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HEMDAT YAMIM

הֵמְדַת יָמִימִים

PARASHAT HASHAVUA

B'haalotcha, 16 Sivan 5773

Wandering ... Without the Ark

Harav Shaul Yisraeli – based on Siach Shaul, pp. 373-4 (an address from 1940)

"The ark of the covenant of Hashem was traveling before them a three days' path to set for them a resting place. And the divine cloud was upon them during the day when they travelled from the encampment" (Bamidbar 10:33-34).

A nation wandered in a barren land, with hot sand beneath them and a hot sun above, searching for a land to arrive at. They had thrown off their bonds of slavery but were looking for an independent life of freedom. What was leading them, preparing the path for them and warding off their enemies? The ark and the divine clouds. Flashes of fire came out from between the staves of the ark, burning snakes and scorpions; the clouds straightened the path (Devarim Rabba 7:9). The people were drawing closer to entry into the Land.

We find later on (Bamidbar 14 – next *parasha*) that the people were still excited about the idea of entering the Land. They wanted to go up and enter the Land, willing to sacrifice their lives for the dream of their homeland. Yet, the Amalekites and Canaanites came and destroyed the pioneer group (ibid. 45). Why were they not successful? Since the ark did not go along with them (ibid. 44), what happened was not a surprise.

These days also, the Jewish nation is wandering in the wilderness of the nations, without a clear path, seeking the Land where the cloud will enable them to have a proper encampment. However, they are exposed to different clouds, not those that straighten a path but cast fog over it. There are once again masses of Jews with walking sticks in hand and a questioning look of "to where" in their eyes. The most powerful state in the world has proclaimed war on them, and we would like to stand up and battle them. We proclaim: "We are ready to go up to the Land and sacrifice our lives for it." However, that is a dangerous step, and the question remains whether our fate will be like those who tried to go up to the Land from the desert and were destroyed.

The same guideline should be before us now as then. As long as the ark of the covenant is with us, we should feel confident that we will be brought to a place of rest. Operatively, that means that we must keep our part of the covenant. We have two covenants: the old one stemming from Mt. Sinai and the new one that came with the known declaration [apparently, Balfour]. These days the latter covenant has been publicly renounced [White Paper of 1939]. We must redouble our efforts to reinvigorate the original covenant and have it stand up against the new, abrogated covenant. The covenant at Sinai must stand up for us as we battle the modern Amalekites and Canaanites.

Tragically, we do not see the force that can bring us the salvation we need. We are not carrying the ark of the covenant. The calls to fight do not include the Name of Hashem, and martyrs are mentioned without invoking His Name. Most of us "kick the ark." At times like this, we have a special obligation to influence them. We are used to blaming those who desecrate Shabbat and other commandments and thereby defile the Land. However, we must remember that there are those who carry the ark. We need to know how to carry it before the nation and return it to its proper station. "The ark carries those who carry it."

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Ask the Rabbi

by Rav Daniel Mann

A Minyan Split Between Adjacent Rooms

Question: In small *shuls* and “*shiva* houses,” where there is an overflow to an adjacent room, do there have to be ten men in one room? Someone claimed that if everyone is under one roof, there are no questions.

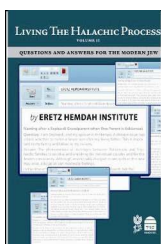
Answer: The *gemara* in Pesachim (85b), in the context of eating *Korban Pesach* within a certain area, discusses whether those who are within the doorway of the border are considered inside or outside. The *gemara* says that the same is true for *tefilla*, i.e., *tziruf* (formation of a *minyan*). The *gemara* in Eruvin (92b), regarding a *minyan* split between adjacent courtyards of different sizes, distinguishes between different configurations. One might have argued that these sources are not referring to cases under one roof. However, it is clear from *Rishonim*, the Shulchan Aruch (Orach Chayim 55:19) and many *poskim* that the guidelines for separate rooms inside a building are much the same as those of separate courtyards.

The Rashba (Shut I:96) asks why it is allowed for a *chazan* to stand on the *bima* when its dimensions make it a separate domain, thus separating the *chazan* from the *tzibbur*. He gives two answers: 1. A *bima* specifically functions as an integral part of the *shul*; 2. If some people in one domain see some people in the other one, they constitute one unit (as they do regarding a *zimun* for *bentching*- Berachot 50a). The Shulchan Aruch (ibid.) cites the Rashba's first answer as halacha regarding *tziruf* for a *minyan*, while citing an opinion that this is only on condition that the *bima*'s partitions do not reach the ceiling. These are among the many sources that debunk the claim you were told, as a *bima* is obviously under the same roof as the rest of the *shul*, and still other reasons are needed to explain the *tziruf*.

Most practical cases depend on the extent to which we accept the Rashba's second answer – that a visual connection between the two groups suffices. (Another scenario, based on the details of the aforementioned *gemara* in Eruvin (see Shulchan Aruch ibid. 15), is rarely applicable. Those standing in the doorway probably do count (Mishna Berura 55:50), but that is not of much help.) The major question is whether the parameters for connecting groups regarding *zimun* (i.e., visual) apply to creating a *minyan* for *tefilla*. The Mishna Berura (55:48 & 55:52) is not conclusive on the matter. Therefore it is best, when possible, to have ten people in one room.

Once a *minyan* is achieved in one room, most opinions assume that those in the overflow room receive the benefits of a *minyan*, regardless of the visibility connection. The Radbaz (650) says that those in the small room are fully considered as *davening* with a *minyan* if the small room can be accessed only through the main room. In any case, those not in the room with the *minyan* may answer to those parts of *tefilla* that require a *minyan* (Shulchan Aruch, OC 55:20) and be exempted from obligations by those inside the main room (Mishna Berura 55:61). The logic is that the ten in one room create the setting (the *shechina* – see Mishna Berura 55:60) for the matter of *kedusha*, after which we say that partitions do not prevent the sanctity to flow (see ibid. and Pesachim 85b). (See further opinions in Piskei Teshuvot 55:27.)

It seems that the logic just mentioned allows for leniency in the following common scenario. Ten men are *davening* in the main room, but not enough of them have finished *Shemoneh Esrei* when the *chazan* would like to start. In *Living the Halachic Process* (I:A-10) we preferred the opinion that one needs eight people, not including the *chazan*, to answer. Some *poskim* required fewer because the presence of the ten brings the *shechina*, but others counter that *chazarat hashatz* requires a *minyan* who relate to the repetition. In the case of adjacent rooms, we can combine factors. The presence of ten in the big room brings the *shechina*. Then, we only need ten people who are connected to *chazarat hashatz*. Since those in the small room can fulfill their obligation through the *chazan*, they count toward the quorum needed to start.



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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

Thanking Hashem for a Variety of Valuable People

(condensed from Ein Ayah, Berachot 9:284-286)

Gemara: One who sees a great assemblage of Jews (*ochlusa*) says: “Blessed is the Wise One who knows the secrets” [of each of the different people in the assemblage]. Ben Zoma saw an assemblage on the steps of the Temple Mount and recited this *beracha* and also said: “Blessed is He who created all of these to serve me.” He used to say: “See how much toil Adam had before he had bread to eat: he plowed, sowed, reaped, harvested, threshed, winnowed, sifted, grinded, kneaded, and baked; only then did he eat. I, in contrast, wake up and all of these things are done on my behalf.” (He then pointed out a similar phenomenon regarding clothes.)

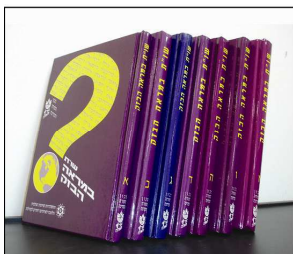
Ein Ayah: Since people’s thoughts and appearances are different one from the other, the more one looks at individual people’s contents, the more he will be astounded by the great differences between them. Differences can result from different education that affected each person in a different way (nurture), or from people’s inborn natural traits, which are also responsible for their different appearances (nature). Paradoxically, the differences between people unify them to one goal – to build the world fittingly. One should be inspired by the divine wisdom that provides the world with people with varied inner and outer characteristics, enabling them to join together harmoniously. If people were aware to what extent they are similar, they would be so strongly drawn toward their own group and would actually negate their own individuality. Then the world would not develop properly. Therefore, Hashem arranged matters so that everyone will view the world from an individualistic perspective. In that way he can use his individualism to further the world.

A person is liable to think that his friend’s desires are unnecessary. If he viewed his friend’s viewpoint as he did his own, he would not stick to his own. Then he might relinquish his approach, and the world would be missing his uniqueness. Therefore, people’s differences are left outwardly and their similarities are preserved internally.

When mankind’s education will be completed, it will no longer be as important to preserve individualism, and the nations will call out in unison in the Name of Hashem and serve Him in harmony (see Tzefania 3:9). Until that time, the points of unification will be like a sealed bag. Because Israel will cause the “unsealing” to transpire, one makes the *beracha* about secret thoughts upon seeing an assemblage of Jews.

A person, while tending to see others’ characteristics and thoughts as lacking value and integrity, should realize that, before Hashem, their value is clear. This *beracha* helps people realize that and that there is a secret that connects them. Ben Zoma looked at matters properly. He viewed people with different occupations, not as a threat to his own agenda, but as those who “serve him.” One should see everything that exists in the world and choose that which is useful for his spiritual development and thereby love other people focused on different occupations. Hashem put a certain charm in the eyes of the members of each profession toward that profession. Ben Zoma specified the actions that need to be done just for the simple, physical task of preparing bread. This is all the more true for manufacturing clothes, where there is an element of beauty, which requires special talents and attributes to allow one to hold his position. This is even more so in regard to artists and musicians.

Realizing how many different types of people are needed to provide for one’s basic needs reminds him to have warm feelings for a variety of people. Ben Zoma made a point of stressing the value of having so many types of people and seeing the unifying factor in all of them, rooted in Hashem. They all enhanced his life and deserved his affection.



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Guidelines for Peshara (Compromise)

(based on Hemdat Mishpat, Noach 5773)

One of the aspirations that stood behind the foundation of the network of Eretz Hemdah *batei din* and continues in its operations is the formation of clear halachic principles upon which the various *beit din* panels of the network operate. The first step towards realization of this goal is the writing of clear rulings with a detailed presentation of the reasoning of the ruling on halachic and practical grounds. Additionally, Eretz Hemdah is a partner, along with the Mishp'tei Eretz Institute, in the annual symposium of *batei din* in conjunction with the symposium of the Halichot Olam Institute. At these events, an annual topic is discussed after the presentation of a position paper. In summary of the consensus of the discussion, guidelines are composed on the topic of the symposium. These guidelines are then approved by important *dayanim* and *poskim*, led by Harav Yaakov Ariel (Head of the Court in Ramat Gan), Harav Dov Lior, and the heads of the various panels of the Eretz Hemdah *beit din* network.

This week we will present the guidelines in regard to *peshara* (compromise). First we note that one type of *peshara* is one that *beit din* help the parties arrive at without a decision by *beit din*. We are discussing *peshara* that the sides empower *beit din* to arrive at, without knowing what *beit din* will decide. Because of the broad authority that *beit din* has in this regard, guidelines for employing *peshara* are important. Following are some of the conclusions:

1. A *beit din* that wants to employ *peshara* should include in the arbitration agreement, which the parties sign, that *beit din* is authorized to rule "whether according to law or according to compromise."
2. The common form of *peshara* that is used in *batei din* is compromise that is close to the content of the law (see Shut Radbaz IV:164).
3. The agreement to compromise does not include random compromise, and *dayanim* who practice such a system are to be criticized (Bava Batra 133b).
4. *Beit din* should not choose to employ *peshara* when logic and ethics point in the direction of following the simple law (Moznaim Lamishpat 12; Divrei Malkiel II:133). To the contrary, one of the reasons to prefer *peshara* in certain cases is when the standard halacha brings a result that in a specific case is against a healthy sense of logic (ibid.; Orach Mishpat, Choshen Mishpat 1).
5. One of the prominent circumstances where *peshara* is called for is when the facts of a case cannot be proven according to the standards of halacha but *beit din* intuitively what actually happened with a reasonable level of certainty (Shulchan Aruch, CM 12:5). *Beit din* can employ *peshara* to extract partial payment when there is a minority opinion that supports the defendant, to warrant partial payment when there is an unenforceable moral obligation (Aruch Hashulchan, CM 104:15), in a case of indirect damage (Rav Z.N. Goldberg), and to obligate penalty payments, including those that are only based on halachic precedent or those that originate from local law.



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