

HEMDAT YAMIM

PARASHAT CHUKAT

2 Tammuz 5768

This edition of Hemdat Yamim is dedicated in loving memory of

**R' Meir ben Yechezkel
Shraga Brachfeld**
o.b.m

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Leaders Change but History Still Repeats Itself Harav Yosef Carmel

When comparing this generation's leaders with great historical leaders like Moshe, Aharon, and Shmuel, about whom we have learned in the latest *parshiyot* and *haftarot*, we cannot but long for such outstanding leadership. However, when taking a look at the *p'sukim*, we see that despite their greatness, leaders of old were not always appreciated. In fact, they even suffered violent rebellions. The Torah spells out its rejection of Korach's rebellion and the punishment of its perpetrators. Sometimes a whole story is only hinted at. One such case is found (in coded form) in our *parasha*.

The Torah relates the great public mourning that accompanied the death of Moshe's brother and partner, Aharon (Bamidbar 20: 28-29). However, we need *Chazal's* insight to appreciate the extent of the upheaval his death caused. From the proximity of the relevant *p'sukim*, they deduce that with Aharon's death, the special divine clouds disappeared, which, in turn, invited the Canaanites of Arad to attack (Ta'anit 9a).

The Yerushalmi (Yoma 1, 1) goes a step further. When tracing the order of Bnei Yisrael's travels in the desert, we see that after Aharon's death, they turn up in places they had previously been mentioned to have gone through several encampments before (see Devarim 10:6-7). This is coupled with a look at the families that are mentioned and are missing respectively from different genealogies of the time. *Chazal* concluded that in the panic after Aharon's death, a significant portion of Bnei Yisrael reversed their steps with the intention of returning to Egypt and were pursued by people from the tribe of Levi. They met in civil battle in Moseira, and whole families from each side were decimated.

What lesson can we learn from this little-known crisis in Bnei Yisrael? One lesson for all generations is to not use one's lack of satisfaction with the quality or accomplishments of the generation's leader as an excuse for the nation's behavior. Don't think that if we only had a leader like Moshe, Aharon, and Shmuel that we would all fall into line. They too had to fight opposition and lack of stability, whose source was from within the nation. Such leaders were not handed things on a silver platter but had to prove their qualities in the face of adversity. They had to withstand a fragmented society that included people on a variety of levels of belief. The need to choose well, within the realm of free will, is always present.

The second lesson is to the leaders, who might be tempted to blame their troubles on the people and lose sight of their own failures. Leadership is a heavy yoke, which always raises challenges. Only someone who is willing to give of himself selflessly, stressing the people's needs and ignoring his own, can join the likes of the great historical leaders about whom we have learned. May we merit such leaders soon.

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Question: I am a single *kohen* living in Israel. I, therefore, wear my *tallit* only for *nesi'at kapayim* (*duchening*). When I put on my *tzitzit* in the morning, should I make a *beracha*, or should the *beracha* on the *tallit* cover the *tzitzit*?

Answer: First we must understand the halacha that you correctly assume that one who puts on a *tallit* does not make a *beracha* when putting on his *tzitzit* in the morning.

The Shulchan Aruch (Orach Chayim 8:10) says that one who puts on his *tzitzit* when his hands are still dirty from the night should put them on without a *beracha*, which he will recite later. He suggests doing so after purposely handling the *tzitzit* or when he puts on another pair of *tzitzit*. The Darchei Moshe (OC 8:3) relates the *minhag* to make a *beracha* only on the *tallit* that he wears for *Shacharit*, which also covers the smaller pair of *tzitzit*.

The Mishna Berura (8:24) provides different reasons for the practice to make the *beracha* only on the *tallit* and use it to cover the already worn *tzitzit*. He mentions the Chayei Adam's (12:4) issue not to make two interchangeable *berachot* in close proximity. Since one *beracha* can accommodate multiple *tzitzit*, an unnecessary second *beracha* would be a *beracha she'eina tzricha* (unnecessary and thus improper). (The Chayei Adam actually prefers making the *beracha* on the *tzitzit* to cover the *tallit*.) The Darchei Moshe (ibid.) was bothered by the possibility that the *mitzva* of *tzitzit* will not be complete (and thereby not warrant a *beracha*) because often the *tzitzit*'s garment is too small. Others point out other things that could make a *beracha* on the *tzitzit* unnecessary (e.g., the garment's shape, having had the *tzitzit* on all night.).

This practice does raise problems. *Berachot* generally precede the *mitzva*'s fulfillment; here the *beracha* comes after the *mitzva* of *tzitzit*. Rabbeinu Yonah (cited by the Beit Yosef, OC 8) says that it is sufficient that the *beracha* precedes part of the performance of the *mitzva*, in this case, the continuation of their being worn. The Taz (8:9) says that since one cannot put on the *tzitzit* right away, considering that the hands were dirtied during the night, it is fine to delay the *beracha*.

The question is whether this system is best even if one will put on his *tallit* only significantly later, i.e., during *chazarat hashatz*, prior to *duchening*. Not only is the concern with two *berachot* in succession being unnecessary reduced, but the problem of waiting a long time without a *beracha* being on the *tzitzit* also increases. Several *poskim* therefore say that when a long time is expected between the two, one makes a *beracha* first on the *tzitzit* and later on the *tallit* (see Be'er Moshe VI, 4; Tzitzit 8:(52)). Some still prefer one *beracha*, on the *tallit*, because of the lingering concern that the *tzitzit* do not warrant a *beracha* (Minchat Shlomo II, 4.1.3). This is far from clear; recall that when there is no *tallit*, we take our chances and make a *beracha* on the *tzitzit*. It should also depend if the garment clearly requires *tzitzit* or not. On the other hand, it is hard to alter *minhagim*.

It is also not clear what constitutes a long break. Opinions apparently range from around an hour to two or three hours (see Minchat Shlomo, ibid.; Piskei Teshuvot 8:16). Therefore, when one waits between *tzitzit* and *tallit* from the time he dresses until *chazarat hashatz*, there is ample justification to prefer either approach on whether to make a *beracha* on each or make the *beracha* only on the *tallit* (if it is his own *tallit* or he acquires it temporarily before putting it on). One can continue as he was taught or how he has practiced until now. Either way, it is correct to have the proper intention: taking the first approach, intend not to cover the *tallit* with the *beracha* on the *tzitzit*; taking the second approach, have in mind with the *beracha* on the *tallit* to cover the *tzitzit*.

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Non-Jewish Ownership of Eretz Yisrael – part VII

(from Eretz Hemdah I, 5.7)

[We will now examine the p'sak halacha on the question whether there is *kinyan* (acquisition) for a non-Jew to remove the kedusha of the Land in regard to mitzvot.]

The Yerushalmi (D'mai 5:8) rules that *yeish kinyan* (a non-Jew has *kinyan*). In several places in his commentary on *mishnayot* (as opposed to one place where he seems to contradict himself) the Rambam agrees. However, the Bavli does not give an indication of which of the Talmudic opinions on the subject to *pasken* like, and the Rambam in Mishneh Torah (Terumot 1:6) rules that a non-Jew does not have *kinyan* in *Eretz Yisrael* to remove *kedusha*. The Kesef Mishneh suggests that the Rambam ruled *ein kinyan* because of several *mishnayot* that assume that, but it actually seems that several *mishnayot* assume *yeish kinyan*. The Kesef Mishneh adds the possibility that when the Rambam says *ein kinyan*, that is referring to after he obtains the field a second time or after doing *miru'ach* (the classical processing of the fruit) in Jewish hands. He implies that the *machloket* of *yeish* or *ein kinyan* is even when the field is in the non-Jew's hands, but as far as *p'sak halacha*, the Rambam holds *yeish kinyan* when it is still the non-Jew's and *ein kinyan* regarding when it returns to the Jew.

The Rambam distinguishes between a case where the grain grew a third of its growth under a Jew's ownership and had *miru'ach* of a non-Jew, in which case there would be an obligation of *ma'asrot* on a rabbinic level, and a case where it grew totally under non-Jewish control. The Ra'avad does not distinguish. The Kesef Mishneh says that the Ra'avad's source is the *gemara* (Gittin 47a), which asked against the opinion of *ein kinyan* from a *baraita* that obligated in *ma'aser* only if it grew a third by a Jew. From this we see that if one holds *ein kinyan*, there is no distinction where it grew a third, as either way it would be obligated. The Rambam though, while saying *ein kinyan*, does not obligate when it was totally under non-Jewish control.

Why would the Rambam mix his *p'sak* and hold like different opinions in different cases? The Kesef Mishneh cites a Yerushalmi that says that even R. Meir who holds *ein kinyan* agrees that there is a *kinyan* on the possession, and R. Ba says that this is so regarding eating the fruits. This means that the *mitzvot* apply to the produce when a Jew rents the field from the non-Jew, as it is not considered as if he obtained land outside *Eretz Yisrael*. However, if the non-Jew grew the produce and did the *miru'ach*, we would say *yeish kinyan*, as the fruit is the non-Jew's. It comes out according to the Kesef Mishneh that there are two approaches to the opinion that *ein kinyan* (whether it be R. Meir or Rabbah). According to one approach, the laws apply even when it is under the non-Jew's control. The Bavli (Gittin 47) thus assumes that if one holds *ein kinyan* then this is even if the produce did not reach the crucial stage of a third of its growth under Jewish control. In relation to this opinion, the Rambam *paskened* that *yeish kinyan*.

However, according to the opinion in the Yerushalmi that R. Meir himself holds that in regard to cases where everything took place under non-Jewish auspices the laws stemming from *kedusha* do not apply, all would agree *yeish kinyan* in such a situation. Thus, when the Rambam says *yeish kinyan*, he can actually be ruling like the opinion that *ein kinyan*, just with the approach that the scope of that opinion was reduced. The Rambam is not ruling a compromise between the two opinions but is *paskening* like R. Meir, who happens himself to have a "compromise position."

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P'ninat Mishpat

A Review of the Year's Piskei Din - part II

(based on Halacha Psuka, vol. 45)

Mekach Ta'ut (Misinformed Transaction) and Ona'ah (Mispricing)

A Clause That Negates the Claim of Mekach Ta'ut

Purchase contracts of cars often have a clause where one relinquishes his right to take legal steps in the case of misrepresentation of the object. This clause is not halachically binding.

Mekach Ta'ut When the Buyer Relinquished His Right to Check the Object

A difference of opinions exists if relinquishing the right to check an object before buying also relinquishes the right to claim *mekach ta'ut*. In any case, if the check is expensive, the failure to have it done is certainly not a reason to prevent the buyer from claiming *mekach ta'ut*.

Use of the Object After the Blemish Was Discovered

In a case that one buys an object and uncovers a blemish that is grounds for nullifying the sale, if he uses the object after that point, he no longer has the right to undo the sale. However, if the buyer had no choice but to use the object, its use does not indicate a relinquishing of the right to return the object.

The Setting of a Price in Regard to Ona'ah

It is very difficult to arrive at a standard price in regard to determining the existence and degree of mispricing. However, when there is an object that has a catalogue price, it is accepted that this serves as the standard price.

Inheritance and Wills

Giving Power to a Will

Fundamentally, a halachically valid will has to be phrased as a present from the giver and should not be written in the form of inheritance. However, a will that is phrased improperly can still be valid under certain circumstances. For example, when the will has a status of a will of one who is on the verge of death (*sh'chiv meirah*) or similar circumstances, or when there is no known inheritor of the one who is bequeathing the will is valid.

Rentals

The End of a Rental Period

In a case where the rental is paid for in advance, the nullification of the rental can be accomplished only through an act of *kinyan*. Therefore, if the renter just leaves the property without an agreement with the landlord, he still must continue to pay rent. Similarly, the death of the renter is not grounds for ending the rental if the rent was paid in advance.

The Burden of Proof

When there is a discrepancy about facts or a doubt on a matter of halacha, when the matter relates to a question resulting from land rental, it is the renter who, as a rule, has to prove his claim. When the question relates to the rental of movable objects, the burden of proof is on the one who is trying to extract the object in question from his counterpart.

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