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HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH Lech Lecha 8 Cheshvan 5772

The Covenant – Updated Harav Yosef Carmel

Last week we demonstrated that the sight of the rainbow is the sign of the covenant between Hashem and between Noach and his offspring, which requires the latter to distance themselves from illicit relationships. Since Cham, one of Noach's sons, grossly violated the covenant, there was a need to update the covenant with one family within the descendants of Shem, who was very careful in that regard.

Why wasn't the covenant done with all the descendants of the righteous Shem? The answer seems to be alluded to in the story of Nimrod, found in last week's *parasha*. He is described as a great warrior, who took control of much of the region of Mesopotamia (Bereishit 10: 8-10). This region is one that is populated primarily by the descendants of Shem. *Chazal* attributed to Nimrod the dubious distinction of the leader of the generation that built the Tower of Bavel. Thus, we can view Nimrod as rebelling against Noach's decree that the sons of Cham will be subservient to those of Shem and Yefet, and he did so with the plan to generally rebel against Hashem.

Avraham was the only one who had the bravery to rebel against Nimrod's leadership and publicly criticize his heretical ways. It was against that backdrop that Avraham left Ur Kasdim, as the Torah retells at the end of *Parashat Noach*. That is why, in *Parashat Lech Lecha*, Avraham is chosen to have a new covenant made with his family. Looking carefully at Bereishit 17: 1-15, one sees many of the phrases and ideas found in regard to the covenant with Noach repeated here. These include the idea of seeing, the sign of the covenant, and an eternal covenant.

However, it may be even more instructive to consider the differences between the processes of entering into the two covenants. Whereas the rainbow was found in a place where all can see, Hashem appeared to Avraham in a manner that involved only him. Instead of "all flesh" being involved, as was the case regarding Noach, this covenant is found in the flesh of "every male." Finally, the place of the sign of the covenant is the most covered part of the body.

The covenant with Avraham ushered in a new chapter in human history. Avraham was chosen to establish a holy nation, one that guards the covenant and makes the matter of physical modesty a necessary and fundamental condition for the fulfillment of the *mitzva* to procreate. The nation of Avraham's descendants was charged with the obligation to teach the world about the oneness of Hashem, which takes on its full meaning when we base our lives on sanctity and purity.

On Yom Kippur, we beseeched Hashem, "*Labrit habet v'al tefen layetze*" (look at the covenant and do not look at [the actions instigated by our evil] inclinations. A key to the success of our request that Hashem look at the covenant is that we keep our part in the covenant.

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Ask the Rabbi

by Rav Daniel Mann

Question: Is it permitted to wear a kinetic watch on Shabbat, which is powered by the periodic natural movement of the hand rather than by a battery or winding by hand?

Answer: Let us start our discussion with old clocks, which were operated in a manner that is halachically equivalent to winding watches. The Shulchan Aruch (Orach Chayim 338:3) says that one can set such a clock before Shabbat even though it chimes loudly on the hour. *Acharonim* explain that people will assume he set the matter into motion before Shabbat (and thus the special *marit ayin* of noises does not apply – Mishna Berura 338:14). There is a major discussion among *poskim* whether pulling the chains to begin the operation of such clocks is considered creating or fixing a utensil (Chayei Adam 44:19) or whether this is just considered the way of using an existing utensil (Panim Meiorot II, 123). According to the former, it is forbidden, very possibly on the Torah level, to set the clock into operation on Shabbat, and this is the consensus.

The next question is whether one can wind a watch that is already working to keep it operational longer than it otherwise would be. The Ktav Sofer (OC 55) compares this to cutting off part of a candle in a way that will make it go out earlier. A simple watch, though, seems to be significantly more lenient in that nothing problematic is happening later, and the question is whether making a change to keep an already operating instrument working longer is equivalent to creating a working instrument. Indeed, the Da'at Torah (on the Shulchan Aruch, *ibid.*) champions the idea that just extending efficacy is not forbidden. The Ktav Sofer also raises the possible distinction between clocks that chime for more hours than they otherwise would have and cases where the gears and handles just move longer. In any case, the *minhag* developed to not allow winding to continue the existing operation even if there is no chime, unless there are mitigating or extenuating circumstances (see Mishna Berura 338:15; Sha'ar Hatziyun 338:17; Shemirat Shabbat K'hilchata 28:19-21).

More recent *poskim* have dealt with the advent of self-winding watches, which wind by one's movements. In this case, the consensus has been that it is permitted while the watch is still working (see Shemirat Shabbat K'hilchata 28:28). Here the aforementioned case for leniency regarding watches that wind is bolstered by the fact that the person is not doing a discernable or intentional act of winding but that it is happening as a certain side result of his activities (*p'sik reishet*). Additionally, regarding this relatively new case, a *minhag* to be stringent has not developed.

The recent invention of kinetic watches is slightly different from self-winding watches. The mechanism of kinetic watches is based on a quartz system, which is normally operated by battery. In this case, instead of a battery, movement generates the small amount of electricity that the watch needs, and the watch stores the energy for anywhere from days to months. The relatively new question of a mini, mechanical electricity recharger is not a simple one, and we have found rabbis coming out in either direction. However, our feeling, is that such a transfer of energy of movement to electricity to be transferred again to "harmless" mechanical movement, without creating new circuits, is not included in the prohibitions of electricity that the halachic world has assumed since the advent of the use of electricity. (We may reverse our decision if a consensus forms to forbid it.)

The matter is more complicated regarding kinetic watches with digital displays, which use electrically generated forms. However, there are significant reasons for leniency here too. The most important one is that the energy provided on Shabbat is rarely needed for operation on Shabbat, as the charge lasts at least a few days.

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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

Positive Overflowing of Bounty and Boundaries

(condensed from Ein Ayah, Berachot 7:45)

Gemara: Rabbi Yochanan said: Whoever makes a *beracha* over a full cup of wine will receive a portion without boundaries, as the *pasuk* says: "To the west and the south he will inherit" (Devarim 33:23). Rabbi Yossi bar Chanina says: He will merit receiving two worlds: this world and the world to come.

Ein Ayah: Superficially, we view the proper approach for a person who wants a truly meaningful life as accomplished by sufficing with necessities and distancing himself from enjoying extras. However, enjoyment of a broader physical life beyond bare necessities is engrained in the human soul, and it must be for good reason that Hashem created us in that way.

Desiring luxuries is a negative trait when one does so in order to simply indulge his senses, in which case he really should work on limiting himself. However, it is also possible to use one's natural inclination toward expansiveness in order to prepare himself for that which is good and straight in Hashem's eyes. In that case, he need not try to curb himself, for there is no limit to that which he can accomplish with broad resources.

Making a *beracha* on a full cup demonstrates a satiation in bountiful materialism. However, when one uses that cup to bless Hashem in a way that indicates that he wants to use broad resources to promote that which is righteous, then it is appropriate for him to desire a broad physical life. Such a person's reward is a portion without boundaries, for if he desired the plentifulness for himself, how much can he have? However, if he desires great riches, honor, and success so that he will be able to accomplish many things, there are no limits as to what can be used. That is why he receives a portion without boundaries.

The foundation of a good approach to life is recognizing the good one receives. The more one appreciates that which he receives the more his personal characteristics will develop favorably. Then also, the more he receives, the more he will use his gifts to spread kindness in the world. This occurs when one recognizes the good in his Maker.

Most people make a clear distinction between physical and spiritual pleasure, and such people cannot fill their soul with the love of both this world and the world to come. The Chovot Halevavot compares it to putting water and fire in the same utensil. This, though, is when one is talking about this world from the perspective of the pleasures of the senses. However, when one enjoys the good of this world because of what he can accomplish with it, then the love of the physical is the love of the spiritual as well. The acts of kindness that he is involved in are activities that are very compatible with the life of the world to come. This is why one who makes a *beracha* on a full cup can inherit both this world and the world to come.

From the two statements (portion without boundaries; this world and the next) together, we learn that with the right approach to abundance in this physical world, one can make himself fit to receive endlessly in a both physical and a spiritual manner.

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The Ability to Levy Fines for Infringement on Intellectual Property Rights

(based on an unpublished ruling by Beit Din Eretz Hemdah-Gazit)

Case: The plaintiff (=pl) put artistic work on a Wikimedia website. The foundation allows free access to the works on its site, even to be used in a commercial setting, with two major conditions: users must credit the artist; the user must display the license agreement code, so that the public knows that they too can use the work under the same conditions. The defendant (=def) regularly uses works from Wikimedia and usually credits the artist. He does not usually display the license code, which he did not feel was necessary. Pl caught def using a work of his without credit, complained, and received a few hundred shekels compensation. Recently he caught def doing so again, and is suing for 40,000 shekels as punitive payment.

Ruling: Def accepts the need to credit artists and explained how he failed to credit pl twice. He also started displaying the license code and pledged to be more careful in the future. Pl agrees that he did not incur losses by the infringement on his rights.

Halacha recognizes intellectual property rights, although there are different opinions as to the nature of the halachic basis. There is a difference, though, between safeguarding someone's rights and penalizing a violator beyond damages. *Beit din*, since the time when authentic *semicha* ceased, is not authorized to rule on penalty payments, only on recovering losses, actualizing deserved profits, and the like. While the latter could justify *beit din* ruling payment of a few hundred shekels, it could not justify more than that.

The Knesset's revised law on copyright infringement of 2007 enables courts to levy penalties up to 100,000 shekels even if no damage is proven from the infringement. We accept the government's ability to legislate based on *dina d'malchuta dina*. This includes areas that regulate monetary issues between individual citizens (and not just between citizens and the state) when the law is within the spirit of the Torah (see K'tzot Hachoshen 259:3). There is no question that the Torah values giving credit to the originator of an idea and even equates not doing so with theft (see Midrash Tanchuma, Bamidbar 27). The Rama (CM 1:5) says that while *beit din* cannot enforce the Torah's penalty payments, they may levy penalties made by contemporary rabbinical leadership. The S'ma says that this is within the power of the general leadership to make life livable for the community. The S'ma (2:2) says that it is justified to levy such payments either when an individual consistently violates a certain social norm or when society neglects a certain area of law or behavior, in which case an individual may be made to pay a penalty even if he is not known to be negligent in that area. Copyright law is certainly something that will not be kept carefully if there are no consequences.

The Knesset law gives logical guidelines to help determine the rate of penalty. Since pl did not lose from the infringement, def did not gain (since they only needed to credit and not pay), and because def took steps to prevent such violations in the future, *beit din* decided not to levy a large penalty. On the other hand, a token fine could encourage future violations and discourage people like pl from going to the significant trouble of protecting their rights in *beit din*, which is helpful for society as a whole. The balance struck was of a payment of 3,500 shekels.

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