

HEMDAT YAMIM

PARASHAT VAEIRA

28 TEVET 5769

This edition of Hemdat Yamim is dedicated to the memory of **Shirley,**

Sara Rivka bat Yaakov Tzvi

HaCohen z"l

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.**

This week.....

- **Believe Me When I Speak - A Glimpse from the Parasha**
- **Thanking Hashem After a "False Alarm" - Ask the Rabbi**
- **The Virtues of Hard Work- from the Writings of Harav Avraham Yitzchak**

Hakohen Kook, z.t.l

- **Enforcing a Work Agreement - P'ninat Mishpat**
- **A person's obligation to pay for damages that occurred in unusual circumstances- Hemdat Hadaf HaYomi**

Believe Me When I Speak

Harav Yosef Carmel

We have discussed before that there are different levels of belief and, correspondingly, different means by which the liberation from Egypt could have transpired. Shemot, chapter 6, describes Hashem's original revelation to Moshe and His attempt to convince him to bring about the nation's redemption by means of Divine speech. Moshe would have represented Hashem and have used prophetic sayings to cause the nation to believe in their liberation and to cause Paroh to agree to set them free. The people needed to believe that this was the fulfillment of the promise to Avraham during the *brit bein habetarim*. Moshe did not accept this task, ostensibly because he was incapable of expressing himself properly (Shemot 6:12). However, more fundamentally, it was because he did not think that the nation was capable of reaching that level of belief.

Therefore, at the second communication at the burning bush, Hashem equipped Moshe with tools, the staff and the miraculous signs, to convince Paroh and the nation. In the first stage, Bnei Yisrael believed based on the signs, which reached their height at the splitting of the sea. The great miracles lead to the revelation at Sinai, where they heard Hashem speak, after which time their belief was based on the *dibbur* (speech). If we look at the text of Shemot, we see that before Sinai the Torah introduces Hashem's speeches with "*vayomer*" (roughly, He said) and afterward it is with "*vayedaber*" (roughly, He spoke).

Let us now approach the thesis from other sources. After the giving of the Torah, Moshe's staff disappears from the text, except for an appearance in Bamidbar. We can learn something from R. Yehuda's break-up of the plagues that afflicted Egypt into three groups, represented by acrostics (*detzach, adash, b'achav*). The staff is involved in all of the first group's plagues and in two of the last group. In the middle group, whose middle plague is *dever* (pestilence- the same letters as the word for speaking), the staff does not appear. Instead, the root *davar* appears in different forms, four times. Once it refers to the pestilence itself. Once it is going on the fact that Bnei Yisrael were not affected by the plague. Another time it refers to the thing that Hashem did in the land. The root also comes up in the manner of speech to Paroh (compare to Shemot 7:26). When speech is used or felt, the staff is not necessary.

Let us pray that our nation will be strengthened in its belief and will return to the level of belief that existed at Sinai. About this event, the Torah says: "I will come to you in the midst of the cloud so that the nation will hear when I speak to you (Moshe) and in you too they will believe forever" (Shemot 19:9).

Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinat'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.

www.erezhemdah.org

Question: If one had indications of a life-threatening illness but subsequently it is determined that it was a false alarm, should he recite *Hagomel* and make a *seudat hoda'ah* (meal of thanksgiving)?

Answer: The *gemara* (Berachot 54b, based on Tehillim 107) lists one who recuperates from illness as one of four types of people who must thank Hashem. The manner in which he does this is by reciting *Birkat Hagomel* before ten people.

Regarding the illness' extent, the Shulchan Aruch (Orach Chayim 219:8) says it applies to any reasonable illness; the Rama says it is only for illnesses where there appears to be real danger (parallel to the parameters for violating Shabbat). Some Ashkenazi *poskim* accept the former approach, at least when the illness confines one to bed for three days (see Mishna Berura 219:28).

One might suggest that your question depends on these opinions. Is a life-threatening situation needed or only one that warrants thanking Hashem when He brings recovery? However, the sources indicate that even the expansive opinion requires some threat to life, just that it reasons that any significant illness could become life-threatening. If it becomes clear that there was no danger at all, no one would require *Hagomel*. (If one was bedridden for three days, Sephardim would require a *beracha*, presumably even if doctors say there was no danger- see Yalkut Yosef, OC 219: 22, 27).

This being said, there is great logic to distinguish between the formal *beracha* of *Hagomel*, which must meet certain parameters, and the more general positive element of making a *seudat hoda'ah*. The Shulchan Aruch does not mention anywhere a requirement to make such a *seuda*. Yet, the practice exists, although apparently on a voluntary basis (as opposed to *Hagomel*). Some cite the following *gemara* (Berachot 46a) as evidence. Rav Avahu, upon visiting Rav Zeira when he was sick, stated that if the latter would recover, he would make a feast for the rabbis. Some cite this idea as not only worthwhile after recovery but as a *segula* (spiritual facilitator) for bringing recovery (see Imrei Shamai, p. 85 in the name of the Ba'al Shem Tov's disciples). If one, under these circumstances, felt the need to promise such a party, it does not seem right to claim afterward that the self-obligation was not binding because it was based on misinformation.

Even if one did not accept such an obligation prior to recovery, a *seudat hoda'ah* would still seem appropriate. Even if it turns out that there was no serious illness from which recovery was necessary, there still was good news that a perceived problem disappeared. We shall illustrate with Talmudic precedent. The *gemara* (Bava Kama 87a) tells of Rav Yosef (who was blind) who said that he would make a feast for the rabbis if he found out that the opinion that a blind man is exempt from mitzvot is incorrect because one who is obligated in *mitzvot* receives more reward. Here, nothing changed but a happy realization, and yet a celebration was appropriate. Another such source is the historical background behind an early-winter pagan holiday. The *gemara* (Avoda Zara 8a) says that one was instituted properly by Adam who feared that daylight was disappearing due to his sin until the solstice passed and he saw that the days were naturally getting longer. Despite Adam's mistake, the celebration was appropriate (until it turned pagan).

The logic behind such thanks appears to be as follows. We are always in danger (see text of *Asher Yatzar*), just that it is natural not to feel it. However, when we understandably come face to face with the prospect of our mortality, it is a good time to thank Hashem for our continued existence. So, if one wants to make a *seudat hoda'ah* upon receiving, for example, a negative biopsy result on a suspected malignant growth, he should be encouraged.

"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.)

[This piece is very hard but hopefully very enriching, even if understood only partially.]

The Virtues of Hard Work

(based on Berachot 1:101)

Gemara: Greater is he who benefits from the toil of his hand than a G-d fearer. For regarding one who benefits from the toil of his hand the *pasuk* says: "The toil of your hand shall you eat, you are fortunate and it is good for you" (Tehillim 128:2). Regarding a G-d fearer, the *pasuk* says: "Fortunate is one who fears G-d" (ibid. 112:1); it does not say, "It is good for you."

Ein Ayah: The elevated feeling of one who benefits from the toil of his hand is the most complete and best ethical feeling in man. This is because a person has engraved in his nature that since he is free to choose his actions and, with diligence, he can complete himself in all ways, he should not sit idly by and wait for others to act for him. Even with regard to Divine Providence, he should imprint on his soul to reject dependence on others unless he cannot perform the matter himself. Whatever he can accomplish is the completeness (*shleimut*) that the Divine Providence bestowed upon him to have the power for a success that will be in his hand. This moral power leads a person to lofty levels because he will also strive for *shleimut* in Torah, wisdom, and good deeds. This all stems from the fact that the person wants to benefit from his toil and not be one who is supported by charity, which leads him to higher levels than an abstract feeling of fear of G-d. The latter may invigorate him to grasp service of Hashem. However, sometimes he will try only to "fulfill his minimum obligations" with nice and holy ideas that fill his heart.

In truth, the main pleasant feeling in the world to come belongs to one who benefits from the toil of his hand, for this is the good *shleimut* known in its truth to his Maker, although one cannot feel its entirety. This is why it says one with fear of G-d is fortunate, for he feels good fortune in its pleasantness and grandeur. It is in the world to come that this true goodness is recognized. Therefore, the essence of the good that comes from fear of G-d is one of palpable enjoyment. While it is of the highest level, its advantage is from the perspective of the enjoyment, similar to the good feeling of this world.

In contrast, the good that comes from the holy level of one who enjoys specifically that which comes from the work of his hand and thereby completes himself is connected to the truly good side of the world to come. Specifically there, the glory of this *shleimut* will be recognized. Since this attribute of benefitting from one's own efforts, when it gets to its upper reaches, includes all the wonderful parts of good levels, it is very respectable even from its beginning. One who acquires this good attribute for himself is worthy of respect and honor even when the attribute is only starting to develop, i.e., when its purpose is to sustain his body and the people of his household from the hard work of his soul in a just and straight path. This attribute will elevate him even to its lofty value, in the storehouse of moral life in the path of Hashem. This is because the power of straightness that exists in this good feeling is the basis of all of the Torah. This is the part that Hashem gives to man to be judged based on his actions through free choice, and this is the whole purpose of our souls coming down into the world and getting mixed with the powers of the body. It is these efforts that the rabbis of mystical matters called running away from "bread of embarrassment" [i.e., our soul's feeling that the enjoyment that one gets from the Divine light is not fully worthwhile if it was not earned through development of the soul by choosing well in life's tests]. The content of the matter is that the true goodness is to exist and be drawn by an approach of true straightness, which is Divine justice.

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

Enforcing a Work Agreement

(from Halacha Psuka, vol. 51, a condensation of a psak from Techumin XXIV, pp. 84-90)

Case: The defendant (=def), the director of a pre-school for an NPO (non-profit organization), discussed with the children's parents, including the plaintiff (=pl), that the NPO had lost the rights to land for a new building. Pl offered to lobby for an extension, which he ended up doing successfully. He claims that def promised that if he succeeded, he would be appointed the project's contractor. As proof, he provided a letter from def that refers to him as the contractor. Def explains that pl volunteered to help the school and requested a letter, which pl even dictated to her, to show his involvement to enable him to intercede on their behalf.

Ruling: There are three possible reasons to consider pl to have been hired by the NPO as the project's contractor. 1) In regard to work agreements (as opposed to sales), an oral agreement along with the beginning of the work form a binding *kinyan*. One can claim that the efforts with the municipality are the beginning of his work. However, since it is common for one who is being considered for a project to be involved in preliminary discussions and planning for the project before he is hired, his actions do not constitute the beginning of work.

2) A document can serve as a *kinyan* regarding obligations to workers (Pitchei Teshuva, Choshen Mishpat 333:1). However here, def claims that the document was not written to bolster an oral agreement but to indicate to others that a relationship already exists. A *shtar re'ayah* (document of proof) does not create an obligation, so the letter does not change anything. Since def has a logical explanation for the letter's existence, it does not prove that a *kinyan* existed.

3) If a public group obligates itself to something it cannot back out (Shulchan Aruch, CM 204:9). R. Akiva Eiger (to CM 333) says that this applies to matters of employment as well. The Netivot Hamishpat says this is true when we can interpret the obligation as a *neder* (oath). An NPO has a status of a public group and so their employment may not lend itself to backing out. However, the director of the pre-school does not have authority to decide for the NPO which contractor will perform the work needed. Furthermore, the document could not serve as a binding *kinyan* as long as basic matters of salary and conditions, which traditionally are included, were not addressed (see Shulchan Aruch, CM 209:2).

However, one who was asked to do a service is entitled to pay commensurate to the gain he provided even if pay was not discussed (Shulchan Aruch, CM 375:4). We do not presume without proof that the work was done for free (see Rama, CM 264:4). This is especially true here where def requested help and is not affected by the fact that pl's son is enrolled at the school. Therefore, pl should be paid according to the value of his involvement in obtaining the building extension.

Mishpetei Shaul – Unpublished rulings by our mentor, Maran Hagaon HaRav Shaul Yisraeli zt"l in his capacity as dayan at the Israeli Supreme Rabbinical Court. The book includes halachic discourse with some of our generation's greatest poskim. The special price in honor of the new publication is \$20.

Baba Kama 21-27

Rabbi Ofer Livnat

A person's obligation to pay for damages that occurred in unusual circumstances

We learned in the Daf Yomi this week (*Mishnah*, 26a) the principle that: "A person is always liable for damages he causes, whether unintentionally or intentionally, whether he is awake or asleep."

This statement seemingly implies that a person is obligated for any damage he does, even if unusual circumstances that are out of his control cause him to do the damage. The Talmud later limits this principle and determines that this rule only applies to the basic compensation for damages. However, this principle does not apply to additional obligations in which a person would be obliged if he would injure another person. These obligations are:

- Compensation for *tza'ar* [suffering]
- *Ripuyi* [compensation for medical expenses]
- *Shevet* [compensation for loss of work]
- *Boshet* [compensation for humiliation inflicted].

Regarding *tza'ar*, *ripuyi*, and *shevet*, one is only obligated when damage is caused out of negligence. Payment for *boshet* is obligated only when one has intentionally caused damage.

The Talmud *Yerushalmi* (chapter 2, *halachah* 5) limits the responsibility for damages caused during one's sleep to a case where the object, that was later damaged, was already in place and one came and laid down to sleep next to it. However, in a case where one fell asleep, and someone subsequently laid down to sleep next to him, or placed vessels next to him, he is exempt for damages caused during his sleep.

The Rishonim debate the reasoning of the *Yerushalmi*. The Tosafot (*ibid.*, 28b, "*u'Shmuel*") learned from the *Yerushalmi* that a person who damages in unusual circumstances is only obligated in an instance where he was able to take precautions to prevent the damage. However, if the circumstances would be completely beyond his control, he would be exempt. Therefore, if the object damaged was placed next to him only after he fell asleep, he would be exempt. The Ramban (*Baba Metziah* 82b) argues, explaining that a person is obligated on all damages he does, even if the circumstances were completely beyond his control, and even if he damaged as a result of a stormy wind, "such as the kind experienced by Eliyahu the Prophet." The reason for the exemption in the *Yerushalmi* is due to his friend's negligence when he lay down next to him, and thus he is responsible for the damage caused to himself. The Ramban's opinion seems to be in between the first two approaches. In his analysis of the *Yerushalmi*, the Ramban explains (*Chovel u'mazik*, 1: 11) that one is exempt because of his friend's negligence, which is like the Ramban's understanding of the *Yerushalmi*. Nevertheless, the Ramban writes (*Chovel u'mazik*, 6: 4; and see also *Nizkei Mamon*, 14: 2) that there are cases that are considered as "acts of G-d," in which a person is not held responsible for damages he caused. It seems that what characterizes these cases is that the person was aware of the dangers and took the necessary precautions and nevertheless the damage came about. Thus, these cases are considered an "act of G-d," and one does not attribute the responsibility for the damage to him.

The Ramah, (*Shulchan Aruch* 378: 1-2; 421: 4) ruled like the viewpoint of the Tosafot that a person is exempt when there are circumstances beyond his control. However, the Shach (378, *sif katan* 1) inferred from the wording of the *Shulchan Aruch* (378: 1-2; 421:1) that he ruled like the Ramban.

Do you want to sign your contract according to Halacha?

The Rabbinical Court, "[Mishpat Vehalacha BeYisrael](http://www.eretzhemdah.org)" 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>