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# HEMDAT YAMIM

## חמדת ימים

### PARASHAT HASHAVUAH

**Rosh Hashana 1 Tishrei 5770**

#### A Day of Remembrance

This Rosh Hashana, we will be without the *mitzva* from the Torah that is so central to the experience of the day, the blowing of the *shofar*. Not only do we miss the opportunity to do a *mitzva*, but it also makes us somewhat apprehensive going into our judgment without the protection it provides. How are we supposed to feel about missing the *shofar*?

The Netivot Shalom (Rosh Hashana 6) says that the sound of the *shofar* does actually accompany us. The *mishna* (Rosh Hashana 29b) says that when Rosh Hashana falls on Shabbat, the *shofar* is blown in the *mikdash* (sanctuary) but not in the *medina* (in the country, in general). The Beit Avraham is cited as saying that *medina* refers to actions that we do with our body, whereas *mikdash* refers to our minds. Indeed, without blowing the *shofar* this Shabbat, the concept of the *shofar* accompanies our minds.

The *gemara* (ibid.) says that we do not blow *shofar* out of concern that someone will carry it outside. The Yerushalmi attributes the lack of *shofar* blowing to *p'sukim*. One of the references to *shofar* blowing in the Torah calls Rosh Hashana a "day of blasts" (Bamidbar 29:1) whereas the other one refers to a "remembrance of blasts" (Vayikra 23: 24). When Rosh Hashana falls on Shabbat, we fulfill the element of remembrance. It is strange, though, that the first and more central of the discussions of Rosh Hashana should refer to the exception to the rule, when the *shofar* is missing. The Netivot Shalom answers that the "fulfillment" of *shofar* on Shabbat is actually the higher level: the remembrance of *shofar* is in our minds without needing the physical blowing. Usually, he explains, the *shofar* inspires us in the manner of *yirah* (fear of Heaven). Shabbat adds the element of *ahava* (love), which joins together with *yirah* to create a harmonious whole.

It is interesting that the word used to connote the involvement in *shofar* without the action, "*zichron*," shares the root of the word for the positive commandment of our commemoration of Shabbat, "*zachor*" (Shemot 20:8; see Berachot 20b). What great positive actions do we do to commemorate Shabbat? We make a declaration that the day is Shabbat (which rabbinically we enhance with wine and a longer than Biblically necessary recitation) and that's it. Perhaps this is the idea of Shabbat. Hashem rested from activities and imbued the world with a special concept – that a thought-out refraining from activity can bring as much or more to the world as creating heavens, earth, and all that reside in them. Rosh Hashana corresponds to the sixth day of creation, when everything was completed – except Shabbat. When Shabbat coincides with Rosh Hashana, we cannot ignore Shabbat, and we introduce the element of contemplation on lofty ideals and ceasing to act within the commemoration of Rosh Hashana.

May we be able to experience Rosh Hashana with the sanctity of Shabbat that entered the world as its creation was completed and thereby coronate Hashem in a most significant way.

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Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich

5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360

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Fax: 972-2-5379626

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# Ask the Rabbi

**Question:** After finishing blowing or hearing *shofar* blowing on Rosh Hashana, is the *shofar muktzeh* from that point on?

**Answer:** First we have to check if it is permitted to blow the *shofar* after the *mitzva* is completed. If it is permitted, then the *shofar* is a *kli shemelachto l'heter* (a utensil used for permitted purposes) and will be able to be moved for any reasonable purpose.

This matter is actually the subject of substantial *machloket*. The Rama (Orach Chayim 596:1) says that it is forbidden to blow the *shofar* for no specific need on Rosh Hashana after he has fulfilled the *mitzva*. He (in the Darchei Moshe, OC 588:2) refers to earlier sources that indicate this approach. The Tur (OC 589) cites an opinion that a man may not blow *shofar* on Rosh Hashana just for a woman after fulfilling the *mitzva* himself, since the *mitzva* does not apply to her and thus it is blowing without justification. We reject this opinion because we rule that there is a value for a woman, although she is exempt, to hear the *shofar*. Otherwise, though, it would have been forbidden. Another discussion (Tur 590) mentions that one who makes the *shofar* blower repeat blowing when he is not required is making him violate the rabbinic prohibition of blowing the *shofar* without a reason. The *gemara* (Rosh Hashana 33a) also talks about children blowing the *shofar* for practice for the future without a *mitzva* need, implying that an adult should not do this.

On the other hand, the Taz (596:2) argues that blowing *shofar* is forbidden only on Shabbat, out of concern he may carry it in the public domain, but it is permitted on *Yom Tov*, when carrying is permitted. He argues that the sources forbidding blowing for adults refer to Shabbat. The Ohr Zarua (II, 266) in fact explicitly permits blowing *shofar* all day long on Rosh Hashana that does not fall on Shabbat. In the final analysis, most *poskim* forbid blowing *shofar* without a specific purpose after fulfilling the *mitzva*. One may blow to fulfill the *minhagim* to add more blasts (100, for most) than are strictly required for the *mitzva*.

One of the Taz's arguments that it is permitted to blow after finishing the *mitzva* is that if it were forbidden, then it would be forbidden to move the *shofar* due to *muktzeh*. In fact, the *gemara* (Sukka 41b) assumes that it is permitted to carry a *lulav* after fulfilling the *mitzva*, and the Rama himself says only regarding Shabbat that a *shofar* is *muktzeh*. One might then argue that since we forbid blowing *shofar* after fulfilling the *mitzva*, it should also be forbidden to move. Furthermore, the Magen Avraham (588:2) says that a special type of *muktzeh* applies to a *shofar*, namely, *muktzeh l'mitzvato* (an object that is set aside for a *mitzva* may not be used for another, non-*mitzva* purpose). The Machatzit Hashekel (ad loc.) implies that this *muktzeh* not only precludes using the *shofar* for another purpose but even makes it forbidden to move. However, many assume that *muktzeh l'mitzvato* does not prevent moving the object (Tosafot, Shabbat 45a; see Tz'lach, Shabbat 44a and Mishna Berura 588:15).

In any case, the great majority of *poskim* assume that even though one may not blow the *shofar* beyond the needs, one can move the *shofar* (Mishna Berura 596:3 in the name of *Acharonim*; Shemirat Shabbat K'hilchata (28:34)). The Mishna Berura (ibid.) explains that one cannot determine that a *shofar* is no longer slated to be used because it is possible that someone has not heard the *shofar* blowing and needs it. The Kaf Hachayim (OC 596:7) explains that since children may blow throughout the day, the *shofar* can be used for them.

The Shemirat Shabbat K'hilchata (20:(51)) wonders why we assume that one may move a *shofar* after finishing to use it but not move a *brit mila* knife after the *mila* (see the *machloket* between the Rama, Yoreh Deah 266:2 and Taz, ad loc.: 1). He suggests that is more common to unexpectedly find someone that is in need of *shofar* blowing than to find an eighth day baby who unexpectedly needs a *mila*.

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# Ein Ayah

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

[We will go out of order to see a piece of Ein Ayah that relates to Rosh Hashana and return to a piece that shares a philosophical common denominator.]

## Rosh Hashana and the Number Nine

(based on Berachot 4:44)

**Gemara:** These nine [*berachot* of the *Amida*] of Rosh Hashana correspond to what? Rabbi Yitzchak from Kartignin said: They correspond to the nine references to Hashem that Chana said in her prayers, as it was said: It was on Rosh Hashana that Sarah, Rachel, and Chana were remembered [with the children they prayed for].

**Ein Ayah:** On Rosh Hashana, all the world's inhabitants pass before Hashem like *b'nei maron*, which [according to one explanation in Rosh Hashana 18a] means like a flock of sheep. This illustrates the matter of Divine Providence on an individual basis, which exists beyond the Divine Providence that relates to a species or is general Providence.

The number ten represents an entire group as a whole, as this is the lowest number that is considered a community. Therefore, the most appropriate number to represent one relating to individuals in a group as individuals is nine.

This idea applies to Chana, who requested from Hashem to fulfill her personal desire in a manner that was above the way of nature. She was not fit to give birth and requested that Hashem provide a miracle to help her as an individual, which is very much along the lines of individualistic Divine Providence. That is the reason that she mentioned Hashem's names nine times in her prayers to show the great extent of individual Divine Providence that Hashem employs.

On Rosh Hashana, we must particularly concentrate on picturing in our mind's eye the matter of Divine Providence for the individual. This can help us improve our individual actions and increase our evoking of mercy, each one according to his own needs. This is the way to build the success of the collective, which requires the success of its constituent parts. For this reason, the prayers of Rosh Hashana were built upon the number nine.

## The Needs of the Individual and of the Collective

(based on Berachot 2:43)

**Gemara:** Master of the universe, it is clear and known to you that we desire to do Your desire, but who stands in the way? The yeast in the dough and the subjugation of the kingdoms. May it be Your will to subdue them from before us and after us, and we shall return to the laws of Your desire with a full heart.

**Ein Ayah:** A person should deal with his *shleimut* (completeness) in regard both to his personal matters and the *shleimut* of the collective by joining together with *K'lal Yisrael* in a manner that will bring spiritual and physical benefit to the nation by his actions. The main causes of lacking in an individual's actions are a bad nature and its faults, which are referred to as the yeast in the dough. Regarding communal needs, which are in a low point without the strengthening of Hashem's Torah and all good goals and attributes, it is the subjugation of the kingdoms. In all matters, we can look forward (the main part) or backward (the minor part). Really, a person is complete only when he is attached to the collective. Therefore, the front part is the communal, and the back is the individual. We ask that we should not be held back in either realm.

The matter of returning to the laws of Your desires refers to the laws of the Torah. The laws complete a person in a true way; some of them are designed to complete the collective. Therefore, only when one is prepared to improve himself, others, and the collective can he do the laws that Hashem desires with a full heart, for then he will feel the internal pleasantness of the holy Torah and *mitzvot*. Then Hashem's pleasantness will be upon him to set the path of his actions.

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# P'ninat Mishpat

## The Status of Municipal Regulations Regarding Home Expansion – part I (based on Et Ladin, Harav Nir Vargon – Halacha Psuka, vol. 28)

The interplay between the laws of the Torah and those of the civil government can be ground for tension and disagreement due to their differences. We will concentrate on municipal regulations in regard to people's rights to build, specifically, the law that neighbors must agree to the building expansion even when the building plan does not violate any halachic limitations.

The *gemara* (Bava Batra 8b) says that the people of a city can set rules for measures and price rates and enforce their regulations by means of penalty. The Mordechai (ad loc. 480) brings two opinions as to the source of this authority of the *tuvei ha'ir* (municipal leaders). The Maharam (accepted by the Rama, Choshen Mishpat 2:1) says that they possess the *Beit Hadin Hagadol's* status that enables confiscating property when the matter is necessary for *migdar milta* (to fix a situation). However, Rabbeinu Tam says that *migdar milta* applies only to religious matters and that the *tuvei ha'ir* can only take steps to enforce that which the people have already agreed upon.

There is also a *machloket* whether it is necessary for the regulations to be approved by an *adam chashuv* (important person) who is appointed to oversee the needs of the city's people when they adversely impact on part of the population. The Rivash (399) says that this is unnecessary, but the Tashbetz (Chut Hameshulash 15), Rama (CM 231:28), and Shach (ad loc. 4) require such an approval. The Tashbetz adds that it is insufficient for the *adam chashuv* to be a *talmid chacham*; the main criterion is that he be appointed to oversee the population's needs.

Based on the aforementioned, it is logical to accept municipal regulations as publicly approved decisions. In a time and place where there are usually not *talmidei chachamim* with official responsibility to oversee the public's needs, there is logic to say that there is not a need for an *adam chasuv's* approval, which is necessary only when there is an appropriate person to give it.

Some *Rishonim* integrate the element of the laws of the kingdom and local practice as halachic factors, beyond the element of the need to follow local regulations and the matter of *dina d'malchuta*. The Rashba (Shut I, 1032) says that if one opens a window to the public domain in a manner that is locally permitted, his neighbor on the other side of the street cannot make him close it. This is because the former is viewed as opening to the public domain as the king wants, which a neighbor cannot stop even if we would normally view it as an infringement on the neighbor's privacy. The Rosh (Shut 99:6) says that in a place where the practice is to have beams extend from the houses out in the direction of the public domain, we do not say that the airspace before the house is *hefker* (free for all to claim).

## Mishpetei Shaul

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Elul 24 – Tishrei 1, Baba Batra 23-29

## Chazaka on Real-Estate

Rav Ofer Livnat

This week in the Daf Hayomi, we begin to learn the third chapter of Baba Batra, which discusses when a person attains a chazaka on real-estate. A chazaka is a form of proof of ownership on an item. Regarding movable objects, the assumption is that the one holding them is the owner, even if someone else was previously known to be the owner. However, regarding real-estate, the opposite is true: the original owner is assumed to be the true owner, even if someone else is currently using the property. Therefore, if the person currently using the property claims to have bought it, he must show the shtar (purchase deed) as proof.

When does the person residing in the property attain a chazaka? The Mishna (28a) states that, after a person resides in the property for three years with no objection from the previous owner, he attains a chazaka and is no longer required to show the shtar as proof. The Gemara deals with the question of why a chazaka is attained specifically after three years. The conclusion of the Gemara (29a) is that, until three years, people make sure to keep the shtar, but after three years they often become negligent and lose the shtar.

The Rishonim disagree as to how to explain this conclusion of the Gemara. According to the Ramban (Baba Batra 42a d"h ha detanya), the main reason that a chazaka is attained is because the fact that he resided in the property for so long without objection is proof that he is the owner. However, within three years, since people normally make sure to safeguard the shtar, if he is unable to present it to us we are suspicious of him. However, after three years, since the lack of a shtar is no longer suspicious, we rely upon the fact that the previous owner did not object, as proof.

The Kitzot Hachoshen (140, 2) proves from several Rishonim that they understood the conclusion of the Gemara differently from the Ramban. According to their opinion, the Sages realized that people tend to not safeguard the shtar for more than three years, and they were concerned that the previous owner would wait until the current owner would lose the shtar, and then come and claim that the property is still theirs. Thus, they instituted that, after three years, the person residing in the property attains a chazaka.

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