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The Brave of Strength Who Do His Will

Harav Yosef Carmel

The *pasuk* that opens the section of our *parasha* that deals with the Jewish holidays reads as follows: "Six days you shall work and on the seventh day you shall cease; in the plow and the harvest you shall cease" (Shemot 34:21). Generations of rabbis have disputed the meaning of the second half of the *pasuk*. Rabbi Akiva said that stress of the agricultural tasks identifies the subject matter as the *Shemitta* year, teaching us that one should start and finish the year's observances before and after the year, respectively. R. Yishmael understands that like the beginning of the *pasuk*, the end is also talking about the day of Shabbat, teaching us that one type of harvesting, the cutting of the grain for the *korban ha'omer* on the 16th of Nissan, is permitted even when it falls on Shabbat.

While Rashi brings both explanations, the Rashbam explains the whole *pasuk* regarding Shabbat. The reason, he says, that plowing and harvesting are specified among the *melachot* is to tell us that even basic needs may not be seen to on Shabbat. We might have otherwise thought that *melacha* on Shabbat was permitted not only to save a life but also for crucial needs.

The Seforno connects the two parts of the *pasuk* differently. The Torah tells us that just as keeping one day of Shabbat helps bring success to the work on the six days of the week, so too does refraining from working the field one year out of seven bring blessing to the other six years.

We now find ourselves in the midst of the *Shemitta* year. It is thus important to strengthen our resolve to follow it as appropriate and understand the message behind it. The challenge for the farmer to keep the laws properly is very difficult. The Torah, after all, expects Bnei Yisrael to ask, "What shall we eat in the seventh year?" and answers that "I will command my blessing to you in the sixth year, and it will produce for the three years" (Vayikra 25:20-21). *Chazal* greatly praised the farmers who kept the laws of *Shemitta*, applying to them the *pasuk* (Tehillim 103:20) "the brave of strength who do His Will" (Vayikra Rabba 1). The problem is that most *poskim* posit that the special blessing was promised only when the observance of *Shemitta* was mandated by Torah law (see S'ma 67:2 based on Tosafot). Therefore, over a century ago, efforts were made to make the year of *Shemitta* observance one that the population could handle. Three halachic solutions that exist are the *heter mechira*, use of *otzar beit din*, and development of systems of growing such as *matza menutak* (planting detached from the ground). See our *teshuva* (in Bemareh Habazak III) which was signed by Rav Yisraeli z.t.l. in this regard.

Let's hope we will soon merit keeping the laws of *Shemitta* on a Torah level in the most careful way possible when we will be in a state where "the rest of the land" can be established in all of its sanctity in the Holy Land.

break from a tradition but an addition of a link.

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Ask the Rabbi

Question: I once learned that when a *minyan* starts with ten men and one or two leave, the *minyan* can continue normally. Is this so?

Answer: The general concept you refer to exists, but we have to refine some details.

The *mishna* (Megilla 4:3) lists parts of *tefilla* that require a *minyan*, including *Kaddish/Barchu* and *chazarat hashatz* (repetition of *Shemoneh Esrei*). The Yerushalmi (ad loc.:4) comments that for each, if a *minyan* was present at the section's beginning, they can continue with it even after some have left. (It reprimands those who leave in a manner that leaves the rest without a quorum, even though the remaining people may continue). The Rashba (*Shut* I, 95) extends the matter a step, saying that if a group started *chazarat hashatz* with a *minyan* and someone left, they recite even *Kedusha* (which is in *chazarat hashatz*), even though they started *Kedusha* without a *minyan*. The Terumat Hadeshen (I, 15) goes even further. If a *minyan* was in the midst of *chazarat hashatz* when some left, they can even say the full *Kaddish* that follows *U'va L'tziyon* without ten. The rationale is that the key addition to that *Kaddish* ("Titkabel tzlot'hon..."), the request that Hashem accept the completed *tefilla* of *Shemoneh Esrei*, demonstrates that all of the *tefilla* until this point was a continuation of *Shemoneh Esrei*. The Shulchan Aruch (Orach Chayim 55:2-3) codifies the above concept and the applications mentioned. So indeed that which you remember learning is correct.

There is further leniency than you remember regarding the number of people who can be missing. The Ran (Megilla, ad loc.), reasoning that a significant part of the *minyan* must remain for the group to continue as if there were still a *minyan*, sets the minimum at a simple majority of six (including the *chazzan*). This too is accepted by the Shulchan Aruch (ibid.).

However, this concept has limitations. The group can continue only with sections that are directly connected to the *davar shebekedusha* (section of the *tefilla* that requires a *minyan*) that began with a *minyan*. The Yerushalmi (ibid.) posits that each of the sections mentioned separately in the *mishna* is a separate section. Therefore, having a *minyan* for *Kaddish/Barchu* does not entitle them to do *chazarat hashatz* without one. A *minyan* that disbanded during *chazarat hashatz* would have to skip over *nesi'at kapayim* (the *kohanim's duchenin*, daily in Israel and on holidays abroad). They would not be allowed to do *kri'at hatorah* (*laining*) without a *minyan* even though the *Shemoneh Esrei* unit continues until after the Torah is normally returned (see above).

There are too many permutations to mention in this forum, but we will mention a few interesting ones. At *Ma'ariv*, if there was a *minyan* for the opening *Barchu*, the group can recite the *Kaddish* before *Shemoneh Esrei* because *Barchu* is the beginning of the *berachot* of *Kri'at Shema*, which concludes with *Kaddish* (Mishna Berura 55:22). However, since the *Kaddish* at the end of *Ma'ariv* relates to *Shemoneh Esrei*, one would need a *minyan* for *Shemoneh Esrei*. While it is sufficient to have a *minyan* for *Shemoneh Esrei* of *Ma'ariv* in order to recite *Kaddish* after it, at *Shacharit* and *Mincha*, *chazarat hashatz*, not *Shemoneh Esrei* is necessary. This is because that *Kaddish* was composed primarily for *chazarat hashatz*, with the exception being at *Ma'ariv*, where there is no *chazarat hashatz*, where it relates to the silent *Shemoneh Esrei*. The Shulchan Aruch (OC 124:4) speaks about the critical need to have nine people listening to all of *chazarat hashatz*. However, based on the concept at hand, if there are nine listening in the beginning and three stop listening, the *chazzan* can continue, just that it is as if they physically left without leaving a *minyan*, which, we mentioned, is criticized (Igrot Moshe, OC IV 19; see Derisha, OC 124:1).

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Autopsies – part IV(condensed from Amud Hay'mimi, *siman* 34)

[Three issues need to be discussed regarding the possibility of performing autopsies: *halanat hamet* (delaying a burial); *leaving certain body parts out of burial*; *nivul hamet* (disgracing the deceased). We conclude the series with the final issue in the autopsy debate, *nivul hamet*.]

The *gemara* (Chulin 11b) cites no Torah source to prohibit *nivul hamet*, yet it clearly understood that it is a Torah law. The *gemara* wants to provide a Torah source for the idea that we follow the majority from the fact that *beit din* executes a murderer even though the victim might have been a *tereifa* (one with a mortal wound). It suggests that they actually might have had to check the deceased to preclude this possibility but rejects this because of the problem of *nivul hamet*. Since the discussion relates to Torah-level law, *nivul hamet* must be a Torah problem. On the other hand, the *gemara* also provides cases where the problem can be overcome. One is to investigate the body to possibly save the murderer from execution. Rashi says that this is based on the instruction of "the congregation shall save the murderer" (requiring *beit din* to attempt to exonerate a murderer). The Noda B'yehuda demonstrates that *piku'ach nefesh* (saving lives) does not apply but that the stated issue does. Although it is unlikely that the check of the corpse will save the defendant, *nivul hamet* is justified. The *gemara* also allows investigating the body if that was necessary to facilitate the execution. Bava Batra (154a) even allows those who bought property from the deceased, who was arguably under-aged, to do so in order to not lose their purchase.

Several *acharonim* reason that the prohibition of *nivul hamet* stems from the *mitzva* of burial, which demonstrates that the Torah cares about the deceased's honor and thus precludes disgracing the body. How can *beit din* forgo this *mitzva*, which applies to all Jews, because of the aforementioned relatively weak considerations? Also, since we do not allow one to forgo burial because of a *gezeirat hakatuv* (a Divine decree that goes beyond normal logic), how can pragmatic considerations override the related *nivul hamet*?

It seems rather that the source of *nivul hamet* is "*v'ahavta l'rei'acha kamocho*" (= *valrkm*) love your friend as yourself). The *gemara* (Sanhedrin 45a) disallows stoning a woman when she is naked because it is a *nivul* and would violate *valrkm*. Rav Herzog rejected this thesis, arguing that after the person is already dead he cannot be called *rei'acha*. However, the Ramah implies that this description applies to a person after the punishment is meted out, which, in the *gemara*'s case, is after death. Indeed, before the punishment was complete, the sinner would not deserve such a distinction. In contrast, Tosafot (Sanhedrin 45, as explained by the Aruch Laner) holds that the matter of picking a proper means of execution is not based on the regular rules of *valrkm*, which he does not deserve because of his grievous sin, but is a special rule of carrying out the death sentence. If so, there is no indication that this applies after death. However, [skipping over the detailed derivation] it appears that Tosafot agrees conceptually with the Ramah. The Ritva states explicitly that *nivul* after death is learned from *valrkm*.

It is understandable that if the issue is *valrkm*, it could possibly be pushed off for others' needs. While not everyone's needs would push it off, the needs of those who could lose due to their interaction with the deceased (his buyer or he who would be killed because of him) do push aside *nivul hamet*. It also follows that if the needs of those who interacted can push the prohibition of *nivul hamet*, then certainly the deceased's own instructions can do so. Therefore, autopsy for one who agreed to it during his lifetime would be permitted even if it means that a small part of the body will not be buried as long as it does not cause a delay in the burial [see previous weeks' columns].

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P'ninat Mishpat

Partial Pay for a Worker Who Did Not Complete a Job

(based on Halacha Psuka, vol. 39, condensation of a *p'sak* of Beit Din of Beit El)

Case: The defendant (=def) hired the plaintiff (=pl) and two friends to paint a home he wanted to rent out. Def promised to pay pl 25 shekels an hour and his friends 20. After a few days, pl quit because he found another job, prompting def to hire a different painter for 30 shekels an hour. The delay in finishing the work prevented def from renting out the home when he wanted, resulting in a loss of one month's rent. Pl says that he would not have taken the job had he known the home was for rent; he demands full pay for the time he worked.

Ruling: A worker may quit his job in the middle without losing the accrued salary. However, if the employer has to hire a new worker for more money to avoid loss, he can withhold that extra amount over the first worker's projected wages (Shulchan Aruch, Choshen Mishpat 333:5-6). Loss of income which would have been attained had the worker continued working justifies doing so (Chazon Ish, Bava Kama 23:22). This applies to our case where it was justified for def to hire a new worker for a higher wage to try to rent the home on time. Def though cannot deduct for the loss of the rental. Although pl denies committing to work for a month, def is believed to say that he did because if def was willing to lie, he could have said that he already paid pl (*migo*).

The Ramban (Bava Metzia 76b) explains that the reason an employer can deduct the new worker's salary is that the first worker is assumed to accept such losses when he takes the job. Based on this, the Pitchei Choshen reasons that if the worker was unaware that quitting the job he accepted could cause losses, he is not liable for such measures. In our case, pl was unaware of that situation. Similarly, the Nachalat Tzvi (CM 291:24) says that the rules of deducting from the worker to pay for a new worker apply only when he was hired for something that was known to include a loss. In contrast, if he was hired for a multitude of tasks that happen to include some that include losses when one stops in the middle, he can quit without having money withheld.

Even according to Tosafot (Bava Metzia 76b) that the withholding of pay in this case is due to *dina d'garmi* (payment for semi-direct damages), there is reason to exempt def in this case. That is because: 1) The Rambam (Sanhedrin 6:1) says that one is obligated to pay for *garmi* only when he damaged on purpose; 2) Since def knew that there would be losses, he should have informed pl. We cannot make pl lose for doing something that was not within his control to know.

Regarding calculation of his pay, the majority opinion was that since pl received more than the going rate, it is logical that this was on the understanding that he would in fact carry out the full project for which he was hired. Therefore, he will be paid for the work he did only at the rate of 20 shekels per hour.

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