



HEMDAT YAMIM

Parashat Hashavua

Korach, 26 Sivan 5782

Harav Shaul Israeli zt"l
Founder and President

How to Handle Disagreements

Harav Yosef Carmel

Machloket (disagreement) is an inseparable part of the Jewish experience. It helps clarify relevant subjects and enriches our spiritual world. Understanding the pros and cons of various opinions enables us to see things both deeply and broadly. These elements of *machloket* are positive **if** they come from a place of unity ("We are all in the same boat"), which does not require uniformity. Clarifying a matter and listening to the other side – yes! Personal insults and lack of respect toward the person with whom we disagree – no and, again, no!

Let us look at the *machloket* with Korach. Why did there need to be two proofs that the Moshe/Aharon approach was correct – the swallowing up of Korach and the flowering of Aharon's staff? The answer appears to emerge from the realization that there were two different disputes – about Moshe's leadership and about the choice of Aharon as *kohen gadol*.

The first miracle (Bamidbar 16:28-30) was "called" by Moshe in advance. If the ground would open and swallow up Korach and his cohorts, it would prove that Moshe was correct in his leadership. Of course, Moshe succeeded. However, this solved only the issue of Moshe's authority to decide.

The question of whether Aharon was the optimal choice was proven differently. Each of the tribes brought staffs, Aharon's staff was placed among them, and Aharon's staff grew flowers/fruit overnight. Moshe and not Aharon involved himself in this "contest" (ibid. 17:22-23). What is the difference between the two challenges?

Moshe held two leadership positions. The first was as the nation's "political" leader, which required having the nation's recognition and support. Not all the people did so originally, seeing him as just another human being, and some treated him with suspicion because he grew up as an Egyptian prince in Pharaoh's court. As a political leader, Moshe had to negotiate with kings throughout the Middle East and take actions that were not popular with all the people.

Moshe's second task was as the recipient and teacher of the Torah. In this task, he refrained from food and sleep for 40 days and went up to the Heaven to return with the Torah, which is of divine origin. He is the only person who merited to speak "face to face" with Hashem, and his extreme spirituality made it necessary to wear a mask after speaking to Him. Whoever argues with Moshe in this role denies Hashem's most basic tenets, as belief in the eternal relevance of the Torah that Moshe taught is a foundation of Jewish belief.

These points were concretized by the miracle in the beginning of our *parasha*. As one who is on the level of an angel, Moshe's decisions must not be attacked, as Korach learned. The people learned to accept him.

Aharon, in contrast, did not need the people to accept him. The *kohanim* and *levi'im* are human beings who are chosen to serve special roles in the service of Hashem. Their sensitive tasks require them to take on special restrictions. Their roles are not those which they pursue but those which they are born into. A *kohen* is a *kohen*, and a *levi* is a *levi*. This is what was proved by the miracle of the flowering staff.

Let us continue to embrace disagreement, while keeping it within the realm of respectful behavior. In that way, we will learn from Aharon, who "loved all creations, drew them close to the Torah, and made peace between Jews and between them and their Father in Heaven."

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Responsive Baby Bassinet

Question: There is a special bassinet that provides motion and soothing noise and reacts to an infant's crying by intensifying them. Is it permitted to use this bassinet on Shabbat, and if so, are there special instructions?

Answer: [I researched the operation of a specific product but leave the parenting research to the parents.]

Presumably, you are asking about when you prepare the bassinet (including attaching the "sack") so that you will not have to activate it on Shabbat. Several issues need addressing.

We assume (it is a broad subject) that activation of the change in the settings (as done by the crying) constitutes a Rabbinic-level violation of Shabbat. The baby himself is not culpable for anything, but is his parent guilty of causing him to do something forbidden? An adult must not feed (literally or figuratively) even a young child something that is forbidden (Yevamot 114a). However, he may put him in a situation where he will likely choose to do the violation on his own (ibid.). Our case is both better and worse than that case. On the one hand, the infant is not fundamentally violating Shabbat because his lack of cognizance of any connection between his instinctual crying and the change to the bassinet (see Shut R. Akiva Eiger I:8; Living the Halachic Process VI, C-11 regarding using diapers with disintegrating forms).

However, since the infant is not acting with cognizance, when an adult puts him in the situation in which he is expected to eventually cry and set off the change, we view the results from the adult's perspective. Since the significant action will occur later after being activated by something, we say that the adult acted through *gerama* (indirect action). (Regarding *gerama* completed by living things, see Bava Kama 59b; Har Tzvi, Tal Harim, Tzad 1). Violation of Shabbat through *gerama* is a very low-level violation of Shabbat, to the extent that it is permitted in certain cases of need (Rama, OC 334:22), and there is likely more room for leniency when the basic prohibition is only on a Rabbinic level (see discussion in Yabia Omer III, OC 17). There is thus room for need-based leniency when the serious needs of a child are involved (Rama, OC 328:17), but that is something that a rabbi needs to decide on a case-by-case basis, which we cannot do in this general presentation.

Even if one receives a lenient ruling, he must be careful. If the infant is crying or likely to do so as he is put into the bassinet, thereby activating the bassinet immediately, that is considered the parent acting directly regarding Shabbat (see Tosafot, Shabbat 17b), as is taking out a crying baby in a way that it will stop right away.

It is forbidden to play musical instruments on Shabbat, and for Ashkenazim this extends to instruments made for the purpose of making sounds (Rama, OC 338:1). This bassinet seems to fit the bill as designed for sound making. However, this will not be a problem here for two reasons. 1) The prohibition is probably only for direct noise making, not for setting a situation in which it will make noise in the future (Shemirat Shabbat K'hilchata 28:(65)). 2) The prohibition does not apply when the noise is made to help the sick (Mishna Berura 338:1), and since leniency is on the basis of the child's significant need, this matter is also covered.

Another noise prohibition, *avsha milta*, applies even when nothing was done on Shabbat to cause it (e.g., putting grain in a mill soon before Shabbat) if people who hear it are liable to **think** that it was set up by *melacha* on Shabbat (Rama, OC 252:5). However, that is only for louder noises than the bassinet makes (Igrot Moshe, OC IV, 70.6).

In conclusion, we believe one could make the claim that leniency is called for, at least in case of need (to be discussed with one's personal rabbi). However, leniency is not a foregone conclusion, especially because not infrequently the immediate activation of the mechanism will make its use outright prohibited. We await *poskim* to express their opinions on this quite new product.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.



Igrot HaRe'aya - Letters of Rav Kook

Connecting Disciplines in Torah Study - #103 – part IV

Date and Place: 21 Tevet 5668 (1908), Yafo

Recipient: Rav Yitzchak Aizik Halevi, the author of a monumental history of rabbinic scholarship, Dorot Harishonim. See Rav Kook's letter to him (#99).

Body: [Rav Kook continues to deal with the place of prophecy and Divine Spirit in decision-making in halacha and in the difference between the Talmud Bavli and Talmud Yerushalmi, the latter being briefer and more in touch with spiritual insight. A large portion of the rest of the letter touches on specific halachic discussions as examples of the concept, and we will largely skip that.]

On a matter in which there is no question what the *halacha* is, based on Torah logic, all agree that we say "It is not in the Heaven," i.e., prophecy and miracles cannot overrule the findings of halachic authorities. In contrast, when investigation of the roots of the Torah, whether based on the Written Law or oral traditions, leaves room for doubt, we do not say "It is not in the Heaven."

[The *gemara* (Temura 16a) says that during the days of mourning for Moshe, 1700 laws were forgotten, and Otniel ben K'naz recovered them with powers of halachic analysis. [The *p'sukim* to which the *gemara* refers tell that Otniel ben K'naz captured a place called Kiryat Sefer, lit. The City of the Book.] We must say that these *halachot* were forgotten totally, and therefore it was necessary to use intellectual prowess, not Divine Spirit. Furthermore, it is likely that Otniel did not have to arrive at a final decision. Rather once he was able to identify the logic for each side in the question, it was theoretically possible to decide between the approaches based on prophecy or Yehoshua's or Pinchas' Divine Spirit. However, it was the will of Hashem in the beginning of the age of the Oral Law to strengthen the position of the scholars in using intellect that emerges from the rigorous analysis of the Torah. Therefore, Otniel had the merit of finishing, reaching the resolution of the matter with analysis. Otniel was rewarded for his "conquest" by receiving the upper and lower well springs (see Shoftim 1:13-15). This is a hint at the two elements of clarification: that which applies to the intellect of the land (i.e., human existence) and that which relates to the upper intellect, which is impacted by prophecy and Divine Spirit. The *p'sukim* use the terms of smiting and capturing [for what Otniel did in Kiryat Sefer], for he did not suffice with involvement in battle (parallel to raising the logic of the approaches) but to conquest (parallel to arriving at a conclusion).

In a similar manner, there is intellectual depth that emanates from the analysis of the simple logic as it reaches the higher-level ideas. This cannot be spelled out in the Talmud, and it is reserved for great scholars who understand matters on a higher level. The Yerushalmi makes use of such hints because of its scholars' advantages of living in a land whose air increases wisdom. The Bavli does this as well, but in fewer cases. [Now Rav Kook gives a few examples in the Bavli of hints of a hidden, upper-level understanding.]

... I have written these few ideas very hastily due to various tiresome matters that preoccupy me. I apologize if they are not written in a refined, organized manner, as would befit writing to someone of your great honor. I pray that Hashem will give you strength and that you will complete that which you set out to do. Namely, may you elevate the crown of the Torah, return its students to the glorious level of the past, and unify the holiness of the Rabbis with the source of the sanctity, which flows from the Torah of truth. Then our brethren will no longer be attracted by the lies, unwisely presented, of the lowly people who claim that our past is false.

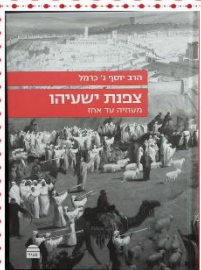
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Together with all *cholei* Yisrael



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.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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P'ninat Mishpat

Limits of Interest Rate for Loan with Heter Iska – part III

(based on ruling 80033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) lent 500,000 NIS to a contractor (=def) to carry out a *Tama 38* project (a special plan to strengthen and improve a building in return for the right to add floors to it). They used the *heter iska* used by Bank Mizrahi, and the rate of interest was 18% annually plus punitive interest of \$200 a day for late payment. Def paid 527,000 NIS but late, so that some interest was outstanding. Pl made a claim for 390,360 NIS with *Hotza'ah Lapo'al*, which def opposed, and the courts transferred the case to *beit din*. Pl claims that since def owed 135,000 NIS and three years have passed, def owes 61% interest plus around a quarter million dollars for the punitive interest. Def claims that since he already paid more than the principal he took, he cannot be subject to punitive interest, and that it is enough to pay 18,000 NIS for outstanding interest.

Ruling: [We have seen which parts of the interest were permitted to be paid based on the *heter iska* and which not.]

Is the interest payable when it is clear that the expected profits that justified the taking of “interest” based on the *heter iska* did not materialize? Normally, according to a *heter iska*, one can either swear that he did not make as much as was expected or pay the expected amount (Shach, Yoreh Deah 167:1). There are two ways to explain the payment (Brit Yehuda 38:(54)): 1. The *d'mei hitpashrut* (money paid in lieu of interest, based on “expected profits”) are intended to allow the “borrower” to pay the full profits, and therefore even in the case of lower profits, it can be paid. 2. The *d'mei hitpashrut* are to exempt one from having to swear, irrespective of profits. The Pitchei Teshuva (Choshen Mishpat 108:4) cites a *machloket* whether the basic obligation is to pay the *d'mei hitpashrut*, with a possibility to get out of it with an oath or whether the oath is the basic obligation. A difference between the approaches is in the case where the borrower is replaced by inheritors, to whom the oath does not apply.

All agree that if the “lender” knows that there have been no profits, he is not permitted to take the *d'mei hitpashrut* (Igrot Moshe, YD II:62; Brit Yehuda 38:4). This can happen only when the loan was for a specific purpose, whose outcome can be checked. In this case, since there was a stipulation that the money would be used only for the *Tama 38* project, and the project did not come to fruition, it should not be permitted to receive interest payment.

The Shulchan Aruch and Rama (YD 177:5) rule that a borrower can change the usage of the money even if there had been a stipulation, because the intent is to earn more money, not to steal (Taz ad loc. 10). Since in the *heter iska* used here, all of the borrower's property and business ventures are used as liens for the loan, it is difficult to ascertain what the money should be attributed to, and therefore the *d'mei hitpashrut* should be paid. This applies even in cases like this in which def declared bankruptcy (Brit Yehuda 40:(22)).

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