

PARSHAT MATOT-5769

“MARRIAGE OF OUR PEOPLE TO THE LAND OF ISRAEL-EQUATED TO MARRIAGE OF CHATAN VE-KALLA-HALACHICLY SPEAKING”

According to Rav Soloveitchik, the relationship between Am Yisrael and Eretz Yisrael is no less than a marriage between a husband and a wife.

In sefer Bamidbar (Parshat Matot 32:1-33), two of twelve tribes, Gad and Reuven, opted to remain in chutz La’Aretz, on the “other” side of the Jordan River. Moshe Rabbeinu was, understandably quite unhappy with the request, but agrees to it, with specific conditions. Moshe formulates the conditions very carefully, stating, “If all the able bodied men of Gad and Reuven will accompany all of Israel to battle with the inhabitants of Canaan and remain there until victorious, then they can return to their families on the other side of the Jordan and I will grant them permission to settle there. However, if they do not fulfill this condition then I will not allow them to remain on this side of the Jordan and they must settle in Eretz Yisrael.

This formula of articulating both sides of the condition, that is, if you meet the conditions then you can have what you want and if you don’t meet the condition then you cannot have what you want, is known as “Tenai Kafful”, (kafful meaning-double) and is recorded in Mishna (Kiddushin 61a). It has become the halakhic framework for every tenai (condition) set forth in a sale or gift, whenever something transfers ownership from one individual to another.

The Rambam (Hilchot Ishut 6:2) states that in order for a tenai to invalidate an agreement, the Tenai Kafful must conform to four rules. They are:

- A- The tenai must be kafful. (If you do such and such-I will sell, if you do not do such and such- I will not sell.
- B- The positive side must precede the negative. (It cannot begin with: If you don’t do this- I will not sell, if you do this- I will sell.) It must begin the other way around.
- C- The Tenai must precede the act. (One cannot state: I will sell- if you do this and this, I will not sell-if you do not do this and this.)
- D- The Tenai must be something attainable, something potentially able to be done. (If one states: “If you go to the moon, I will sell .If you do not go to the moon the sale is null and void.) In such a case, the Tenai is invalid and the sale remains valid.

These rules are all derived from the p’sukim in parshat Matot, and they are all perfectly understandable. However, then the Rambam adds in Halacha 14, an amazing statement, that, according to most of the Geonim (Rav Shriria Gaon, Rav Hai Gaon and others) these rules apply only to laws of marriage and divorce, but not to ordinary sales between two individuals. (The Ri”f, Rav Alfus also concurs with this). The question all Rishonim ask, is, how could the Geonim and Rambam hold such a position when the source of this halakha in parshat Matot speaks about taking possession of land and has nothing to do with marriage and divorce!

Rav Soloveitchik tried to offer an explanation to this strange position. He said that by ordinary sales or transfer of ownership, all we really need is “Daat Makneh” and “Daat Koneh”, the two parties have to come to terms and agreement. Anything they both agree upon, any conditions they both agree upon, becomes legal and binding, regardless of how the condition was articulated. It makes no difference. Two adults can agree to any terms they both feel comfortable with, as long as they have a “meeting of the minds”. The Torah does not interject itself into ordinary business sales. However, when it comes to Kiddushin (marriage) and Gittin (divorce) the Torah looks into the inner feelings of the person and knows how he feels, even if verbally he expresses otherwise. The Torah knows that deep down in his heart a man wants to marry a woman. He wants to fulfill the dictates of “Therefore a man shall leave his father and his mother and cling to his wife and they shall become one flesh” (Bereishit 2:24). And if a man creates a condition to marriage, the Torah understands that he really wants to proceed with the marriage even if she does not fulfill his conditions, and we override his tenai that he established to block the kiddushin. However, if the man is persistent and he really insists on the conditions then in that case the tenai must stand on solid ground and meet all four rules of tenai kafful.

In parshat Matot, the issue is settling in chutz l’Aretz or in the land of Canaan (Israel). In parshat Shelach, Hashem orders Moshe to send forth men into the land of Canaan, “Send forth men, if you please” (Bamidbar 13:1-2). Now, why was this necessary? HaShem knew it would turn out disastrously. According to the Rav, He did it because there is a Halacha in Gemara Kiddushin (41a); that it is forbidden to betroth a woman before he sees her (gets to know her). Our relationship to Eretz Yisrael is akin to a marriage between husband and wife. We cannot enter into such a relationship without first seeing Eretz Yisrael. HaShem says, go see the land, is it fertile or lean, are the people there strong or weak? Getting acquainted with the land is a prerequisite to entering it for a “marriage relationship”.

The Geonim believed that Bnei Gad and Reuven really wanted, deep in their hearts, to cross the Jordan and settle in the land of Canaan. So Moshe tells them, if you really want to follow your words and contradict your deep-rooted feelings, then in order for the condition of settling outside of eretz Canaan then the tenai must be articulated with all the rules and regulations of a tenai kafful.