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HEMDAT YAMIM

Parashat HaShavua

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In Praise of Humility

Harav Yosef Carmel

The *korban* (sacrifice) of a *yoledet* (a woman who has given birth) is different from other *korbanot*. The Torah speaks of a sheep as a burnt offering and a bird as a sin-offering (see Vayikra 12:1-8). The Torah also says, “*v’chiper aleiha hakohen v’taheira*” – that this will serve to atone for her and make her pure.

The Yerushalmi (Shabbat 1:3) explains the *p’sukim* in a positive way, saying that it allows the *yoledet* to reach new heights of sanctity. On the famous *baraita*, on levels of spiritual elevation, which is the basis of the *sefer Mesillat Yesharim*, the Yerushalmi says that our *p’sukim* are an affirmation that “cleanliness brings to purity.” Ba’alei HaTosafot (on Vayikra 12:5) explain that *v’chiper* is a reference to cleanliness because the word has a double meaning of atonement and cleaning. In that case, the *pasuk* is not talking about atonement, which makes sense if we assume, as is reasonable, that the *yoledet’s korban* is not due to any sin.

However, since the word does usually refer to atonement, which implies sin, Rabbeinu Bachyei is troubled about what the *yoledet* did that requires such a *korban*. One could have argued that a *korban* is necessary due to the danger from which she was extricated, but then she should have to bring a *korban todah* (of thanksgiving). He suggests that it is not for the specific *yoledet’s* sin but for the sin of the mother of all humans, Chava, who, with her husband, Adam, ate from the Tree of Knowledge. However, this explanation is not even hinted at by the *pasuk*.

We will continue in the positive direction, by citing the words (from Shir Ma’on) of Rabbi Shimon Sofer (grandson of the Chatam Sofer, who was rabbi of Eiger-Erlau, was killed in Auschwitz at the age of 94, and whose followers created a community near which Eretz Hemdah is situated). He invoked the *gemara* (Sukka 29b) that the most powerful of the forces that cause one to lose his money is haughtiness. From the negative, we can extrapolate the positive – someone who acts with humility deserves to be blessed monetarily, as Hashem is more apt to reward for the positive than He is liable to punish over the negative. Rav Sofer says that based on *tropp* (cantillation), the *pasuk* “*v’im lo timtza yada*” hints at the following reading – “if you make yourself nothing, your hand will succeed [to acquire riches].” [Ed. note – one who understands the rules of *dikduk* will have difficulty accepting this reading on the level of *p’shat*, but that is beyond our present scope.]

If we put the various explanations together, we will arrive at the following: A *yoledet* brings another Jewish child into the world, and thereby is elevated and sanctified spiritually. If she will also cling to the attribute of humility, she will also be blessed materially. Let us wish that all Jewish women will have the great blessing of having children and will be elevated both spiritually and materially with the help of humility.

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by Rav Daniel Mann

Consequence of Removal of Sleeve from under *Tefillin*

Question: When after fastening the *tefillin shel yad*, I find part of my sleeve under the *tefillin* and pull it away, must I refasten the *tefillin* due to the rule of *ta'aseh v'lo min ha'asuy* (= *tvlmh* – *mitzva*-related actions must be performed directly)? In this case, the placement of the *tefillin* becomes proper not by fastening them but by removing something else!

Answer: Let us start by citing cases of *tvlmh* found in Shas. If one “forms” a *sukka* by hollowing out a pile in a way that leaves *sukka*-kosher objects over the space, the *sukka* is *pasul* until moving the *s'chach*. One needs to positively place *s'chach* over an area (Sukka 12a). If the *tzitzit* of a garment are attached before it is obligated in *tzitzit*, the *tzitzit* must be reattached (Menachot 40b). *Mezuzot* must be placed on an obligated doorpost and not placed on a board which later helps form such a doorpost (ibid. 33b). The *gemara* raises the possibility that *tvlmh* applies to *hadassim* connected to a *lulav* when they were invalid and remain after they were fixed (Sukka 33b).

There are some grounds to compare our case to the Talmudic cases. We will see if there are distinctions that would justify the apparent practice that people do not refasten the *tefillin* after removing the sleeve. First, we note that the *gemara* and *Rishonim* do not discuss *tvlmh* in regard to *tefillin*. Some say (see discussions in Levushei Mordechai, Yoreh Deah II:122 and Shevet Halevi II:154) that *tvlmh* applies specifically to *mitzvot* for which the Torah uses the root *aso* (do/make), i.e., *sukka* and *tzitzit*. Some explain that *mezuzot* is only Rabbinical (opinion in Sdei Chemed, vol. V, p. 330) or a loose use of the term (Levushei Mordechai ibid.); *lulav* is unclear and might be because of its connection to *sukka*. This might (see later) remove the whole question.

Rav Frank (Har Tzvi, OC 23) uses the following convincing thesis about the *mitzva* of *tefillin* to rule leniently in your case. The *mitzva* of *tefillin* relates to the state of having *tefillin* on oneself, not to the act of putting it on, and therefore, for example, a non-Jew can put the *tefillin* on an infirmed person. Similarly, he says, *tvlmh* cannot be a problem if we do not care how the *tefillin* got there.

The Shevet Halevi (ibid.) points out that the classic *tvlmh* sources refer to preparing various *mitzva* objects (*sukka*, garment with *tzitzit*), not to the performance of the *mitzva*. One could use that distinction to negate any problem of *tvlmh* regarding fastening, but he argues that the need for direct action regarding the actual fulfillment of the *mitzva* is broader than the issue of *tvlmh*. However, the Shevet Halevi posits that just like when *tvlmh* disqualifies *s'chach*, this is remedied by shaking the *s'chach* (Sukka 15a), removing the *chatzitzot* to fix the *tefillin*'s position is positive “doing.” The Eshel Avraham (Butchach), 27:4 said this before him.

Other opinions lend room for leniency. The Rashba (Megilla 24b) says that a sleeve under *tefillin shel yad* is not a matter of *chatzitzot*; rather, *tefillin* should be under a covering rather than on top of it because it is “a sign for you” (Shemot 13:9). Therefore, says Rav Frank (ibid.), the fastening was not intrinsically flawed, and when the “side problem” is solved, one does not need a new action. A precedent for this concept is the Rama (OC 626:2) – a *sukka* under a *pasul* overhang becomes kosher when the overhang is removed without further action because external problems do not create *tvlmh* problems.

Also, perhaps a *chatzitzot* on a minority of the place of the *tefillin* does not disqualify (Eshel Avraham ibid. considers it a possibility). If that opinion is correct (although we do not rely upon it *l'chatchila*), the whole question disappears. Perhaps even if one does not fulfill the *mitzva* with a partial *chatzitzot*, fastening it in that way is at least considered a *mitzva* action.

Because there are so many possible reasons for leniency, and several of them are strong reasons that negate the problem, there is no need in practice to refasten the *tefillin shel yad* after the sleeve is rolled back.

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Ein Ayah

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

Either Way, Don't Say

(condensed from Ein Ayah, Shabbat 11:2-4)

Gemara: The *mekoshesh* (the man who desecrated Shabbat in the desert) was Tzelufchad, as it says ... – these are the words of Rabbi Akiva. Rabbi Yehuda ben Beteira said to him: “Akiva, this way or that way, you are destined to receive judgment – if it is as you have said, the Torah covered it up, and you are uncovering it; and if not, you are spreading slanderous reports about that righteous person.”

Ein Ayah: Whoever acts against the divine statutes is one who sins and will have a related punishment. There are, though, distinctions between different types of sins. There are those whose sin is breaking forth with light in a place in which darkness is required. After all, not everything that exists needs to be known, including in regards to historical facts.

One who sins by acting contrary to a statute distorts the character of existence from its correct form. Worse than this is one who sins by creating distortion. If it happens that something false becomes part of the world of “known facts,” especially if it detracts from a true situation in the realm of justice, one has sinned in falsifying judgment. Certainly the two sins are not of the same gravity, and the punishment is in line with the values violated, but either way, one will have to reckon with a judgment against him for the sin.

It should be recognized that the reason behind things that are to be omitted is equivalent to that for things one is obligated to do. When something is omitted by the Torah, the omission has a positive element to it. The matter is much more noticeable when it contains information that naturally would have clarified something pertinent. If the Torah, nevertheless, remains “sealed” on that matter, it is a sign that it was purposely left concealed. Therefore, said Rabbi Yehuda ben Beteira to Rabbi Akiva, if indeed Tzelufchad was the person involved, it would be wrong for Rabbi Akiva to reveal the matter contrary to what the Torah intended as to what should be revealed and what should not.

If indeed it is not true that Tzelufchad was involved, then there was an act of slandering about a righteous person, which would represent a unique offense, which goes beyond the general sin of slandering those who are innocent. Each righteous person and anyone that the Torah chooses to discuss is someone whose memory is supposed to bring benefit to those who learn Torah. Our image of that person impacts our essence in various ways, both consciously and subconsciously. Since Tzelufchad was not mentioned in the context of the sin that Rabbi Akiva attributed to him, he is to be presumed to be righteous and he should impact upon us as one who is righteous. Therefore, Rabbi Akiva was depriving us of having Tzelufchad impact upon us on the level his memory is capable of doing. That is the danger of the statement of slander in regard to the specific righteous person involved.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

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P'ninat Mishpat

Giving a Partnership to One Partner

(based on ruling 78033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=p) and defendant (=def) jointly opened a retail meat business. They have now decided to end the partnership, with def getting the business. They have asked *beit din* to do “express adjudication” to determine how to compensate p. The two had opened an *osek mursheh* (app., a personal business) and took a large bank loan, for which they have been making monthly payments. Based on their written agreement, def worked five days a week in the store and received an 8,000 shekel a month salary; p worked twice a week and received 1,800 shekels. Due to a dispute, p stopped working in the store in Oct. 2017. P claims that the business is worth today 300,000 shekels, and since there is close to 100,000 shekels of debt, his half share for giving def full control should be at least 100,000 shekels. He claims to not be responsible for loans def took on the business without p's agreement. He claims there are also various payments that def improperly took from the business account. Def claims that the business is not presently worth anything, including because it does not presently have a license to operate as it is. He wants the value of the business to be estimated based on the time that p stopped working at it. He therefore wants p to pay 40,000 shekels of debt before leaving the business.

Ruling: The two sides agreed in the hearing to have Mr. B, who is not an appraiser but owned a supermarket in their region, to appraise the business's value. Mr. B estimated the value of the business at 235,000 shekels, which took into account the fact that it does not yet have a license. He also took into account the present equipment and inventory.

Because this is “express adjudication,” we will estimate the value based on Oct. 2017. This is the only way (on technical grounds, mainly because p is unaware of what transpired financially since then) to do a simple estimation.

It is true that Mr. B is not a professional appraiser and one can disagree with the way he used to appraise the business's value. However, because there was logic in using him, because he is objective, and especially because the sides agreed to use him, the claim of one of the sides that he could have used a different system for appraisal is to be rejected.

Def claims that the business's debt is 86,037 shekels. P does not know exactly but estimates it at 85,000 shekels. Since the difference between the sides is small and def has an exact number and a definite claim, we will follow it, just rounding it down to 86,000 shekels. Therefore, the value of p's half of the business is $(235,000 - 86,000) / 2 = 74,500$ shekels.

Both sides argue that the amount of salary that they received from the business was unfairly low. *Beit din* rejects the relevance of both claims. As long as previous agreements were followed, that is the arrangement which should be binding.

The expert's fee was paid by p and by the business (instead of def) in equal parts. Since at this point, the business is owned by def, there is no need for def to have paid from his “private pocket.”

.....
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