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Severance in Jewish and Israeli Law

Rabbi Moshe Pinchuk

One of the parent organizations of our Beit Midrash is Torah MiTzion. This week we feature an article by Rabbi Moshe Pinchuk of Torah MiTzion, on a contemporary issue in Israeli law.

A key component of corporate downsizing is the dismissal of workers. In recent years, downsizing has become an increasingly common phenomenon. This has increased interest in the "ethics of downsizing". Questions of ethics and morality range from the decision to initiate downsizing; to determining who should be dismissed; and finally, to obligations the company may have to the dismissed workers. In this article I wish to focus on the last issue, severance compensation.

The Israeli law on the subject is entitled: Severance Compensation. The choice of words, "compensation" rather than, say, "pay" is quite revealing of the law's moral underpinning. Compensation implies damage or hurt has occurred, and needs to be put right. Indeed, dismissal of a worker will usually cause substantial financial loss. The Bible views mere holdover of payment as a life-threatening criminal act (Devarim 24:15). How much more so when a permanent loss of income is at stake?

Viewing severance pay as compensation has some legal and practical ramifications: First, if the dismissed worker is the "damaged party", it is incumbent upon him to sue the "damaging party". As plaintiff, the burden of proof lies with the worker. It is up to him to demonstrate

the existence and extent of the damage. Second, in cases where the worker chooses to quit his job it is quite difficult to view the employer as a "damaging party", and there is no basis for legal action against him.

Israeli law is aware of this second limitation and has artificially defined some scenarios of resignation as dismissal: A worker forced to quit for health reasons; a mother quitting on grounds of child rearing; a worker who quits on account of change of address. All of these cases are to be legally viewed as a dismissal, thus entitling the worker to severance compensation.

The Jewish law concerning the termination of a slave offers an alternate ethical model for severance pay. Amongst the commands of Devarim we find: "If your brother, a Hebrew man, or a Hebrew woman, be sold to you... And when you let him go free from you, you shalt not let him go empty. You shall furnish him liberally out of your flock, and out of your threshing-floor, and out of your winepress; of that which the Lord your G-d has blessed you shall you give to him." (Devarim 15:12-14) The "furnishing" required here may be viewed as a gift, a token of appreciation for the work done by the slave, and a stipend to help him on his new path. This command inspired the following recommendation in *Sefer HaChinuch* (Mitzvah 482): "Nowadays, 'the wise man may hear, and increase in learning' (Mishlei 1:5), when one employs an Israelite over an extended period or even a short period, it is proper that he bestow to him upon

termination, from that with which he has been blessed."

Since this model presents severance pay as a gift, it may entail payment even if the worker quits. The employee is also not a plaintiff required to sue. Therefore, burden of proof is no longer upon him to demonstrate damage. To the contrary, it is upon the employer to demonstrate unsatisfactory work in order to relieve himself of the gift of appreciation.

The difference between "severance compensation" and "gift of appreciation" can be demonstrated in a court ruling of Israel's Chief Rabbinate: "The plaintiff... is suing for severance compensation as if he has been dismissed. He claims he was forced to quit because the employer was not paying him... he views this as a worsening of conditions which justifies his leaving and requires compensation... but as **he has been unable to prove this claim, there are insufficient grounds to obligate the defendant to compensate him.** However, it would seem fitting to **obligate the defendant to pay a certain amount, ex gratia, in appreciation of the plaintiff's dedicated work.**"

Very recently, an amendment to the Israeli law has been proposed. Its essence is that workers not entitled to severance compensation will, by law, receive a "termination of employment" grant. If this amendment is adopted, the Israeli law will incorporate both ethical perceptions of severance pay: compensation and gratitude.

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Continental Press 905-660-0311**

***The Jonathan Sacks Haggada* Koren Publishers Jerusalem, 2013**

Who is the author?

Rabbi Jonathan Sacks, former Chief Rabbi of the United Kingdom, is a well-known philosopher and theologian, respected worldwide for the novelty and originality of his ideas. Furthermore, as a prolific writer of more than two dozen books he is famous for presenting his ideas in a clear, intelligent, and passionate way. The former Chief Rabbi's sources of inspiration are broad, and his books cite, besides the obvious Jewish references, a wide array of sources from philosophical, historical and sociological works.

Since stepping down from his position as the Chief Rabbi in 2013, he has served as a Professor of Jewish Thought at Yeshiva University.

What is the structure of the book?

This Haggadah has two parts. The first part is a bilingual Haggadah (the English is rendered by Rabbi Shlomo Riskin of Efrat), which includes commentaries by Rabbi Sacks, some of which are original thoughts and some of which are quotations and stories

relating to the Haggadah. This part boasts some wonderful gems such as: seeing the invitation to join our Seder meal as the beginning of salvation; explaining that in contrast to Purim, in which the Megillah replaces Hallel, in the Seder, the Hallel cannot be replaced by the Haggadah, for the Haggadah is not a text to be read, but an experience to live through; and his insightful explanation of Chad Gadya as an expression of hope for Divine justice. However, the real reason for buying the book is undoubtedly its second part: a collection of twenty-one of the author's articles and sermons relating to Pesach and the Exodus – where Rabbi Sacks, not constrained by a specific phrase or quote from the Haggadah, develops his thoughts into full ideas. We shall now turn to some of these ideas.

Why is this Haggadah different from other Haggadot?

As Rabbi Sacks himself writes in the first article, anyone who plans to write another book on the Haggadah must ask himself, "not 'Why is this night different?' but 'Why is this edition different?'" What Rabbi Sacks writes in answer to this question can rightly

serve as a short summary of the ideas he finds in the Haggadah:

"My answer is that I wrote this commentary because, amongst all the many I have read, I could not find one that explained, in their full richness and scope, the fundamental themes of the Pesach story:

1. the Jewish concept of a free society,
2. The role of memory in shaping Jewish identity,
3. The unique connection that exists in Judaism between spirituality and society, giving rise to what I have called elsewhere the politics of hope.
4. Nor could I find a Haggadah that told me in detail about the role of Pesach in shaping Jewish identity through the millennia, or its influence on Western thought as a whole."

The articles elaborate on all of these points and more, and anyone who finds himself intrigued by them will find a very fruitful and rich discussion in this book.

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Israel's Chief Rabbis: *Rabbi Ovadia Yaavetz*

Yaron Perez

Rabbi Ovadia Yaavetz
5682 (1922) – 5771 (2011)
Chief Rabbi, Kiryat Ekron 1960-2011

Life

Rabbi Ovadia Yaavetz was born in Sa'dah, Yemen. His grandfather, Rabbi Yahya Yaavetz, was a great Torah scholar; he served as the regional Rabbi for Sa'dah, and the *av beit din* (head of the rabbinical court) for Northern Yemen. When Rabbi Ovadia was nineteen years old, he received ordination from his grandfather, who died a short time later, as well as Rabbi David Zadok HaLevi, Rabbi of Al-Hajar in Northern Yemen.

Rabbi Ovadia's father, Rabbi Yaakov Yaavetz, was appointed Rabbi of Sa'dah after Rabbi Yahya's passing; when he died, Rabbi Ovadia became Rabbi. The role included serving as *shocheit*, *mohel* and *sofer* (scribe), as well as teacher and halachic authority. Rabbi Ovadia was known for his incisive mind and encyclopedic knowledge; fluent in Arabic and well-versed in the Koran, he frequently represented the Jews of Yemen before the government.

In 1949, Rabbi Ovadia Yaavetz was recruited to persuade the Jews of Northern Yemen to ascend to Israel. He personally headed a large group of Jews, as part of Operation Magic Carpet. [For more on Operation Magic Carpet, see Toronto Torah 4:6, at <http://www.yutorah.org/lectures/lecture.cfm/798495>.] They settled in Rosh ha'Ayin, where Rabbi Yaavetz led the local religious council. Ten years later, the Jewish Agency sent Rabbi Yaavetz to encourage additional aliyah from Yemen. He succeeded, returning to Israel with a large contingent.

In 1960, Rabbi Yaavetz was appointed to replace his mentor, Rabbi David Zadok HaLevi, as Rabbi of Kiryat Ekron, south of Rechovot.

Legacy

Rabbi Yaavetz authored several books, including his *Afikei Mayim* commentary to the Torah, a work of responsa called *Darchei Noam*, and a history of the Jews of Northern Yemen, *Sa'dah uSevivoteha*.

Rabbi Yaavetz was a strong Zionist, and he identified with the Religious Zionist *HaPoel haMizrachi* political movement. As a function of his Zionism, Rabbi Yaavetz opposed all negotiation regarding trading away portions of Eretz Yisrael. In 1969, not long after the Six Day War, he published an article on the subject for *Emunim*, a periodical of Yemenite Jewry. He wrote, "Eretz Yisrael was promised to us by the mouth of the Almighty, and just as G-d lives, so His oath lives. Across thousands of years of exile, the nation of Israel yearned to return to the land of its ancestors, to make its future there. Because the time of desire before G-d had not yet come, this did not happen. In our generation, the generation of revival, G-d desired, and all of sacred Eretz Yisrael was liberated by the IDF in the Six Day War. With the aid of the G-d of the legions of Israel, the descendants returned to their boundary. Only one who is too blind to see could not recognize the great change of our days, when the Great Cause restored that which had been stolen to its owner, to fulfill His oath. What kind of fool would reject His favour for His nation, bartering it away among the nations, enemies of Israel?"

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Biography
Rabbi Yitzchak Herzog
 Rabbi Jonathan Ziring

*Adapted from Chief Rabbi, Shoftim 5776
 The original was written by Yaron Perez*

Rabbi Yitzchak HaLevi Herzog was born in Lomza, Poland in 1888. In 1898, his family moved to the United Kingdom, when his father became a Rabbi in Leeds. He was ordained in 1908, at the age of 19, by three rabbis: Rabbi Yaakov David Wilovsky (of Slutzk, and eventually Tzfat), Rabbi Yosef Shleifer of Slonim, and Rabbi Meir Simchah of Dvinsk. By age 25, he had completed an M.A. and a doctorate in literature, at the Sorbonne and the University of London. As part of his studies, Rabbi Herzog examined the possibility of renewing the practice of the mitzvah of *techelet*, from the perspective of both halachah and chemistry.

At the age of 29, Rabbi Herzog became Rabbi of Belfast, Ireland, later becoming the Rabbi of Dublin, and, in 1922, Chief Rabbi of Ireland.

In 1934, Rabbi Herzog made his first trip to Eretz Yisrael; he met with leading Israeli rabbis, including Rabbi Avraham Yitzchak HaKohen Kook, Chief Rabbi of Israel. Highly impressed by Rabbi Herzog's Torah knowledge, Rabbi Kook encouraged him to ascend to Eretz Yisrael. Later that year, Rabbi Kook passed away, and Rabbi Herzog indeed came to Eretz Yisrael; he was appointed as Ashkenazi Chief Rabbi, and later became the first Chief Rabbi of the State of Israel; he served in this role until 1959. As the first Chief Rabbi of the State, he devoted much energy to explaining how a Jewish state could function within halachic parameters.

In 1941, Rabbi Herzog embarked upon a worldwide trip, attempting to rescue Jews from the concentration camps. He met with U.S. President Roosevelt to ask him to bomb the camps, but Roosevelt refused.

In 1946, Rabbi Herzog travelled through Europe to convince Holocaust survivors to ascend to Eretz Yisrael. He also met with Pope Pius XII, who refused to return Jewish children who had been hidden in monasteries during the war. Rabbi Herzog went from monastery to monastery himself, to remove Jewish children and bring them to Israel.

He passed away in 1959.

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Torah and Translation
Minority Rights in a Jewish State
 Rabbi Yitzchak Herzog, *Techumin* II pp. 169-179
 Translated by Rabbi Jonathan Ziring

מעשה השאלה צריכה שתוצע בצורה, במדה מרובה, אחרת, מזו שבה הופיעה עד כאן לפנינו. נתנת לנו האפשרות לקבל מהאומות כח להקים בארץ ישראל מדינה יהודית, אך בתנאים שנסבול בני דת אחרת, יהיו אפילו עובדי אלילים (ובלבד שאין עבודתם מפרעה את קיום המוסר הכללי ואת החוק המוסרי), שישבו בארצנו ויקיימו את הפולחן שלהם, ועכ"פ אם יקבלו את הנתיונות של המדינה היהודית לא תושלל מהם הזכות לרכישת קרקעות ונכסי דלא יידי.

מה עלינו לעשות? להגיד לאומות: אין אנחנו יכולים לקבל את התנאי הזה, מפני שתורתנו הקדושה אוסרת על ממשלה יהודית להתיר הישיבה בארצנו לנוצרים ומכ"ש לעובדי אלילים, ונוסף על זאת היא אוסרת עלינו להרשות פולחנם בארצנו ואוסרת עלינו להרשות להם לרכוש קרקעות? דומני שלא ימצא רב בישראל בעל מוח ובעל שכל ישר שיסבור שעלינו להשיב כך, כלומר שזוהי חובתנו מדין תורה.

אפילו אם נניח שבקבלנו את המדינה בתנאי הנ"ל תעבור הממשלה היהודית עבירה כשתקיים את התנאי, גם אז הייתי אומר שהעבירה נדחת מפני פק"נ של עם ישראל, בשם לב למצב האומה בעולם. ואם כי אין פק"נ עומד בפני איסור ע"ז ואפילו אבזרייהו, זהו בנוגע לישראל עצמם, אבל איסור הסבילות של פולחנם ואצ"ל האיסור של חנייתם בקרקע וכדומה, אין זה בכלל, ואין זה דוחה פק"נ של כלל ישראל. יתר ע"כ, הלא יש אופנים שבהם אפשר להתיר אפילו איסור תורה משום איבה...

ואולם אין אנו זקוקים להיתירים, לא על היסוד שמדינה יהודית היא בבחינת הצלת האומה ויש בכלל זה הכנת מקום מקלט לעת צרה, ח"ו, עד שיבוא משיח צדקנו, לאור הטרגדיה האיומה של גלות אירופא בימינו וכמעט לעינינו.

Now, the question must be posed in a form that for the most part is different from the way it has appeared until now before us. We have been given the possibility of accepting from the nations the ability to establish a Jewish state in the Land of Israel, but on condition that we tolerate members of other religions, even if they are idol worshippers living in our land and keeping their own worship (provided that their worship does not interfere with general moral existence and moral law). At any rate, if they will accept as given the Jewish state, their rights to acquire property and real estate will not be negated.

What should we do? Tell the nations, "We can't accept this condition because our holy Torah forbids a Jewish government from permitting dwellers in our land who are Christians, and even more so idol worshippers? More than that, it forbids us from permitting their worship in our lands and forbids us from permitting them to acquire land?" It seems to me that a rabbi will not be found in Israel, with a brain and common sense, who thinks we must respond this way, meaning that this is our obligation by the law of the holy Torah.

Even if we would assume that by accepting the state with this condition the Jewish government violates a sin when we fulfill this condition, even so I would say that the sin is pushed aside to save the lives of the Jewish nation, when we pay attention to the situation of the nation in the world. And even though [the right/obligation] of protecting lives does not stand up to idolatry, and even the ancillary elements thereof, that is only with regards to Jews [worshipping idols] themselves, but the prohibition of tolerating their worship, and it does not even need to be said, the prohibition of them dwelling in the land and the like, is not included, and it does not push aside saving the lives of the collective Israel. Even more so, there are cases where we can even violate Torah law [to prevent] enmity....

Besides, we don't need a dispensation, as the Jewish state is a salvation for the nation, and it is a refuge during distress, G-d forbid, until the Messiah comes, in light of the terrible tragedy in the European exile that happened in our days, almost in front of our eyes...

The 613 Mitzvot: #583—Taking Collateral

Rabbi Mordechai Torczyner

An economy which would provide opportunities for the needy to emerge from poverty through entrepreneurship must balance the needs of borrowers and lenders to ensure the accessibility of credit. Jewish law, both biblical and rabbinic, strives to make the terms of lending attractive while simultaneously defending the pursuer of credit.

In this spirit, Devarim 24:6 commands, “[A creditor] shall not take an upper or lower millstone for collateral, for he would be taking a life for collateral.” As explained by Sefer

haChinuch (Mitzvah 583), a lender may accept any item as collateral at the time when a loan is extended. Further, a lender who fears that a borrower may default is allowed to take collateral during the loan. However, this lender may not take items which are needed for food production.

We will explore further limitations on collateral in the coming weeks, G-d-willing.

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Weekly Highlights: Mar. 18 — Mar. 24 / 20 Adar — 26 Adar

Time	Speaker	Topic	Location	Special Notes
Mar. 17-18				
Derashah	Adam Friedmann	The View from the Rock	Clanton Park	
Before minchah	R' Jonathan Ziring	Daf Yomi	BAYT	Rabbi's Classroom
After minchah	R' Mordechai Torczyner	Gemara: Idols for sale!	BAYT	Simcha Suite
Sun. Mar. 19				
8:45 AM	R' Mordechai Torczyner	Legal Ethics: Managing Cognitive Bias	BAYT	With CPD Credit Open to laypeople
8:45 AM	R' Jonathan Ziring	Responsa	BAYT	Hebrew
8:45 AM	R' Josh Gutenberg	Contemporary Halachah	BAYT	Not this week
3:00 PM	R' Mordechai Torczyner	Brother Daniel and the Mystery of Jewish Identity	Limmud Toronto 150 King St. W.	
Mon. Mar. 20				
7:00 PM	Adam Friedmann	Jewish Philosophy	Terraces of Baycrest	
8:30 PM	Adam Friedmann	Gemara Arvei Pesachim	Clanton Park	Men
8:30 PM	R' Jonathan Ziring	Pre-Pesach 2: The Celiac Seder?	Shomrai Shabbos	Men
Tue. Mar. 21				
1:30 PM	R' Mordechai Torczyner	Ezra: Aliyah!	Shaarei Shomayim	
Wed. Mar. 22				
10:00 AM	R' Jonathan Ziring	The Jew Victorious 3: The Battle of Sancherev	Beth Emeth	There is a fee; info@torontotorah.com
2:30 PM	R' Jonathan Ziring	Narratives of Vayikra	carollesser@rogers.com	
8:00 PM	Adam Friedmann	Why do we do that?	Shaarei Tefillah	
8:30 PM	Yaron Perez	Parshah: הפרשה ואני	Shaarei Shomayim	Hebrew
Thu. Mar. 23				
1:30 PM	R' Mordechai Torczyner	Shoftim: Professor Yiftach	49 Michael Ct.	Women
Fri. Mar. 24				
10:30 AM	R' Mordechai Torczyner	Refunding Ribbit	Yeshivat Or Chaim	Advanced

This week, our Men's Beit Midrash for University Students at Yeshivat Or Chaim offers:

Sunday 10:00 AM Gemara Chullin, Rabbi Aaron Greenberg

Sunday 11:00 AM Kuzari, Rabbi Elan Mazer

Tuesday 8:30 AM, Nefesh haChaim, Rabbi Jonathan Ziring

Friday 8:30 AM, Yeshayah, Rabbi Mordechai Torczyner

This week, our Women's Beit Midrash for University Students at Ulpanat Orot offers:

Monday, 9:30 AM to Noon, Middot HaNefesh through Chassidut, Mrs. Ellie Ezra Perez

Tuesday, 9:30 AM to Noon, Laws of Kashrut/Chullin, Mrs. Ora Ziring

Wednesday 9:30 AM to Noon, Hilchot Bein Adam laChaveiro, Mrs. Ora Ziring

Thursday 9:30 AM to Noon, Netivot Shalom on the Parshah, Mrs. Ellie Ezra Perez