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HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH

Shemot 17 Tevet 5771

Why Not Clarify What It Means?

Harav Yosef Carmel


The background behind Moshe's birth is written in a very unclear manner: "A man from the house of Levi went and took the daughter of Levi as a wife" (Shemot 2:1). Why not spell out the identity of the bride and groom? The names actually appear in next week's *parasha*, and the story behind the mystery appears in the *gemara* (Sota 12a). Amram, one of the generation's leaders, decided to divorce his wife because having children, many of whom (specifically, the males) were killed, was too painful. His daughter, Miriam, told him that his decision was worse than Paroh's, because Amram's "decree" meant that girls would not be born either. Also, Paroh's decree only took people from this world, and Amram's excluded the people who were not born from the world to come as well.

The Kli Yakar suggests that the approach that there was divorce involved here is hinted at by the strange use of wording in the *pasuk*. Firstly, it says "*Vayeilech*" (lit., he walked or went). He points out that this word appears prominently in the context of divorce ("she left his house and went to another man" (Devarim (24:2)). Secondly, the word "house" is sometimes a reference to a wife. Finally, the name Levi is etymologically linked to the concept of joining together. The *pasuk* thus reads: he went away from the connection he had with a woman and then came back and took her as a wife.

The Zohar sees this matter as a sign of strong Divine intervention. It says that the angel, Gavriel, is the one who brought the couple back together, or that Amram did it but as decreed from Above. The Abarbanel says that the marriage was a "Divine decree," for otherwise it would not be normal for Amram to have married his aunt. He says that the language of "going" shows that he went out of the normal course of action. On the other hand, the Abarbanel also says that being such close relatives actually made them compatible as far as their personal makeup.

A final reason that is found in the Zohar is that the names are not mentioned because each one acted in absolute privacy so people would not discover what had transpired.

Whatever the case, it is no surprise that the union that was responsible for the birth of such a great leader as Moshe at such a crucial time was unique and full of special Divine intervention.



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[The following is adapted from a din Torah at Eretz Hemdah's beit din with the litigants' permission. We are sharing only portions of the deliberations.]

Question: The Cohens were making *aliya* from the US. In order to make it more financially feasible to send a lift in a large container (where one saves money if he can come close to filling it) which they could not fill with their own items, they decided to rent space to acquaintances. The Levis (also *olim*) were among those who accepted the offer and ended up paying \$1,500 (out of a total of app. \$10,000) for their things. They were told that in the professional packing process, their items (especially breakables) would take up much more room than one would expect. The Levis brought over many household items in marked boxes, where they were placed in a corner of the Cohens' basement. The Levis took up the Cohens' offer to insure part of their goods, but underpriced the value for insurance because they heard that the companies do not always pay. The Levis had no contact with the companies involved in the shipping; everything was in the Cohens' name. The movers did not pack all of the breakables with bubble wrap and did not separate different families' items as instructed. As a result, several of the Levis' things were broken, and they had to return to the Cohens' Israel home several times to look for things. Although the Cohens sent claim sheets to insurance three times, the insurance evaded dealing with it and the Cohens have given up. The Levis wants the Cohens to pay for the lost and broken items. They also want a refund of part of the shipping fee due to the poor service they received and the fact that their items were not packed in the bulky way that justified the \$1,500 fee. How much, if at all, should the Cohens pay?

Answer: The Cohens are *shomrei sachar* (paid watchmen) for the shipment, even if they only charged per space, as defrayal of costs is of value and a *shomer sachar* need not receive formal payment (Bava Metzia 80b).

If a *shomer* hands over responsibility for the items to another *shomer*, within expectations, *shomer* 1 is exempt from responsibility (Shulchan Aruch, Choshen Mishpat 291:21). If *shomer* 2 did an insufficient job, *shomer* 2 has to pay (ibid. 24). There is a *machloket* (two opinions in Rama, ad loc.) whether, when *shomer* 2 has no money to pay, *shomer* 1 assumes responsibility to pay. Since, according to the arrangement, the Levis cannot approach the shippers or the insurance, this case seems parallel. However, when owners knew who would be serving as *shomer* 2, *shomer* 1 is not obligated if *shomer* 2 fails to pay (Shach, CM 291:32; see Pitchei Choshen, Shomrim 4:(44)). That is the case here. In fact, the Levis' description of why they insured as they did displays their understanding that the insurance company would be the address for such common problems. They should have raised the issue of the Cohens' responsibility if they thought they should be responsible. Both sides realized the Cohens were obligated to do their part by filing a claim, which they seemed to have done. Thus, the Cohens are, on a certain level, exempt.

However, there are claims with some basis, that the Cohens were deficient in performing their part of the job, which includes giving the packers firm instructions how to pack, supervising the job, and filing with the insurance in a way that they would not evade payment. The *gemara* (Bava Metzia 42b) teaches us that even when giving responsibility over to *shomer* 2, how it is given over can obligate *shomer* 1. Even if their performance was not negligent (*pshiya*) given the difficulty involved, it is far from clear that they took all of the precautions a *shomer sachar* is obligated in. Since in any case, a *shomer* has to, in theory, swear that he fulfilled his obligation, and in lieu of oaths in our times a compromise is enforced instead, we obligate the Cohens to pay [a certain amount – *the calculation is beyond our scope, as are other elements of the analysis*].

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[With this we begin the second volume (of four) of Ein Ayah]

The Basis of Berachot

(condensed from Ein Ayah, Berachot 6:1)

Gemara: “How does one make a *beracha* (blessing) on a fruit?” ... From where do we know these words [that there are *berachot*]? As the *baraita* says: The *pasuk*, “holy of praisings to Hashem” (Vayikra 19:24) – this teaches us that they need *berachot* before and after [eating them]. From here, Rabbi Akiva derived that it is prohibited for one to eat before he blesses.

Ein Ayah: Sanctified objects teach that one should seek human, spiritual benefit even from physical things. Therefore, it is more proper to enjoy the knowledge of Hashem’s creations, especially those creations from which we benefit by having our spirits elevated, than to enjoy the physical enjoyment of taste. It is also proper for one’s spiritual outlook to relate to Hashem’s kindness and wisdom in the creation itself in addition to being thankful for his particular benefit from it. This is the idea of a *beracha* before eating.

The *beracha* afterward has more to do with one’s thanks for his ability to survive due to that which Hashem provides him. Added to the matter of survival is the fact that he enjoys the food, including the spiritual enjoyment of being able to appreciate Hashem’s creations. That is why it is forbidden to taste the food without a *beracha*, as one should recognize the value of the benefit of the taste.

Although one who just tastes food (but doesn’t swallow it) is exempt from a *beracha*, that is only when he does so in order to ascertain what taste it has. However, if one tastes the food for enjoyment, he should make a *beracha* on that enjoyment [an interesting halachic *chiddush*], for that is one of the benefits for which we bless, as is implied by Rabbi Akiva’s statement.

Like Misappropriating from Hekdesh

(condensed from Ein Ayah, Berachot 6:3)

Gemara: It is forbidden to benefit from the world without a *beracha*, and whoever benefits from the world without a *beracha* is like one who violates *me’ila* (misappropriation of funds of *hekdeh*, that which is set aside for a use related to the service of Hashem, classically, in the *Beit Hamikdash*). What is the remedy? ... He should go, before the situation arises, to a scholar, who will teach him the *berachot*.

Ein Ayah: The prohibition of benefiting without a *beracha* relates to the failure to recognize the good one has received, which is a foundation of the service of Hashem. Additionally, all the benefits in the world are not able to fulfill their purpose unless they are used for the appropriate moral function that brings awareness of Hashem into the world. Therefore if one does not make a *beracha* but uses the benefit only for its material value, he has made a change in the purpose of the object’s existence. This is very similar to one who uses *hekdeh*, which is set aside to bring one to spiritual completeness, for physical pleasures, thus changing its designation in the process. This change, known as *me’ila*, transforms holy into mundane, and the Torah warns us against this.

A person is used to following his eyes and his physical pleasures and will not necessarily notice the spiritual opportunities that stand before him. Therefore, he should go to a scholar from the outset to teach him how to view matters, before his senses pull him too far in the physical direction. Only then will he succeed in raising his level of fear of Hashem to the point that he sees the spiritual benefit before the physical one. Such a person will not come to *me’ila* but will fulfill the instruction to “in all of your ways, know Him” (Mishlei 3:6), which is a small idea that all of the Torah is connected to (Berachot 63a).

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A Political Party's Obligation to Abide by a Questionable Addendum

(condensed from Shurat Hadin III, pp. 221-224)

Case: Three political parties (=def) that ran together in an election signed an agreement with a group of voters. The agreement mentioned that there was to be a binding addendum. The agreement and a handwritten, unsigned addendum were given over to neutral parties by pl and def to hold. The neutral party gave the addendum to a member of the voters' group to photocopy, and the latter returned copies. In the addendum, it says that a certain member of the voters' group (=pl) would be appointed to a certain local position. Def first said that the addendum does not bind them because it is unsigned, they might not have read it, and because it was not approved by their national echelons. Upon interrogation at a second hearing, representatives of def said that they were not sure if the promises found in the addendum had ever been made and raised the possibility that the addendum was tampered with during the time it was taken for photocopying and was out of the hands of the neutral parties. Def adds that they would have made the appointment if it had been feasible and still might do so if it became possible.

Ruling: Obligations accepted by public officials are binding even if they were not formalized through a *kinyan* (act of finalization of an agreement) (Rama, Choshen Mishpat 163:6). A ruling of the Rabbinical Courts proved that this is also true in regards to the promise of appointment to a post. Written agreements are binding even if the parties claim that they did not read the content of the document (Shulchan Aruch, CM 61:13). In this case, although the addendum was not signed, the signed document indicates that there would be an addendum.

Do we have to be afraid that the addendum was altered? The claim is a strange one, as during the first hearing no one cast aspersions on the addendum's veracity, just to whether it is was binding, and it is not logical that such a basic claim would come up later. Similarly, originally def's representatives said that they all forgot if there had been a promise (not long after it might have taken place); no one claimed they thought it was not true. Later on, some representatives weakly claimed that it was false. The Rosh (Shut 59:1) says that one cannot change his position from not remembering, when said in a serious manner, to remembering that the other party is wrong. It is also not clear why, if there is a fear of forgery, def would still consider appointing pl to the position. In a case where a document was taken from and then returned to neutral people in charge of watching it, we can apply the assumption that one does not lie about something that is likely to be uncovered (see Ritva, Yevamot 47a).

Def's entire presentation of facts is suspect, and we see no reason to doubt the veracity of pl's claim. Thus the addendum to the agreement should be followed to the full extent. The national organization does not have to approve everything that the local branches commit to locally.

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