

This week.....

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bat Harav David and Bina
on the occasion of her yahrzeit,
24 Tammuz and members of her family who perished in the shoah
Al Kiddush Hashem

Moshe's Leadership and Yehoshua's Leadership

Harav Moshe Ehrenreich

In our *parasha*, Moshe is told to pass on the leadership to Yehoshua, a fine candidate to replace an irreplaceable leader (Bamidbar 27:18). The *midrash* illustrates the seriousness of the loss of Moshe, saying that had he brought Bnei Yisrael into *Eretz Yisrael*, the *Beit Hamikdash* would not have been destroyed and no nation would have been able to stand up to them. The author of the Mishne Lamelech asks how Moshe would have prevented destruction, considering that the nation committed the three cardinal sins.

He answers based on the *p'sukim* (Devarim 4: 22-23) that connect the ideas that Moshe was going to die and that Bnei Yisrael would worship false gods. He explains that with Moshe tapping into the merit of *Eretz Yisrael*, the desire for idol worship would have been nullified. In that way, Moshe's entrance would have prevented the things that brought on the destruction of the *Beit Hamikdash* from occurring.

Rav Yisraeli z.t.l. (Harabbanut V'hamedina, pg. 310) raises another way in which Moshe's leadership in the Land would have prevented destruction and Yehoshua's shortcoming in this regard. Bnei Yisrael's entry into the Land after 40 years of wandering signified a sharp transition from a life that depended on miracles to one that externally appeared natural. There was no more manna, special fire, or special cloud to show Hashem's presence on a daily basis. The people had to fight and settle the Land. The spiritual challenge was to recognize that within the "natural" life, Divine intervention affects everything. That is why the first battle, the Battle of Jericho, included a miracle. They circled the city for seven days with the ark of the tablets; on the seventh day the walls fell to the sound of the *shofar*.

In order to capture the miraculous nature of the event, a ban was made on use of the city's spoils. However, this was insufficient to train the people's mindset. Hashem had told Yehoshua that in order to succeed, the *sefer Torah* would have to be with them and be studied day and night (Yehoshua 1:8). Because this imperative was not fully kept, an angel appeared and told Yehoshua that he had failed to involve himself in Torah study during off-times between battles (Megilla 3a). Rav Yisraeli said that he thus failed to put Torah at the center but had set the stage for the ultimate deterioration to the point of violating the three cardinal sins.

In contrast, Moshe was able to tell his father-in-law that he spent all day judging the people (Shemot 18:15). This was not just a matter of dispute resolution but a way to teach people that the Torah's laws apply to every aspect of one's life. They show the Divine wisdom's breadth and relevance. This is a message that we, as *dayanim* in modern-day society, must remember. Hopefully, we can display the Torah's beauty and significance to those who come to us for judgment.

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Question: How can we make the *beracha* on *netilat yadayim* (= *neya*) in *shul* some time after we washed our hands, as *birkot hamitzva* are always recited at the time the *mitzva* is performed *shul*?

Answer: The *gemara* (Berachot 60b) describes the morning *berachot* as being recited as one performs each action the *berachot* relate to (e.g., opening one's eyes, putting on shoes, washing hands, putting on *tzitzit*, etc.). These days, we make the *birkot hashachar*, which praise Hashem for providing us with our physical needs, at one time, usually at the beginning of *davening*. The Shulchan Aruch (Orach Chayim 46:2) provides two reasons for our present practice: our hands are dirty when we get up, making it improper to make a *beracha*; some people cannot make the *berachot* themselves, so in *shul* the *chazan* says it on their behalf. Your query revolves around the question whether the *beracha* on *neya* stays in its place, at the time of the washing, or also moves.

The Beit Yosef (OC 6) cites two approaches to the matter. The simpler one, which he accepts (Shulchan Aruch, OC 6:2) is, as you argued, that the *beracha* should be close to the *mitzva*. Admittedly, unlike other *birkot hamitzva*, the *beracha* on *neya* is recited after the *mitzva*, as before the washing, one's hands are likely to be too dirty to make the *beracha* (see Tosafot, Pesachim 7b). However, it still can be done either before one wipes his hands or soon thereafter, as opposed to after a long break (see Mishbetzot Zahav, OC 6:4). However, the Beit Yosef justifies the *minhag* to make the *beracha* on *neya* in *shul*, which Ashkenazim accept (Rama, ad loc.), based on the Rashba's approach to the reason for *neya*. He says that as one embarks on the day as a new creation, he must thank Hashem and wash his hands like a *kohen* in preparation for these thanks. As the washing is related to these *birkot hashachar*, just as they are done in *shul*, the *beracha* on *neya* is also done there. The Perisha (6:3) understands that this *beracha* is not a standard *birkat hamitzva*.

The Rosh (Berachot 9:23) says that *neya* and its *beracha* were instituted as a preparation for *tefilla*. Therefore, says the Chayei Adam (7,6), if one were to wash his hands when waking up and then went to the bathroom and washed his hands again before *tefilla*, it is the second washing that must receive the *beracha*. While he only seems to make an issue of this when one expects to use the facilities between *neya* and *davening*, the Gra (Maaseh Rav 3) says that the Rosh's approach mandates making the *beracha* specifically in *shul* before *tefilla* (he appears not to require another *neya* if he does not use the facilities in between). However, the Gra is an extreme opinion in this matter, as he accepted the Rosh so much as to require *neya* with a *beracha* before Mincha and Maariv (ibid.), which we do not.

In these matters, we would suggest that Ashkenazim and Sephardim follow their respective *minhagim*. The question is when a lot of time passes between *neya* upon arising and *tefilla*. The Chayei Adam suggests that the person go to the bathroom again, making the *beracha* after the second time. However, the Biur Halacha (to 4:1) raises the issue that, according to the Rashba, the *beracha* will not relate to the *neya* that requires it, upon awakening. This appears to be an issue if a long time goes by, even if he did not use the facilities in between (see ibid.). The Rama (6:2) leans toward making the *beracha* earlier in this case, whereas the Biur Halacha leans toward the Chayei Adam. The safest thing, in the case of a long break, is to make to make the *beracha* on *neya* at home, followed by *birkot hashachar*, which is the beginning of *davening* (Mishna Berura 6:9). (Realize that, according to all opinions, a long time goes by between the *beracha* on *neya* and *Shemoneh Esrei*).

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Order of Acceptance of Spiritual Levels

(based on Berachot 2:1)

Gemara: Rabbi Yehoshua ben Korcha said: why did the section of *Shema* precede *V'haya Im Shamo'a*? It is so that one should accept upon himself the yoke of the Heavenly Kingdom and afterward accept the yoke of *mitzvot*.

Ein Ayah: The commentators already pointed out that there was no real reason to ask why *Shema* should precede *V'haya Im Shamo'a*, as it precedes it in the Torah. The matter is that it seems, according to the natural order, that *V'haya Im Shamo'a* should come first because the main idea of reciting *Shema* is to attain *shleimut* (completeness) in recognizing Hashem. It is clear that this cannot occur without one becoming accustomed first to *mitzvot*, which straighten a person's path and purify his personal attributes and opinions. Therefore, *Shema* should have been after *V'haya Im Shamo'a*. However, that is in regard to the *shleimut* of the recognition. Regarding the basic level, which applies to all, the main thing is the acceptance of the Heavenly Kingdom, in regard to belief and acceptance of the inheritance of the community of Yaakov. Therefore, *Shema* must precede the acceptance of the yoke of *mitzvot*.

What to Do With a Long Life

(based on Berachot 2:3)

Gemara: Sumchus says: Whoever elongates the word "*echad*" ("one," within *Shema*) has his days and his years lengthened.

Ein Ayah: Long life is appropriate for one who set out a lofty purpose for his life. Under those circumstances, the greater the value of the means that help bring one to the goal, the greater accomplishments he can reach in that area. Therefore, he needs a long life so that he can obtain things that will enable him to reach his goal. This is not the case for one who has no purpose in life. In such a case, every moment in his life is isolated and, as these are fleeting, it makes little difference how many and how long these moments are.

The gain of stretching out the word *echad* is to engrain in his spirit that, since Hashem is one, He rules in His world on His own. All that He created was created just for this one special and lofty goal. We have to follow Hashem to make the purpose of our own lives an uplifting goal. If we do this, then we will merit long days and years, so that we can accumulate many actions that help bring about these important attainments. The quantitative accumulation brings a grander attainment.

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The Proper Level of *Shemira* (Watching an Object)

(based on Sha'ar Ladin, from Halacha Psuka, vol. 59)

A *shomer chinam's* (unpaid watchman) type of *shemira* depends on the object (Rambam, She'eilah 4: 2-3). The *gemara* (Bava Metzia 42a) says that money must be stored in the ground. Yet, says the *gemara*, if one received money on Friday, when he lacks the time to bury the money, he is not required to do so.

The Rosh (Bava Metzia 3:21) cites the Ri Abartzaloni, who says that one must put money in the ground only in a time when thieves are prevalent, but not in "our days." The Rosh brings support from the Yerushalmi that says that it is enough for a *shomer* to put the item where the *shomer* places his own things. The Rambam qualifies that this is only if he puts things in normal locations. The Rambam (ibid.:4) does not mention the Ri Abartzaloni's idea, prompting the Beit Yosef to assume he disagrees. The Maggid Mishneh says that the Rambam agrees that one gives an object to be watched based on the assumptions of his time and place.

The Netivot Hamishpat (291:24) says that a *shomer chinam* is not required to act on the *shemira* but just to put the object in a safe place. He brings two applications to this distinction. The Machane Ephrayim (Shomrim 38) says that a watchman, during the time the object is under his watch, is not considered the owner's worker. This makes a difference regarding the law of *shemira b'ba'alim*, that if one is working for the *shomer* at the time he started watching, the normal obligations do not apply. This approach also justifies the Maggid Mishneh (Sh'eilah 7:11) that a *shomer chinam* cannot back out of his responsibility to watch, as opposed to a *shomer sachar* (paid watchman) who can, because any worker has to be able to stop working. Regarding a *shomer sachar's* obligation if the object is stolen or lost, Tosafot (Bava Kama 57a) asks why he is exempt only if there was an armed robber and not if a particularly talented robber steals it. They answer that we learn from the *p'sukim* that the Torah obligated a *shomer sachar* when there is a robbery except in a defined case which is under the category of *shvuya*. Apparently, they posit that a *shomer sachar* is obligated for the action(s) of watching, and we say that if the object was stolen or lost we consider that there was not proper watching. Only when it was taken by force do we not attribute the loss to the actions of the *shomer*. According to this approach, there is a *machloket* as to when an *oness* (extenuating circumstance) occurred to the watchman (e.g., he became suddenly sick), not the object. The Nimukei Yosef exempts him because he was unable to watch; the Rashba obligates him if the object was stolen. Tosafot elsewhere (Bava Metzia 42a) says that regarding any *oness*, even one that resulted in regular robbery, a *shomer sachar* is exempt. The Shulchan Aruch (CM 303:2) and Netivot Hamishpat (ad loc.:2) accept the first opinion; the Shach (ad loc.:4) and Gra hold like the second Tosafot.

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Baba Metzia 71-77

The Prohibition to Lend without Witnesses

This week in the Daf Hayomi, the Gemara (75b) states that it is prohibited to give a loan without witnesses. The Gemara gives two reasons for this prohibition. The first is that it is considered "putting a stumbling block before the blind," since one is "putting" the temptation to deny the loan before the borrower. The second reason is that this will bring a curse on the lender, since it is possible that the borrower will forget the loan and deny it, and people will think that the lender is lying and will curse him.

The Gemara tells a story about Rav Ashi who asked Ravina for a loan on Friday afternoon close to Shabbat. Ravina refused to give the loan without a shtar (promissory note) signed by witnesses. Even though Rav Ashi was a Talmid Chacham, and there was no doubt regarding his credibility, Ravina was concerned that Rav Ashi would forget the loan.

At first glance, Ravina's behavior appears a bit puzzling. The situation was close to Shabbat, so why couldn't witnesses suffice for Ravina? Why did he demand a shtar signed by witnesses? From this the Rambam (Malveh Veloveh 2, 7) learned that, although witnesses are sufficient, it is better to write a shtar. The Poskim (Choshen Mishpat 70, 1 and commentators), following the Rambam, delineate the hierarchy of different proofs for a loan that one can take.

The basic option is to have witnesses on the loan. The problem with this option is that the lender is dependent on the presence and memory of the witnesses, and also that the borrower can claim that he repaid the loan. The second option is to take collateral. This is better in that the lender is not dependant on witnesses and that the borrower cannot claim that he repaid the loan (in most cases- see Choshen Mishpat 72). The problem with collateral is that there is no proof as to the amount of money lent, and a dispute between the lender and the borrower can occur regarding this (Sma'ah ibid 4).

Another option is a promissory note signed by the lender (ktav yado). The advantages of this method are that there is no dependence on witnesses, and that there is proof of the amount lent. The disadvantage is that the borrower can still claim that he repaid the loan (Maharshadam 23, quoted by the Shach ibid 2). Thus, the best way to lend is with a shtar. That way, there is no dependence on witnesses, there is proof of the amount of the loan, and the borrower cannot claim that he repaid the loan.

Nowadays, there is an option to give a check for a later date against the loan. According to some Poskim (Minchat Yitzchak 5, 19), a check is considered almost equal to a shtar, and the borrower will not be able to claim that he repaid the loan. According to this opinion, a check would be as good as a shtar for this matter.

Summary:

It is prohibited to give a loan without receiving proof of the loan. One can give the loan in the presence of witnesses, take collateral, or take a promissory note signed by the borrower, but the best option is to take a shtar.

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