

HEMDAT YAMIM

PARASHAT CHAYEI SARAH

24 CHESHVAN 5769

This week.....

- **The People's Choice - A Glimpse from the Parasha**
- **Two Out of a Group Who Want to do a *Zimun*- Ask the Rabbi**
- **Help Not to Lose One's Level- from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **Regretting Allowing a Relative to Testify**
(based on Halacha P'suka 46, a condensation of a ruling of the Supreme Rabbinical Court)

This edition of Hemdat Yamim is dedicated to the memory of **George Weinstein** and in loving memory of **Tamar Lichtenstadt** z"l. May her memory be a blessing. As well as **R' Meir ben Yechezkel Shraga Brachfeld** o.b.m
Hemdat Yamim is endowed by Les & Ethel Sutker of Chicago, Illinois in loving memory of **Max and Mary Sutker** and **Louis and Lillian Klein**, z"l.

The People's Choice

Harav Yosef Carmel

This week's *haftara* deals with the issue of succession of David's kingdom. While Adoniyahu took steps to claim the throne, Natan the prophet was convinced, apparently based on prophecy, that Shlomo should be king. David had previously sworn to Bat Sheva that Shlomo would succeed him (Melachim I, 1:11-14). On the other hand, it was clear to Natan that in practice Adoniyah had already effectively assumed the position based on several factors: 1) He assembled for himself a chariot, cavalymen and 50 people running before him. 2) Other members of the royal family and court took part in his festivities (ibid.:5). 3) The general populace stood behind his claim to the kingship, as the oldest of the princes (see ibid. 2:15).

Natan's approach to advancing Shlomo's candidacy is perplexing. If he had prophecy that Shlomo was to be the next king, why didn't he announce it before David and the nation? After all, Natan's status as the court prophet was not in question. He had the confidence even to stop David's plans to build the *Beit Hamikdash*, a project that David looked forward to throughout his life. He confronted the king forcefully in regard to the episode with Bat Sheva and Uriyah. Why here did he resort to a plan that avoided taking on the issue of succession directly?

Apparently, the prophet was not authorized to intervene in the matter of choosing a king against the people's will. At first glance, the *pasuk*, "You shall place upon yourselves a king that Hashem will choose" (Devarim 17:15) seems to contradict this thesis. Yet the Ramban derives from the end of the *pasuk*, which commands the people not to choose a foreigner, that the people decide. The *pasuk* invokes Hashem's Name because, in the final analysis, Hashem arranges for all leaders to assume their positions (Bava Batra 91b). However, as far as practical procedure, the people pick the king. The people choose, and it turns out that it was Hashem's mandate.

Therefore, Natan had to devise a strategy whereby the people would throw their weight behind Shlomo. He knew that a royal ceremony could win over the masses. A ceremony was arranged at the Gichon stream, including anointing of oil and blowing of the shofar. The idea was for it to be a call to the populace to express acquiescence to David's choice. Indeed it was successful, as the *pasuk* states: "All of the people said: 'Life to the king, Shlomo.' All of the nation came up afterward and the nation was playing flutes and were very happy, and the Land split to their sound" (ibid. 39-40). It is particularly the noise that troubled Yoav, Odiyah's most prominent supporter. The harbinger, Yonatan ben Evyatar also connected the excitement with the result: "The city was teeming with the noise you heard, and also Shlomo sat on the throne" (ibid. 45-46).

May we merit leaders who are a proper choice of the nation and Hashem.

Let us pray that the world will understand that the real dominion is Hashem's and all will want to attach themselves to His Kingdom. **Eretz Hemdah** is the premier institution for training young rabbis to take the 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

Question: If two people want to do a *zimun* and a third does not want to yet, the two can force the third to answer. What about if there are, say, five people? Can two pick one to force to join?

Answer: The *gemara* (Berachot 45b) says that if three eat together, one stops to answer for two who want to *bentch*, but two do not stop for one. Rashi explains that one should show proper manners to answer, implying that there is no halachic imperative that he must take a break in his eating to do so. However, the Shulchan Aruch (Orach Chayim 200:1) rules like the *Rishonim* who say that it is halachically required for the third to answer, and even if he refuses to answer, the two (only) fulfill the requirement of *zimun*.

In order to answer your question, regarding two who want to use a third when there are more than three participants in the meal, we need to understand the reasoning behind the halacha above. *Poskim* explain that it is based on the concept of *rov* (majority) (Birkei Yosef, OC 200:5; Mishna Berura 200:2). The minority that is not yet ready to *bentch* has to follow the majority of the group that is interested. According to important *poskim*, this idea of *rov* can be extended to other groups. The Eliyah Rabba (OC 200:6), for example, says that six who want to do a *zimun* with Hashem's Name also create a majority to force four to answer.

If the matter depends on *rov*, it does not appear that a minority of a group can force a majority or even two sub-groups of the same number of people cannot force one another to do a *zimun*. The Birkei Yosef (200:5) assumes simply that which the Eliyah Rabba implies: five cannot make five answer. One could claim that the important thing is to have a majority of the necessary quorum who are ready to *bentch* and then they can use whomever they want. Thus two could force any one they wanted, while five, which is only half way to the *zimun* of ten, could not. However, the language of the *poskim* implies that it is a matter of deciding when the most appropriate time is for the group to do the *zimun*. There is no reason to assume that two can select one from the main group and turn him into their minority.

The exact definition of what constitutes a *rov* in this regard is important for the following case. One person wants to *bentch*, and a second is not yet finished but agrees to help his friend by answering now. Can those two force the third? The Birkei Yosef (*ibid.*) (discussing five and five with one of the "non-*bentchers*" volunteering) leans toward the view that he cannot. The person who volunteers is still not an interested party who creates a *rov* who are *bentching*. On the other hand, Rav Kook (Orach Mishpat, OC 40) leans toward the approach that even when only one of the two is *bentching* now, the two can force the third. His impression is based on the following *gemara* (Berachot 45b). Rav Papa was eating with his son and a third person. Only his son was ready to *bentch*, and Rav Papa accommodated him. The *gemara* says that Rav Papa had gone beyond the letter of the law in agreeing. Rav Kook understands that once Rav Papa agreed, the third's willingness was irrelevant. (One can deflect the proof and say that, given Rav Papa's stature, it was clear that the third person would not object.) It seems that a majority of *poskim* accept the Birkei Yosef's approach that only two who are actually *bentching* can force a third. In practice, most people do accommodate their friends anyway, which is good. (Vaya'an Avraham (OC 16) suggests the possibility that if the second agrees because he is halachically required to respect the person who wants to *bentch*, it would be considered a *rov*; he himself rejects the suggestion).

Let us remember that, for Ashkenazim, when someone answers *zimun* before *bentching*, he must wait until the end of the first *beracha* before resuming eating (Rama, OC 200:2).

"Living the Halachic Process" - We proudly announce the publication of our first book in English. "Living the Halachic Process" a selection of answers to questions from our Ask the Rabbi project. A companion CD containing source sheets for the questions is also available. In honor of the book's debut we offer it at the special rate of \$20 (instead of \$25). Contact us at info@eretzhemdah.org

Have a question?..... e-mail us at info@eretzhemdah.org

Ein Ayah

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

Help Not to Lose One's Level

(based on Berachot 1:53)

Gemara: Whoever regularly comes to the *beit k'nesset* and one day he does not come, Hashem asks about him, as the *pasuk* says: "Who among you fears Hashem and listens to the voice of His servant, who went in the darkness and there was no light for him... (Yeshaya 50:10)"

Ein Ayah: A general insight regarding all of the paths toward human completeness, whether of the community or of the individual, that must be employed is that once people advance in the levels of ethical completeness, they must try to not fall back from their level and not lose their pleasant attainment. This is because regarding everything that reached its completeness in actuality, when it subsequently falls back, it becomes more lacking than it is for one who never acquired the matter in the first place. This is the foundation of the halacha that one who practiced good *minhagim* and wants to discontinue them, needs *hatara* (dissolution of the implied oath to continue the practice).

In relation to community life, a good *minhag* is especially severe because when an ethical attainment subsequently deteriorates, it causes an even greater lacking than had it been absent from him in the first place. Therefore one has to be more careful because "we go up in sanctity and do not go down." Therefore, one who already stood at a certain high level of service of Hashem should not allow himself to ever go down from it.

If such a person does falter, the hand of Divine Providence is outstretched to alert him to the matter and arrange for rebuke. This is because: "He that Hashem loves, He rebukes" (Mishlei 3:12). The rebuke may continue until he returns to his normal strength. This is because there is a lot of Divine Providence in regard to the acquisition of human completeness, as man is the central figure of the creation, as we explained in the previous passage. Therefore, the *gemara* says, Hashem asks about one (*mashil bo*) who regularly comes to the *beit k'nesset* and one day he does not come. [The following passage can be understood best if Rav Kook was basing himself on the literal translation of this phrase, *mashil bo*, which is that He causes the question in him.] In other words, Hashem arranges reasons that cause the person to ask about himself because he should have had trust in Hashem's Name. The fundamental element of the Name of Hashem is the assurance that Hashem's leadership will help to attain true completeness, which is to resemble Hashem's paths. This is because Hashem's leadership is the secret of His great and lofty Name.

Responsa B'mareh Habazak, Volumes I, II, III, IV, V and VI:

Answers to questions from Diaspora rabbis. The questions give expression to the unique situation that Jewish communities around the world are presently undergoing. The answers deal with a developing modern world in the way of "deracheha, darchei noam". The books deal with the four sections of the Shulchan Aruch, while aiming to also take into consideration the "fifth section" which makes the Torah a "Torah of life." (Shipping according to the destination) **Special Price:** 6 volumes of Responsa Bemareh Habazak - \$75 (instead of \$90)

P'ninat Mishpat

Regretting Allowing a Relative to Testify

(based on Halacha Psuka, vol. 48, condensation of Piskei Din Rabbaniim, vol. IV, pp. 346-350)

Case: A husband demands that his wife accept a *get* because her abusive behavior has made it impossible for him to continue living with her. He wanted to bring his wife's brother as a witness. The wife signed an agreement to accept him as a witness despite the fact that, according to halacha, he is invalid to testify about his sister. Later she backed out of her agreement.

Ruling: The *mishna* (Sanhedrin 24a) cites a *machloket* whether one who accepts a relative or other invalid witness can back out of his agreement. However, the *gemara* explains that this is only when the ruling has already been handed down. On the other hand, if a *kinyan* was made to finalize the agreement, then the sides cannot back out (Shulchan Aruch, Choshen Mishpat 22:1).

The Shach points out that the *Rishonim* dispute why it is that the *kinyan* is binding and is not considered a *kinyan devarim*, an agreement on something too abstract to take effect (e.g., a future action). The Nimukei Yosef understands that the *kinyan* does not take effect on any object or monetary obligation but finalizes the parties' agreement to be bound by the testimony. The Ra'avan, however, says that the *kinyan* obligates the parties to the monetary outcome of the testimony by conditionally creating a debt to pay or relinquishing rights to payment, respectively.

Beit din concluded that the Nimukei Yosef's opinion, that the *kinyan* is not directly monetary in nature, is the more accepted one. The Rambam (Sanhedrin 7:2) uses the language of "accepted upon himself to be *mocheh*" which sounds like a *kinyan devarim* that nevertheless works. Tosafot (Bava Metzia 74a) talks about accepting unfit witnesses "with words alone." In this case, since the wife signed a document before *beit din* binding her to accept her brother's testimony, it should be valid, as a signed document is an effective form of *kinyan*.

However, there is a problem in accepting the permission for the relative to testify in this case. That is because such acceptance is able to work specifically regarding monetary cases, where a person can obligate himself in the money that is at stake. However, here the issue is whether or not the woman will be required to accept a *get*. The Terumat Hadeshen (173) says that a *kinyan* does not take effect regarding this matter. Therefore, it makes sense that acceptance of unfit witnesses will not be binding either.

It is true that the Rashbam (Bava Batra 128a) says that accepting unfit witnesses is not the acceptance of an obligation but the granting of credibility to the witnesses. According to that approach, it should work in regard to *gittin* as well. However, the rest of the *Rishonim* do not view it that way. Therefore, the wife can back out of her acceptance of her brother as a witness.

Do you want to sign your contract according to Halacha?

The Rabbinical Court, "[Mishpat Vehalacha BeYisrael](#)" serves the public in the matter of dispute resolution according to the Halacha in a manner that is accepted by the law of the land.

While drawing up a contract, one can include a provision which assigns the court jurisdiction to serve as an agreed upon arbitrator.

Tel: (02) 538-2710 beitdin@eretzhemdah.org Fax: (02) 537-9626

Founder and President: Harav Shaul Israeli zt"l Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360
Tel: 972-2-537-1485 Fax: 972-2-537-9626

Email: info@eretzhemdah.org **Web:** <http://www.eretzhemdah.org>