

This week.....

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Armor for Unconventional Offensive

Harav Yosef Carmel

Chazal learn an operative lesson from the juxtaposition of two major elements of the *parasha*, the laws of the *nazir* (one who refrains from wine) and those of *sota* (a promiscuous woman suspected of adultery). "Whoever sees the deterioration of a *sota* should make an oath to refrain from wine." How do we understand this *midrash*? How would one who listens to rabbinic advice see the illicit acts of a *sota*, whose actions take place privately (the Torah says that there was no witness to the event-Bamidbar 5:13)? Our conclusion is that this person is the man who was illicitly involved with the *sota*. He is the one who should stay away from wine.

Shimshon, the subject of our *haftara*, has a very different situation. He did not decide to become a *nazir* or react to a certain situation. Rather, Hashem ordained his *nezirut* for the purpose of enabling him to save Israel (Shoftim 13:5). What is the connection between Shimshon's *nazir* status and his success as a savior?

The connection between exposure to promiscuity and *nezirut* is strongly evident in Shimshon's story. This is most strongly expressed by *Chazal's* statement: "Shimshon followed his eyes; therefore, the Philistines gouged out his eyes." The next chapter in the *navi* describes Shimshon's first encounter with a foreign woman: "He went down to Timna and saw there a woman from the daughters of the Philistines ... 'take her for me for she is fitting in my eyes'" (ibid. 14:1-3). This was Shimshon's form of seeing the *sota* in her state, while he was "protected" by his *nezirut*. That is why the G-d fearing Shimshon (who took great steps to fulfill the decree of *nezirut*) took this somewhat bizarre route to save Israel. He understood that the reason Hashem ordained him to be a *nazir* was that He wanted Shimshon to engage in dangerous situations with women. But what was the perceived purpose?

Throughout *Tanach* and human history in general the "strong side" took the daughters of the weaker side as a wife. That is why the Egyptians proclaimed that daughters of Paroh were never taken by foreigners (although in fact they did marry Avraham and Shlomo). This explains the change of terminology between the original and the altered version of the intermarrying that Shechem described between his tribe and Yaakov's family, as Shechem stressed taking wives for themselves. This also explains Yoash, the king of Israel's scolding of the suggestion that Amatzia would take his daughter, as Yoash saw himself as the superior (Divrei Hayamim II, 25:18). (Nowadays, of course, this type of marriage arrangement has passed from the world.)

Based on this background, Shimshon's marriage with the *sota* (Philistine woman) had national significance as a proclamation that the time during which the Philistines enslaved the Israelites was over. Indeed we have proved elsewhere that this proclamation of independence lasted for a long period.

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Question: After staying up all night on Shavout, we have someone who slept say the morning *berachot* on everyone's behalf. Why is this necessary? What happens if we cannot find anyone?

Answer: We must address different categories of *berachot*, with different reasons and details.

Netilat yadayim and "*Asher yatzar*"- There are two possible reasons (see Beit Yosef, Orach Chayim 4) for washing our hands with a *beracha* upon waking in the morning, before *davening*: 1) Our hands probably got dirty as we slept (Rosh); 2) Because in the morning we are like a new being, we set out on a process of purification and blessing Hashem (Rashba; see Mishna Berura 4:1). There is a further element of removing an evil spirit from one's hands (see Rama, OC 4:2).

Reason 1 does not apply if one did not sleep and kept his hands clean. It is not fully clear whether reasons 2 & 3 apply if one did not sleep. The Rama (4:13) says that although one should wash his hands as usual, he should not make the *beracha* out of doubt. Listening to the *beracha* of one who slept on behalf of others avoids the doubt. One who did not sleep but "went to the bathroom" and thereby touched covered parts of the body also makes a *beracha* (Mishna Berura 4:30). Reason 1 certainly applies to such a person and the others are likely to apply, as the night passed by the time of *alot hashachar* (break of dawn, 72 minutes before sunrise).

"*Asher yatzar*" can be said by anyone who recently went to the bathroom.

Birkot Hashachar- Most of the series of *berachot* thanking Hashem for elements of our lives were originally recited as one received the benefit (e.g. putting on shoes, clothes, straightening the body) (Berachot 60b). Nevertheless, our practice is to make the *berachot* at one time, whether or not we recently received the benefit (Rama 46:8; see Yalkut Yosef for Sephardic practice). Therefore even one who did not sleep and renew these benefits can recite the *berachot* because the praise of Hashem is true in regard to others. The main issue is with the *berachot* of "*hama'avir sheina*" and "*elokai neshama*," which focus on awaking from sleep and are recited, at least partially, in the first person. The Mishna Berura (46:24) rules that one should hear these *berachot* from one who slept. On the other hand, it is legitimate to make these *berachot* despite not sleeping (see *Ishei Yisrael* 5:(40) & *Piskei Teshuvot* 494:7), especially if no one who slept is available.

Birkot Hatorah (= *bht*)- It is unclear whether the reason one is obligated to make *bht* every morning is the fact that it is a new day or that his sleep ended the efficacy of the old *beracha*. Due to this doubt, the Mishna Berura (47:28) rules that one who was up all night doesn't make *bht* at daybreak but hears them from one who slept. (Yechave Da'at III, 33 argues.) However, he accepts R. Akiva Eiger's idea that if one took a reasonably long nap during the previous day (and did not make the *bht* since getting up), he makes the *berachot* the next morning even if he stayed up all night. This is because he is obligated according to both approaches, as he has slept and a day passed since his last *bht*. Such a person is better suited to be *motzi* others than one who slumbered for a few minutes at night. One who sleeps at night should make *bht* before learning, after which he is unavailable to make them for others. (Those who listen should recite the texts after *bht* - "*Yevarechecha...*").

Tzitzit- It is unclear if we are obligated in *tzitzit* at night, and thus whether we need a *beracha* in the morning. One should be *yotze* with the *beracha* on his or another's *talit* (Mishna Berura 8:42).

What is considered significant sleep may depend on where (bed or chair) and/or how long (opinions range from a minute to a half hour and beyond) he sleeps. The *halacha* may change depending on what topic is being discussed (see *Ishei Yisrael* 6:(64)).

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

Non-Jewish Ownership of Eretz Yisrael – part III

(from Eretz Hemdah I, 5.3)

[We continue to discuss the Talmudic opinions on the question of whether a non-Jew has a *kinyan* (ability to acquire) on Eretz Yisrael in regard to removing the *kedusha* that enables the obligation of *terumot* and *ma'asrot* to take effect.]

The Talmud Bavli (Menachot 66b) understands the *machloket* between R. Meir and R. Shimon on *ma'asrot* on produce of a non-Jew in Israel, not as depending on the ownership of the land itself but as referring to produce that was processed by a non-Jew. The application is whether one can take *ma'asrot* from a Jew's produce on a non-Jew's produce or vice versa, which requires the obligation of *ma'asrot* on the two to be of the same level. R. Shimon, who says that one cannot take from one on the other, says that it is because the *miruach* (smoothing of the pile of produce) of the non-Jew exempts the produce from *ma'asrot*, even if it grew in a Jew's field. Tosafot (ad loc.) explains that you cannot attribute the *machloket* to the *kinyan* on the land because elsewhere it is evident that R. Meir holds that there is *kinyan*. If that is the case, then the *machloket* must be referring to a case where the produce grew in a Jew's field because if it had grown in a non-Jew's, then for that reason R. Meir would have said that *ma'asrot* would not have applied.

The *gemara* in Gittin (47a) cites a *machloket* between Rabba and R. Elazar on whether there is *kinyan* (R. Elazar) or not (Rabba). Tosafot (ad loc.) explains that they refer to R. Shimon's opinion, for according to R. Meir there certainly is *kinyan*. According to Rabba, only *miruach* of a non-Jew exempts; according to R. Elazar, both land ownership and processing of the fruit can create the exemption. The two *Amoraim* argue whether the *pasuk*, "for the Land is Mine" (Vayikra 25:24) teaches us that a sale cannot remove the *kedusha* of the Land or that it is only forbidden to dig or otherwise ruin the land. It is pertinent that this *pasuk* is the continuation and explanation of the *pasuk* cited by the Yerushalmi that there is no *kinyan*, which works well according to Rabba.

According to the opinion that there is *kinyan*, there is a difference between the Bavli and the Yerushalmi. According to the Yerushalmi a permanent sale takes effect; according to the Bavli, it apparently does not, or else it is hard to understand why the non-Jewish buyer cannot dig holes in the ground. It follows, according to the Bavli, that the sale does not take effect to uproot the laws of *yovel*, yet it would take effect in regard to removing the obligation of *ma'asrot*.

One can ask: according to Rabba, who holds there is no *kinyan*, if that is what the aforementioned *pasuk* teaches us and there is no source to forbid a non-Jew to dig holes, why shouldn't the laws of *yovel*, which explain *ein kinyan*, preclude digging holes as they do for a Jew who buys it? It may depend on the *machloket* in the Yerushalmi if it is possible to sell land during *yovel*. The matter apparently depends on how one understands the extent of land sale during the time of *yovel*. Does *yovel* affect the essence of the sale in the first place, making it temporary, or does *yovel* leave the original sale intact and uproot the sale when the time of *yovel* comes?

Apparently the Rambam and Ramban dispute this matter. The Rambam holds that one who sells a field permanently violates a prohibition. The Ramban does not require making the sale in a way that acknowledges that the field will return due to *yovel*. Rather, *yovel* is a Divinely ordained uprooting of the sale. The Rambam understands that *yovel* makes the sale temporary without stipulation. The Ramban understands that the sale itself is permanent and *yovel* takes effect later.

[We continue with the analysis next time.]

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P'ninat Mishpat

Pay for a Guardian

(based on Halacha Psuka, vol. 44 - a condensation of Piskei Din Rabbaniim vol. V, pp. 82-96)

Case: A man died, leaving his property to his four sons. The will specifies that they would share the estate equally. Because of ambiguous language, different sons, the plaintiff (=pl) and the defendant (=def), disagree as to whether they share a store together or pl received all rights to the store. Def, who was appointed by his father to be the estate's guardian, sold the store and divided the profits among the brothers. Pl demands to have all of the profits. Def counterclaims that he deserves a salary as guardian and thus demands money from pl.

Ruling: According to *beit din's* analysis of the will, pl is correct that the store and, presently, the profits from its sale belong to him. The question of def's rights to be paid remains to be determined.

The *mishna* (Shvuot 45a) says that a guardian who is accused of misappropriating funds from the estate has to swear that he did not do so. However, the *mishna* in Gittin (52a) limits the matter. According to the Tanna Kama, if *beit din* appointed the guardian, he is exempt from swearing. Abba Shaul says that this is not so, but rather one who is appointed by the father is exempt. The reason to exempt a guardian is that we fear that the prospect of an oath discourages people from accepting the responsibility. Abba Shaul (whose opinion is halacha- CM 290:16) reasons that people are interested in being court-appointed guardians because it highlights their trustworthiness. The Noda B'Yehuda (II, CM 34) derives from this idea that such a guardian also does not need to get paid.

In our case, where the father appointed the guardian, we should thus say that he should get paid. However, it is apparent from the Meiri that we do not distinguish between the different types of guardians in this regard. He cites that anytime a guardian made a stipulation to receive profits from the estate, even if the deceased appointed him, he has to swear. This is because a guardian who profits would not be deterred from accepting the position due to an oath. However, if he did not stipulate, he would not receive profits, for if he did, the halacha would not have exempted him from swearing. However, the Meiri referred to a guardian for the property of minors, as people are willing to administer their affairs for free because it is a *mitzva*. For adults we assume that one would agree only for pay, even if it was not stipulated. This distinction is also implied by Rashi (Bava Metzia 39a).

Although in principle, def deserves pay for being a guardian, in practice he will not receive it because it is evident that he was *mochel* (relinquished rights to) the pay. After all, when he sold the store, he split the funds equally and did not demand compensation. Only after the conflict with pl arose (and after he was *mochel*) did def decide to demand pay. Therefore, pl receives all the proceeds of the sale and does not have to pay def.

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