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HEMDAT YAMIM

Parashat HaShavua

Pinchas, 21 Tamuz 5777

Sukka, Mishkan, Ohel, and Aron

Harav Yosef Carmel

The connection between a husband and wife is created by *kiddushin* (marriage), which comes from the root of *kedusha*, sanctity. This enables them to build a home where the Divine Presence dwells, as *Chazal* teach us: "If a husband and wife merit it, the Divine Presence is between them; if not, fire consumes them" (Sota 17a).

We have seen this idea in various forms in the previous *parshiyot*. Bilam reacted enthusiastically: "How good are your tents, Yaakov, your dwelling places (*mishkenotecha*), Israel" (Bamidbar 24:5). When you live in a tent in sanctity and purity, it turns into a *mishkan*. In the opposite direction, the sins of Bnei Yisrael with the Daughters of Moav, which led to the idolatry with Baal Peor, symbolize where improper relations can lead.

We will try to suggest a new explanation for the rebuke that Uriya (the husband of Bat Sheva) gave to David through hints that he gave. David tried repeatedly to get Uriya to go home, and Uriya responded strongly although carefully (to avoid rebelling against the king): "The *aron* and Israel and Yehuda are sitting in Sukkot" (Shmuel II, 11:11). The Yerushalmi (Sota 8:3) asks: Wasn't the *aron* in Zion. It answers that the *aron* was in a *sukka* (a temporary dwelling).

According to Chazal, Uriya was not talking about the *aron's* geographic location but its spiritual situation. He was hinting that David's actions had banished the *shechina* and perhaps even delayed the building of the Beit Hamikdash, which would have allowed the *aron* to be entered into its permanent home in its *Kodesh Kodashim*. This is because the *aron* symbolizes the dwelling of the *shechina*.

The book within a book of "*Vayehi binsoa ha'aron*," talking about the *aron*, teaches that when Bnei Yisrael preserve the sanctity of the encampment, they will be successful against their enemies. The *keruvim* that are on top of the *aron*, symbolize the dwelling of the *shechina*. When the two figures are facing each other it is a sign that Israel is fulfilling the will of Hashem (Bava Batra 99a). This loving stance between the figures also hints at the idea that with proper relationships between spouses, the *shechina* is found.

Returning to Uriya, after he mentioned the state of the *aron*, he mentioned that Israel and Yehuda were also in Sukkot. This was a further hint at the dwelling of the *shechina*. We know that the *sukka* creates a situation of living in the "shade of Hashem," in the clouds of glory. There was such a cloud not only in the desert but over the tent of Sarah, the matriarch who "gave up" a *yud* in her name in favor of a *heh*. These two letters are the difference between the Hebrew words for man and woman and join together to form Hashem's Name. Uriya strongly sent the message to David that his actions with Bat Sheva had done the opposite of bringing sanctity to the encampment, and it would not bode well for the building of the Beit Hamikdash. At that time, David was not yet ready to internalize the message.

May we merit more and more Jewish families with the proper "cloud" over their homes. Each one will bring us a step closer to the time that we will openly sense the *shechina* in the "place that Hashem chose."

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Halachic Consequences of Use of Medical Marijuana

Question: After years of unsuccessful 'conventional' treatment for debilitating pain, the medical marijuana my doctor has prescribed for me has proven more effective and with lesser side effects. My license is only for "leaves," not pills or oil. Obviously, I can't smoke on Shabbat, so I baked a batch of "cannabis brownies" to eat. These take effect about 90 minutes after ingestion. Can I eat one of these brownies before *shul*? If so, should I make *Kiddush* first? Also, can one do *Birkat Kohanim* while using medical marijuana (although it affects coordination briefly and I feel a bit drunk, I am not drunk, and it does not impair my thinking ability)?

Answer: [We trust that our readership is aware of the great distinction between drug abuse and between responsible use of medical marijuana – as prescribed by a doctor in a place it is legal, for those in great need].

It is generally forbidden to eat anything before *davening* except for water and, for some, tea and coffee (with various opinions about sugar – see Shulchan Aruch, Orach Chayim 89:3 and Mishna Berura ad loc. 22). However, it is permissible to eat food for a health need, even when one is not fully sick (Mishna Berura 89:24). Anyone who has a prescription for medical marijuana is sick enough to be justified to ingest his treatment as needed.

Regarding *Kiddush*, there is a quandary. Assuming the brownies have a decent taste, they require a *beracha*, even though their main purpose is medicinal (Mishna Berura 204:42). Therefore, the *halacha* is that you should not eat it before *Kiddush*. On the other hand, you don't need the *Kiddush* wine for health reasons, so what justifies *Kiddush* before *davening*? The Be'ur Halacha (to 289:1) says that one makes *Kiddush* before pre-*davening* eating for health purposes. The Igrot Moshe (OC II:26) disagrees in a case where not all halachic opinions agree that the food lends itself to *Kiddush*, which raises the purpose that the wine was not justified. However, assuming the brownies are real flour-based cookies and you are having a *k'zayit* of them, *Kiddush* is in place (see Mishna Berura 273:25).

Is it preferable to ingest the active ingredient as a non-food, to avoid the undesired situation of eating and *Kiddush* before *davening*? This "improvement" makes the halachic situation worse regarding medicines on Shabbat, which are permitted in a food form that is not recognizable as medicinal (see Orchos Shabbat 20:132). While the need likely justifies taking medicine (see Shulchan Aruch, OC 328:17), the halachic issue of eating before *davening* is easier to waive than that of taking medicine on Shabbat. In the absence of a net gain by an alternative, the medicated brownies are fine.

Now to *Birkat Kohanim*. The *gemara* (Ta'anit 26b-27a) derives from a connection between *Birkat Kohanim* and both *nazir* and service in the *Beit Hamikdash* that it is forbidden to *duchen* when drunk. The *gemara* indicates this is only a Rabbinic derivation/halacha. A *nazir* is forbidden only in grape products and service is fully forbidden only after drinking wine (see Kritot 13b). Therefore, some say that there are no restrictions on *Birkat Kohanim* after consuming something intoxicating unless he is as drunk as biblical Lot was (Magen Avraham 128:55). The Taz (128:35) disagrees and disqualifies one who has drunk anything that makes him unfit to "speak before a king," and we are stringent to follow this opinion (Mishna Berura 128:141). The halachic cut-off point wine of a *revi'it* (Shulchan Aruch, OC 128:38) does not apply to other drinks. While the Taz says one should therefore not drink anything intoxicating before *Birkat Kohanim*, this is reasonable for those who are drinking recreationally, not for one whose use of something "intoxicating" is medically necessary. (see Chayei Adam I, 32:7 regarding *Kiddush* on a small amount of whiskey before *Birkat Kohanim*.) Therefore, assuming you will make *Kiddush* on grape juice and that during *Birkat Kohanim* you will be acting in a fully presentable manner, you should perform the Torah-level *mitzva* of *Birkat Kohanim*.

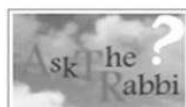


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Ein Ayah

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

The Value of Unsuccessful Rebuke

(condensed from Ein Ayah, Shabbat 5:17)

Gemara: R. Zeira said to R. Simon: "You should rebuke the House of the Exilarch." He answered: "They will not listen to me." R. Zeira responded: "You should rebuke them even if they will not listen."

Ein Ayah: The greatest moral aspirations, which are the light of the world and the basis for human life, must always be recognizable for their great intrinsic importance. These moral aspirations are more important for their holy energy and goodness than for the practical results they may bring. Positive results are nice finishes to the spiritual desires, which adorn the efforts, but there is nothing lacking even if and when nothing positive actualizes.

All *hishtadlut* (attempts to do something desirable) should always be forthcoming from anyone who has the spirit that enables him to actualize matters, at least to the extent of speaking in a forceful manner that could possibly be accepted. There are times that they will not be accepted because society's lowly state prevents positive ideas from being implemented. When the social structure is skewed, even those who are capable of implanting positive change do not reach the necessary heights to do so.

This, though, is specifically a good time to utilize the strong tool of logical rebuke, which the community's lay leaders should be able to accept, even if in practice they will not. The spiritual beauty of the ideas themselves is valuable. Also, we are confident that these efforts will form the basis for future spiritual improvements, when the time will be right. Even in the present, these efforts can help, unnoticed, curtail further deterioration.

Therefore, those who are in a position to use their oratory and spiritual abilities to rebuke should do so even if they do not expect positive results.

The Advantage of Good Over Bad

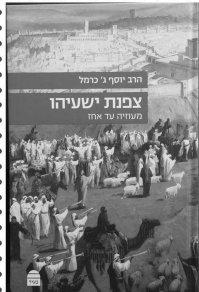
(condensed from Ein Ayah, Shabbat 5:18)

Gemara: Never did a positive promise turn into something negative except ...

Ein Ayah: Things have an intrinsic purpose in regard to their being a means of getting to a greater goal. It is intrinsically worthwhile to act toward the prospect of positive things. Negative things lack intrinsic value, although they have value for being an eventual conduit for the development of future good.

Considering Hashem's attribute of goodness, only good things should be happening. On the other hand, the greatest good is the ethical good, which requires people to be fully good internally. Therefore, it is necessary for there to be real goodness and justice, so that man not only receive good but be good.

Since the goal is that there should be goodness in a broad manner, when Hashem pledges to provide something good, there is an expectation of two positive things: the coming of the good thing and preparation for an even better thing in the future. Sometimes a person's circumstances change and the good that was foreseen as being able to provide future good no longer is destined to bring that state. Still, though, the positive pledge has value for its own sake, and Hashem can find other means to arrive at the ultimate good. Therefore, the direct good will still occur for its own intrinsic value. In this way, there is rationale for the rule that pledged good generally will continue to be kept, for its own sake, even when there is reason to suspend it.



Tzofnat Yeshayahu - Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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P'ninat Mishpat

Altercation with a Photographer – part II

(based on ruling 75129 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) is a newspaper photographer who went to a building site in a settlement that was the subject of legal/public controversy. Upon starting to take pictures, Reuven, a guard at the site, told him to leave. Pl continued taking pictures from a nearby public street, and then Reuven was joined by the defendant (=def), the site's foreman. After a short argument, pl started taking pictures of def until the camera sharply hit him in the nose causing blood to stream down. Putting down the camera, he saw that only def was close enough to have hit him. Def denies hitting him and said that he only raised his hand to block the camera's view, and that apparently pl banged the camera into his nose himself. Reuven's story was similar to def's. Pl is suing for 100,000 shekels (his injury includes a deviated septum).

Ruling: We saw last time that there was enough circumstantial evidence to require a compromise payment for some of the damage that def caused pl.

The *gemara* (Bava Kama 84b) posits that *beit din* consisting of those without authentic *semicha* (everyone in our time) cannot rule on penalty payments. They can only rule on natural obligations that emerge from common cases and that involve loss of money. Bodily damage that one person inflicts on another is considered uncommon and thus should not be judicable. The Rambam (Sanhedrin 5:10) says that payment is due for medical expenses and time missed from work, and the Shulchan Aruch (Choshen Mishpat 1:2) concurs. The Rama brings those who differ but says that the *minhag* is for *beit din* to make an informal ruling as a means to appease the injured, who has a valid grievance. The Mabit (I:93) understands that this refers to all the elements of bodily damage. The Tur (CM 1) sees this as a late Rabbinic institution, which can be exercised under certain circumstances.

If the sides voluntarily accept broad adjudication rules, the Sha'ar Mishpat says that while they cannot affix actual penalty payments, they can obligate payments in less common cases, like bodily damage. In our arbitration agreement, the sides accept our authority to follow rules that include compromise according to our discretion, which, we believe, gives us the right to levy such payments. Because the proofs of def's culpability were not halachically complete and because our authority is only for compromise, not full payment, the award we will make is quite partial.

There is no payment here for permanent damage (*nezek*). There is some room for payment for *tza'ar* (pain caused) during and after the incident. We do not require payment for medical expenses to the extent that these are covered by the national medical insurance. However, there are always some additional medical expenses that are not covered. In this case, it is also not clear if def will undergo an operation on his nose and whether it will be fully covered. If needed, def will be responsible for 35% of the expense (pl has 180 days to submit paperwork on this matter).

The amount due as of the rendering of this ruling is 2,500 shekels. If def knows that he indeed did cause the damage, this amount does not cover his full moral obligation.

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