

# תורה מציון Torah MiTzion

RELIGIOUS ZIONIST KOLLELS כוללים ציוניים בתפוצות

## Shabbat Shalom from Torah MiTzion

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## The Episode of Tamar

**Rav Moshe Pinchuk, former Rosh Kollel, Melbourne**

The motives of the heroes in the story of Judah and Tamar are elusive. Judah, Prince of the tribes how is it that he so swiftly succumbed to a street prostitute? More enigmatic are Tamar's motives. Being fully aware of Judah's stature did she really expect him to fall to her enticement?

I would like to suggest that Tamar's plan was completely different - she never planned nor expected Jehuda to approach her in such a way. But when he did, she took full advantage of the situation.

A careful reading of the pesukim, reveals that Tamar never intended to to pose as a prostitute. Quite the contrary, the expression used is "and she covered herself with a scarf",

the only other appearance of this expression is when Rivkah in modesty applies the shawl in the presence of Isaac.

I fully subscribe to Seforno's interpretation regarding Tamar. What Tamar wanted was to confront Judah in a non-mourning attire and demand that he fulfill his pledge to her regarding the third son Shelah. Torah itself bears testimony to Tamar's motivation, she was not given to Sheilah, when he matured. Judah, and Judah only interpreted what he saw in Tamar as a harlot, perhaps on account of being recently widowed and the ensuing state of mind. The verse stresses that this was Judah's subjective interpretation (Breishit 38,15): He saw her and he thought she was a harlot, because her face was covered. It is a fact that when subsequently Judah searches for her to make good his payment no local person can recall the presence of such a harlot. The word "and he thought her" appears only once more in the bible in the story of the priest Ely misinterpreting Chana's prayer as an act of drunkenness: And Chana was speaking to her heart, only her lips were moving, and he (Ely) thought she was drunk. It seems that in the bible this word is indicative of a man misinterpreting a woman's actions and rightfully is applied regarding Judah.

Tamar's plan was simple - to confront Judah on his journey to Timna and make strong her claim to Shelah. Tamar's plan misfired when Judah did not recognize her as his daughter in law but as a harlot and desired her. At this moment Tamar reacted swiftly to the unexpected turn of events and acted as Torah records.

What was it that Tamar wanted from Shelah and what was she to gain by "exchanging" Shelah with Judah? The medrash reveals Tamar's desire:

Tamar was not a blood-member of the family of Jacob, but once she was brought into the family through marriage to Judah's son she burned with desire to partake in the historical and redemptive role destined to the Jewish people. Tamar now calculated which son would be the chosen one as forefather of Messiah:

"above whose brow would the father lift up his horn that he anoint him as heir? Tamar had fingers whereon to reckon it up. Three of the sons had been cursed, the favoured, son of the true wife, was dead. justice was the horn out of which the oil of anointing must trickle on the brow of the fourth, Judah he was the heir" (Thomas Mann, Joseph and his brothers).

But it was too late - by the time Tamar appeared on the scene Judah was married and hence she had to avert her gaze from father to son - To E'r, then O'nan and finally Shelah. However when Judah now inadvertently offers himself to her she takes full advantage of the situation.

Indeed, Tamar's plan was crowned with success - she gives birth to Peretz, and as is to be found at the end of Ruth, King David was later born. Tamar indeed is the ancient matriarch of King David and consequently of Messiah ben David.

<b>The Extradition of Jewish Offenders to Non-Jewish Authorities</b> <b>Simon Jackson, Legal Advisor to Torah MITzion</b>
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Having just finished his IDF Army Service, Avner decided to travel to the Far East. He planned to stay in India for several months, portering part-time, to save money for the rest of his trip. However, not more than one week had elapsed when Avner found himself in a

dispute with a Chinese porter, who worked at the same company. Blows soon followed and the next thing Avner saw was the porter lying on the ground in a coma. Avner panicked, quickly packed his bags and flew back to Israel.

The porter's body was found and the Chinese police commenced an inquiry, in which it became apparent that Avner was responsible for the murder. The Chinese Justice Ministry submitted a formal request to the Israeli Government for Avner's extradition to the Chinese authorities for trial. Unlike in Israel, the maximum penalty for murder in China is the death penalty. Moreover, Avner's attorney argues, that the trial may be conducted by judges who are not known for their sympathy towards Israel. Should Israel accede to China's request?

### **Introduction to Moral Dilemmas**

Our case raises a number of challenging issues. First, should extradition be an option at all? On the face of things, "to serve a prison sentence in a foreign country, besides the deprivation of liberty, involves an extra "punishment" of residing in an environment whose customs and language are foreign to the prisoner, and causes the prisoner's family additional distress, above and beyond the suffering caused to the family as a natural consequence of the imprisonment of one of its members, in view of the remoteness of the place and time" (Supreme Court Justice, Menachem Elon, in the case of *Aloni v. Minister of Justice* 1986).

Secondly, is there any room for the institution of extradition in the Israeli legal system? It could be argued that the State of Israel, being the "Jewish State," needs to serve as a refuge for any Jew, even if he is a criminal. On the other hand, perhaps preference should be given to the principle that determines that a criminal needs to receive his just deserts so as not to profit from his crime.

Other difficult dilemmas, relating to the subject of extradition, arise when the extradition of an Israeli offender to a foreign country may potentially harm him, even seriously. Perhaps the interest of the individual should take preference in such a case, certainly if he is likely to face real danger if he is extradited?

### **Possible Grounds for Avner's Extradition Under Modern Israeli Law**

Under the Israeli Extradition Law, 5714-1954 ("the Law"), a person found in Israel may only be extradited to another country under the provisions of the Law. The basic thrust of the Law is thus negative in nature - extradition is an exception to the rule under which citizens of Israel cannot be extradited to stand trial abroad. The Law reflects the view that Jews should not be handed over to gentile courts, where they might face an unfair trial.

The Law requires the existence of an agreement between Israel and the requesting state providing for reciprocal obligations to extradite requested persons. If such a treaty exists with China, this threshold would be satisfied in our case. Another condition contained in the Law is that the offense must be an extraditable offense, i.e. any offence which would carry a prison sentence of one year or more. This would certainly be satisfied in our case, as even if the porter's death was caused by negligence, the penalty under Israeli law is a 3 year prison sentence (and up to 20 years imprisonment for manslaughter).

Under section 2B of the Law, a wanted person may not be extradited *where the request for his extradition arises from racial or religious discrimination*. If Avner's extradition is being sought solely because of his Jewish background, he would not be extraditable under Israeli Law. Clearly, however, this would be difficult to prove.

***Should Avner be extradited if his life is likely to be endangered following the extradition?*** Under section 16 of the Law, a wanted person may not be extradited for an offence which is *punishable by death* under the law of the requesting state (but not so punishable in Israel). Assuming the law in China does *not* require the death penalty for the offence with which Avner is being charged, but the judges *in their hostility* are likely to subject Avner to the death penalty or perhaps condemn him to languish in a Chinese jail - should Avner then be extradited? The Law is silent on this point.

### **The Foundations of Law Act, 5740-1980**

Until the year 1980, when a particular situation was not fully covered by the existing Israeli law, the principles of *British* law would be used to fill the gap created. In 1980, a revolutionary law was passed by the Israeli Knesset - the Foundations of Law Act. This states that where a judge is faced with a legal question requiring decision, to which he finds *no answer* in statute law, judicial precedent or analogy: ".he shall decide it in light of the principles of ***freedom, justice, equity and peace of the Jewish heritage.***"

We examined above the existing "statute law" with a bearing on our case and found it wanting. In accordance with the requirements of the Foundations of Law Act, we must next examine whether any "judicial precedent or analogy" is able to assist us on the issue of whether a person should be extradited when his life is *likely* to be endangered by his extradition?

### ***Aloni v. Minister of Justice (1986)***

Until 1986, this question had not been decided. In 1983, William Nakash, a French Jew, collaborated in the killing of an Arab in Benzansan, France, following a quarrel among nightclub owners. Shortly after the murder, Mr. Nakash arrived in Israel under a false identity and received Israeli citizenship. France requested his extradition based upon the extradition treaty that existed between the two countries.

The Israeli Justice Minister declined to carry out the extradition, citing fears concerning the physical safety of Nakash in a French jail at the hands of fellow inmates. Several MKs appealed the decision to the High Court of Justice, which decided to *overturn* the Minister's decision. The majority opinion ruled that Nakash's extradition should only be avoided in the event of a *high probability of danger* to his life (by contrast, Justice Elon, in the minority, ruled that a ***reasonable doubt*** concerning the accused's safety, were he to serve his sentence in a foreign country, would be sufficient to prevent his extradition).

What is intriguing, more so than the final outcome of the case, which went against Nakash, is Justice Elon's approach to find an answer to a question that had not hitherto been dealt with in Israeli law or by the courts. Using the Foundations of Law Act, 5740-1980 as his mandate, Justice Elon reviewed the attitude of Jewish Law to extradition. We shall follow his thought process, which ultimately led him to conclude that it is possible, even under Jewish Law, to extradite a criminal to a foreign government.

The position adopted by Justice Elon aroused controversy. Amongst his disputants was Rav Shaul Yisraeli who emphasized the prohibition of litigating before non-Jewish courts. As we cite the talmudic and halakhic evidence adduced by Justice Elon in support of his position, we will cite the arguments of Rav Yisraeli against his position, followed by Elon's rejoinder to these arguments. Both positions are published in vol. 8 of the Halachic journal, *Techumin* (Research Articles Concerning Torah, Society and State), and make fascinating reading!

## Next Column: Extradition Through the Prism of Jewish Law and History

### Family Learning: Parshat Vayeshev Bluma Zalcman

- 1) What did Ya'akov give to Yosef to show him his love? How did the brothers react?
- 2) What was the first dream Yoseph had?
- 3) What was Reuven's secret plan and how did it go wrong?
- 4) What was the name of Yoseph's master in Egypt?
- 5) What did Yoseph say the baker's dream meant?

*Answers follow below*

### Looking Back: The Partition Plan

The Partition plan, was the plan that the United Nations came up with to divide Israel into an independent Jewish State and an independent Arab State, ending the British Mandate. This event is considered one of the most important events in the history of modern Zionism. This decision is recorded in Israel's Declaration of Independence as one of the justifications it has to become a state.

The plan was actually the brainstorm of a special committee for the U.N.- UNSCOP (**United Nations Special Committee of Palestine**). This committee was selected especially for the purpose of finding a solution to the problems in Palestine, by the U.N. in 1947. The committee was formed as a response to Britain's return of the mandate to the U.N. (the U.N. is the successor of the League of Nations which granted the mandate to Britain in the first place).

In Israel, there was much tension in the air, and confrontations between the British, Jews and Arabs. In Europe, people were just beginning to realize the monstrosity of the Holocaust, and about a million Jews were put into Displaced Persons camps with nowhere to go. The Zionist movement did everything in its power to bring Jews over to Israel, legally and illegally, the latter only adding to the tension between the Jews and the British Mandate.

In the international community, Great Britain lost a lot of its strength due to World War II. They were starting to give up the mandates they had around the world. The two superpowers, The United States and Russia, were very interested in making a Jewish state, as a solution to the (growing) problem of Jewish refugees for political reasons (they would be able to have influence in the Middle East through Israel).

None of the major countries in the world were made a part of the UNSCOP committee, in order to keep the decision neutral. The eleven countries selected were: Australia, Uruguay, Guatemala, India, Holland, Yugoslavia, Peru, Czechoslovakia, Canada, Sweden and Persia. The committee came up with two solutions, but one was voted down. The solution that was

presented to the U.N. on the 31<sup>st</sup> of August, 1947, was that there should be two independent states, with Bet Lechem and Yerushalayim as international land.

On the night of the 29<sup>th</sup> of November, 1947, the U.N. voted for the approval of the Partition plan, with 33 votes for, 13 against and 10 abstentions. They told Great Britain that they had to be out of the country by the 1<sup>st</sup> of August 1948. The British left early, however, ending the British mandate at 12 o'clock at night between the 14<sup>th</sup> and the 15<sup>th</sup> of May, 1948.

The land designated for the two countries would be cut in half. There were plans to build 2 junctions that would connect between the two pieces. The area that was designated for the Arabs was better than that of the Jews and the Arabs had easy access to Yerushalayim (which was to be neutral), but the Jewish area was bigger and they had better access to the shore.

The Jews decided to accept the plan and when it was approved, there was lots of dancing in the street. The Arab population, on the other hand, rejected the plan and the next day began fighting with Jews, beginning the War of Independence.

**Torah MiTzion** establishes Religious Zionist Kollels (centers of Jewish learning and outreach) in Diaspora Jewish communities to strengthen the study of Torah, Jewish identity, the unity of the Jewish people, and the connection between Torah study and Israel.

The Kollels, led by a Rosh Kollel, are comprised of Israeli shlichim (emissaries) - married men and their wives, and single young men, graduates of Yeshivot Hesder in Israel - who serve in the communities for a period of one-three years.

Torah MiTzion is also proud to be a partner of the "**Jewish Learning Initiative**" program on college campuses.

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Answers, Family Learning

- 1) A beautiful striped coat with many colors. The brothers got jealous and began to hate Yosef.
- 2) That the brothers' bundles of grain all bowed to Yosef's bundle of grain.
- 3) He was going to take Yosef out of the pit when the brothers left, but by the time he got back from his father, they had sold him.
- 4) Potifar
- 5) That in three days, Pharaoh was going to have him executed.