

HEMDAT YAMIM

PARASHAT **Terumah**

This week.....

3 Adar I 5768

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This edition of Hemdat Yamim is dedicated in loving memory of **R' Meir ben Yechezkel Shraga Brachfeld**

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“You Shall Do for Me a Sanctuary... Tabernacle”

Harav Yosef Carmel

During these days, when the future of the site of and around the *Beit Hamikdash* hangs in the balance and our enemies and the world at large want to see us leave it, it is important to clarify our connection to it. We must raise the value we place on the “good mountain and the Lebanon,” which we pray will be built soon, by learning about it and in other ways.

Hashem told Bnei Yisrael to take up a collection, make a sanctuary (*mikdash*), and form the utensils of the tabernacle (*mishkan*) (Shemot 25: 1-8). A few basic questions need to be asked: 1) How many *mitzvot* are included in these *p’sukim*? 2) Are these *p’sukim* talking about a *mitzva* for all generations and, if so, what is the need for the *p’sukim* in Devarim that talk about the *Beit Hamikdash*? 3) Is there a difference between a *mishkan* and a *mikdash*, both of which are mentioned within the *p’sukim*?

The Ibn Ezra says that our *p’sukim* are talking about only the *Mishkan* and not the *Beit Hamikdash*, the permanent edifice that would be built later in history. The reason that the Torah uses the term *midkash* here is because the *Mishkan* is a place for the Holiness of Hashem to dwell.

In contrast, the Rambam cites our *p’sukim* as the source for the ongoing *mitzva* “to build a house of worship where sacrifices will be brought and a constant fire will burn and to which people will go on pilgrimage and congregate every year” (Sefer Hamitzvot, Aseh 20). The Ramban derives two *mitzvot* from the *p’sukim*, both in regard to the *Mishkan*: to erect the structure and to build the utensils. According to the Ramban and Ibn Ezra, it is clear that the commandment in Devarim is needed for the *Beit Hamikdash*. According to the Rambam, though, that the *Beit Hamikdash* is included in the discussion here, why is there separate discussion elsewhere?

Rav Yisraeli explains that the idea behind the new commandment is the need for a special place where the *mikdash* will be located and that, as a result, other places will be disqualified. That is why the Rambam calls it the *Beit Habechira* (the house of choice), along the lines of the *pasuk* “the place that Hashem will choose”. Tosafot understands that the *Beit Hamikdash*’s difference is that it must be a permanent structure, not a tent.

While thinking about these concepts, we fulfill the *mitzva* of “inquiring about the Divine Presence.” It is also important to realize that past generations wasted historical opportunities due to a lack of preliminary preparation of studying the issues. The fact that we are missing the *Beit Hamikdash* should bother every Jew. Without such a palpable feeling it is difficult to struggle to obtain and maintain the holy sites. Let us hope that we will succeed in internalizing and actualizing the dream.

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Ask the Rabbi

Question: Can one fulfill the *mitzva* of *tosefet Shabbat* (extending Shabbat) by deciding a few minutes before that she is accepting Shabbat?

Answer: The concept of *tosefet* arises in connection with holy days (or *Shemitta* years), originally regarding Yom Kippur. The *gemara* (Yoma 81b) learns from the Torah's mention of fasting from 9 Tishrei in the evening until the next evening that the fast begins a little before day's end and ends a little after it. It shows that one should act similarly regarding refraining from *melacha* (forbidden work) on Shabbat and *Yom Tov*. Admittedly, the Rambam omits this concept in the laws of Shabbat and even in the laws of Yom Kippur mentions it in regard only to fasting (see Maggid Mishneh, Shvitat Asor 1:6). However, the Shulchan Aruch, Orach Chayim 261:2 requires *tosefet Shabbat*.

There are two or three elements to *tosefet*. 1) One violates *tosefet* if he ignores the coming day's laws until it begins (Beitza 30a, regarding those who ate "until dark" on Yom Kippur. 2) One's acceptance of the new day is binding even if he did so earlier than necessary (Shulchan Aruch, OC 263:10). 3) It is a *mitzva* or even an obligation to accept *tosefet* actively. It is #3, which is not clear, about which you are inquiring.

The Mishna Berura (261:21) says that accepting Shabbat is accomplished orally. He cites the Rama (608:3 and 553:1) that cognitive acceptance without speech is invalid and therefore one who only mentally decided to end eating before a fast may eat again. The Mishna Berura (553:2) cites important *poskim* who feel that a mental decision is binding and does not seem to decide between the approaches. Based on these passages, the Shemirat Shabbat K'hilchata (46:2) says that one is required to accept Shabbat before day's end, preferably with speech, although it is possibly binding with a cognitive decision. Neither author mentions dissenters to this concept (#3).

Two things trouble us. First, few observant Jews or shuls are careful to actively accept Shabbat early. In fact, many shuls finish *Mincha* moments before or even after sunset, at which time *tosefet* has likely kicked in automatically and one has lost the *mitzva*. (It is unclear how long *tosefet* is but it is a matter of (almost certainly single digits of) minutes- see opinions in Piskei Teshuvot 261:2). It is also strange that the Mishna Berura does not cite a source for the need to accept Shabbat early. The Rama he cites refers only to element #2, that oral voluntary acceptance is binding. Possibly, it just makes sense that one should accept (even though it is not done before *Shemitta* or at Shabbat's end) rather than be forced into *tosefet* and that it is meaningful only if done in a binding manner. However, it is still troubling that the classical sources do not seem to mention this requirement, even regarding Yom Kippur, the original source (see Shulchan Aruch, OC 608:1).

In fact, it is not clear that explicit acceptance is necessary. Rav O. Yosef (Yabia Omer VII, OC 34) argues that if one is in a shul where *Mincha* (which must be done before Shabbat) will finish after sunset, he may *daven* without accepting Shabbat, claiming that the essence of *tosefet* is simply refraining from *melacha*. Shevet Halevi (I, 50) is also not convinced that acceptance is necessary, although he says that many *Rishonim* consider it a *mitzva* (mentally may suffice). Ohr L'Tzion (18:2) concurs and understands even the Mishna Berura to have been referring only to element #2.

There is little reason not to actively accept Shabbat a few minutes before sunset, when it is unlikely to need to do *melacha*. However, the fact that most people do not do so need not be a mistake. For Ashkenazi women, the matter is a non-issue, as they normally accept Shabbat when lighting Shabbat candles (Rama, OC 263:10). When they do not do so, their status is like a man's.

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Autopsies – part II(condensed from Amud Hay'mimi, *siman* 34)

[Last time we raised the question if one's permission to delay burial is valid (to not bury is not).]

The Radvaz (I, 313) says that the *mitzva* to bury on the same day applies only to those who were executed; others must be buried but not necessarily on the same day. The logic is that one might die near nightfall, making it impossible to bury him in time, whereas *beit din* can plan things so that the burial of one who is executed can take place the same day. While this position fits the Rambam's wording in Mishneh Torah, in the Sefer Hamitzvot he says that *bal talin* (delaying burial) applies to all. The Radvaz apparently believed that the Rambam changed his mind and that his two positions correspond to two opinions in the *gemara* on whether or not we learn from "you shall certainly bury him" that all deceased people should be buried right away.

The Radvaz's thesis is difficult within the Rambam [for reasons beyond our scope]. However, what is noteworthy in the Radvaz's approach is that he holds that *bal talin* applies to every night that he is not buried. Thus, there is a positive *mitzva* to bury, specifically on that day, and a negative commandment for every night the deceased remains not buried. Since it is forbidden to listen to the deceased's instructions not to bury even if he was not buried that day, it follows that it is due to *bal talin* and thus that the deceased cannot push off *bal talin*.

Why should this be, though, as we saw that *bal talin* stems only from the honor of the deceased? The Rambam holds that disgrace of the deceased is the parameter of the *aveira* but that we do not accept it as the reason in a manner that the prohibition falls off when the reason is obviated. Therefore, one cannot disgrace the dead by delaying the burial even with his permission.

However, we have seen Tosafot's approach that if burial stemmed from the deceased's disgrace, he could have pushed it off, and we would not have applied the prohibition across-the-board. One cannot prove this from the *gemara* (Bava Kama 91b) that one may disgrace himself, as one can prove that the disgrace of non-burial is a greater than others and it is possible that the Torah did not allow the greater disgrace to be done even with permission. Rather, Tosafot learned the matter as follows. Since the *gemara* treats *bal talin* as disgrace and yet allows it for the deceased's sake, the *gemara* should have concluded clearly that the same is true of burial. Therefore, Tosafot concluded that *bal talin* involves disgrace only to the deceased, which he can waive, whereas burial might affect the whole family, in which case the deceased would be unable to waive it.

The Rambam learns differently. Disgrace is not a necessary component of *bal talin*. Therefore, it could be that the only disgrace discussed is the deceased's and still there could be a difference of halacha between *bal talin* and the *mitzva* to bury. Tosafot understands that the disgrace is the reason for the prohibition, and it applies only when one is unable to waive it. Tosafot can distinguish between burial and *bal talin* because they hold like the Sh'iltot that the *mitzva* to bury exists even after the first day and so it need not be derived at that point from *bal talin* and might apply even if the deceased waived it. *Bal talin* though does depend on the deceased, according to Tosafot, so that he can waive it.

In summary, the Rambam holds that one cannot give instructions to delay his burial so that his body can be used by science (when it does not save lives), as what is true for burial is true for *bal talin*. We suggested that according to Tosafot, there is a distinction between the matters and one can decide to delay. On a question of a potential Torah prohibition where the Rambam is stringent and Tosafot's opinion can be debated we cannot allow delay of the burial in a manner that is not for the deceased honor even if he gave permission.

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P'ninat Mishpat

Backing Out of a Rental After Checks Were Given

(based on Halacha Psuka, vol. 38, condensation of Piskei Din Yerushalmiim III, pp. 151-153)

Case: The plaintiff (=pl) rented an apartment to the defendant (=def). When the contract was signed, def gave pl checks for the entire rental period. However, before handing over the contract, pl demanded a security deposit and refused to hand over keys to the apartment, prompting def to back out of the whole agreement. Pl demands that the agreement should stand.

Ruling: The Shach (Choshen Mishpat 190:1) says that one cannot acquire land by presenting the seller with loan contracts of those who owe money to the buyer. This does not serve in lieu of money, which is a *kinyan* (act of acquisition) for land, because the seller lacks confidence that he will receive money included in the contracts (the buyer could relinquish his rights to receive payment from the debtors). However, the K'tzot Hachoshen (190:1) and the Netivot Hamishpat (190:1) say that the seller does not fear the relinquishing of the debts because if this occurred, he would simply demand the money from the buyer. According to them, loan contracts are equivalent to money and constitute a *kinyan*.

The case of a check is the equivalent of a loan contract, in that in general the check enables one who possesses it and has it in his name to collect the money, whereas it is possible that the account holder will cancel the check. Therefore, according to the latter *poskim* we do not have to fear that the checks will be cancelled and the *kinyan* is valid to acquire the rental of the property.

The Rashba (Shut I, 1028) says that if one rents property for a year and dies in the middle, the inheritors must pay the balance of the rental because rental is a full acquisition. However, the Shach (CM 334:2) says that, according to Tosafot, rental is not a *kinyan* but only a mutual obligation between landlord and tenant. Based on the Rashba, we can say that since the *kinyan* took effect, pl was not allowed to withhold the key to the apartment. However, that does not mean that def could back out of the agreement due to pl's breach. Rather, he should have compelled pl to allow him into the apartment. According to Tosafot's approach of mutual obligations, it follows that if one side is not fulfilling his obligations, the other one does not have to do so either. However, Tosafot's and the Rashba's argument applies when the payment is made at the end, whereas if the renter pays in advance, all should agree that the rental is finalized as a *kinyan*.

The Netivot (312:5) says that the landlord has a personal obligation to provide property for the renter so that if he sold the property to a non-Jew, he has to find him another home. Based on this, we could say that since pl does not want to provide the apartment, def can back out of the agreement. However, that applies only when the renter has no other remedy, but when the apartment is fit for occupancy, def may not back out but should compel pl to allow him to occupy his house.

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