

This edition of Hemdat Yamim is
dedicated to the memory of
**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.....

- **Another Quality of a Jewish Leader- A Glimpse from the Parasha**
- **Should Ancient Hebrews be referred to by the name "Hebrews" or "Israelites"? - Ask the Rabbi**
- **Multi-Facted Harmony, Belief Preparing for Knowledge**
- from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l
- **A Contractor's Work That Was Stopped in the Middle- P'ninat Mishpat**
- **Two People who Deposited Money Together- Studies in Choshen Mishpat Related to the Daily Daf**

Another Quality of a Jewish Leader

Moshe Rabbeinu led Bnei Yisrael for approximately 41 years. In our *parasha* we find him seeming to cave in under pressure. "Did I conceive this nation or did I give birth to it, that You should say to me, 'Carry it in your bosom as a nursing woman carries the nursing baby' I will not be able to bear this whole nation alone, for it is too heavy for me" (Bamidbar 11: 12, 14). What caused the shaking of Moshe's resolve? After all, he had weathered worse storms, such as the danger at Yam Suf, the Golden Calf, etc. He would continue in his post for another 39 years and act strongly in such events as the spies and the rebellion of Korach.

Let us take a look at what "set off" Moshe. The people complained that they lacked meat, even though they had an ample supply of manna. On one hand, the stakes were lower compared to some of the other episodes where Moshe showed strong leadership. However, this may have been the problem. Moshe rose to the occasion to fight for real issues: to save the lives of the people, to fight idolatry and defection from Hashem's plan for the nation, etc. In this case, the matter was just dealing with human frailties, i.e., the desire for meat instead of manna. The man of G-d found it hard to deal with the disrespectful "*kvetching*" of people on such a mundane matter.

This idea may explain the analogy Moshe picked. A nursing mother wants nothing more than to feed her child. Yet sometimes the baby feels hungry and becomes impatient with his mother. A whimper would suffice to bring the mother to fulfill his desires, but instead he may cry inconsolably for what he wants, until he is not even able to enjoy it when his mother is ready. It is a rebellion without a cause. A baby does it in one way; a nation, including Bnei Yisrael, will have a more sophisticated type of tantrum. This was a human frailty that Moshe had trouble dealing with.

It is interesting how Hashem answered Moshe. As Moshe did not want to continue alone, Hashem had him find 70 people who were "elders of the nation and its task masters" (ibid.:16). Rashi points out that these were men who received lashes instead of Bnei Yisrael when the latter were unable to finish the unreasonable work Pharaoh had decreed upon them. They had given of themselves for the people in a matter that showed sensitivity to their brethren's pain. Why should they get hit, especially when some of Jews probably did not pull their weight to the maximum? They were simply people who were sensitive to the suffering of others who lacked the backbone to absorb difficulties as they did. While Moshe also showed his sensitivity, he needed partners in this regard.

Leadership requires more than heroic acts and visionary shepherding. There is also a need for those who understand the way the simple person feels and are willing to deal with the pain that accompanies human frailty.

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.

Question: I am on my state's History- Social Science Curriculum Framework and Evaluation Criteria Committee. We have been debating whether the Ancient Hebrews should be referred to by the name "Hebrews" or "Israelites." How does your organization refer to your ancient ancestors? Related questions: Was it the Hebrews or the Israelites who organized the Kingdom of Israel? From which did the teaching that God established ethical principles for humankind emerge?

Answer: Clearly the names are used interchangeably along with the name Jews (which is a misnomer, as this technically refers only to the descendants of the tribe of Judah). However, study of the most authoritative text, the Holy Scriptures (=Hebrew Bible) reveals that there is a clear, although not absolute, historical distinction between Hebrews and Israelites.

The first person called an *Ivri* (=Hebrew) is Abraham (at the time, Abram) in Genesis 14:13. One explanation (see Ibn Ezra's long commentary to Exodus 21:2) of this appellation is that he descended from Ever, a prominent great-grandson of Shem, the son of Noah (Genesis 10: 21-24), who was an early monotheist according to Jewish tradition. (Many of ancient nations were named after progenitors found in that chapter.) Another possibility (see Rashi's to Genesis 14:13) is that Abram came from the other side (*ever*) of the river (Euphrates), as is stressed in Joshua 24:3. The name, Israelites (*Bnei Yisrael* = Sons of Israel), could not have existed at the time, for God renamed Jacob, Abraham's grandson, Israel much later. However, even after the renaming, *Ivrim* (Hebrews) was used to identify people from that family. Joseph was called an *Ivri* three times (Genesis 39:14, 17; *ibid.* 41:12) and said he was kidnapped from the Land of the *Ivrim* (*ibid.* 40:15). They were a known group in Egypt; the Egyptians considered it a disgrace to eat with them (*ibid.* 43:32). In Exodus, when the family became nation size, they are still referred to several times, including by the Biblical text, as Hebrews. Moses was a "child of the Hebrews," who later saw a Hebrew being hit and two Hebrews fighting (see Exodus 2: 6, 11, 13). God is presented to Pharaoh as the "God of the Hebrews" (*ibid.* 7:16). In total there are 11 such references to the family/nation in Exodus as Hebrews, all before the exodus took place. There are also references to Israelites there.

There are no references to the nation as Hebrews throughout the Pentateuch after the exodus. The only exception is the references to a Hebrew slave (Exodus 21:2; Deuteronomy 15:12) that one may acquire. In the entire rest of the Bible, Hebrews are used only in reference to slaves (in which the individual resembled his ancestors, before they were a free nation) and in the context of how the Philistine's called their Israelite foes (several places in Samuel I). Also, Jonah (1:9) called himself a Hebrew, arguably in a self-deprecating manner. At the same time, there are thousands of uses of the term Israelites in Biblical accounts after (including some before) the time of the exodus.

In short, the nation that left Egypt, received the Torah at Sinai, and founded the Kingdom of Israel in the former Land of Canaan was known as *Bnei Yisrael* (Israelites). Previously there had been a family/tribe that started with Abraham the Hebrew. He, followed by the first generations of descendants, spread monotheism and morality as respected citizens/leaders of the Land of Canaan (see Genesis 14: 14-23; 21:33; 23:6; 26: 26-29; 35:5), including a region known as the Land of the Hebrews (see above). This family/tribe was known to the outside world, for the most part, as Hebrews. Their forebears continued the same mission as a nation of Israelites (see Exodus 19: 1-6).

So, while the names Hebrews and Israelites can and often are used interchangeably, the more precise usage depends on the exact period of ancients one refers to.

"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

Multi-Faced Harmony

(based on Ein Ayah, Berachot I, 163)

Gemara: On Shabbat [in the *Beit Hamikdash*], they would add another *beracha* for the *mishmar* (the group of *kohanim* finishing a week of service): “He who had His Name dwell in this house should have love, brotherhood, peace, and friendship dwell among you.”

Ein Ayah: The *Beit Hamikdash*, from which light and knowledge of Hashem spreads to the world, will finally bring ultimate global peace and human perfection in knowledge and morality. This is promised by the *pasuk*, “Many nations will walk and say: Let us go up to the house of Hashem... and they will beat their swords into plowshares” (Yeshaya 2: 3-4). This will come by means of raising the banner of Israel, whose set place is the *Beit Hamikdash*, the eternal place of Hashem’s light on earth. Therefore, it is fitting that He who had His Name dwell in this house to bring global peace will cause love, brotherhood, peace, and friendship to dwell among the *kohanim*. That will enable them to guide toward the goal of global peace.

There are four elements of man’s existence, from all of which peace can come when used properly: emotion, nature, intellect, and chance. The emotions of the heart bring on love; nature causes that those born from one race, one nation, or, certainly, one tribe feel kinship toward each other; intellect teaches one to appreciate peace because it is objectively good. Chance, which brings people together in a place or an occupation, increases friendship.

All these positive outcomes are actualized when people go in the straight path. However, when the path curves, these connections can become points of friction. That is why there is a blessing that in all four of these areas, love, brotherhood, peace, and friendship will dwell through emotion, nature, intellect, and chance.

Belief Preparing for Knowledge

(based on Ein Ayah, Berachot I, 164)

Gemara: Whoever did not say “*Emet v’yatziv*” in the morning or “*Emet ve’emuna*” in the evening did not fulfill his obligation, as the *pasuk* says: “To tell your kindness in the morning and your trustworthiness in the nights” (Tehillim 92:3).

Ein Ayah: The night, in relation to the day, is like the preparation in relation to the goal. The rest we have at night prepares for the work of the day. So too, *emuna* (belief) prepares for the completeness of true knowledge regarding Hashem’s kindness. Without belief one would not fulfill *mitzvot* and all the attributes that eventually lead to recognition of the truth. Therefore, belief is considered like preparation, which night represents, in regard to what the intellect and senses grasp. It is necessary for one who is to grasp as he reaches the heights of intellect to be properly led in the path of belief. He certainly cannot reach true knowledge without being prepared by belief. A person also will not have flashes of truth at all times, as the Rambam says. His intellect may work well, and he will independently realize the truth of the Torah views. Yet, even as one who is in the light of day, he still must always be armed with the ammunition of belief. This enables his completeness to find a place to give light even when the intellectual inspiration subsides, a time that can be compared to night. That’s why the *gemara* mentions day before night, because often, even during the times of “intellectual daylight,” some “dark of night” lingers. Therefore, one always needs to be ready to hold on to belief, which is the eternal light. This is also hinted at regarding the moon, about which it says: “Go and rule in the day and the night” (Chulin 60b).

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)

A Contractor's Work That Was Stopped in the Middle

(based on Halacha Psuka vol. 58- condensation of a *psak* of Mishpat V'halacha B'Yisrael)

Case: The plaintiff (=pl) is a contractor who was hired by the defendant (=def) to renovate her apartment. During the work, def added more work. At some point, conflicts arose and the work was stopped. Def took another contractor to finish the job and, as usual, it cost more than it would have cost for pl to finish the job. Pl demands to be paid for the value of the work he carried out. [Other elements of this *din Torah* were discussed in Halacha Psuka, vol. 43.]

Ruling: The Shulchan Aruch (Choshen Mishpat 331:3) says that if one did work for which a price was not set, he is paid according to the lower range of accepted salaries in that place for that type of work. However, in this case, it should be determined in line with the original price estimate that pl presented. This is based on the Rama (CM 333:8) who says that if a worker agreed upon a price with one group of local leaders and then ended up being hired by a different set without stipulation, we assume that the same price is in force. The additional work, which was tacked on and is not to be viewed as a second hiring, should be modeled after the type of rate found in the first estimate. Since pl was not paid by time, the partial work should be determined based on the percentage of the entire job that was agreed upon.

In this case, def claimed that pl did deficient work. When this is the case or a worker changes the result of his work without authority, R. Yehuda (Bava Kama 100b), like whom we *pasken*, says that the worker receives the lesser of the following: the value of the improvement he made or the expense of the supplies used. Tosafot brings an opinion that the improvement is in comparison to the object as it was supposed to have been fixed. According to the Rambam (Sechirut 10:4), the improvement is in relation the object's price before the work. The Shulchan Aruch (CM 306:3) and Shach accept the Rambam's ruling, whereas the Rama and Netivot (ad loc.) accept Tosafot. The Shach also says that the worker should also be paid for his "toil time."

There were materials that were prepared by third parties, which def did not use because neither side communicated with the other after the conflict arose. One *dayan* reasoned that such "undelivered" work should not even be compensated partially. However, he can get paid for outlays that he incurred at def's behest. The other *dayanim* reason that since the work was done, pl should be paid.

Regarding doubt as to the facts regarding the work done, the Shulchan Aruch (CM 12:5) says that one should rule in a manner that resembles compromise. This is especially true in a case like this where evaluating every element of the work would be a drawn-out, expensive process.

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 Metziah 36-42

Two People who Deposited Money Together

This week in the Daf Hayomi, the Gemara (37a) deals with a few cases where a person knows that he owes money, but he is in doubt as to whom he owes it to. One of the cases is where two people gave money to someone to watch for them; one gave a hundred and the other two hundred. When they came to retrieve their money, each claimed that he deposited the two hundred, and the guardian did not remember who deposited the hundred and who the two hundred. The conclusion of the Gemara, according to the ruling of the Rambam (She'ela Vepikadon 5, 4), and the Shulchan Aruch (Choshen Mishpat 300, 1), is that, if they deposited in two separate bundles, then he has to pay two hundred to each of them, since he was negligent, as he should have written the names on the bundles. However, since one of them is lying, each one of them needs to swear that he deposited two hundred. However, if they gave the money in one bundle, the guardian gives a hundred to each and the remaining hundred is left aside until it is clear who the owner is. The reason is that, since they did not separate the money, the guardian is not responsible to know which amount belongs to which person.

The Rishonim question the ruling in the case that exempts the guardian. This case appears to be a classic case of a person who admits to part of the claim, and is therefore required to swear on the rest of the claim ("Modeh Bemiktzat"). Each depositor claims that the guardian owes him two hundred, and the guardian admits owing one hundred. However, since he cannot swear to each person that he does not owe him the second hundred, since he is in doubt, he should be forced to pay, according to the rule that one who is required to swear and cannot do so must pay (Baba Metziah 98a). Thus, even though they deposited the money in one bundle, since the guardian admits to part of the claim, he should be required to pay the full amount to each of them!

The Ramban (Baba Metziah 37a) answers that, since it is clear that no more than three hundred was deposited, and the guardian is willing to give three hundred, there is no claim against the guardian, and the dispute is between the two depositors. Thus, the guardian is not considered as one who admits to part of the claim. The Rashba (ibid) does not accept the Ramban's answer. Rather, he claims that the rule that a person who cannot swear, since he is in doubt, must pay, is only valid if we expect him to know and be able to swear on the rest of the claim. However, if we don't expect him to know, we do not require him to pay for not knowing and not being able to swear. Thus, in the case where two people deposited together in one bundle, since we do not expect the guardian to know who deposited two hundred and who one hundred, he is not required to pay even though he admitted to part of the claim and is not able to swear.

This claim of the Rashba is a matter of dispute. According to the Rambam, even if the defendant is not expected to know, if he cannot swear, he must pay. Therefore, the Rambam rules (ibid 5, 6) that if a person gave a wallet with money to someone to watch, and the guardian was negligent and lost the wallet, and he does not know how much money was in it, he must pay the full amount that the owner of the wallet claims was in it. The reasoning is that, since he admits to part of the claim, as he admits that there was money in the wallet, and he cannot swear as to how much there was, since he does not know, he must pay the full claim of the plaintiff. The Ra'avad (ibid) disagrees on the basis of the reasoning of the Rashba; since we do not expect the guardian to know how much money was in the wallet, we cannot make him pay for not being able to swear.

The Shach (Choshen Mishpat 72, 51) rules in accordance with the Rambam, that even in a situation where the defendant is not expected to know, if he is required to swear and he cannot, he must pay, unless it is a situation where it is clear that he does not know and could not have known.

Thus, anyone who receives something to guard, should make sure to know exactly what he is receiving, and if he receives an amount of money he should count it, so that he will know exactly how much he is liable for.

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>