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HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH

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Better Bow Early than Bow Late

One of the most famous questions on the stories of *Chumash* is why Yosef put his brothers through the mental anguish of not knowing whether this powerful leader would kill them or spare them and why delay informing Yaakov that his dear son was still alive and well. The most famous answers are along the lines that Yosef felt a need to have the dreams carried out, as this was his prophecy of sorts to fulfill, or that the brothers needed to have atonement for their horrible sin.

Rav Hirsch, though, felt that such concerns should remain within the realm of the Creator and Leader of the world to arrange. Yosef need not help Hashem fulfill His prophecies or decree atonement on others (which people could use to justify taking revenge). Rather, Yosef was using the opportunity, of all things, to improve his relationship with his brothers. You see, each side had serious elements of misgiving and mistrust toward the other. Yosef did not think it was healthy to resume their open relationship while he still felt the brothers' inability to soften their stance toward him and feel the pain of a brother, even one who might be guilty of a crime (as it must have appeared that Binyamin later was). The brothers did express their candid remorse for not having mercy on Yosef (when they thought he could not understand them) and did come to the full support of Yosef's one full brother, Binyamin.

The other part of the clearing of the air was from the perspective of the brothers' outlook on Yosef. They had viewed him as a power hungry person who would do whatever he could to gain dominion over them. Here, he was showing them what he could do to them and then not do it.

While not wanting to argue with Rav Hirsch, the latter idea is not simple. After all, showing them exactly what he could do to them was arguably the proof that he wanted them to understand how much more powerful he was than they. Perhaps, then, we can take the thesis of wanting to clear the air in a slightly modified direction.

Yosef knew based on the dreams that, one way or another, his brothers were going to bow down to him. This was seen through the eleven objects (stalks or stars), which represented them, bowing down to the corresponding object that represented Yosef. This could happen in a way in which the brothers would bow down to him as their brother, Yosef, by virtue of his power over them. Yosef did not want that to be the relationship between them. He wanted there to be a relationship of joint dependence one on the other, including Yosef request of the brothers to make sure that they take his bones to the Land along with them. Yosef arranged it that they would bow down to him, not with the realization of who he was, but while thinking that he was some unknown Egyptian leader. By the time Yosef was ready to reveal himself to them, it was on the terms of brothers, after which he no longer had them to bow down to him.



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Question: I know that some people have begun being careful to *daven Mincha* before lighting Chanuka candles on *Erev Shabbat*, but *shuls* continue to have *minyanim* at the regular time as if it is not a requirement. Should one or should he not *daven Mincha* first?

Answer: There are prominent, albeit relatively recent sources that indicate that one should *daven Mincha* first on *Erev Shabbat*. (During the week, there is hardly an issue since one normally lights at night, which by definition is after *Mincha*.)

The Sha'arei Teshuva (679:1) says in the name of the Birkei Yosef that Chanuka lights should be done after *Mincha* because *Mincha* corresponds to the afternoon daily *korban* in the *Beit Hamikdash* and the lighting of the *chanukiya/menorah* is related to the miracle that occurred with the *menorah* in the *Beit Hamikdash*. Since in the *Beit Hamikdash*, the *menorah* was lit after the afternoon *korban*, that should also be the order in our practice. This logic is not overwhelmingly compelling. First of all, Chanuka lighting is generally a *mitzva* of the night (which precedes by many hours the next *Mincha*), not one that is to follow *Mincha*. Secondly, it is far from agreed upon that the Chanuka *menorah* corresponds to the lighting in the *Beit Hamikdash*.

Another prominent source is the Pri Megadin (Eshel Avraham 671:10), who comments in the following context. The Darchei Moshe (OC 671:5) cites *Rishonim* who say that while usually the Chanuka lighting in *shul* is done in between *Mincha* and *Maariv*, on *Erev Shabbat* it should be done before *Mincha*. While the Rama (OC 671:7) says that the *minhag* is to light after *Mincha* even on *Erev Shabbat*, the Magen Avraham (ad loc. 10) says that when time before the beginning of Shabbat is short, one should light the candles first. The Pri Megadim points out that in general, for example when lighting at home, *Mincha* should be first. He raises the following interesting but difficult logic. Chanuka lighting is to be done at night, and while we do it somewhat early before an incoming Shabbat, lighting them makes it night-like, after which it is almost self-contradictory to *daven Mincha*.

The Tzur Yaakov (I, 136) objects to the Pri Megadim based on two strong questions. First, if the people whom the *Rishonim* discuss are *davening Mincha* in *shul* close to nightfall, apparently they already lit Chanuka lights at home previously – i.e., before *Mincha*. As far as the logic is concerned, he asks that if lighting Chanuka candles is like ushering in night, how can we light Shabbat candles afterward?

Besides the questions, we should remember the idea of *davening Mincha* first is not based on classical sources, nor is it clear that it was meant to be binding. Despite all of the above reservations, *Acharonim* (including the Tzur Yaakov) find it difficult to dismiss the prominent opinions. The Mishna Berura (679:2) roughly describes it as the preferable thing to do.

The great majority of *poskim* say that it is worthwhile only if one can *daven* earlier with a *minyan* (see Yechaveh Da'at I, 43). If one is dealing with a community which is very geographically centralized (certainly including yeshiva dorms), then it is possible to make the pre-Shabbat *minyan* some 20 minutes earlier than usual, thus allowing people to go back and light after *Mincha*. (One would not want to make that *Mincha* so early that people might mistakenly light before that *Mincha*, before the earliest time one can light.) If we are dealing with a large community, it is possible to have a very early *minyan* for *Mincha*, which can be used for those who want and are able to follow this stringency, and a regular *minyan* at around the regular time. We would suggest to the individual to make a small effort to attend the earlier *minyan*. (If he does, he also gains the advantage of probably having less pressure before Shabbat.) It would seem wrong, in standard communities, to have only a very early *Mincha* and thereby reject the quite accepted *minhag* (as apparent from several written sources and from personal experience) that one lights and then goes to *shul* for *Mincha*.

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Different Types of Obstinacy

(condensed from Ein Ayah, Berachot 5:110)

Gemara: There are three things regarding which a large quantity is damaging and a small amount is good: sourdough, salt, and obstinacy.

Ein Ayah: [Rav Kook apparently understood that the significance of this statement is specifically in regard to obstinacy, whereas the sourdough and salt serve to help define the context of the obstinacy, as we will see.]

There are two types of obstinacy. One is to stand by one's own opinion and not give in to another person. This is a good thing when a single counterpart or even quite a few other people are trying to do something that is not straight and proper. In general, it is proper for one to rely on his own opinion and not always feel a need to conform to that which others tell him, which would deprive him of his own opinions and initiative. This is the small amount of stubbornness that is beneficial. If one goes too far and refuses to agree with what others tell him when it would be proper to do so, this is a damaging type of obstinacy.

There is a second type of stubbornness, which is more far-reaching. Not only is that person so set in his path that he continues acting his own way, but he tries to make others conform to his views. This too can be good if one acts this way sparingly and even more selectively than regarding the first type of obstinacy. The particular danger here is that he will become embroiled in serious arguments, and problems that are difficult to fix will arise.

To correspond with the various forms of stubbornness, the *gemara* brought into the discussion the matter of sourdough and salt. Sourdough works by changing the nature of the dough with which it is mixed, making it ferment and become more like the sourdough. If this is overdone and the dough is ruined, then even if one wants to overcome this by adding more regular dough to the mix, it will not undo the changes and the spoilage that has already occurred. So too, one who tries to influence his friend to a damaging degree will find it overwhelmingly difficult to counteract the damage.

Salt is different in that it does not change the food to which it is added but adds a taste to it, which could be positive, or it could be negative if overdone. However, if one puts in too much salt, he can add more food until the salt ends up being at the right proportion. So too, even when one does not try to change others but to allow his approaches to remain intact, he can also overdo it, but if he does, it is easier to rectify.

There are another two forms of obstinacy which can be compared to sourdough and salt. There is a stubborn person who makes changes with great patience because he is so persuasive that he not only impacts people at the moment of argumentation but he even tries to have his way over time. This can be represented by sourdough, whose impact continues to change things over time. There is another type of person who impacts, but only does so at the time of his activity. This is good when it is not appropriate to take things slowly, but this is very damaging when it is not called for. This is the kind of case where "salt-like" seasoning is bad and a sourdough-like influence is proper. This idea can be derived from the *pasuk*, "A time and a judgment shall one with a bright heart know" (Kohelet 8:5). Every type of obstinacy should be used at the proper time.

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The Meaning of "Including V.A.T." When There Is No V.A.T.

(condensed from Shurat Hadin, vol. IV, pp. 319-321)

Case: The plaintiff (=pl) signed a memorandum of understanding with the defendant (=def) for the latter to build an *aron kodesh*. The price of 22,800 shekels was to include assembly and V.A.T. (Value Added Tax= *Ma'am* - the Israeli sales tax). After the work was done and the money paid, pl requested a detailed receipt, including for the V.A.T. paid. Def responded that there was no V.A.T. payment because the workshop belongs to a non-profit organization, which is exempt. Pl argues that if no V.A.T. was paid, he should be refunded the 17% of the sales price which the document implies would be paid, when "including V.A.T." was written. Def claims that the phrase means only that the buyer does not have to worry about paying V.A.T. beyond the stated price.

Ruling: We can distinguish between different types of taxes. Income and capital gains taxes "accompany" the transaction somewhat externally. V.A.T., though, is an integral part of the sales price and is generally included in the quoted price. Therefore, when a price is set and V.A.T. is not mentioned, the seller cannot add on to cover it. If V.A.T. would have been an external payment and would have been mentioned as "included" when it was not paid, the buyer could demand money back.

Still, there is a question how to look at the matter. Do we say that the buyer agreed to pay as much as he did because he thought the seller would be earning less, due to the expected V.A.T.? If so, he was deceived. Or do we look at the phrase as promising the buyer that the quoted price is the total price? If so, how much the seller kept does not make a difference.

The Shulchan Aruch (Choshen Mishpat 61:15) says that we look carefully into a document's language and do not say that a party was not so careful with his language. He also says (ibid.:16) that we do not follow the actual words but the parties' intent. The Rama (CM 42:10) says that if most people who hear the words of a document understand it one way, we follow it even to enhance the position of the possessor of the document. The Knesset Hagedola cites a *machloket* between the Maharik and the Rashba, whether in the case where the language could be understood well either way but better in one direction, we would say that the document's possessor can receive the better conditions.

Beit din looked into the language of "including." In a parallel case, where the payment was "including transportation costs" and it turned out that there were no such expenses, the Pischei Choshen (Pikadon, pg. 260) said that if there was a set fee that included transportation (as opposed to writing how much each element would be), he does not have to return any money.

Furthermore, since it was pl who wrote "including V.A.T.," when def signed the document he did so based on standard language of such contracts, just like a document that says payment will be even from the "shirt off my back," which is not taken literally. In this case, where def has already been paid, it is difficult to take money back from him.

However, there is *geneivat da'at* in the matter, and def should appease pl and in the future should make it clear that he is exempt from V.A.T.

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