

This week.....

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This edition of Hemdat Yamim is dedicated to the memory of **Yehudah ben Naftali Hertz** Cohen (Kamofsky) and

Yehoshua ben Yaakov z"l (Egon Mayer) By Ernest & Judith Gottdiener as well as

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

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Jerusalem and Tzadok – Eternally Chosen

Harav Yosef Carmel

This week's *haftara* makes special mention of the family of *kohanim*, descendants of Tzadok. At the time of the third *Beit Hamikdash*, they will be involved in the service described there (Yechezkel 43:19). Yechezkel mentioned them twice more (40: 45-46; 44:15) in similar roles. Who is this family? Why were they chosen? What can we learn from their prominence?

Aharon had four sons: Nadav, Avihu, Elazar, and Itamar. The first two were killed when acting inappropriately before Hashem. Elazar succeeded his father and helped divide *Eretz Yisrael* among the generation that entered the Land. His son, Pinchas, received a covenant of eternal priesthood due to his zealotry in defending Hashem's honor. His extremely long reign as spiritual leader spanned the majority of the period of the Judges. He apparently lost the *kehuna gedola* as a result of spiritual downturns accompanying civil wars at the time of *pilegash b'Giva* and that of Yiftach.

During the next period, Itamar's descendants held the *kehuna gedola*. First Eili ran the *Mishkan's* operations in Shilo. His sons, Chofni and Pinchas, were killed in battle, as were other *kohanim* soon thereafter. However, Eili's descendant, Achiya, served during Shaul's reign (Shmuel I, 14:3). It is apparently his brother, Achimelech, who was killed along with many other *kohanim* in Nov, by Shaul's decree, when they appeared to support David. Evyatar, Avimelech's son, wandered in exile with David.

It is not surprising that after all of these tragedies to Itamar's family, when David made a census of the *kohanim* and formed 24 shifts of service, 16 of them came from Elazar's family. The reemergence of the house of Elazar was completed when Shlomo removed Evyatar from office, after which time the *kehuna gedola* always rested in the family of Tzadok, a descendant of Elazar.

The choosing of a family of *kohanim gedolim* follows a trend of choosings that shaped the way our nation serves Hashem. *Eretz Yisrael* was chosen from the lands, and Jerusalem from its cities. The *Beit Hamikdash* was chosen among Jerusalem; Aharon was chosen as the *kohen* and David's family as kings. What is interesting is that Tzadok's choice is linked to the choice of Jerusalem. In the wake of Avshalom's rebellion, David fled Jerusalem, and Tzadok wanted to accompany him. David told him to return because if he, David, would merit returning to his throne, it would be, of necessity, in Jerusalem. David saw that, in any case, Tzadok must be linked to Jerusalem and remain there. On that day, Evyatar tried unsuccessfully to access the *urim v'tumim* and Tzadok emerged as the permanent choice as the progenitor of the *kehuna gedola*.

As our *haftara* shows, along with the eternal nature of the choice of Jerusalem, the prominence of the family of Tzadok is also eternal.

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Question: Should my wife and children give their own *mishloach manot* (=mm) or do the many mm we send suffice for everyone?

Answer: The Rama (Orach Chayim 695:4) says that women are also obligated in mm; they are to give theirs to women, as men give to men. Some *poskim* (Pri Chadash, ad loc.; see also Gra) disagree, as the *megilla* talks about a man giving his friend. The great majority of *poskim*, including Sephardim (Kaf Hachayim 695:56; Yalkut Yosef, Moadim p. 333), support the Rama.

The Magen Avraham (ad loc.:14) reports that women in his time rarely gave mm. He suggests that that only widows are required; a husband who gave to a few people fulfilled the *mitzva* on his wife's behalf. He implies that if the couple gave to two people (enough to fulfill two people's *mitzvot*), there is no need to distinguish which mm are whose or that each goes to the correct gender. He concludes that it is proper to be stringent (as does the Mishna Berura 695:25).

Recent *Acharonim* have discussed how exacting this stringency is. Neither woman nor man is ever required to hand deliver his own mm, which may be sent by a halachic agent or even a non-halachic courier [see Ask the Rabbi, Teruma 5761]. It is brought in Rav Orbach's name (Halichot Shlomo 19:17) that it is proper and sufficient to discuss with one's wife and mention to at least one recipient that the *mishloach manot* are [also] on her behalf (see footnote 27, ad loc.). He assumes no one needs to legally own the mm he gives (if he has permission to give it) (ibid.- see discussion in Hilchot Chag Bechag, 13:(16)). Rav O. Yosef (see Yalkut Yosef, ibid.) prefers that the woman herself give a specific mm to a particular woman but does not mention making sure that the food she gives is halachically hers. Still others (see opinions stated in Mikraei Kodesh (Harari), Purim 12:(37)) suggest being more stringent and having the woman make a *kinyan* from her husband or have others do so on her behalf so that she will own the mm. Even if one is conceptually stringent on this point, in a great many of our families it is probably not necessary, as spouses' normal arrangement is that their property is owned jointly. Thus, each spouse has a right to claim for him or herself that which she needs for a variety of purposes, including *mitzvot* (see Bava Batra 137b).

Where the matter is less simple is regarding children who are dependant on their parents for money. Some say that they are not required to give mm separately, as those with full financial dependency do not usually have monetary obligations. Here, it appears that it is more accepted to obligate the children, at least when they are over bar and bat mitzva (Mikraei Kodesh, ibid.:15). In this case, the children do not have joint ownership in the family's property and if one wants to follow the opinions that one must own the mm he gives, he or she should use his own money or receive permission from the parents to acquire for himself some food supplies for this purpose.

The Pri Megadim (Eshel Avraham 695:14) says that even children under bar mitzva should fulfill the *mitzva* as an obligation of *chinuch* (training). Some want to claim that we fulfill this by having the children deliver their parents' mm (see Piskei Teshuvot 695:15). However, it seems both halachically and educationally sound to give small children supplies to make and deliver their own mm to their own friends. (If they are incapable, they are too young to be obligated.)

In summary, where possible, every member of the family should preferably give at least one mm package. It is a worthwhile stringency to tell them that they, when taking the package, they will be acquiring it for themselves to give. It seems unnecessary and, in some cases, is even insulting to tell one's wife that she has to first acquire the provisions before giving hers.

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The Placement of Yihiyu L'Ratzon

(based on Berachot 1: 119-120)

Gemara: Let us consider. The words, “*Yihiyu l'ratzon imrei fi...* (Let my mouth's sayings and my heart's thoughts be accepted in good will before You)” (Tehillim 19:15), are relevant both before and after prayer. Why did the rabbis institute it after the 18 blessings? It is because David said it only after 18 psalms. Isn't it after 19 psalms? “Praiseworthy is the man...” (Tehillim 1) and “Why did the nations churn ...” (ibid. 2) form one section.

Ein Ayah: Upon deliberating whether it is fit to make a short prayer that our prayers will be accepted before or after prayer, we see both possibilities have logic. There is an advantage to do it before prayer so that it will arouse a person's heart to pray with proper intent. This is a great element of *shleimut* (completeness) beyond the gain achieved by our prayers being accepted and our requests fulfilled.

There is also an advantage to making this request after prayer because it is fit to notice that prayer is intended to impact on man's behavior, which should be good and clean after the prayer in a manner that resembles the spiritual elevation he experienced during prayer. This is as the rabbi in the *Kuzari* said that the light of prayer should illuminate the spirit in a manner that lasts until the next prayer. It slowly dims until its light is renewed at the next prayer. Therefore, it is proper to pray after the prayer that the words and feelings be in good will, including that they should have their intended effect on the heart in the best way even during the time he is away from prayer. Therefore, it is most appropriate to say this prayer as he is ready to take leave of his prayers and become involved in dealings that are divorced from holy ideas.

One should not deny that during prayer one can reach very high emotions of holiness, which are too lofty to relate to life's mundane elements. Thus, it would be good to request, as prayer commences, to succeed in reaching these lofty levels at the right time. We learned, though, from the fact that King David uttered this prayer after 18 chapters, that there is greater gain in attaching the uplifted state to one's practical daily attributes and activities. This exceeds the gains of having lofty ideals that last only while one has them, even though those too are good and pleasant. That is why David is called “the pleasant psalmist of Israel” and “the man placed above” (Shmuel II, 23:1). In other words, his elevated spirit was preserved. He strove to have his actions resemble the high state that he had during his prayers, the prayers of the straight. We learn that the main gain from spilling out his spirit before its Maker in prayer is in its connection to the constant behavior in life. Thereby, one sanctifies his life until it is close to the holy emotions that are reached in the holy moments of prayer.

Man's *shleimut* is when he tries to perfect himself individually as much as he can. However, he must realize clearly that no personal *shleimut* can be reached unless the whole (*k'lal*) is completed in Israelite national success. From that success will flow the success of all of mankind.

One should be careful that his interest in the *shleimut* of the *k'lal* not compromise his personal *shleimut* in good actions and traits. The whole cannot be complete without its components being complete and successful. On the other hand, he should not think that he can reach personal *shleimut* without yearning with all his heart for the *k'lal's shleimut* and success. Only when his diligent striving for personal *shleimut* joins together with interest in the *k'lal's shleimut* will he reach true good fortune. That is why, “Praiseworthy is the man...,” which deals exclusively with personal *shleimut* and “Why do the nations churn...,” which deals exclusively with the matters of the *k'lal* form one section, and are combined with an “*ashrei*” in the beginning and the end.

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An Incomplete Sale of an Apartment

(from Halacha Psuka, Condensation of a Psak by Beit Din Gazit, Sderot)

Case: The plaintiff (=p) sold an apartment to the defendant (=def). The contract included a clause that def could move into the apartment on a certain date, after making the last payment. Def moved into the apartment, with permission, two months earlier than the date in the contract and a month before the final payment was made. Pl says that since def moved in before the last payment, he had been living in p's apartment and should pay rent for that time. Def says that he acquired the apartment when he moved in and thus should not pay rent.

Ruling: Although either money or a contract can effect a sale of land, in a place where there is usually a sales' contract, money without a contract is not a *kinyan* (Shulchan Aruch, CM 190:7). In Israel today, all transactions are registered in the Tabu, and, therefore, many *poskim* posit that before such registry, the transaction is not complete because the sides have not reached full intention to complete the transfer. However, in this case, both sides agreed that they intended the transaction to be complete before the Tabu registry, through the *kinyan* of money (see Chazon Ish, Likutim 16 and Maadanei Eretz, Shviit 18, who agree conceptually). However, the contract says that this would be only after the final payment, and so def was living for a month in p's apartment.

Regarding one who lived in another's apartment without permission, he must pay if the dweller benefited and the owner lost. Def benefited because otherwise he would have rented another apartment for the month. Did p lose?

The Rama (CM 363:10) says that one who occupied the house of someone who was out of town and was not trying to rent it out is exempt from paying, as the apartment was not slated for renting. It would seem that the apartment in question was not going to be rented for such a short time. However, *beit din* viewed it as slated for rental to def, as it was natural for him to move into specifically this apartment. Therefore, def has to pay rental.

The Rama (ibid.) says that if one says to a friend: "Live in my courtyard," he does not have to pay rent. This seems to contradict the Rama's ruling (CM 246:17) that if one tells his friend to eat with him, he has to pay for his food. The K'tzot Hachoshen (246:1) claims that the former Rama is talking about a case where the one who lived there would have rented elsewhere. Therefore, he would have to pay only if he caused a loss to the owner, which does not apply if the owner invited him. Regarding the eating, he has to pay for the benefit that he did have, which we will assume requires payment unless there is a special indication that the provider wanted to do so for free. In our case, def benefited, and, furthermore, the history of their relationship makes it clear that p did not intend to provide def with valuable benefits for free.

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Baba Kama 63-69

Stealing a Stolen Object

This week in the Daf Hayomi (65a) we learned the guidelines used to determine how much a thief has to pay for the object that he stole. The basic rule is that, if the object stolen no longer exists, then the thief pays according to the value of the object at the time of the theft. However, if the object's value rose after the time of theft, and the thief actively damaged the object, for example, he stole a barrel of wine and later on broke it or drank it, then he has to pay according to its higher value at the time that it was damaged.

The Ketzot Hachoshen (34, 3) questions this Halacha on the basis of the Mishnah in the beginning of the Perek (62b) that states: "One who steals from a thief does not pay payments of Kefel (the fine that requires the thief to pay twice the value of the stolen item)." The Ketzot learned from this Mishnah that for an object that is already stolen, there is no concept of stealing again for which one can be liable. Therefore, he asks, why is the thief who broke a barrel of wine, which he already stole, held liable? The Ketzot thus concludes that the thief who broke the stolen barrel is not considered to have committed an additional act of theft, but rather he is held liable because he is considered a Mazik, a damager, as he damaged the owner's barrel when he broke it (there are implications to being held liable for damage as opposed to theft). Therefore, if at the time of the breaking of the barrel it was worth more than at the time of theft, we can consider him a damager and obligate him to pay the higher value.

The Netivot (34, 50) in principle agrees with the Ketzot that one who steals a stolen object is not obligated to pay the owner; since the object was already taken from them, he did not cause the owner any further harm. However, claims the Netivot, if one does an action which increases the degree of the theft, then he can be held liable as a thief. Therefore, according to the Netivot, when a thief breaks the stolen barrel, this can be seen as an increase in the theft, since until he broke the barrel it could have been returned to the owner, and now it can no longer be returned. Thus, the breaking of the barrel is considered an act of further theft and the time of breaking is also considered a time of theft, and therefore the thief is obligated to pay according to the time of theft during which the barrel was worth more. However, the Imrei Moshe (siman 32) and other Achronim disagree with the basic assumption of the Ketzot and the Netivot. They claim that the Mishna stated only that there is no fine of paying double for one who steals a stolen object, but he still needs to pay the value of the object itself. According to their opinion it is clear that there is no problem with defining a thief, who stole a barrel of wine and then broke it or drank it, as committing a further act of theft, and he can thus be held liable by the laws of theft for this action.

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