

HEMDAT YAMIM

PARASHAT SHOFTIM

6 ELUL 5768

This week.....

- **“Pursue Justice Justice” - A Glimpse from the Parasha**
- **A Beracha on the *Mitzva* to Write a *Sefer Torah* - Ask the Rabbi**
- **The Purpose of an Effective Tefilla - from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **Workers Who Missed Work Due to Illness – part III (Harav Akiva Kahana)- from the world of Jewish Jurisprudence**

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“Pursue Justice Justice”

Harav Yosef Carmel

As an institution that trains *dayanim* and runs a *beit din*, through both of which we are trying to have a positive impact on society, this week's *parasha's* opening theme is one that is very close to our hearts.

The root of *tzedek* (justness) arises no less than four times in the short portion that discusses the *mitzva* to appoint judges (Devarim 16:18-20). The pursuit of justice must be the guiding light of the judicial system of the Jewish nation. In this light, we will try to analyze the meaning of the *pasuk*, “*tzedek tzedek tirdof*” (pursue justice justice). *Chazal* advance several explanations. Reish Lakish (see Sanhedrin 32b), a first generation *Amora* in *Eretz Yisrael*, derives from here that one should employ his developed common sense and not rely only on set principles in a case of a *din merumeh*. This is a case where there is a serious concern that behind the smooth explanations and testimonies, a hoax is going on.

Rav Ashi, from the last generation of Babylonian *Amoraim*, learned the *pasuk* differently. The stress on justice obligates the *dayan* to not rule based on the strict law in a case where it will cause damage to both sides. Rather in such cases, one should employ *p'shara* (compromise). According to both of these explanations, the double language limits the scope of the strict principles. In other words, sometimes the standard rules of justice should be avoided. Both also understand the *pasuk* as referring to the judge.

Rabbanan, on the other hand, explain that it is the litigants who are being addressed. They should do everything possible to ensure that the judgment that they receive will be of a high quality. If the most expert *dayanim* are far away, they should still consider going to the place where the expert judges sit. This is particularly pertinent for the defendant, who is the one who normally determines where the case will be heard. Ibn Ezra also directs the imperative at the litigants. Justice is doubled to signify that one should go after justice whether it is to win or to lose, to go as often as is necessary, or just to strengthen the matter. The Ramban says that the language is doubled specifically so that it can refer both to the *dayanim* and to the litigants.

During times, which always seem to abound, when maintaining our hold on the Land and our security is a challenge, we should remember the following: “In order that you shall live and inherit the Land’- the appointment of judges is worthwhile to give life to Israel, to have them inhabit the Land, and to have them not fall to the sword, as it says, ‘so that you should live’” (Yalkut Shimoni, Shoftim 907).

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Question: Why is there no *beracha* on the writing of a *sefer Torah*?

Answer: This question, which we have not found discussed directly by the *Rishonim*, has several suggested answers in the writings of the *Acharonim*.

Before addressing possible answers, let us mention a fundamental debate by the *Rishonim*, which impacts on them. The Rambam (Sefer Torah 7:1) rules that each individual is obligated to write or have a *sefer Torah* written for him, even if he has a *sefer Torah* that he inherited. However, the Rosh (Sefer Torah 1 - as most understand him) posits that the nature of the *mitzva* is not to have a formal Torah scroll written but to have texts available from which Torah will be learned. In our early history, the *sefer Torah* was the primary text for Torah study. Nowadays, the main *mitzva* is to have on hand as many of the myriad texts as one is likely to study Torah from.

The Rashba (I, 18) says that *berachot* were not instituted for *mitzvot* that are not independent but are steps to another *mitzva*. The Divrei Menachem (as cited by the Sdei Chemed, vol. VI, p. 313) says that since the main idea of the *mitzva* to write a *sefer Torah* is to learn Torah, a *beracha* was not instituted. Similarly, the Mahari Bei Rav (62) suggests that it is like several *mitzvot* where we make a *beracha* only before the *mitzva*'s final stage. Just as we do not make a *beracha* on building a *sukka* or making *tefillin* (Rambam, Berachot 11:8) we do not make a *beracha* on writing a *sefer Torah*, which is completed when one learns from it. The Mahari Bei Rav also suggests that an existing *beracha* actually covers the writing of a *sefer Torah*. Since according to many one makes a *birkat hatorah* not only before saying words of Torah but even before writing them (Shulchan Aruch, OC 47:3), an individual *beracha* for writing a *sefer Torah* didn't have to be instituted. The Chatam Sofer (OC 52) claims that the former explanation (and probably the latter, which he does not mention) applies only if one assumes like the Rosh, which he views as a minority opinion, that the *mitzva* to write a *sefer Torah* is inexorably linked to Torah study.

The Chatam Sofer (ibid.) discusses two technical possibilities of why the Rabbis would not have instituted a *beracha*. One is that since it is a *mitzva* that takes a long time to complete, there is a concern that it will be disbanded before completion, thus causing a *beracha l'vatala*. The Ateret Paz (I, II, YD, 12:(1)) cites the Yefei Lev who says that this is the reason that the *kohen gadol* did not make a *beracha* on the series of activities he performed in the *Beit Hamikdash* on Yom Kippur. The Chatam Sofer is not satisfied with this answer, suggesting that one could write almost the whole *sefer Torah* and then make a *beracha* before finishing up the last words. He assumes that although *berachot* are usually supposed to be made before one starts the *mitzva*, where following that principle would prevent making a *beracha*, we would make it closer to the end. He extends this not obvious assumption to the *beracha* on building a fence, saying that it would be made when the fence was about to become sufficiently safe.

The Chatam Sofer prefers another technical answer of depressing implications. He says that since, already at the time of *Chazal*, there were certain questions about spelling words in the Torah, there is a lack of confidence that we are fulfilling the *mitzva* (which requires a kosher *sefer Torah*) and, therefore, a *beracha* is inappropriate. The Ateret Paz (ibid.) discusses at length whether when we write a *sefer Torah* according to the conclusions that have been reached about spelling, we have to be concerned that we are not fulfilling the *mitzva* (like the Chatam Sofer) or not. He also cites an opinion that there is concern that an individual scroll diverges from the accepted text.

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Ein Ayah

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

The Purpose of an Effective Tefilla

(based on Berachot 1:48)

Gemara: Abba Binyamin said: a person's *tefilla* is accepted only in a *beit kneset* (synagogue), as it says: 'To listen to the praise and the prayer.' A place of praise is where prayer should be.

Ein Ayah: The foundation of the matter is that the goal of prayer is two-fold, according to which prayer is divided into two parts: praise and request.

One idea is that Hashem made a rule in His world that He provides man's needs through his prayers, as it says: "The prayer of the righteous is His will" (Mishlei 15:8) and "their cry He shall hear and save them" (Tehillim 145:19). A second is that a person should turn his potential for *sheleimut* (completeness) into actuality by organizing his ideas of discussing Hashem's greatness and getting his thoughts and all of his soul's powers used to gazing at His pleasantness. This is the fruit of life and the goal of *sheleimut*. This type of activity includes the idea of announcing Hashem's glory in His world and His closeness to people, especially those who cling to His ways.

It is proper to engrave in one's heart that even the section of the prayers that focuses on requests is effective so that through this realization, man can come to the fullest, true *sheleimut*, which comes by realizing Hashem's glory. Hashem wants us to know that prayer works and the closer one is to the Divine *sheleimut* by doing good deeds and developing his wisdom and fine attributes, the better chance his prayers have of being successful and his words of making an impression on the One who accepts the decrees of those whom He desires and fulfills them. This matter brings mankind closer to Hashem. Therefore, Hashem created a rule in the world to help prepare man to reach *sheleimut*. He who is wise understands through this the root of the existence of prayers without the need for philosophers' many calculations. Therefore, there is a condition within the request section of the prayers that it should always be subservient to the loftier element of the prayers, which has to do with making Hashem's honor known.

The existence of *batei kneset* and their sanctity as a mini-*Mikdash* is because they are buildings in which the existence and honor of Hashem is publicized. Therefore, it is proper to show that the part of request is also subservient and exists because of the goal of escaping the mistaken conception that the Ruler of the World has changes of heart. That is why [the *gemara* says] that a person's prayers are accepted only in a *beit kneset*, which is the place of songs of praise. The foundation of the prayers of a *beit kneset* is in the lofty intellectual element, namely, the realization of Hashem's greatness and closeness to us.

Within these two general elements of prayer, three parts are actually included. One is the goal of fulfilling the requests a person needs, which is the lower level of prayer. A higher level is to prepare man to have an enriching relationship with Hashem. The highest and loftiest element is to make Hashem's greatness known in the world. This is why three parts of *Shemoneh Esrei* were instituted: the first three *berachot*, the last three, and the middle section. The first three [i.e., praise] improve a person's level. After these, he can come to make his requests of Hashem [i.e., the middle section] without making conceptual mistakes. The goal of the last three is to recognize Hashem's greatness based on prayers and their impact in the world.

Therefore, these two spiritual elements [corresponding to the first and last sections of prayer] cannot be separated because they are based on a spiritual concept that is totally disconnected to physicality regarding their goal. Therefore, the first three and last three are considered one, in contrast to the middle section, whose goal is for concrete gains, and, therefore, includes different levels according to the needs.

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P'ninat Mishpat

Workers Who Missed Work Due to Illness – part III (Harav Akiva Kahana)

(based on Halacha Psuka, vol. 42)

The Knesset Hagedola (Choshen Mishpat 333:17) says that even the Rosh, who says that a worker who is sick does not deserve payment, agrees that if a worker cannot come to work, not because he is sick but in order to avoid an epidemic, he does get paid. He posits that this is not considered to fall under the category of one who is unable to work because of illness. Rav Moshe Taveretzky (Kol Hatorah compendium, vol. 54) understood within the Knesset Hagedola's opinion that if a teacher could have pushed himself and found the strength to teach and he did not do so, he would not receive his salary. However, this does not seem to be the case, as the Knesset Hagedola does not indicate this and it is unlikely that we should make such distinctions, which are hard to discern from case to case.

Mahari Bruna (134) and the Tzitz Eliezer (II, 26) hold that when a worker is sick but is able to work with a lower level of efficiency (perhaps even with reduced hours) he receives full pay. Their proof is from the *gemara* regarding an *eved ivri*, which says that although an *eved* who is sick for more than three years has to make up the time, if he was able to work at light jobs, he does not have to make up the time. The Tzitz Eliezer assumes that the same is true of a regular worker.

However, logically there is room to distinguish between the *gemara's* case and that of a regular worker. An *eved* does not come to an agreement in advance with his owner as to which tasks he will be responsible for. Rather, he is obligated to do everything that he can that the owner wants. Therefore, whatever work he is capable of doing is considered a fulfillment of his servitude. In contrast, a standard worker is hired for a specific job. If he is unable to do this job according to the minimum specifications, then he is not fulfilling his obligations and may not deserve full salary. This is the implication of the Ritva (Kiddushin 17a).

Let us now summarize that which we have learned. An *eved ivri* does not have to make up for time he misses due to illness unless he misses more than half of his stint as an *eved*. There is a *machloket Rishonim* regarding if a regular worker has the same parameters in this regard as an *eved* or whether he normally is not paid for the work he misses due to illness. Exceptions to the rule would be in places where there is an accepted practice to pay for sick days and in a case where it is evident from the situation that the employer relinquishes his rights to compensation for the work missed. It also appears that if illness makes a worker perform at a lower than expected level of efficiency, he is also paid in full.

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