

This edition of Hemdat Yamim is
dedicated to the memory of
**R' Meir ben Yechezkel Shraga
Brachfeld**

o.b.m

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This week.....

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A Trustworthy Servant

Harav Yosef Carmel

After being given at Mara and "featured" prominently at *matan Torah*, Shabbat is mentioned in this week's *parasha* (Shemot 31:17) and next week's. We will try to understand these mentions and Moshe Rabbeinu's connection to Shabbat with the help of the Shabbat morning *tefilla*: "Moshe will rejoice with the giving of his portion, for a trustworthy servant You called him; a crown of grandeur You gave to him, when he stood before You at Mount Sinai; two tablets of stone he brought down in his hand, and it was written in them the guarding of Shabbat."

When Hashem contemplated destroying *Am Yisrael*, Moshe rose to the occasion, willing to sacrifice his interests to save them. The *pasuk* says: "If You will bear their sin; and if not, erase me from the book that You wrote" (ibid. 32:32). Our *parasha* also relates that when Moshe came down from the mountain, his face glowed (ibid. 34: 29, 35). Let us now summarize the historical progression of the time. Moshe began his leadership of Bnei Yisrael in Egypt while they were still slaves. The first step in their liberation was to convince Paroh to give them a weekly day of rest – on Shabbat. This was not merely a respite from work but a break from physicality, enabling them to concentrate on spirituality. Upon becoming leader, Moshe actually became "a slave to the holy nation." He thereby taught the nation the notion that pushing off personal needs for the needs of the collective is uplifting. The height of Moshe's servitude to the nation is what we mentioned, that he was willing to be wiped out of Hashem's book on the people's behalf.

The first commandment about Shabbat came after the Torah was given at Sinai, and it gave a spiritual significance to the exodus. However, the sin of the Golden Calf, which was the wrong type of servitude, put into question the centrality of spirituality in the nation's life. Moshe's willingness to sacrifice ensured Hashem's forgiveness. First, his shining countenance was a sign to all that he was a trustworthy servant. Also, Bnei Yisrael received again the gift of Shabbat, which was accompanied in the second tablets with the command of *shamor* (guard).

We now return to the Shabbat *tefilla*. "Moshe will rejoice with the giving of his portion (the gift of the original Shabbat in Egypt and his acceptance of his mission), for a trustworthy servant (of the nation) You called him; a crown of grandeur You gave to him (the shining face), when he stood before You at Mount Sinai (begging for the nation's survival); two tablets of stone he brought down in his hand (the second tablets), and it was written in them the guarding of Shabbat ("guard the day of Shabbat")."

May we merit again leaders who resemble the trustworthy servant, Moshe. Let us also remember that Shabbat is our liberation from the enslavement to a variety of Golden Calves.

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Question: I accidentally made the *beracha* of “*al mitzvat tefillin*” when putting on my *tefillin shel yad*. What should I have done regarding *berachot* from that point?

Answer: Before addressing the heart of your question, let us guess your background. You must be an Ashkenazi, who usually makes a *beracha* each on the *tefillin shel yad* and the *shel rosh*. A Sephardi makes *al mitzvat tefillin* only when he talks in between putting on the two *tefillin* (Shulchan Aruch, Orach Chayim 25:9) or when he can put on only the *tefillin shel rosh* (ibid. 26:2). He would not have made the mistake that you did, which is common for Ashkenazim, who make *al mitzvat tefillin* daily. We will see later why being Ashkenazi makes a difference.

The *gemara* (Menachot 36a) cites R. Yochanan who says that when fastening the *shel yad*, one makes the *beracha* of “*l’haniach tefillin*” and upon placing the *shel rosh* he recites *al mitzvat*. On the other hand, the *gemara* cites Rav Chisda that one makes a *beracha* on the *shel rosh* only if he talks in between the two *tefillin*. The *gemara* answers that if one is silent, he makes one *beracha*, and if he talks he makes two *berachot*. One approach in *Rishonim* (including Rashi, ad loc, accepted by Sephardim- see Shulchan Aruch, OC 25:6) is that the number is the total of *berachot* for the two *tefillin*. One is recited before fastening the *shel yad*. If he talks, a second one is said on the *shel rosh* instead of saying nothing then. According to Rabbeinu Tam (see Tosafot ad loc.), one always recites *al mitzvat* on the *shel rosh*. If he spoke, he also repeats then *l’haniach*. The Rama (OC 25:6) accepts and sets the *minhag* among Ashkenazim to follow this approach.

The Rosh (Pesachim 1:10), following Rabbeinu Tam’s approach, says that both *berachot* apply to both the *shel yad* and the *shel rosh*. However, *Chazal* preferred that we not recite two *berachot* on one *mitzva*. Therefore, they attached the *beracha* that is more appropriate for one who is about to start putting on *tefillin* (*l’haniach*) to the *shel yad* and the more general *beracha* of *al mitzvat* to the *shel rosh*, upon completion of the *mitzva* of *tefillin*. The Taz’s brother (in a *teshuva* found in the Taz, OC 25:6) says that *al mitzvat* applies to the remembrances that *tefillin* conjure up and *l’haniach* applies to the *mitzva*’s specific detailed actions.

The following halachic ramifications emerge from this generally accepted approach. Since both *berachot* go on both *tefillin*, if one recited *al mitzvat* when putting on the *shel yad* and *l’haniach* when putting on the *shel rosh*, he fulfilled the *berachot* requirement despite the imperfect order. Therefore, says the Shaarei Teshuva (25:5, based on the Michtam L’Dovid), if he said *al mitzvat* and fastened the *shel yad*, he recites the remaining *beracha*, *l’haniach*, when laying the *shel rosh*, and all is covered. Although some argue (see ibid.) this is the best solution (see B’er Moshe V, 10).

The matter would be different if you caught your mistake before fastening the *shel yad*. Since *l’haniach* was in fact instituted to precede the *shel yad* and covers the *shel rosh* as well, you should have recited *l’haniach* after *al mitzvat* and before fastening the *shel yad*. At this point, with both *berachot* already recited, you would not have made any *beracha* before putting on the *shel rosh* (Shaarei Teshuva, ibid.). If you had caught and corrected the mistake quickly enough by inserting the words “*l’haniach tefillin*” within around a second and a half of saying *al mitzvat*, then we could apply the regular rule that mistakes in *berachot* can be fixed *toch k’dei dibbur* (B’er Moshe ibid, in contradiction to the Kaf Hachayim’s (25:39) novel ruling; see Piskei Teshuvot 25:12).

If a Sephardi, for some reason, recites *al mitzvat* as his lone *beracha*, he would have fulfilled the *mitzva* and would not make a *beracha* upon putting on the *shel rosh* (Michtam L’Dovid, ibid.).

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Ein Ayah

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

The Intersection of the Intellect and Emotion

(based on Ein Ayah, Berachot 1:127)

Gemara: Rabbi Yochanan said in the name of Rabbi Shimon Bar Yochai: that which the *pasuk* says: “Her mouth opened with wisdom, and the teachings of kindness were on her tongue” - corresponding to whom did Shlomo say this? He said this specifically corresponding to his father, David, who lived in five “worlds” and said *shira* (sang) to Hashem: He lived in his mother’s stomach and said *shira* ... He came out to this world and looked at the constellations and said *shira* ... He nursed from his mother’s breasts and looked at them and said *shira* ... He looked at the downfall of the wicked and said *shira* ... He looked at the day of death and said *shira* ... [For each idea a Biblical source is cited.]

Ein Ayah: There are two things that are needed for a person to reach *shleimut* (completeness): intellectual knowledge and emotion. The source of intellectual knowledge is empirical knowledge, acquired wisdom and experience, all of which have nothing in common with the feelings of the heart.

Emotion emanates from the power of imagination and the growth of the poetic side of the human spirit. When it senses the Divine loftiness, it can reach an ideal level of love of Hashem, may He be blessed.

Usually, these two wonderful powers interact in a not fully harmonious manner. When the intellect is preoccupied with gathering cold information to understand what and why everything is happening, the emotion is not aroused to yearn with the depth of pouring out the soul to the Holy and Elevated. Similarly, when the heart is excited with feelings of holiness, the power of rational intellectual judgment is not capable of functioning.

However, there are exceptional people who are able to reach *shleimut* in both of these powers. They can recognize the truth based on the intellect’s various elements and based on experience, and, specifically through this, they can develop the *shleimut* of feeling the grandeur of Hashem’s actions. This is the basis of the love of Hashem that comes from the wonderful recognition of His love and kindness.

It is in regard to this phenomenon that the *pasuk* of “Her mouth opened with wisdom” was said. The beginning [of the relationship with Hashem] always has to be with wisdom, with the ability to judge and with the rigor of arriving at true knowledge and the fruit of wisdom. The *pasuk* continues: “and the teachings of kindness were on her tongue,” referring to the emotions of Divine pleasantness and the emotions of holiness.

By whom did we find the strength of the accumulation of knowledge and recognition that actually brought on lofty emotions? It was David, the pleasant psalmist of Israel. He did not settle for basing his psalms on superficial feelings regarding things that are apparent from the first look. Rather, he lived in “five worlds,” contemplating with great wisdom about all of Hashem’s actions. He focused on the way He leads man, from the day of his birth up to and including the day of his death, until he becomes elevated to the goal of having an elevated human soul, which remains when the body dies. This type of emotion does not come from a simple natural emotional base, but can come about only after much work and deep knowledge. This is the connection between the study of kindness which is related to feeling and song, with the source of wisdom, to know and understand the calculations of the whole of Divine actions, which can serve as a basis of proper emotion.

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Firing or Worsening a Teacher's Work Conditions During the Year

Based on Halacha Psuka 54- A Condensation of Techumin X, pp. 204-215

Case: The plaintiff (=pl) is a teacher at the defendant (=def), a school belonging to a private school system. Pl's contract includes the following provisions. "The last day to inform about layoffs is as accepted among education workers." "Based on the Shulchan Aruch's ruling, our teachers do not receive tenured positions but may be rehired to one-year contracts; in some cases, they can be fired in the middle of the year." After the normal date of notification, def informed pl that he would be moved from his present position to a more difficult one. Pl claims that this is tantamount to firing, and that he thus deserves to be paid for the year. The possibility of firing a teacher in the middle of a school year contradicts the general teachers' contract, and the law is that rights that emanate from general contracts supersede provisions of individual contracts. Def responds that the general contract applies to teachers in the various formats of public schools, whereas def is a private school system, which is entitled to make its own rules of employment.

Ruling: The Shulchan Aruch (CM 333:2) says that a worker who starts working for a fixed time period and is fired is paid for the entire period; if he is a teacher, he is paid in full despite his "vacation time" (ibid. 334:4). On the other hand, one may replace a teacher with a better teacher (Bava Batra 21a). The Aruch Hashulchan says that the *gemara* applies even within an employment period. The Minchat Yitzchak says that it is true only in situations where teachers were hired on a daily basis. A father could decide to hire someone new instead of "rehiring" the old teacher; it was not considered firing. In contrast, in our setting, removing them during a period is problematic. Furthermore, the Aruch Hashulchan would agree when a *kinyan* such as a contract was done.

We follow the personal contract despite the general law against firing because the law may create a standard procedure, but this can be overcome by an explicit personal agreement. Also, the Education Ministry accepts def's claim that the general contract does not apply to private networks.

The Shulchan Aruch rules that one can terminate a teacher prematurely only when he is deficient. There is no grounds to say that pl is deficient. However, according to the majority ruling's interpretation of the contract, the administration is authorized to fire based on its judgment of what is best for the students' welfare, and it certainly may change the teacher's task, even for the worse. This is apparent from the fact that the contract does not state an end to the employment period. Even if the clause can be understood in different ways, pl, whose rights would be a result of the contract, would have to prove that his reading is the correct one. Therefore, def may remove pl from his post and is required to compensate him at that point only according to the normal *minhag* of severance pay.

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Baba Kama 70-76

"Ed Zomem"- a Torah Invention?

When two witnesses testify, the Torah states that, after the judges interrogate them, if they passed the interrogation, they are believed and the judges can even deliver capital punishment based on their testimony. Nevertheless, there is a possibility that two false witnesses will collaborate and plan their testimony and will pass the interrogation of the judges. The Torah (Devarim 19, 16-21) recognizes this possibility and therefore rules that witnesses, whose false testimony caused the judges to rule against an innocent person, receive the same punishment they tried to inflict. Witnesses who were determined to have lied are called "Edim Zomemim." The question is, how can we indeed determine that the witnesses lied, for even if new witnesses come and testify that the first witnesses lied, why should we believe the second witnesses? Perhaps they are lying and the first witnesses are telling the truth.

The Mishna in Makot (1, 4) states that, indeed, we do not always believe the second witnesses, but rather it depends on the nature of their testimony. If they are arguing with the first witnesses regarding the content of the testimony, for example, if the first witnesses testified that they saw someone murder a person, and the second witnesses testified that he could not have murdered, since they saw him in a different place at the same time, in such a case we do not know who is telling the truth and therefore we do not accept either testimony. However, if the second witnesses do not address the content of the testimony of the first witnesses, but they rather testify regarding the witnesses themselves and claim that they could not have witnessed the murder, since they were at a different place at that time, then we believe the second witnesses and punish the first.

This week in the Daf Haymoi (72b) we learned an argument between Abayey and Rava regarding an "Ed Zomem," a witness who was determined to have lied in his testimony. According to Abayey, just like any person who transgressed a prohibition is deemed unqualified to testify from the time he transgressed, so too an Ed Zomem, since it was determined that he lied in his testimony, he is deemed unqualified to testify from the time he testified falsely. However, according to Rava, he is only deemed unqualified to testify from the time that the second witnesses testified that he lied in his testimony. The Gemara explains (in its first explanation of Rava's opinion) that according to Rava, the very fact that we believe the second witnesses is not something we understand but rather an 'invention' of the Torah; for who is to say that the second witnesses are telling the truth and not the first ones. Therefore, we can rely on the testimony of the second witnesses only from the point of time when the Torah stated that they should be believed, and that is from the time of their testimony. However, we cannot retroactively disqualify the first witnesses from when they testified, on the basis of the testimony of the second witnesses, since we do not really know that they are the ones telling the truth. The Gemara (73a) states that the Halacha is according to the opinion of Abayey. The Tur (Choshen Mishpat 38) wrote an explanation as to why the Torah ruled that the second witnesses are to be believed:

"What is the difference between Hakchasha (when the two sets of witnesses are considered to be contradicting each other and we do not accept both testimonies) and Hazama (where the second witnesses are believed)? Hakchasha is not a testimony as to the witnesses themselves but rather a contradiction regarding the content of their testimony, for example, if these say that A borrowed from B and these say that we know that A could not have borrowed, since we were with him all day and we saw that he did not borrow. However, Hazama is testimony as to the witnesses themselves, for example, they say that at the time you say you saw him borrow you were with us. And, because of this, we believe the second witnesses since they testified regarding the first witnesses themselves and it is as if they testified that they (the first witnesses) murdered or violated the Shabbat and they (the first witnesses) are not believed regarding themselves to say we did not do such a thing."

The Lechem Mishne (Edut 18, 2) asks why the Tur is giving an explanation to this matter if the Gemara stated that this is an 'invention' of the Torah. He answers that the Gemara only stated so when explaining the opinion of Rava, but according to Abayey (and the Halacha is like Abayey), Hazama is not an 'invention' but rather is based on the reasoning stated by the Tur. However, he proves from the wording of the Rambam (Edut 18, 3) who writes "that which the Torah believed the second witnesses over the first witnesses is a decree of the Torah," that the Rambam disagrees with the Tur and feels that even according to Abayey this is an 'invention' of the Torah. Abayey just disagrees about the scope of this "invention;" he believes that we accept the testimony of the second witnesses entirely and disqualify the first witnesses retroactively.

However, the Rambam in his commentary to the Mishna in Makot (1, 4) explained in a similar fashion to the Tur why the Torah ruled that the second witnesses should be believed. If the Rambam knew this explanation then why did he write in the Mishne Torah that this is a decree of the Torah?

The Netivot Hamishpat (38, 2) explains that even when we say that "Ed Zomem" is an 'invention', we do not mean that there is no logic behind it. Rather, we mean that the Torah gives us a new perspective. When two witnesses come and claim that the two other witnesses are lying, since they weren't present in the place of the event that the first witnesses are testifying about, we could have thought that this is just another case of a contradiction between witnesses. The Torah's 'invention' is to change our outlook. We should not look at this as a case of contradicting testimonies, but rather as a testimony regarding the first witnesses themselves, and therefore the second witnesses

are believed. Therefore, on the one hand, this new an outlook is an 'invention', but on the other hand, this outlook is logical, and we accept it entirely.

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