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HEMDAT YAMIM

חֵמְדַת יָמִימִים

Parashat HaShavua

Behar, 13 Iyar 5776

“Foreigners and Citizens You Are With Me”

Harav Shaul Yisraeli – based on Siach Shaul, p. 351-2

In explaining the *mitzva* of *yovel*, the Torah says that the Land will not be sold for eternity and finishes up that this is related to the concept that we are “foreigners and citizens with Me” (Vayikra 25:23). The connection to “with Me” appears to be as follows: If you treat Me like one who fully belongs, then you fully belong; if you treat Me as an outsider, you too will be like outsiders.

The idea is that in the *mitzvot* of *shemitta* and, especially, *yovel* the element of recognizing heavenly dominion is particularly prominent. It is that which makes us deserving inhabitants of the Land. This is because in order for us to have dominion over the Land from a human perspective, we must be fully cognizant of the fact that it is Hashem and no other who has the ultimate ownership of the Land. “For the earth and everything that is in it is Hashem’s” (Tehillim 24:1). This is the reason that the Torah starts with the story of Genesis and not with “*Hachodesh hazeh*,” the first *mitzva* that Bnei Yisrael were commanded nationally, which would be appropriate, since the stories of nations begin with their independence.

Hashem chose for us a land that is the nerve center of the world. This is described in the *pasuk*, “The land which Hashem is interested in. Constantly Hashem’s eyes are in it, from the beginning of the year until its end” (Devarim 11:12). Now we can understand the connection between *shemitta* and Sinai, where, the Torah stresses, that *mitzva* was given. “The strength of His actions He told to His nation, to give to them the land that is the lot of the nations” (Tehillim 111:6). This is the secret that Hashem created the world with a statement made by “His mouth.” The whole world exists due to the spiritual element. Therefore, the connection to the Land comes specifically by stressing the fact we are connected to it to the extent to which Hashem grants it to us (“we are foreigners and citizens”).

This last *pasuk* is surprising, in that it refers to the Land as “that which is the lot of nations.” Is *Eretz Yisrael* the lot of the nations? Isn’t it our lot? There is a deep meaning here. The vision for Bnei Yisrael is the vision of the End of Days, when “all those who inhabit the world will recognize and know Hashem.” Such an era can be ushered in only when the Kingdom of Israel will be the Kingdom of the Heaven.

Refuah Sheleymah to Orit bat Miriam

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Ask the Rabbi

by Rav Daniel Mann

Al Hamichya on a Fruit

Question: I ate a fruit that requires the *beracha acharona* of *Al Ha'eitz* but, due to a lack of concentration, I recited *Al Hamichya*. Do I have to subsequently recite the correct *beracha acharona*?

Answer: It actually depends which fruit you ate. We will start, though, with the Levush's (Orach Chayim 208:17) overview of the various *berachot acharonot* and of one reciting the wrong one.


Birkat Hamazon is a Torah-level obligation (see Devarim 8:10), prescribed by the Torah for bread, which is filling and is the staple of a classic diet. The Rabbis modeled a *Birkat Hamazon*-style *beracha* (*Me'ein Shalosh*) for the seven foods that are mentioned in the *p'sukim* around the one on *Birkat Hamazon*. (There are opinions that this too is a Torah-level obligation.) Within the versions of *Me'ein Shalosh*, the highest level (and thus the first mentioned when one makes a *beracha* on multiple *Me'ein Shalosh* foods) is *Al Hamichya* because it is for grain-based foods, which are generally more filling than fruits. Afterward, wine (*Al Hagefen*) is more important, followed by *Al Haeitz* for grapes, figs, pomegranates, olives, and dates. The Levush explains that it is obvious that a lower-level or an inaccurate *beracha* is insufficient for that which requires a higher-level one. Additionally, a higher-level *beracha* does not cover foods which call for lesser praise because an exaggerated *beracha* is not of value. Thus, for example, reciting *Birkat Hamazon* for vegetables, as if it constituted a meal, is valueless, and *Borei Nefashot* must still be said.

Two exceptions to this rule are dates and wine. The *gemara* (Berachot 12a, as understood by *Rishonim* – see Beit Yosef, OC 208) says that if one recited *Birkat Hamazon* after eating dates, he fulfilled his obligation because dates are particularly filling. Another *gemara* (ibid. 35b) says similarly that wine is filling and would have required *Birkat Hamazon* if not for the fact that people rarely make it the basis of a meal. Therefore, the Shulchan Aruch (OC 208:17) rules that *Birkat Hamazon* is valid after-the-fact for dates and wine. All other foods that require *Me'ein Shalosh* are not exempted by *Birkat Hamazon* that was recited on them outside the framework of a meal with bread (ibid.).

What about when the mistake was to recite *Al Hamichya* instead of *Al Haeitz* (or *Al Hagefen*)? The Levush (ibid.) assumes that regarding dates and wine, if *Birkat Hamazon* is not too much of an exaggeration, then certainly *Al Hamichya* is not, and one would not have to repeat *Me'ein Shalosh*. The Taz (OC 208:16, see Pri Megadim ad loc.) disagrees. He argues that *Birkat Hamazon* contains the word *zan* (roughly, sustain), which is appropriate for dates and wine, whereas *michya* (roughly, food that gives life) is a different quality, which does not apply to them. The Malbushei Yom Tov (208:11) reasons that the fact that the halacha of fulfilling the *beracha* on dates with the wrong *beracha acharona* was said in regards to *Birkat Hamazon* implies that *Al Hamichya* is invalid even after-the-fact, and the Eliya Rabba (208:26) does not discount this possibility. However, the majority of *Acharonim* assume that after *Al Hamichya* for dates or wine, one does not need another *beracha* (see Minchat Shlomo 91, V'zot Haberacha p. 48). Since the general rule is that when in doubt, he does not make another *beracha*, this is the proper ruling to adopt.

The question of *Al Hamichya* sufficing for dates and wine is much more complicated when one had both grains and dates or wine and mentioned "*al hamichya*" without the other elements. In that case, we assume that the person, when omitting the other elements, demonstrated that he did not remember the need to have the *beracha* cover them. Therefore, the stronger view in that case is to repeat *Me'ein Shalosh* with just the missing element (see discussion in Har Tzvi, OC I:108; Yalkut Yosef, OC 207:(2)).

The clear consensus is that one does not fulfill his *beracha acharona* obligation on grapes, figs, pomegranates, and olives with *Birkat Hamazon* or *Al Hamichya* (see Shulchan Aruch, OC 208:17).



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Ein Ayah

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

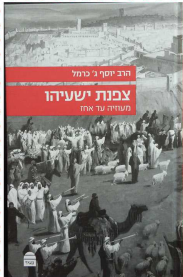
Decreased Activity for One who Relies on Miracle

(condensed from Ein Ayah, Shabbat 2:194)

Gemara: Rabbi Yannai said: One should never put himself into a situation of danger and saying that a miracle will occur, as it is possible that the miracle will not occur, and if the miracle occurs, his merits will be lessened. This is what the *pasuk* [said by Yaakov] means: "I have become smaller due to all the kindness and the truth that You have done for Your servant" (Bereishit 32:11).

Ein Ayah: On one level, there is a practical advantage of someone refraining from relying on miracles, for Hashem wants the world to operate based on nature. Additionally, there is a spiritual reason, which stems from the fact that man himself was one of the things that Hashem created with wisdom based on the rules of nature that He placed into His world. Therefore, it is proper that man should love nature, as it allows him to be active and not to be the object to which things happen. Even when man is ostensibly acting himself, he is actually acting together with Hashem (see Yeshaya 26:12). This desire to be one who acts is part of a person's *shleimut* (completeness). When the desire to act combines with knowledge, then he will know how to act properly, and nature affords him the opportunity to do so. In contrast, a miracle turns a person into the object upon which forces operate, and this actually takes away from his power, as he cannot do anything in this regard. What are merits if not the wide variety of good actions that a person does? When a person acts according to the path that Hashem sets out for him, his merits increase, and while they increase they certainly do not decrease. But when the miracle is happening to him, and as a recipient, that which occurs to him is a function of the past merits that he has accumulated, the miracle subtracts from the existing past storehouse of merits. After all, Hashem put limits even on the moral powers that He put in the world, and that which has been gained by proper actions that a person has done can go only so far, whether in the physical or the spiritual realm. As long as a person is acting in the proper way, he can continue to succeed on an ongoing basis, as the *pasuk* says: "The work of your hands shall you eat, you are fortunate and it is good for you" (Tehillim 128:2). He will experience the full joy and success, and he loses nothing because he is only asking to continue living properly. Therefore, one should always have an internal love of nature. This can be fully significant only when he knows clearly that miracles exist and that they are great, yet he sees the value of the sustainable situation of living based on healthy, natural actions. Then his actions are connected to complete truth and true freedom.

There are times when a person needs, for a variety of reasons, to become "smaller" by receiving miracles from Hashem. However, the ultimate goal is to grow again. Indeed, Yaakov, while acknowledging the impact of having received, also was told that his life was one of profound actions, as his new name (Yisrael) connoted that he had acted successfully with dominion among angels and with men (Bereishit 32:29).



Tzofnat Yeshayahu - Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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Agent's Fee for a Sale Cancelled After Contract

(ruling 74021 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (*pl 1, pl 2*) are in-laws who signed a contract to buy an apartment for their children, with the help of an agent (*def*), whom they paid. The bank turned them down for a mortgage because part of the apartment was built illegally (one room appears in the Land Registry as a balcony) and the apartment which they were told is 70 sq. meters is registered as 52 meters. *Pl* sued the seller in a *beit din* and received a ruling that stated the sale was void due to *mekach taut* (misinformed sale). *Pl* demand that *def* return the agent's fee, as he withheld pertinent information, which, as a friend of the seller, he certainly had. *Def* claims that the first *beit din* made a mistake, as a converted balcony is not grounds for *mekach taut*. He points out that *pl* are satisfied with the apartment as it is, and 70 meters are indeed usable. *Def* denies knowing about the apartment's legal status, which buyers should check themselves at the Land Registry. *Pl 2* asked *def* to find a renter for the apartment, which he did, and *def* is countersuing for an agent's fee for this. *Pl 2* responds that since the rent is now going to the seller, as the sale was cancelled, the seller should pay the fee.

Ruling: *Pl* did not prove that *def* was aware of problems with the apartment.

Does an agent receive his fee for brokering an agreement that was made but not brought to fruition? The Rama (Choshen Mishpat 185:10) says that there are different local practices of whether a matchmaker, whom he compares to a commercial agent, receives his fee from the time of engagement or the time of marriage and that this determines whether he receives pay if there is a broken engagement. (Israeli law talks about an agent as being the one to bring the sides to a binding agreement.) The Maharshal (Bava Kama 10:39) says that the *shadchan* is deserving once he brings them to an agreement that includes a penalty for breaking it (*tenaim*). The Aruch Hashulchan (CM 185:11) adds that in that case, the side that breaks the engagement has to return the other side's part of the *shadchan* fee, but the *shadchan* does not return anything.

The matter is different, though, when *mekach taut* causes the sale to be naturally void, as just as the sale was a mistake from the outset, it turns out that there was never the basis for the fee. However, in our case, the contract sets special financial provisions (penalties) for the case that problems in the apartment are uncovered, which included the possibility of upholding the sale and making financial adjustments (which does not exist according to halacha). Thus, this sale was not naturally void even in the case of serious illegal construction. The wording of the contract makes it clear that even contradictions between what they were told and that which is in the Land Registry do not void the sale, except that an appendix to the contract made it possible to back out if they could not receive a mortgage.

The ruling of the previous *beit din* does not impact this case. While *beit din* does not contradict the ruling of a previous *beit din*, that is only in regard to the specific issues and litigants involved. It does not mean that another *beit din* has to accept the assumptions of the previous one in different contexts.

In summary, *def* does not have to return the fee he was given. However, he is not entitled to a fee for the rental agreement because according to Israeli law, an agent's fee is not due when there was no signed agent's contract, which is the case here. Although halacha can obligate the party due to the benefit he received from the agent, this does not apply here since there does not turn out to be benefit.

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