

The Law of Adjacent Property Owner

By Moshe Bogomilsky

בשעה שעלה משה למרום אמרו מלאכי השרת לפני הקב"ה רבש"ע מה לילוד אשה בינינו אמר להן לקבל תורה באמרו לפניו חמודה גנוזה שגנוזה לך תשע מאות ושבעים וארבעה דורות קודם שנברא העולם אתה רוצה ליתנה לבשר ודם, מה אנוש כי תזכרנו ... אשר תנה הודך על השמים

When Moshe ascended to the Heavenly heights the ministering angels said before Hashem, "Master of the Universe! What is someone born of a woman doing among us?" Hashem said to them "He has come to receive the Torah." They said before Him, "The coveted treasure that was stored by You as a treasure for 974 generations before the world was created, You intend to give that to flesh and blood?! What is a mortal that You should remember him... You should rather bestow Your glory upon the Heavens." (*Shabbat 88b*)

QUESTION: What *halachic* claim did the angels have that the Torah be given to them and not to man?

ANSWER: The Torah says "*ve'asita hayashar vehatov*" — "You shall do what is right and good in the eyes of Hashem" (*Devarim 6:18*). This *pasuk* teaches that a person should go beyond the letter of the law (*lifnim mishurat hadin*) if he will not suffer any significant loss by doing so. Based on this, the *Gemara* (*Bava Metzia 108a*) says that the Sages have instituted the laws of "*Bar Metzra*" — "the adjoining property holder" (lit. the law of the person on the boundary).

According to the law of "*Bar Metzra*," if a person wants to sell his field, the adjoining field owners have priority to purchase over ones farther away, since it is more advantageous for them to buy adjoining property than distant property. The reasoning is that an outsider can find other fields to acquire and does not suffer any significant loss by giving up the field to an immediate neighbor. The neighbor, on the other hand, gains significantly since it is an advantage for a person to have all his fields together rather than to own properties in different locations. If an outsider does come and purchase the field, we remove him and sell the property to the neighbor who wishes to purchase it.

When Moshe appeared in heaven to receive the Torah, the angels protested to Hashem saying, "Bestow your glory upon the Heavens — We are *bar metzra!* Torah is stored in heaven and we are in heaven while Moshe's place is on earth. Thus, since we are the immediate neighbor and Moshe is coming from far away, we are entitled to the Torah!"

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QUESTION: It is known that whatever Hashem commands the Jewish people to observe, He also does (*Shemot Rabbah 30:9*). If so, why did Hashem disregard the law that gives priority to a *bar metzra* and gave the Torah to Moshe regardless of the angels' protest?

ANSWER: This question has been answered in many ways and here are some of them:

1) Tangible property vs. non-tangible:

The law of *Bar Metzra* is applicable only to *karka* — non-tangible assets (i.e., land or houses) but does not apply to *mitaltelim* — tangible items. The reason for the law is that it is easier and less costly to manage two adjacent fields than two fields in different locations. Consequently, when the neighbor wishes to purchase the field, he can say to the prospective buyer, “You can go somewhere else and buy a field but for me it is better to have this field since it is adjacent to a field I own.” However, in regard to tangible items one can search for similar items and bring them to wherever he desires.

Since Torah is a moveable object, the law of *Bar Metzra* does not apply.

A difficulty with this answer is that though Torah is a moveable item, the rationale for the exception to the law does not fit here. There is only *one* Torah, and another one cannot be gotten on heaven or anywhere on earth; thus, the *bar metzra* — angels — should have priority!

2) Gifts

The *Gemara* (ibid., 108b) says “A gift is not subject to the law of *Bar Metzra* — right of the adjoining property holder.”

This is so because the enactment giving the immediate neighbor first claim over the adjoining property is based on the verse “You shall do what is right and good in the eyes of Hashem” which enjoins people to act properly. This requires a prospective buyer to forgo purchasing such a property in favor of the neighbor, inasmuch, as the buyer can purchase another field elsewhere. However, one is not obligated to defer if he will suffer a loss as a result. Hence, where the recipient obtained the field as a present; one cannot be expected to find someone else to give him a present. The neighbor therefore has no claim to the field (see *Tosafot HaRosh* to *Bava Metzia* 108a).

Hashem gave the Torah as a *gift* to the Jewish people, as stated “*ki lekach tov natati lachem*” — “I have given you a good teaching — do not forsake My Torah” (*Proverbs 4:2*). Thus, the immediate neighbor cannot claim, I have priority to buy this and you can go somewhere else to receive a gift.”

3) Relatives

The Jewish people are Hashem’s *kerovim* — relatives. The Torah states “For what great nation is there that has a G-d, *kerovim* — that is a relative — (lit., who is close) to it” (*Devarim 4:7*). Moreover, we are not just ordinary relatives, but rather, sons (children) as stated “Beloved are the people of Israel, for they are called *children* of Hashem as the verse says ‘You are the *children* of Hashem your G-d’” (*Pirkei Avot 3:14, Devarim 14:1*).

Though the Sages enacted the law of *Bar Metzra*, they, granted the owner the prerogative to sell a field to his relative, and especially to his son over the protests of the neighbor of the adjacent field.

Consequently, even if His giving us the Torah was considered a sale, (see *Shemot Rabbah 33:1*), He may sell it to us, His children, and is not obligated to sell to the *bar metzra* — angels.

4) Moshe too was Heavenly

The Torah and the Psalmist describe Moshe as “*ish Elokim*” — “the man of G-d” (*Devarim* 33:1, *Psalms* 90:1). The *Midrash (Rabbah Devarim 11:4)* explains that the appellation “man of G-d” alludes to the two aspects of Moshe, the lower half was “*ish*” — human — and his upper half was Divine. Thus, Moshe possessed the same qualities angels do, and therefore when he came to heaven to receive the Torah, the angels argument that they are *bar metzra* over mortal man since they are in heaven, was incorrect because Moshe too was a heavenly being.

Superficially, one may ask, Moshe came to heaven to take the Torah on behalf of *Klal Yisrael* and they were mundane and earthly people? However, the *Gemara (Nedarim 38a)* says that the Torah was originally given only to Moshe, but Moshe acted generously with the Torah and gave it to all of Israel.

This clarification, however, is not so simple. Hashem wanted to give to Moshe only *pilpula d'oraita* — the methodology by which to study Torah and derive keen insights from Torah text and the corollary capacity to rule on Torah law (see *Gemara* ibid.). There is, however, no doubt that the Torah itself was intended for the entire *Klal Yisrael*.

5) Moshe was Hashem's Partner

The Torah relates that when Yitro came to visit Moshe, he observed that “The people stood by Moshe from the morning until the evening” (*Shemot* 18:13). Rashi queries, “could Moshe possibly been involved in nothing but judging the people for the entire day?” Rashi answers, “This teaches us that any judge who is *dan din emet la'amito* — renders true judgment — even for a short time, is considered as if he has become a partner of Hashem in the act of Creation.” (Since the words ‘morning and evening’ are mentioned here and also in the *pesukim* about the act of Creation [*Bereishit* 1:5] the Sages derived a connection between the two topics.)

According to *halachah*, a partner has preference over a *bar metzra* (Rambam, *Shecheinim* 12:5). Thus, though the angels were closer to Hashem due to their heavenly residence, Hashem was able to give the Torah to Moshe, though he was distant, due to the fact that Moshe was His partner in the Creation.

This explanation will be valid, however, only according to the opinion in *Gemara (Zevachim 116a)* that Yitro's visit preceded the giving of the Torah.

6) All Jews are Partners

On route to Sinai, the Jews made a stop in Marah. The Torah says that “There He established for [the nation] a statute and a judgment” (*Shemot* 15:25). Rashi explains that “He gave them a few passages of Torah, namely, *Shabbat*, the red cow and laws of invoking monetary claims.”

Now, since they started observing *Shabbat* before receiving the Torah, undoubtedly, they recited the *Shabbat* prayers. The *Gemara (Shabbat 119b)* says “Even an individual who prays on the eve of the *Shabbat* must say ‘*Vayechulu*’ — ‘And the heavens and the earth were finished and all their legions...’ (*Bereishit* 2, 1-3), for Rav Hamnuna said, ‘Whoever prays on the eve of the *Shabbat* and says *Vayechulu*, Scripture treats him as if he had become a partner of Hashem in the act of Creation.’ ”

Since the Jewish people are His partner, He has the prerogative to give them the Torah and not reckon with the objections of the adjacent neighbors — the angels.

7) All Jews are adjacent to Hashem

According to the *Zohar* (Vol. 3, 29b) the souls of *all* the Jews were cut out from beneath His *kisei hakovod* — Heavenly Throne of Glory. Hence, all are considered *bar metzra* — adjacent neighbors to heaven.

8) All or Nothing

The *Gemara* (*Bava Metzria* 108b) says “If the seller sold *all* his possessions to one person, the sale is not subject to the right of the adjoining property holder.” There is concern that the buyer may refuse to purchase all of the seller’s other properties if he must relinquish this one field. Since this may cause a loss to the seller, the buyer and seller can go ahead with the sale of *all* the properties to this one buyer although normally the outsider would be required to defer to the *bar metzra* — adjacent neighbor.

There are two parts to Torah: 1) *P’shat* (*niglah*) — simple interpretation — which mandates *asiyah* — actual physical performance of *mitzvot*. 2) *Sod* (*nistar*) — the secret and esoteric interpretation of Torah according to which everything in Torah is explained on a spiritual level.

The angels claim for Torah was not for the part which requires actual performance. They of course knew very well that this is not their realm and does not apply to them since they are merely spiritual beings. Rather, they wanted to be given the *sod* — esoteric and spiritual part of Torah which is compatible to them. The Jewish people, on the other hand, were willing and eager to accept both the *niglah* — revealed — parts of Torah as well as the *nistar* — hidden and secret parts of Torah.

Thus, the seller, Hashem, has the right to “sell” His *entire* merchandise to one buyer, and does not need to break it up and sell to the neighbor who is interested in purchasing only what is adjacent to him.

9) Livelihood vs. Abundance

Basically there are two reasons why one seeks to purchase a field:

- 1) The buyer may be indigent and seeking means that may better enable him to attain a livelihood to support his family.
- 2) The purchaser is a wealthy real-estate entrepreneur and is seeking to enlarge his portfolio of holdings so that he may be even richer than before.

The law of *Bar Metzra* is based on the Biblical expression “You shall do what is right and good.” Usually it is “right and good” to give preference to a neighbor over a stranger. However, when the buyer needs the field to help him with a livelihood and the neighbor wants it for investment purposes, in this case, the “right and good thing” is to leave the field for the poor man who is in dire necessity and is seeking to improve his lot and that of his family (see *Bava Batra* 5a).

The Jewish people, in a sense, are in the category of an indigent person in difficult straits. Torah is our source of life. We need it desperately, in order to overcome confrontations and temptations of the ravaging *yeitzer hara* — evil inclination. On the other hand, the angels have no evil inclination, and thus, do not need Torah for their very existence. Their desire for Torah is comparable to the one who wants the field to further enrich himself.

Hence, by giving us the Torah to the Jewish people in lieu of the angels, Hashem actually did the “right and good thing.”

10) Building Homes vs. Planting

Another exemption in the law of *Bar Metzra* occurs when the outside buyer wants the land for building a house and the neighbor wants the land for planting. In such a scenario, the Sages have ruled that settlement of the land takes precedence over planting. It is more important for people to have houses than for the neighbor to be able to plant two adjoining fields. The sale is therefore not subject to the law of *Bar Metzra* — right of the adjacent property holder (*Bava Metzria* 108b).

According to the *Midrash* (*Tanchuma, Bamidbar* 16) the purpose of creation was because Hashem desired to have a *dirah* — abode — below in the mundane and earthy world so that His glory should fill all of this material world (see *Tanya* ch. 36). This goal is achieved through the Torah study and performance of *mitzvot* of the Jews.

This is also evident from the *Gemara* (*Nedarim* 32a) which states, “Great is Torah for if not for Torah, heaven and earth would not have been established, as it is stated ‘If not for My covenant (Torah) of day and night, the statutes of heaven and earth I would not have established’ ” (*Jeremiah* 33:25). The *Gemara* (*Avodah Zarah* 3a) also says that Hashem stipulated with the works of creation: “If the Jewish people accept the Torah, then fine (you will endure), but if not, I will return you to astonishing emptiness.” Hence, heaven and earth and the entire universe and its inhabitants are indebted to the Jewish people for their very existence, for it is through their making an abode for Hashem in this world that the purpose of Creation is realized.

Consequently, Moshe told the angels that their argument of *bar metzra* would be of no avail because “You were not in Egypt, you don’t engage in business, you have no parents, etc. Torah makes Hashem a *dirah* — abode — in the physical world and we need it since we are the ones who have to construct His abode on earth.”

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