

HEMDAT YAMIM

PARASHAT **Pekudei**

1 Adar II 5768

This week.....

- **“Keep Your Eye on the Coin!” “Why?”**- A Glimpse from the Parasha
- **Payment for "Kashrut Questionable" Affair** - Ask the Rabbi
- **Religion and Science – part II**- from the works of Rav Yisraeli zt"l
- **Damages from a Car Accident** - from the world of Jewish Jurisprudence

This edition of Hemdat Yamim is dedicated in loving memory of Gershon (**George**) ben **Chayim HaCohen Kaplan** and **R' Meir ben Yechezkel Shraga Brachfeld**

o.b.m

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“Keep Your Eye on the Coin!” “Why?”

This week begins the four *parshiyot* of special *maftirs* and *haftaras*. These beloved *parshiyot* were, believe it or not, selected well before the regular *parshiyot hashavua* were set. Ask any day school 4th grader (who has been listening in class), and he or she will tell you that the first one is *Parashat Shekalim*, which comes from the beginning of *Parashat Ki Tisa*. While true, it's not a simple matter but the subject of a *machloket* in the *gemara* (Megilla 29b). Shmuel says as we do, but Rav says that it is the portion from *Parashat Pinchas* that we read on Rosh Chodesh.

After determining the logic of each opinion, let us try to see the basis and lesson of the *machloket*. All agree that we read *Parashat Shekalim* because during the upcoming month, the population would give the half-*shekel* for public sacrifices that would be given during the new year starting with Nisan. Nowadays we continue the practice of reminding ourselves about the half-*shekel* and then, before Purim, give it as a reminder of the *mitzva* to be renewed when the *Beit Hamikdash* will be rebuilt. Rav says that since the need for the *korbanot* (and the fact that they must be bought from new donations) is stated in Pinchas, that is what should be read. Shmuel says that since the commandment to give the donation is found in Ki Tisa, that is what we read.

What is the logic behind the *machloket*? Rav puts the stress on the need for the donation, i.e., what it would be used for and why it had to be donated now. This could encourage compliance and help focus people on noble intentions. Shmuel, whose opinion we follow, put the stress on the importance of the donation in and of itself. Certainly, out of all of Bnei Yisrael, it should not have been a problem to find enough donations to provide the resources for the communal sacrifices. The matter was to make the most of the communal element of the practice. Firstly, the efficacy of the *korbanot* as engendering the sentiments of service of Hashem needed to be addressed. Secondly, as the Sefer Hachinuch (#105) points out, Hashem did a *chesed* with every individual Jew by allowing him to take a full part in the great service in the *Beit Hamikdash*. Even the richest person would not have an upper hand over the poorest in this element.

Regarding *korbanot*, it is important to internalize the lesson on a deep psychological level. Idol worshippers think of their gods as powerful beings that needed to be appeased with offerings they “enjoy.” Believers in an all powerful and moral G-d understand that the service is an opportunity for us to connect ourselves to Him. Here we are reminded that within our nation, the responsibility to take part in seeing to it that the service can be completed is more than a responsibility but a valuable opportunity. The concept of empowerment through giving is true regarding all forms of donations, from religious ones to charity for the destitute.

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Ask the Rabbi

Question: X hired Y to cater a *mehadrin* (specially strict level of *kashrut*) affair. Due to a mix-up, Y rented utensils (=keilim) from a service that he was only slightly familiar with. Before the affair, X found reasons to believe that the utensils' *kashrut* was suspect, which was confirmed afterward. X wants all his money back, citing internal embarrassment that he caused his guests to eat non-kosher food. Y, who had offered to compensate by providing some free catering, is no longer willing to return money due to X's alleged harassment. What does halacha have to say about this?

Answer: [The response is based on the information provided.] Apparently, those who ate from the questionable keilim violated no Torah prohibition. Involved discussion of this question's *kashrut* element is beyond this presentation's scope, but the most pertinent point follows. If the taste given off by a *k'li* has a negative impact on the food with which it came in contact, which is assumed if the *k'li* had not been used in 24 hours, the food remains kosher (Yoreh Deah 103). One who is unaware of the recent use of a non-kosher *k'li* can assume that food heated in it remains kosher because it was likely not used that day and, even if it was, the taste may combine negatively with the new food (see Shulchan Aruch, YD 122:7 with commentaries). However, it is rabbinically forbidden to use a non-kosher *k'li* even if it was not used within 24 hours in a manner that it may give off taste (Avoda Zara 76a).

If one sells another Jew non-kosher food without disclosure, the buyer can void the sale (Shulchan Aruch, Choshen Mishpat 234:3). The *Mishna* (Bechorot 37a) says that even if the buyer ate the food and thus cannot return it to the seller, the seller must return all of the money. Rashi (ad loc.) posits that this is a penalty against the seller, prompting the Shach (YD 119:25) to say that this would not apply if the seller was unaware of the problem. The S'ma (234:4) adds that any benefit the buyer received was counteracted by the disgust of eating non-kosher food.

The Shulchan Aruch (ibid.) says that if the prohibition on the food was only rabbinic, the seller does not have to return the money when it was eaten. Although the Pri Chadash (YD 119:24) says the buyer recovers the price difference between non-kosher food and that which he paid, most *poskim* say that the seller returns nothing. How can the seller withhold the *kashrut* problem and end up getting a higher price than the food's market value? The Maharit Algazi (Bechorot 5:51) explains that since the buyer got the same benefit as if it had been kosher and would have anyway paid the price of kosher food (and the seller did lose when the buyer ate it) he must pay the planned price of the enjoyment. The Shach (ibid.:27) says that when the Rabbis instituted food prohibitions, they stipulated that the prohibition should not cause the extracting of money between litigants.

According to the Maharit Algazi, ostensibly since X was willing to pay the amount he did and benefited as if it were *mehadrin*, he should not get any money back. However, the Shach's novel idea to treat rabbinically non-kosher food like kosher food regarding money is limited. When one pays extra for a special feature, whether it be for "environmentally friendly" or for *mehadrin*, he should not pay the higher price if he received instead something standard. We should consider also that since X was troubled already during the affair about the *kashrut* questionability, he did not get the feeling of security that people who want *mehadrin* pay for. Despite the reasons to return this extra amount of the money (and the Pri Chadash's aforementioned minority opinion), it is difficult to extract money from Y. However, it is appropriate, based on compromise, for Y to return the difference between kosher and *mehadrin* (approximately 10%), as Y was originally willing to do.

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Religion and Science – part II

(from Perakim B'Machshevet Yisrael, ch. 30)

Rav Yisraeli gathered classical and more contemporary rabbinic views on the interaction between religion/belief and science. We will present his sources in an abridged, free translation form.

4. Arguing Against Attacks on Torah*Igrot Har'iyah I, 134 (Rav A.Y. Kook)*

On the matter of new studies, many of which contradict the simple meaning of the Torah, my opinion is as follows. Whoever has a straight outlook knows that although these new ideas are not proven truth, we are not required to clearly deny and stand against them. This is because it is not at all a principle of the Torah to tell us simple facts and events that happened. The important thing is the inside, the interior explanation of the matters... This is a major rule in the wars of ideas, that any idea that comes to contradict a certain matter in the Torah, we at first need not contradict it but build a Torah palace on top of it [i.e., a higher explanation]. We can elevate ourselves in this way, and it is actually for this elevation that the ideas were discovered. Afterward, when we are not pressured by any attack, we can with a fully confident heart, fight against it also.

5. The Creation of the World, One of the Secrets of the Torah*Igrot Har'iyah I, 91 (Rav A.Y. Kook)*

The counting of the years since creation according to the calculations of the geologists of our time – This is already an accepted Torah idea, that many historical periods existed prior to the count of our period. This idea is famous among the early Kabbalists. In Midrash Rabba (Bereishit 3, 9) it says that Hashem built worlds and destroyed them. The Zohar (Vayikra) says that there were several types of people besides Adam, who was discussed in the Torah (it is just that we need to understand nicely the deep expressions which require a very, very broad explanation). So it is that these archeological digs show us that there were periods of creations including humans. The claim that there was no destruction and new creation between periods lacks a clear proof; rather, they are theories floating in the air with which one need not concern himself. The truth is that we do not need to concern ourselves with such issues. Even if it would become clear to us that there was an order of creation based on the development of species [evolution], this is not a contradiction, for we count according to the simple implication of the *p'sukim* of the Torah, which is more pertinent to us than other ancient knowledge with which we have little concern.

The Torah certainly portrayed creation of the world in a closed form, speaking in hints and parables, as everyone knows that creation is among the Torah's secret [see *mishna* Chagiga 2:1]. If matters were just as they are written simply, what would the secrets be? The *midrash* (see Ramban, Bereishit 1) says: "To tell the power of the world's creation to flesh and blood is impossible, therefore the Torah wrote simply: "in the beginning G-d created." The main idea is the knowledge that comes out of the matter, knowing Hashem and true ethical life. Hashem measures carefully and limits even the spirit He bestows on prophets so that people can take out only certain things in the images [of the Torah's accounts] ... In any case, there is no contradiction to anything in the Torah from any investigative opinion in the world. It is just that we do not accept hypotheses, even if many agree with them, as certainties, for they are fleeting. Later on, new means of inquiry are developed, and formerly new theories turn into a laughing stock. The most exalted wisdom of the times is relegated to small thought, and the words of our G-d are forever.

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P'ninat Mishpat

Damages from a Car Accident

(based on Halacha Psuka, vol. 40, condensation of a *p'sak* of Beit Din of Sderot)

Case: A was driving on a straight road and came to a sign that said to slow down because of cars pulling out of a parking area, which he failed to do. B pulled out of the parking area without looking properly and was hit immediately by A's car, damaging both. Which of the two, both, or neither to pay for damages?

Ruling: The *gemara* (Bava Kama 48b) arrives at the following rules regarding a collision between two passersby that damages both. "If both of them had permission or both of them did not have permission – if they both damaged each other, they are obligated. If they were both damaged by each other, they are exempt... if one had permission and the other one did not, the one with permission is exempt and the one without permission is obligated." One of the examples that Rashi gives for with permission is that they were in the public domain, and one of the examples he gives for without permission is that they are running. The Nimukei Yosef (ad loc.) says that if the two collide, it is considered a case of damaged by each other. Similarly if two cars collide in a manner that they had been moving in different directions toward each other, if they both were of the same level in regard to culpability they are both exempt.

Beit din arrived at the conclusion that A certainly drove "without permission" when he did not obey the traffic sign. Regarding B, at first glance he did not violate any traffic laws and, therefore, he should be considered "with permission." On the other hand, the fact that he did not look around him when he pulled out of the parking area is considered negligence. Although the *gemara* (ibid. 27b) does mention the rule that "people are not in the practice of looking well as they go," *beit din* determined that this is not the case regarding driving in public areas. Therefore, B who pulled out without looking was also negligent.

One can prove that negligence of this type is also considered "without permission." The *gemara* (48a) discusses a case where Reuven entered Shimon's domain and damages were caused. The *gemara* says that if Shimon knew that Reuven entered his area and did not take steps to avoid damaging Reuven, then Shimon is obligated to pay. The *gemara* compares this to the case of one with permission (Reuven, of whom Shimon is aware) and one without permission (Shimon, who was not careful). So too, B's negligence makes him considered without permission.

It is clear that A's negligence was more profound than B's. Would we say that relative to B, it is considered that A alone is considered to be the one without permission? The answer is no, as the matter is like two people who are running, where we do not find a distinction between when they are running the same speed or one is running faster than the other. Therefore, neither has to pay damages to the other.

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Tel: (02) 538-2710 beitdin@eretzhemdah.org Fax: (02) 537-9626

Founder and President: Harav Shaul Israeli zt"l Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360
Tel: 972-2-537-1485 Fax: 972-2-537-9626

Email: info@eretzhemdah.org **Web:** <http://www.eretzhemdah.org>