



HEMDAT YAMIM

חמדת ימים

HaRav Shaul Israeli zt"l
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PARASHAT HASHAVUAH VAETCHANAN

11 Av 5769

The Golan Heights – Like Jerusalem and Shechem Harav Moshe Ehrenreich

Moshe requested of Hashem again “at this time” (Devarim 3: 23-25) to allow him into Eretz Yisrael despite the decree to the contrary. Rashi says that he did so because he had conquered the lands of Sichon and Og and given them to the two and a half tribes. Why did Moshe think this would change things? We will explain with the help of two passages from the Ramban.

Moshe asked permission of those two kingdoms to pass through their lands and did not plan to conquer them despite the fact that they lived in lands that ultimately were to become part of Eretz Yisrael. Moshe wanted the first conquests of the Land to be west of the Jordan, in the Land flowing with milk and honey. Had the two tribes not demanded to live in the conquered areas east of the Jordan, says the Ramban, Moshe would have left these areas desolate until the west bank was settled.

Another idea of the Ramban is as follows. The rules of kashering utensils were given after the battle with Midyan, not the previous battles against the Emorites. The reason is that since the latter's land was part of the greater Land of Israel, the spoils taken from them in a battle of conquest were not subject to the laws of *kashrut*. Only the battle against Midyan, which was one of vengeance, carried with it those restrictions.

Now we understand that Moshe thought that since he had conquered parts of the Land of Israel and remained there, the decree was apparently over. One could claim that the fact that Moshe's request was rejected showed that these areas were not part of the Land. However, the Parashat Derachim proves that other than regarding the laws of *bikurim*, where the “Land flowing with milk and honey” is mentioned, the other laws of the Land apply to the east bank as well.

So how was Moshe wrong? Before his death, Moshe ascended Har Nevo to see the Land he would not enter. The list of regions he saw includes the Gilad (ibid. 34: 1, 2). Since this was one of the places that Bnei Yisrael already conquered and occupied, why was this necessary? One can suggest that since Bnei Yisrael were designed to take control of the west side first, the lands of Sichon and Og did not as of yet receive the sanctity of Eretz Yisrael. What Moshe was seeing, spiritually, not physically, was the Gilad region of the future, which later would be imbued with that sanctity. We can thus understand what Moshe had thought and why he was overly optimistic.

What follows is that once Bnei Yisrael entered Eretz Yisrael with Yehoshua, regions such as the Golan Heights became part and parcel of the Land of Israel. For that reason, Rav Yisraeli (Harabbanut V'hamedina pg. 413) said that regarding general sanctity of the Land, the Golan Heights is no different than Jerusalem or Shechem and that any plan to uproot settlements there, Heaven forbid, is one to impose exile from the Land of its proper inhabitants.

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Ask the Rabbi

Question: When I was a *katan* (under bar mitzva) I made *tzitzit* for myself. Someone told me that they are no longer valid, now that I am fully obligated in *mitzvot*. Is that so? If it is, may I untie one knot and upon retying it as a *gadol* (above bar mitzva), fix them, or must I do something else?

Answer: The *gemara* (Menachot 42a) cites Rav's statement that a non-Jew may not make *tzitzit* for a Jew, based on the *pasuk* regarding *tzitzit* that addresses "the Sons of Israel," which excludes non-Jews. Tosafot (ad loc.) comments that this implies that women would be able to make kosher *tzitzit*, as only non-Jews are excluded, and this is how the Shulchan Aruch (Orach Chayim 14:1) rules. On the other hand, the *gemara* (Gittin 45b) learns from the *p'sukim* "You shall fasten ... You shall write ..." (Devarim 11: 18, 20) that only those who are involved in putting on *tefillin* can write *tefillin*, *mezuzot* and *sifrei Torah*, not non-Jews, women, and children. Tosafot (ad loc.) cites Rabbeinu Tam as saying that this is part of a general rule that only those who are obligated in a *mitzva* can create the halachic object needed for the *mitzva*. Therefore, he says, *tzitzit* tied on to a garment by a woman, are not valid. Tosafot dispute this based on the aforementioned *gemara* and the one that validates a *sukka* made by a non-Jew. The Rama (OC 14:1) mentions the strict opinion and recommends being careful in the first place not to have a woman make *tzitzit*. He says that if it was done, then *b'dieved* they are valid.

The Magen Avraham (14:2) suggests another reason why women should not make *tzitzit*: the words "the Sons of Israel" often exclude not only non-Jews but also the "daughters of Israel." The Pri Megadim (ad loc.:3) says that while, according to Rabbeinu Tam, the issue of not being obligated in the *mitzva* excludes minor males as well, the limitation on the daughters of Israel does not apply to minors, to whom the *mitzva* of *tzitzit* applies even if presently they are too young to be fully responsible for any *mitzvot*. In any case, the Magen Avraham equates between women and children in this matter, making your *tzitzit* of a questionable status. The Mishna Berura says that it is proper to avoid a *katan* making *tzitzit* for a *gadol* (apparently only for Ashkenazim). However, he also says (Biur Halacha, ad loc.) that once the *tzitzit* were made when one was a *katan*, when he must decide if he can, as a *gadol*, use them, it is a question of *b'dieved* and he can use them as is.

In at least one way, a *katan* lacks what a woman possesses: the ability and reliability to do things in a kosher way. Regarding the physical element, one can check to see if it was done properly. However, what about the required *kavana* (intention) to act to create valid *tzitzit*? The *gemara* (Sukka 9a) says the threads of the *tzitzit* must be spun *lishma* (on behalf of the *mitzva*). The Rambam (Tzitzit 1:12) says that this is not a requirement for the attaching to the garment, but the Rosh says attaching must also be done *lishma*, and we try to follow the latter position (Shulchan Aruch, OC 14:2). Therefore, even regarding *b'dieved*, only if an adult was standing with the *katan* and training him to have in mind *lishma* would the *tzitzit* be valid (see Mishna Berura 14:4 and Biur Halacha, ad loc; see Gittin 23a). In your case, the situation is significantly better. You don't have to convince someone else that you had proper intention. Rather, if you are confident that you had in mind that the tying was being done for the *mitzva* of *tzitzit* (which is highly likely), you can continue to use them (Biur Halacha *ibid.*; Tzitzit (Cohen) 14:8). If you are not confident that you had the right intention or if you want to follow the opinions that are stricter than what we presented, you should undo the *tzitzit* fully so that the whole *tzitzit* will be formed properly.

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Ein Ayah

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

Kri'at Shema as Testimony

(based on Berachot 2:8)

Gemara: Ulla said: Whoever reads Shema without *tefillin* is like one who speaks false testimony about himself.

Ein Ayah: The definition of false testimony is to testify about something that one did not see. Realize that grasping the Divine is outside the capabilities of human intellect. The foundation of the unity of His truth is beyond our comprehension, so how can one testify about it [as we do when we recite *Kri'at Shema*]. However, when one performs good deeds that emanate from this lofty learning [that is engendered in *Kri'at Shema*] it is considered as if he understood the picture of the knowledge of the Divine. After all, attaining the actions that flow from the study is one of its goals.

Therefore, when a person recites *Kri'at Shema* and dons *tefillin*, which is the action that most relates to it [as the *mitzva* is found in its first two sections], this is reliable testimony that he recognizes the truth about how the Divine concepts are supposed to impact on his actions. If he does not perform the action, then the testimony remains in the realm of abstract concepts. Since that realm is beyond his intellectual capabilities he is, therefore, in the realm he has chosen, like one who testifies falsely, as it is something that he does not see.

Broad-Based Service of Hashem

(based on Berachot 2:9)

Gemara: Rabbi Yochanan said: [Whoever reads Shema without *tefillin*] is like one who offers an *olah* sacrifice without a *mincha* (meal offering) and a *zevach* (*shelamim* sacrifice) without *nesachim* (libations).

Ein Ayah: The *mincha* and the *nesachim* that accompany *korbanot* (sacrifices) are from the vegetable family, whereas the *korban* itself is from the animal world, which is higher than the former. The altar upon which it is offered is made from the earth, which is mineral. This teaches us that we are obligated to serve Hashem with all of the natural powers that He kindly bestowed upon us. If we serve Him only with the higher powers and not the lower ones, we will not reach *shleimut* (completeness).

Corresponding to these elements, we find different levels of powers within the spirit of a human being. There are: the power of intellect and speech; the power of activity; and the power of lowly life. When one recites *Kri'at Shema* and uses for the basis of the acceptance of the service of Hashem only the higher power of speech and does not don *tefillin*, he fails to demonstrate that he is subjugating all of his powers, even the power of actions, which is physical in nature, to the service of Hashem. In this way, he is like one who brought an *olah* without a *mincha* and a *zevach* without *nesachim*. He is thus hinting that he is serving Hashem only with the highest powers and not those beneath them, which is missing the proper intention.

A *chatat* (sin offering) does not require a *mincha* and *nesachim* because the natural powers do not relate to sin and punishment, as they do not have free choice. For example, the power of digestion is something that just happens. It does not distinguish between forbidden and permitted food, and no commandment applies to it. However, regarding levels and spiritual advantages, for which the *olah* and *zevachim* are designed to purify one so that he can cling to Hashem in a better way, the natural powers can also take part and receive the present of holiness. This is reminiscent of Avraham, whom Hashem gave dominion over his 248 limbs. In other words, Hashem gave even success to even the physical powers, so that they will forever go in the direction of goodness and holiness.

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P'ninat Mishpat

Laws of Shomrim (Watchmen) – part II

(based on Sha'ar Ladin - Halacha Psuka, vol. 60)

We saw last time that even a *shomer* who is exempt from paying when the object was damaged or lost *b'oness* (under extenuating circumstances) is obligated when this was preceded by his *p'shi'ah* (negligence). This is based on the rule that *techilato b'p'shi'ah v'sofo b'oness (=tbpvsb)*, in other words, the makings of negligence which end up with damage of *oness*, obligates the *shomer*.

The *gemara* we ended off with last time (Bava Metzia 93b) said that if a shepherd left his flock to go to town, whereupon a wild animal killed some sheep, the shepherd is obligated to pay. In that context, Abayei and Rabba dispute whether a paid watchman (*shomer sachar*), including the shepherd in question, is required to watch more carefully than one would do for his own property (Abayei) or not (Rabba).

The *gemara* says that according to Abayei, one can explain why in the case of the shepherd, he would be obligated even for that which dangerous animals did, even though it should be considered *oness*. That is because, as a *shomer sachar*, he should have done a better than average job. Tosafot say that since we obligate him based on *tbpvsb*, it must be that coming in to town at a normal time is considered *p'shi'ah*. However, Tosafot is disturbed why the *gemara* says that if he had no chance of saving the animals if he were there, he would be exempt. Tosafot answers that going in to town at a normal time is not a real case of *p'shi'ah* but a level of semi-negligence that is equivalent to *geneiva va'aveida* (theft or loss) for which a *shomer sachar* is obligated but a *shomer chinam* (for free) is not. In that case, we do not say that in the case of an eventual *oness*, the watchman would be obligated. *Tbpvsb* requires to begin with a real *p'shi'ah*.

The Gilyon Maharsha (Choshen Mishpat 291:9) proves that, according to the Rif, when a *shomer sachar's* initial actions were that of *geneiva va'aveida*, which is not a real *p'shi'ah* but is enough to obligate a *shomer sachar*, he is obligated if damage occurred later *b'oness*. The logic behind this *machloket*, he says, depends on the general *machloket* as to why *tbpvsb* is obligated. Tosafot posits that even Abayei agrees that there needs to be some connection between the *p'shi'ah* and the *oness* and his *machloket* with Rava (see last week's article) is only on the extent of the connection. However, when the original "*p'shi'ah*" was not real negligence but on the level of theft or being lost, there is no obligation on an eventual *oness*. The Rif, though, understood that, according to Abayei, one can be obligated to pay without any connection between the *p'shi'ah* and the *oness*, as only returning the object will overcome the obligation that started previously. In that case, he will say that this is so even if the initial obligation was based on a semi-negligence of *geneiva va'aveida*.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Av 5 – Av 11, Bava Metzia 92-98

Returning a Borrowed Object to a Family Member of the Owner

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara continues to deal with the laws of Shomrim (guardians over objects) and discusses in particular the laws of a borrower. The Mishna (98b) deals with the question of when exactly a borrowed object is considered to have been legally transferred to the borrower, thus obligating him to guard it. The Mishna rules that the borrower is responsible for the object from the moment it was given to him, or to a courier sent by the borrower. So too, when the object is being returned, the borrower's responsibility ends the moment it is handed over to the lender or to a courier sent by the lender.

One of the examples in the Mishna of a courier is a son of the lender. The Rashba (responsa 2, 262) derives from the Mishna that if the lender did not appoint his son as a courier to bring him the object, the borrower is still responsible for the object even if he gave it to the lender's son. The Rashba states that even if one returns the object to the owner's wife he is not yet exempt until he returns the object to the owner himself.

However, the Mordechai (Bava Metzia 272) appears to disagree with the Rashba. He quotes a responsa of the Maharam Mirutenburg exempting a shomer who returned the object to the owner's wife. It appears from that responsa, that even if the shomer would have returned the object to one of the owner's sons, this would have been sufficient as well.

The Rema (Darchei Moshe 340, 11; in the short version 340, 1) tries to resolve this seeming contradiction. He distinguishes between returning a borrowed object, and returning an object given for safekeeping. An object given for safekeeping may be returned to a close family member of the owner, but a borrowed object must be returned to the owner himself.

The Shach (72, 136) disagrees with the Rema. He claims that there is no difference between a borrowed object and one given for safekeeping, and in both cases the Rashba requires returning the object to the owner himself. However, if the owner's wife commonly conducts business with her husband's property, one may return objects to her. In our days, most women are considered to be commonly conducting business with their husband's property (Choshen Mishpat 62, 1), and thus one may return such objects to them.

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