



**TORAH ACADEMY**  
of Bergen County

# קול תורה

**Parashat VaYeishev**

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## THE FIRE OF SHAME

by Rabbi Ezra Wiener

After Yehudah sins with his daughter-in-law Tamar, the Torah states, "VaYugad LiYhudah Leimor Zanetah Tamar Kalatecha VeGam Hineih Harah LiZnunim VaYomer Yehudah Hotziuha VeTisareif. Hi Mutzeit VeHi Shalechah El Chamihah Leimor LeIsh Asher Eileh Lo Anochi Harah VaTomer Haker Na LeMi HaChotemet VeHaPetilim VeHaMateh HaEileh," "It was told to Yehudah as follows, 'Your daughter-in-law Tamar has committed harlotry, and moreover, behold, she is pregnant by harlotry.' Yehudah said, 'Take her out and let her be burned!' She was being taken out, and she sent word to her father-in-law, saying, 'By the man to whom these belong I am pregnant.' And she said, 'Recognize, if you please, whose are this signet, this wrap, and this staff'" (BeReishit 38:24-25).

Discussing these Pesukim, Rashi (38:25 s.v. VeHi Shalechah El Chamihah) and Yalkut Shimoni (ad loc. s.v. Hi Mutzeit) quote the famous comment of Rabi Zutra Bar Tuvya: "Noach Lo LeAdam SheYapil Atzmo LeChivshan HaEish VeAl Yalbin Penei Chaveiro BaRabim," "Better that a person throw himself into a fiery furnace and not shame his friend in public." Tamar is informed that Yehudah has ruled that she be put to death by burning, yet she is determined that Yehudah not be put to shame at all costs, including her life. She does not expose Yehudah's guilt.

Rashi (38:24 s.v. VeTisareif) quotes a Midrash that presents the view of Rabi Meir that the penalty of Sereifah, burning, is assessed due to the fact that Tamar is the daughter of Sheim, the son of Noach, who had the status of a Kohein. The Mishnah (Sanhedrin 9:1) assesses the punishment of death by Sereifah to a married daughter of a Kohein who engaged in promiscuous behavior.

There are several questions on this approach, many of which are raised by the Ramban (ad loc. s.v. VaYomer Hotzi'uhah VeTisareif). Firstly, the Sereifah that the Pasuk speaks of ostensibly is burning at the stake, yet the death penalty imposed by Beit Din is "Sereifah Neshamah VeGuf Kayam," the burning of the innards without burning the outer body, which is accomplished by pouring hot lead down the throat of the individual being executed. Secondly, the penalty of Sereifah is administered only to a Bat Kohein who is married through Chupah. Tamar is awaiting Yibum, making her a Shomeret Yavam, and a Shomeret Yavam who engages in an act of infidelity merely violates a Lav, a negative commandment for which one receives lashes, but does not receive Sereifah. Thirdly, Tamar, like all of mankind during her time, is a Bat Noach. The punishment for any violation of one of the Sheva Mitzvot Bnei Noach is Hereg, beheading; Arayot is no different than the other six.

Ramban posits that Yehudah is a Katzin, a sort of chief among

the people. He not only gains the respect and reverence of his brothers, but the people with whom Bnei Yisrael associate also revere Ya'akov's family and specifically the powerful Yehudah. That being the case, this surreptitious act on Tamar's part to dress as a Zonah and entice someone is deemed a disreputable act against the ruler. Tamar is essentially a Moredet BeMalchut, and the custom is to burn those who engage in dishonorable activities against the king.

It seems almost instinctive that if one were falsely accused of such an atrocious crime and, moreover, were being taken to be killed that one would seek acquittal whatever way possible, yet Tamar chooses to sacrifice her life rather than embarrass Yehudah. Such is the crime of embarrassing another human being in public. Tamar is, in essence, in a Yeihareig VeAl Ya'avur situation, where one should sacrifice his life rather than violate the prohibition. As Chazal teach (Sotah 10b), "Kol HaMalbin Penei Chaveiro BaRabim Kellu Shofeich Damim," "If anyone embarrasses his friend in public, it is as if one has killed." Furthermore, it is better that she be killed than kill another human being. As the Gemara (Sanhedrin 74a) eloquently puts it, "Mi Yeimar DeDama Didach Sumak Tefei," "Who says that your blood is more red than his?" This Halachah is not derived from a Pasuk—the Gemara calls it a Sevara, a law which is derived logically.

But why do we compare one who shames another to one who has spilled another's blood? Some explain that it is certainly a severe transgression to embarrass another, but the comparison to killing is merely figurative as it is used to describe the blood that leaves one's face after the shameful words have been expressed. The face turns a bright red and then the effect is Malbin Penei Chaveiro, which literally means that it returns to its whiter, regular complexion.

However, if we are to take Chazal very literally that it is better for a person to be thrown into a fiery furnace than to shame another in public and that this is truly a case of Yeihareig VeAl Ya'avur as Tamar understood, then the comparison to Shefichut Damim must also be taken somewhat literally.

Perhaps we can understand this in light of a well-known explanation of the mechanism of Teshuvah impacting a Gezeirah Ra'ah, an evil decree that has been preordained by Hashem for an individual. How exactly does Teshuvah accomplish Ha'avarat HaGezeirah, the removal of the decree?

Teshuvah changes a person. He is no longer the person he once was. The Gezeirah remains on the old person, but that old person doesn't exist anymore.

The same is true in a different way regarding embarrassing someone. Cruel and critical comments as well as degrading and humiliating remarks have the power to lower a person's self-esteem to the point that he or she no longer has the confidence to be the person he or she thought they were. The individual who thought he was a decent Ba'al Tefilah, Ba'al Tzedakah, athlete, or musician, is no longer that person after hearing degrading remarks. That person is dead. He has been murdered by callous criticism.

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Chazal mention a Kivshan HaEish, a fiery furnace, although it appears that Tamar is to be burned at the stake and not in a furnace. This is, perhaps, to allude to the purpose of a furnace, namely, the refining of metals. "Noach Lo LeAdam SheYapil Atzmo LeChivshan HaEish," "It is good for a person to throw himself into a fiery furnace." One should perfect and refine his own character first and then "VeAl Yalbin Penei Chaveiro BaRabim," he will not have the callousness to cause shame to another human being.

### REUVEIN'S DILEMMA

by Yehuda Feman ('15)

In this week's Parashah, we are told about the famous, yet mysterious, story of Yosef's sale. In an attempt to save Yosef from sudden death, Reuvein convinces his other brothers to merely throw Yosef into a pit. However, this leaves us with a glaring question to ask of Reuvein's seemingly courageous act: why would Reuvein think that throwing Yosef into a pit filled with snakes and scorpions (see Rashi BeReishit 37: 24 s.v. VeHaBor Reik Ein Bo Mayim) be any different than killing him with his own hands? Reuvein must have known that an empty pit would be filled with deadly animals!

The Zohar and the Or HaChaim HaKadosh (37:21 s.v. VaYatzleihu MiYadam) both explain a simple but interesting idea. The brothers had the concept of free will, while the snakes and scorpions in the pit did not and were subject to the will of Hashem. Thus, Reuvein understood that while the brothers could have killed Yosef, that was only because of free will and was not the decree of the Heavenly Court. Therefore, Reuvein professed his trust in Hashem by believing that the snakes and scorpions would leave Yosef untouched in the pit.

This is still slightly problematic, though, as it is unclear why Reuvein thought Yosef merited being saved from such a dangerous environment. While Yosef may have been safer in the pit than in his brothers' hands, this still does not explain how Reuvein could allow this situation to happen?

In order to explain this, we must look at this story on a broader scale. Yosef's brothers were furious as a result of the favoritism shown to Yosef. As a result of this anger, they impulsively decided that they would kill him. Reuvein believed that the brothers were overreacting; however, in order to save himself, and, ultimately, Yosef, he could not disagree with the brothers outright. Therefore, Reuvein decided to offer an alternative to the brothers that would still "obliterate" him. The brothers were convinced by Reuvein's arguments and were content with throwing Yosef into a pit with deadly snakes and scorpions. Reuvein, though, understood that despite the danger present in the pit, Yosef would be saved. As the Zohar and Or HaChaim explain, these animals are subject to the will of Hashem. Despite their deadly nature, they are unable to harm anyone without Hashem's instruction. Reuvein therefore posited that Yosef would be kept safe, and he would later be able to retrieve him from the pit.

Now that we understand Reuvein's thought process, we can now understand why his actions were so special. Although it is a basic obligation to attempt to save someone's life, Reuvein was forced to save Yosef through deceiving his brothers and

convincing them that he was interested in killing Yosef. This Middah of deception was something which was antithetical to Reuvein's nature, yet he was willing to forgo this unnatural feeling in order to help others. This is the greatness of Reuvein's act and the true definition of a pious person: someone who goes beyond his or her natural inclination to do what is righteous in the eyes of Hashem. Like Reuvein, we must be willing to forgo our natural tendencies in order to help others and follow Hashem's will.

### THE IMPORTANCE OF FAITH

by Yitzi Rothschild ('16)

Parashat VaYeishev contains the story of Yosef's imprisonment in Egypt. While in jail, he notices two men who seem distressed, and he is told that the two people had been the chief baker and chief butler of Par'oh. They each had a disturbing and confusing dream that no one was able to interpret. Yosef tells them, "*Halo Leilokin Pitronim Sapru Na Li*," "Only God can interpret your dreams, but I can help" (BeReishit 40:8). Yosef proceeds to interpret each of their dreams, telling the chief butler that he will live and the chief baker that he will die.

Yosef then asks the chief butler, "*VeAsita Imadi Chased VeHizkartani El Par'oh*," "Do kindness to me and remember me when you see Par'oh" (40:14). When Yosef says this, Hashem becomes infuriated and adds two more years onto Yosef's prison sentence (Rashi 40:23 s.v. VaYishkacheiyu). However, it seems rather strange that Hashem would be disappointed with Yosef for wanting to save himself from being wrongly imprisoned. Nevertheless, Hashem is disturbed that Yosef is not looking towards Him for help, but is instead turning towards Par'oh.

A recurring theme throughout Sefer BeReishit is a phrase known as Ma'aseh Avot Siman LeBanim: the events which happen to our forefathers are symbolic of what will happen to their sons. Throughout history, there have been many times when leaders looked to a foreign nation for help and were resultantly punished by Hashem. For example, when Moshe is traveling to Eretz Yisrael, Hashem tells him to ask the nation of Amon if the Bnei Yisrael can pass through their land. Amon refuses, and Moshe resorts to begging for the Jews to gain passageway. This incident is a possible explanation for why Hashem punishes Moshe by not allowing him to go into Israel. Moshe disregarded the directive given to him by Hashem by asking the King of Amon a second time. When the Jews forge alliances with foreign nations instead of relying on Hashem, terrible consequences arise. Similarly, Shlomo HaMelech marries Bat Par'oh in order to gain peace with Egypt, yet after Shlomo's death, Shishak, the King of Egypt, attacks the Jews. Furthermore, when King Chizkiyahu makes an alliance with Bavel, Bavel attacks the Jews a few generations later and ultimately destroys the Beit HaMikdash. Our history has proven that our alliances with foreign nations have only ended in destruction, war, and minimal gain.

Recently, because of the tension concerning Har HaBayit, Jordan has threatened Israel that it will revoke its 1994 peace treaty. After Muslims were banned from praying on Har HaBayit for one day,<sup>1</sup> Jordan began to call Israel a "terrorist state." However, quite the contrary is true. Israel has only ever wanted to make peace with the Arab countries and to stop all of this terrible hatred and controversy.

<sup>1</sup> <http://www.israelnationalnews.com/News/News.aspx/186860>

However, if Israel wants to survive, it is not going to be able to depend on the surrounding nations to help, but rather it must be independent of them and rely on Hashem.

We always have to remember that no matter what we do in life, we always have to depend on Hashem. There are many times when one person helps another, but we must always remember that we should always first look to Hashem first for help.

## UNITED SAVINGS, LLC v. DUNKIRK CENTER FOR HEALTH, INC. AND ROYAL REHABILITATION: A DECISION OF THE BETH DIN OF AMERICA: PART II

*Kol Torah is honored to present an important and precedent setting ruling of the Beth Din of America. We thank Rav Shlomo Weissman, the director of the Beth Din of America, for kindly granting permission to print this ruling. We hope our publishing this article will help to raise the profile of dispute resolution in proper Batei Din. Last week, we presented the facts of the case and the first part of the discussion. This week, we will conclude with the remainder of the discussion and the decision.*

### 4: Ratification

Even if it could be argued that the Respondent was not initially bound to the Agreement, the Respondent effectively ratified the Agreement through its course of conduct following its execution. For a significant period following the execution of the Agreement and its implementation, employees of the Respondent communicated with the Claimant about the services he was rendering; furnished documents and other information to the Claimant, which the Claimant used to generate savings for the Respondent; and paid some of the invoices presented by the Claimant. The Respondent did not repudiate the Agreement at any point during this time.

### 5: Actual Halachic Authority by Virtue of Spouse's Ownership

There is a dispute among contemporary Poskim (Jewish legal decisors) as well as secular legal scholars as to who is the owner of a corporation. John Marshall said, "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."<sup>2</sup> Shareholders hold shares, which entitle them to certain contractual rights.

There are multiple Halachic perspectives on how to treat a corporation. One view is that it is a separate legal entity, i.e., the shareholders do not own assets but have a residual claim. A second one is that it is a partnership, whose "shareholders" own the assets. A third idea is that shareholders are creditors of the company. A fourth analysis is a hybrid of the first and second opinions: sometimes a corporation is regarded as a separate entity and at other times it is treated as if it were a partnership. In one Teshuvah (responsum), R. Moshe Feinstein held that a corporation is the Halachic equivalent of a partnership, and that shareholders retain title to the company's assets as partners.<sup>3</sup> Yet, elsewhere he classifies a corporation as an independent entity separate from its shareholders.<sup>4</sup> R. Feinstein's outlook on the Halachic nature of corporations appears to depend on the character of the particular corporation. Where the same persons hold ownership and managerial control, the entity is akin to a partnership, and the

shareholders are deemed to own the assets. Where there is a functional separation of ownership and control, the corporation is its own entity. One of the owners of Dunkirk and Royal was the wife of JB. Under a literal application of the Halachic concept that a wife's assets vest in her husband,<sup>5</sup> the authority of the wife of JB to bind the entities would inure to JB. Because Dunkirk and Royal are closely-held and, effectively, owner-managed entities, we believe that R. Feinstein would say that they are Halachically classified as partnerships, and that JB had the authority to bind them.

### 6: Benefit Received

We note that even under a strict application of halacha without regard for the applicability of secular law or commercial custom in this case, it is possible that the Claimant would be entitled to receive compensation for the value of the work it performed under the Halachic principle of Yoreid LeToch Sdeih Chaveiro Shelo BiRshut (if one enters his the field of his neighbor [and plants in it] without his permission).<sup>6</sup> Had we issued an award under that theory, we would have had to assess the benefit to the Respondent and what portion of that benefit the Claimant would have been entitled to receive.

### Choice of Law

According to clause (d) of Section 3 of the Rules and Procedures of the Beit Din, "[i]n situations where the parties to a dispute explicitly adopt a 'choice of law' clause, either in the initial contract or in the arbitration agreement, the Beit Din will accept such a choice of law clause as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law." Since the Agreement was valid and binding upon the Parties, and contained a New York governing law provision, any substantive disputes arising under it must be resolved according to the laws of the State of New York.

### The Savings

The Agreement provides that, "[i]f a course of action suggested by [the Claimant] is substantially implemented and a credit, refund or saving is achieved, [the Respondent] will pay [the Claimant] a performance fee... of Thirty Three and Third Percent (33 1/3%) of all refunds, credits, savings or other benefits recovered for [the Respondent] from prior billings... and 33 1/3% of all credits, savings, reductions or other benefits to [the Respondent's] taxes, rates and Costs as compared with [the Respondent's] former taxes, rates and Costs for a period of 30 months from the date the credit savings reductions or other benefits received are first reflected in the Bills."

The Respondent asserts that certain savings would have been realized even without the efforts of the Claimant. Were a binding contract not in effect, we would be sympathetic to such an assertion. The Agreement, however, states that if a course of action suggested by the Claimant is substantially implemented and a credit, refund, or saving is achieved, the Respondent will compensate the Claimant. As a matter of New York law,

<sup>2</sup> Dartmouth College v. Woodward, 17 U.S. 518 (1819).

<sup>3</sup> R. Moses Feinstein (1895-1986), Igerot Moshe, Choshen Mishpat I, No. 15.

<sup>4</sup> Igerot Moshe, Even HaEzer I, No. 7.

<sup>5</sup> Menachot 93b.

<sup>6</sup> Bava Metzia 101a.

contracts are to be interpreted in line with their plain meaning.<sup>7</sup> The Agreement did not include carve-out language that excluded from compensation savings that ultimately could have been achieved by the Respondent without the intervention of the Claimant. We are therefore prepared to award compensation to the Claimant based upon the full savings it achieved for the Respondent.

As set forth above, the Parties disagree regarding the baseline from which to calculate the savings, leaving us with two possibilities: an estimate relative to the Posted Rate and one relative to the Firm Rate. The Agreement does not specify precisely how the savings should be calculated in instances when such savings must be estimated, and here, again, our task is to ascertain the intent of the Agreement based on the plain meaning of the language of the Agreement. While both methods could be bona fide approaches to estimating the savings, we find the one proposed by the Claimant to be more compelling because it is based upon historical data applicable to the Respondent's savings, while the one suggested by the Respondent is derived from hypothetical savings to unrelated third parties, whose profile could materially differ from that of the Respondent. In our view, the Claimant's methodology offers the simpler and more straightforward path towards calculating the "savings" to which the Agreement refers.

Based on this, the Claimant is entitled to \$247,677.63 from Dunkirk.

Dunkirk is entitled to a credit of \$4,548.77 relating to overpayments it made for invoices 77-1352, 77-1364, and 77-1376.

Thus, the net amount that Dunkirk owes to the Claimant is \$243,128.86.

The Claimant asserts that Royal owes to it \$4,333.22. In its July 11, 2013 and August 18, 2013 letters to us, the Respondent did not contest the calculations behind such assertion. Accordingly, Royal owes to the Claimant \$4,333.22.

### ***Costs of Proceedings***

According to Section 28 of the Rules and Procedures of the Beit Din, "[t]he Beit Din, in its award, may assess arbitration fees and expenses in favor of any party and, in the event any administrative fees or expenses are due the Beit Din, in favor of the Beit Din." Fees and expenses are generally paid by the side that incurs such fees, unless it is clear that one side acted improperly such as by initiating frivolous actions. In this case, we have ruled on some matters in favor of the Claimant and on some matters in favor of the Respondent, thus indicating that the matters brought before us were not frivolous. Moreover, the Arbitration Agreement gave us the discretion whether to resolve the controversy according to din or Pesharah HaKerovah LaDin. Thus, had we resolved the case in accordance with din, we would have determined that the Respondent's liability to the Claimant was less than what we have stated in this decision. Therefore, each side shall pay its own fees and expenses in connection with these proceedings.

### ***DECISION:***

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7 Accurate Realty, LLC v. Donadio, 915 N.Y.S.2d 394 (2011) ("Interpretation of a written agreement requires us to determine the parties' intent as derived from the language of the instrument, with the words and phrases employed given their plain meaning.")

Dunkirk owes to the Claimant \$243,128.86, and Royal owes to the Claimant \$4,333.22 (the "Amounts"). The Amounts are due within thirty (30) days of the date hereof, provided, however, that each of Dunkirk and Royal shall be entitled to pay its portion of the Amounts in installments if it notifies the Claimant, in writing within thirty (30) days of the date hereof, that the immediate payment of the Amounts presents a bona fide cash flow problem for it (the "Cash Flow Letter"). In such case, Dunkirk and Royal, as the case may be, shall pay its portion of the Amounts as soon as it can, but at a minimum in six (6) equal monthly installments, the first due simultaneously with the delivery of the Cash Flow Letter, and each subsequent payment due on the monthly anniversary thereafter. If Dunkirk or Royal fails to make a timely minimum payment, then the entire remaining balance it owes shall be due immediately and the Claimant may sue in secular court to obtain such outstanding balance.

Each of the Parties must pay its own costs and fees, and neither side is entitled to reimbursement for such costs and fees from the other side.

All other applications and claims are hereby denied. The obligations set forth herein shall be enforceable in any court of competent jurisdiction, in accordance with the rules and procedures of the Beit Din and the arbitration agreement. Any request for modification of this award by the arbitration panel shall be in accordance with the rules and procedures of the Beit Din, and the arbitration agreement of the Parties. Any provision of this decision may be modified with the consent of both Parties. All of the provisions of this Order shall take effect immediately.

We encourage the parties not to speak negatively of one another with regard to the differences and disputes upon which we have ruled. We wish Berachah VeHatzlachah to the Parties in their endeavors.

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