

HEMDAT YAMIM

PARASHAT KORACH

25 Sivan 5768

This edition of Hemdat Yamim is dedicated in loving memory of

**R' Meir ben Yechezkel
Shraga Brachfeld**
o.b.m

Hemdat Yamim is
endowed by Les &
Ethel Sutker of
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This week.....

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- **A Look Back at the Last Year's Piskei Din- from the world of Jewish Jurisprudence**

More Copper in the Holy Courtyard

Harav Yosef Carmel

This week we will try to understand how Moshe's actions in the aftermath of the conflict with Korach impacted on generations.

Korach and his close associates were joined by a group of 250 prominent people. Moshe challenged them to sacrifice incense in troughs of copper. As a result, the opposition of Moshe and Aharon were killed by a fire from Heaven. In the aftermath, Moshe was told to take the copper remains and turn them into a netting around the altar to serve as a reminder that those are not from the family of Aharon not step forward to bring incense in the sanctuary (Bamidbar 17: 1-5). While the idea was a Divine decree, there was a clear message that the story of Korach's rebellion not be forgotten. Moshe took a bold step in using copper in another context. He accepted the mirrors that women had brought in order to use for the washing cup (*kiyor*) (Shemot 38:8). He felt this was appropriate despite the connection of the mirrors with arguable vanity and physical attractions, thereby showing his high regard for the women. The *kiyor* served as a constant reminder, along with the other copper reminder of the dangers of the rebellious dignitaries of Korach.

The broader and bolder than expected use of copper is notably present in the *Beit Hamikdash* built by Shlomo as well. The following structures in the courtyard of the Temple are found in the sources: 1) Two enormous copper pillars (around the size of a four-story building) named Yachin and Boaz were erected (Melachim I, 7:15-22). 2) There were ten copper washing cups instead of the one in the *Mishkan*. 3) Each of the cups had a large and elaborate copper basin. 4) A large pool made of copper known as the *yam* was erected, which also added some type of purification element. 5) Twelve replicas of cattle were displayed, three in each direction, in the courtyard, as a remembrance of the Israelite encampment in the desert.

What is fascinating about all of these copper utensils and structures is that they do not follow the instructions for the *Mishkan* as found in the Torah and are not mentioned in the list of utensils and materials that David left for his son based on Divine instruction (see Divrei Hayamim I, 28:12-19). From where did Shlomo get the idea and the gall to introduce these elements?

It is very possible that the precedent for these additions was in Moshe's special use of copper in the courtyard of the *Mishkan*, which was an inspiration to not only use the copper as a historical remembrance but as model of future behavior.

Let us pray that we will have the merit to be involved in the complete rebuilding of the *Beit Hamikdash* with all of its basic elements and all of its additions.

Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinate's rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities worldwide.

Question: A friend of mine goes to a hospital that has Jewish patients to make *Kiddush* on behalf of those who are unable to do so. When Shabbat begins late and people eat before Shabbat, he makes *Kiddush* before accepting Shabbat and returns home. Can his *Kiddush* still work for others?

Answer: At first glance, your friend is making *Kiddush* at a time when he is not obligated to do so on behalf of those who have (presumably) accepted (or are accepting) Shabbat and are thus obligated in *Kiddush*. In general, one who has already discharged his obligation of a certain *mitzva* can perform the *mitzva* with its *beracha* to fulfill the obligation of one who has not yet done so (based on the concept of *arvut*) (Rosh Hashana 29a). However, the *mishna* limits this. The one who performs the *mitzva* must be as obligated in it as the one for whom he is doing it. We must consider: is your friend considered obligated in *Kiddush* because generally it applies to him, like one who already fulfilled his obligation? Or should we say that one for whom the time is such that the *mitzva* does not apply is not considered obligated at all?

Regarding cases similar to this, *Acharonim* cite a Yerushalmi (see Tosafot, Yevamot 14a) that says that inhabitants of un-walled cities cannot read the *megilla* on behalf of those from walled cities (whose obligation is a day later). We see that one who is obligated in theory but not at this time is not considered obligated. R. Akiva Eiger (to Shulchan Aruch, Orach Chayim 277) in regard to our case, raises the following distinction. Here, the one who has not accepted Shabbat can accept it and become obligated immediately. Therefore, the obligation is considered relevant even before he did so. However, R. Akiva Eiger left the matter as an unsolved doubt.

Several recent *poskim* have tried to resolve the doubt. Tosafot (Berachot 48b) says that one who did not eat is considered obligated in regard to reciting *Birkat Hamazon* on behalf of one who ate, because he could eat. Rav S.Z. Orbach (Minchat Shlomo I, 3), makes the following distinction between that case and ours. At the time of *Birkat Hamazon*, the *mitzva* applies to the one who has not eaten if only the circumstances were that he had eaten. In contrast, before Shabbat is simply not a time that *Kiddush* is relevant for one who has not accepted Shabbat even if he could do so.

On the other hand, we should consider whether it is clear that *Kiddush* is inappropriate before Shabbat. The Rambam apparently does not accept the concept of *tosefet Shabbat* (the ability/obligation) to usher in Shabbat early. Yet he (Shabbat 29:11) says that it is possible to recite *Kiddush* toward the end of Friday afternoon. This lends credence to the concept that *Kiddush* (as well as its parallel, *Havdala*) applies and can be done close to the time of the transition between Shabbat and weekday. Thus the obligation of *Kiddush* may already apply on a certain level soon before Shabbat even for one who has not accepted Shabbat. While it is difficult to rely on this thesis, it can be thrown in to the mix when contemplating grounds for leniency in various related cases (see Minchat Shlomo, *ibid.*).

Important *poskim* have differed as to whether it is proper to rely on R. Akiva Eiger's more lenient position and allow one who has not accepted Shabbat to make *Kiddush* for others. In a case such as ours where one is doing a *mitzva* by doing so and it is not easy to replace him with someone else who can make *Kiddush* in a better way, we feel that it is proper to be lenient on the matter (see Tzitz Eliezer XII, 25; Yabia Omer VIII, OC 46). While it is best if someone who is hearing the *Kiddush* should be eating upon it at that time, it is possible that even this is not an absolute necessity (Tzitz Eliezer XII, 24). (The details of that issue are beyond our present scope.)

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Non-Jewish Ownership of Eretz Yisrael – part VI

(from Eretz Hemdah I, 5.6)

[We will now examine in regard to what mitzvot the dispute of yeish kinyan or ein kinyan (a non-Jew has or does not have the ability to remove the sanctity of Eretz Yisrael) applies.]

The *machloket* whether *yeish kinyan* or *ein kinyan* is found in the context of *ma'asrot*. The Bavli (Gittin 47) assumes the *machloket* extends to *bikurim*. Although the *derasha* of “*degancha*” refers to *ma'asrot* and “*admarcha*” to *bikurim* (Bava Batra 81a), Tosafot (ad loc.) holds that one who learns from one can learn different things from the other. The *gemara*, in asking on the opinion of *ein kinyan* regarding *ma'aser*, asks from *bikurim*, which implies that whatever opinion is correct for one would be right for the other.

If so, we would expect that the *machloket* on *kinyan* of the Land will determine its status for all *mitzvot hateluyot ba'aretz*. Indeed Tosafot, when investigating a proof if agricultural *mitzvot* that apply in *chutz la'aretz* (e.g. *kilayim*, *chadash*) apply to a non-Jew's land, deflects it by saying that the source follows the opinion of *ein kinyan*. In contrast, the Rosh (*Shut* 2, 1) assumes that the *machloket* does not extend to *orlah* and that all agree there is *orlah* even on a non-Jew's property. He learns this from the *mishna* that assumes a prohibition of *kilayim* on a non-Jew's field, which he understands to be accepted also by the opinion that *yeish kinyan*.

The Chazon Ish (*Shvi'it* 1:2) distinguishes between positive *mitzvot* that require an action and *mitzvot* of prohibition. The *machloket* of *yeish kinyan* applies to positive *mitzvot* such as giving *ma'asrot*. Since only one who is obligated in *mitzvot* can be expected to do these things, these *mitzvot* do not apply to a non-Jew's land. However, the prohibitive *mitzvot* apply to the land and fruit more directly and, since the land's *kedusha* is not uprooted, these *mitzvot* still apply. Therefore, *orlah* applies to a non-Jew's field. He is not sure whether *shemitta* is primarily a prohibitive *mitzva* on the field or a positive obligation on the farmer to cease working. He learns from the Yerushalmi that *kilayim* depends on the owner's activity, as it is violated only if he is happy with the mix of species. However, it is difficult to say that *kilayim* is more based on the owner than on the field.

The aforementioned Yerushalmi is difficult for the Rosh, who says that *kilayim* applies to a non-Jew's field even if one holds *yeish kinyan*. Perhaps the matter is a dispute between the Bavli and Yerushalmi. The latter holds that there is a *machloket Tannaim* if *yeish kinyan*, in which case the *mishna* that indicates that *kilayim* applies to a non-Jew's field can hold *ein kinyan*. The Bavli posits that according to one *Amora* all agree that *yeish kinyan*. Therefore, it must be possible to explain the *mishna* even if *yeish kinyan* by saying that *kilayim* and *orlah* are different. Tosafot (above) who says that the *mishna* holds *ein kinyan* may refer only to an *issur d'rabbanan*. The Rosh would agree that according to the Yerushalmi, the *machloket* applies to *orlah* as well. The different approaches between the Bavli and Yerushalmi stem from the different *derashot* they use to justify the different opinions [the fascinating indications of this thesis' veracity are beyond our scope.]

Tosafot reasons that *shemitta* depends on the general *machloket*; the Rosh's view is unclear.

According to the Rambam [see last week] that if *yeish kinyan*, it is possible to remove the *kedusha* permanently, this applies to every land-linked *mitzva*. This would explain a discrepancy regarding *orlah* in the Rambam between the Commentary on the Mishna and the *Yad Hachazaka* (a later work). In the former work, the Rambam held *yeish kinyan*, explaining why *orlah* would not apply to a non-Jew's field. However, in the latter he posits that *ein kinyan* and subsequently he held that *orlah* applies to a non-Jew's field.

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P'ninat Mishpat

A Look Back at the Last Year's Piskei Din (based on Halacha Psuka, vol. 45)

Vol. 45 of Halacha Psuka is dedicated to looking back at the past year, both regarding joint action and decisions of the cooperative *batei din* (Mishpat V'Halacha B'Yisrael, the Gazit network, and Mishp'tei Eretz) and in summarizing some fundamental principles found in the *piskei din* that were presented. We will now share the latter. The foregoing does not necessarily represent the opinion of the specific *batei din* involved in the cooperative effort but presents opinions of various *batei din* over the decades. We will break up the principles based on topics.

A. P'shara (Compromise)

The Obligation of a Litigant to Allow a Beit Din to Rule Based on P'shara - There is a difference of opinion on whether *beit din* can force parties to sign an arbitration agreement that allows either *din* (the strict law) or *p'shara*. In practice, standard arbitration agreements include permission to *beit din* to rule either for *din* or *p'shara*. Under certain circumstances, *beit din* may make a *p'shara* between the litigants even if they did not sign in the arbitration agreement a clause that authorizes it.

Beit Din's Authority Within the Framework of P'shara - Fundamentally, the legal authority that litigants furnish *beit din* when they authorize *p'shara* is broad. In practice, *beit din* uses it only in the following cases:

1. Where there is halachic doubt.
2. In place of administering an oath.
3. When the straightforward *din* causes a loss to both sides.
4. When *p'shara* brings the argument to a rest better than the *din*.

In practice, Mishpat V'Halacha B'Yisrael and the Gazit network do not use *p'shara* extensively, even in regard to the first two cases.

B. The Effectiveness of Contracts and Obligations

Signing a Contract Without Understanding it - Fundamentally, one who signs a contract is bound by what he signs even if he did not read it. However, we saw *piskei din* that posited that when one thought that he was signing something else, his signature does not obligate him.

Unreasonable Clauses in a Contract - A contract that contains an unreasonable clause requires a special *kinyan* to make it effective. For example, if one is said to rent an apartment forever, this is an unreasonable obligation. When the simple reading of a contract's clause renders it to contain such an obligation, *beit din* should prefer to interpret the contract according to the general spirit of the contract, thereby producing a reasonable obligation.

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