – indicating Avraham will acquire the land as a gift, given in perpetuity. However, two *pesukim* later He instructs Avraham to “arise, walk about the land through its length and breadth, for to you I give it” – suggesting the acquisition is accomplished by an act of *chazakah*, by walking through the land, and that Avraham himself will be the owner. The Meshech Chachmah explains that if land is *hefker* – ownerless – title can be acquired through seeing the land (Bava Metzia 118a). However, in order to acquire it from another individual, another method of acquisition, such as *chazakah*, is needed. He goes on to explain that Eretz Yisrael has two components: (1) one of *ruchniyus*, spirituality; and (2) one of *gashmius*, the physical land itself. With respect to the first, Eretz Yisrael was essentially ownerless: Avraham could acquire title to Eretz Yisrael’s *ruchniyus* through seeing, and title would then be vested in Avraham and his progeny in perpetuity. However, the physical component had to be acquired by the process of *chazakah*. That *kinyan* was effective in vesting title in Bnei Yisrael until they were exiled from the land.

We find then that even though Bnei Yisrael’s physical *kinyan* of the land could be temporarily broken by *galus*, Bnei Yisrael’s ownership of the *ruchniyus* element of Eretz Yisrael is permanent and cannot be broken.

Chanukah and the End of Miracles

Rabbi Daniel Olgin

Most of our *yamim tovim* are commanded explicitly in the Torah. Then there are the extra-Biblical observances of Purim and Chanukah, which are alluded to in the Torah but are not explicit. The events behind both of these holidays occurred at watershed moments in Jewish history.

The Purim events took place towards the end of the Persian Exile. Megillat Esther was the last book to be included in the biblical canon (Megillah 7a), and there was a debate over its inclusion because the Jewish salvation from Haman was through a hidden miracle rather than by overt interference in the laws of nature. No direct revelation was experienced and the Megillah lacks any mention of the Divine Name.

The story of Purim unfolds in a seemingly natural way, through a series of coincidences and court intrigue. The fate of the Jews hung by a thread and they existed in a state of doubt. It is no surprise that the villain of Purim, Haman, comes from Amalek, a nation whose name shares the *gematria* of "safek," doubt.

In the end, since the Megillah contains prophetic insight, it was included in the body of the Written Law – but it is a transitional entity, hanging between the prophetic and post-prophetic worlds.

The period of time between the events of Purim and Chanukah was extremely tumultuous. The Jewish people received permission to return to the Land of Israel and to begin rebuilding the Temple. This period saw the rise of the *Anshei Knesses Hagedolah*, (Men of the Great Assembly), the cessation of prophecy, the beginning of Greek domination of Israel, the beginning of the Mishnaic period, the translation of the Torah into Greek, and the acceptance and momentum of Hellenism among the Jewish people.

The intrusion of Greek rule was a seminal event for Israel. To say that Greek culture and philosophy disrupted Jewish life is an understatement. Purim had introduced doubt among the Jewish people. When power passed to the Greeks on the world stage, just as centuries of prophecy were coming to a close, doubt hardened into the foreign concept of atheism.

The phase of history marked by prophecy was the era of worship. Alongside the truth of prophecy was the equally compelling sway of *avodah zarah* - idolatry. Over and over throughout Tanach, prophets railed against the danger of worshipping false gods. While the danger was serious, idolatry actually served a meaningful function: in a world that only contained the undiminished pure word of the Almighty, available to prophets, free will could not possibly exist. The Jewish people would keep the Torah like robots following their programming. Hashem wants to give us the ability to come close to Him through observing *mitzvot*, but it has to be our choice.

See, I have placed before you today the life and the good, and the death and the evil...I have placed life and death before you, blessing and curse; and you shall choose life, so that you

will live, you and your offspring... (Deut:30.15-20)

To maintain the balance of free will, an equally compelling alternative must exist – such as idolatry. When the human desire for idolatry was nullified, as documented in Yoma 69b, the balance of free will was upturned and needed correction. Thus, with the deaths of Chaggai, Zechariah, Malachi, and Ezra, all in the fortieth year of the Second Temple, prophecy itself was no more.

After prophecy came the mode of atheism and existential emptiness. The end of prophecy and the dominion of Greece are deeply connected. With the loss of prophecy, we lost that ability to connect with the Higher World, which allowed the world to enter a conceptual reality that is entirely bounded by the natural. Greek thought introduced the materialist view that survives to this day since the receding of the spiritual behind the veil of nature.

Virtually all modern scientific, political, social, intellectual and aesthetic structures are based solidly upon Greek foundations. Indeed, one can look at the world today and truly say, "It's all Greek to me." Modern science is a major legacy of Greek thought. The Western view today is that only science has the right and ability to explore and define reality. I vividly remember a conversation I had with my best friend's father when I was a college student exploring Judaism. He was an engineer with NASA and when I asked his opinion about the existence of God, he said, "unless it can be put on a table in a lab, examine, measure and calculate it, it's not real."

Chanukah represents a showdown between Greek thought and Jewish thought. The Chanukah story took place 149 years after the end of prophecy, so there is no book in Tanach that relates its events. Chanukah is the festival of Torah She'be'al Peh - The Oral Law.

In the *Al Hanissim* prayer, we mention two aspects of the celebration: the oil and the successful war against the mighty Greek armies. Although Chanukah occurred in the post-prophetic world, the miracle of the oil was the last revealed miracle in history. The war, on the other hand, did not manifest open abrogation of nature. Rather, it required strenuous human effort in a bitter campaign that dragged on for years. Four of Mattityahu's five sons were killed in battle. The victory of the Maccabees certainly was miraculous, but the war featured no overt changes in nature. The overtly supernatural miracle of the oil burning for eight days occurred in private, within the Temple, and only after the main stage of the military victory.

The Talmud's discussion of Chanuka is inserted in the context of Shabbat lights (Shabbat 21a). Shabbat represents a reality that is entirely given from Above. It is called *k'viya v'kayma* - fixed and permanent, in no way subject to human adjustment. Chanukah on the other hand, is entirely a process generated from below, in the human realm. Both light the world – together.

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