

# HEMDAT YAMIM

PARASHAT HA'AZINU - SUCCOT

12 TISHRI 5769

*This week.....*

- **Porous Protection from Above - A Glimpse from the Parasha**
- **Asking someone to be his *shalich* to hold the *arba minim* - Ask the Rabbi**
- **Excerpts from the Introduction to Ein Ayah – part IV - from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **Location to Adjudicate When a Couple Live in Different Places (based on Halacha P'suka 46, a condensation of a ruling of the Supreme Rabbinical Court)**

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is dedicated in memory of a  
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## Porous Protection from Above

It is not too hard to find a connection between our *parasha* and the upcoming holiday of Sukkot. "He found it (the Israelite nation) in a land of desert and in desolation, a howling wilderness; He surrounded it, He gave it wisdom, He protected it like the pupil of an eye. As an eagle wakes its nest, hovering over its young, it spreads its wings and takes it and carries it on its pinions" (Devarim 32:10-11).

Most commentaries understand these *p'sukim* as referring to the caring protection that Hashem provided for Bnei Yisrael as they left Egypt and sojourned through the desert on the way to Eretz Yisrael. According to the Targum Yonatan and others, the surrounding refers to the clouds that Hashem placed around the Israelite encampment, the very clouds upon which the *sukkot* are based (see Sukka 11b). Again, the way the *pasuk* with commentaries seems to portray the purpose of this surrounding, it was there to protect from enemy nations and their weapons and from wild beasts. However, the Torah tempers the focus on the physical survival. In the midst of the description of the protection, the Torah inserts the idea of giving wisdom, which is widely associated with the giving of the Torah at Sinai during the desert period. Furthermore, the second *pasuk* hints not just at the effectiveness of the arrangement whereby Hashem saw to the nation's needs but also to the loving care with which He treated them. The preparation of the young for the arrival of the mother eagle and the hovering above the nest are part of a picture of doing more than technically necessary to ensure survival.

This picture is bolstered by the specifications of the related *sukka*. While the Torah refers here to a surrounding from all sides, which indicates the element of protection, the word *sukka* refers to the covering on top. Indeed, the *halachot* of detailed requirements for the materials and structure of the *sukka* relate to its roof and, for the most part, not to its walls. Why put the stress specifically on the roof?

While the protection from all around is worthwhile to remember, the Torah is telling us that it has to be put into proper context to be fully appreciated. The Torah, which made us a wise nation, was at the heart of the desert experience. Also, the most important cloud may well have been the one from above. It did protect from the sun and other dangers from above. However, it was not like a roof, which eliminates contact with that which is above, requiring light to enter the structure through side windows. Rather, while the cloud provided shade from the blinding light of the *shechina* (Divine Presence) above, it allowed some sunlight and rain to come through. So too, the *s'chach* is a flimsy covering that enables us to feel the presence of the "loving mother bird hovering above us," seeing to our welfare - physically, emotionally, and spiritually.

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**Question Question:** If a person is in a place where *arba minim* (*lulav, etrog, etc.*) are unavailable, can he fulfill his *mitzva* by asking someone to be his *shaliach* (agent) to hold the *arba minim*?

**Answer:** The *mitzva* of *arba minim* on Sukkot is a classic example of a *mitzva sheb'gufo*, a *mitzva* that devolves upon the body of the one who performs it, for which *shelichut* is ineffective (Tosafot Rid, Kiddushin 42b - see K'tzot Hachoshen 182:1). Thus, one must put the *arba minim* in his own hand. Likewise, one has to sit in a *sukka* himself and put *tefillin* on his body.

**Follow-up Question:** If anything that one needs to do with his body cannot be done by means of a *shaliach*, how can one make a *shaliach* to light Chanuka candles?

**Follow-up Answer:** We see you want us to get deeper into the *lomdus* (halachic analysis) of the concept and parameters of *mitzva sheb'gufo*. Firstly, we should admit that there is at least one opinion that when there are not enough *arba minim* to go around for a community, one person can hold it on behalf of the rest (Yad Hamelech, cited by Shut Chatam Sofer, Orach Chayim 182). This opinion is rejected, mainly because of the concept of *davar sheb'gufo*, as we explain further. Alternatively, the *gemara* (Sukka 41b) learns from the *pasuk* "u'lekachtem" (you [plural] should take) that every individual must take *arba minim* himself (see Chatam Sofer *ibid.*).

So, why does the Tosafot Rid consider *arba minim* a *mitzva sheb'gufo*, while lighting Chanuka candles is apparently not. The K'tzot Hachoshen (*ibid.*) makes the following distinction between various types of *mitzvot* in our regard. The main point of some *mitzvot* is to do an action. In such a case, we say that a *shaliach's* action on another's behalf relates to the *meshale'ach* (the one who asked him to do it), who fulfills his *mitzva*. *Mitzvot* whose fulfillment is *m'meila* (by itself) when a certain situation exists do not lend themselves to the transference principles of *shelichut*. One of his examples follows. It is true that if a *shaliach* attaches *tefillin* to someone's head, we treat it as if the *meshale'ach* did the action. However, that is insufficient for fulfillment of the *mitzva*. If you were to put *tefillin* on your friend's head, he would fulfill the *mitzva*, not you, for the fulfillment is in the *tefillin* being on one's head. That is the case when a *shaliach* puts *tefillin* on his own head on your behalf. Although his action is like yours, his body remains his own, and the right action in the wrong place is of no value to you. The same is true with *mitzva* of *arba minim*, which requires them to be in your hand. (Mishneh Halachot III, 145 says that we know that the essence of *arba minim* is the situation, not the action, only from the *limud* of Sukka 41b).

One can distinguish this from the case of Chanuka candles in a couple ways. One way is to say that the main *mitzva* of Chanuka candles is the action of lighting (Mishneh Halachot, *ibid.*). However, your assumption is not exact. A *shaliach* cannot independently fulfill the *mitzva* of Chanuka lighting on your behalf; he must light the candles in your house (Minchat Shlomo II, 58). In that way, it is similar to someone else putting *tefillin* on your head, which works even for a *mitzva sheb'gufo*. (The difference is that Chanuka candles has an action element and thus requires a valid *shelichut*, whereas anyone may attach *tefillin* to your arm and head (see Har Tzvi, OC I, 23).)

A different formulation is found in Minchat Asher (Weiss), Bereishit 15. Rav Weiss distinguishes between a *mitzva* whose main purpose is the action, in which case a person must do it himself, and a *mitzva* whose main point is arriving at a result, in which case someone else can help him arrive at the result. (See there for further insight and distinctions, including treatment of "complex" *mitzvot* that include both elements).

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# Ein Ayah

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

## Excerpts from the Introduction to Ein Ayah – part IV

[We last saw Rav Kook's urging for Torah scholars to apply their energies to the study of aggada (homiletics and philosophy) as they do to halacha.]

It is possible to see people who have a strong hold on every halachic element of the Torah and know little about what goes on in the Jewish heart, regarding matters of personality and ethics, beliefs and philosophies, which are the root and foundation of Torah. If such a person is kind enough to read a book of ethics, he does so superficially or for the purpose of inspiration and fixing a temporary inclination. The broad and deep Torah of *mussar* (ethics) and *aggada* can be understood and meaningful only when there is a broad knowledge of its important books, which were passed down from the giants of the generations in these fields. The matter has reached a point whereby if a scholar is inspired to invest time increasing his expertise in *mussar*, he deals with guilt that he is wasting Torah time. This is wrong; the field of Jewish thought is also Torah. Granted, if one deals just with feelings and imagination, even if it helps his ability to learn, that is not included in Torah per se, although we can include it in the *mitzva* of *teshuva* or of *tefilla*. However, when we deal with *aggadot* and matters of belief and philosophy, as the *midrashim*, *Geonim*, Rambam and others did, acquiring knowledge and afterward the ability to analyze, it is Torah study, indeed of a type that builds that which was destroyed and seals the gaps in the walls around our nation.

Realize that many of the books that need to be studied in order to be steeped in matters of ethics and philosophy are commentaries on the *aggadot* of *Chazal*. Investment of significant time in this study can bring significant success, which is crucial in our generation. Increased volume of reading has taken hold in our times, taking the place of careful reading and review of classical texts. This has allowed people to acquire much knowledge in the field of halacha and, increasingly, because of its ease and lack of necessary preparation, entices people in other areas as well. Because few scholars are experts in the field of *mussar*, there are few new books that can add light of Torah, fear of Heaven, and holy attributes to a broad readership. The lack of talented people dedicating themselves to this study has allowed the generation to increasingly deteriorate, as scholars of *aggada*, *mussar*, philosophy, and proper personal attributes have painfully waned.

Torah brings on all good things. However, only serious study causes one to act in accordance with the Torah. Only with study of ethics in a manner that binds it to practical Torah will the Jewish home be filled with spiritual light. When there will be greatly increased study of improved behavior, the spectacle of a Torah scholar whose inside is not as pure as his outside will wane, along with its terrible *chillul Hashem*. These better-rounded scholars will also be able to combat new or old attacks on Torah, which have so severely eroded the Jewish fabric of so many. My simple understanding is that a *bi'ur* [an expansive commentary - see previous weeks' articles] of the *aggadot* of *Chazal* is a major step toward improving the situation.

This internal feeling is what prodded me to expound on the words of *aggadot Chazal*. I have felt that those ideas in the writings of *Chazal* that have inspired me will inspire others who desire to learn Torah strongly, including the *aggadic* elements. My hope is that my contribution will inspire those greater than I to contribute their works, which will make mine considered unimportant. Then I will know that I have succeeded.

I have included simple explanations in my work as well. Simple manners committed to writing also can inspire and influence. Works of the simple nature are also needed in our times to strengthen the pillars of Torah, fear of Hashem and belief.

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# P'ninat Mishpat

## Location to Adjudicate When a Couple Live in Different Places

(based on Halacha Psuka, vol. 47- from Mishp'tei Shaul 42)

**Case:** A couple were married in Israel, but now the husband (=def) lives abroad and rarely returns. The wife (=pl) lives in Israel and wants her claim for divorce and related issues to be heard in an Israeli *beit din*. Def wants the matter adjudicated in his area.

**Ruling:** The case should be heard in Israel; two presentations of the rationale follow.

**Rav Goldschmidt** – It is noteworthy that *def* is an Israeli citizen who plans to return and, therefore, is bound by Israeli law. Also, *beit din* in Israel has legal authority to rule and enforce matters of divorce, which the *beit din* that *def* requests lacks. The Maharival (II, 97) explains that the reason for the practice that the plaintiff adjudicates in the defendant's city is that the defendant is expected to feel more bound by the authority of the local *beit din* and accept their rulings. Since the rule is for the plaintiff's good, if this can be attained specifically in the plaintiff's place, that is its proper place, as is the case here.

**Rav Yisraeli** - The *gemara* (Sanhedrin 31b) cites a *machloket* about a case where one litigant wants to adjudicate locally and the other wants to go to the *beit va'ad* (place of eminent experts). It concludes that we follow the request of the lender because a "borrower is a servant to the lender." Israel's *batei din* should be considered a *beit va'ad* because of the concentration of *talmidei chachamim* serving in an organized fashion. Most *Rishonim* understand that the special status of a lender applies to other types of plaintiffs. The Mordechai cites those who say it applies to inheritors and those who give an object to be watched. The Hagoth Maimoniot, citing Tosafot, extends it to matters of theft, damages, and commerce. The Hagoth Maimoniot and Kesef Mishneh dispute if the Rambam (Sanhedrin 6:7) should be understood broadly or in a limited manner (Kesef Mishneh) in this regard. According to the Kesef Mishneh, it would not be possible to force *def* to adjudicate in Israel; according to Tosafot it would be. Either way, in this case, where the *batei din* function by authority of Israeli law, which obligates all of Israel's citizens, *def* cannot avoid its jurisdiction. Also, the Gra (CM 14:18, based on Bava Kama 46b) explains that the rationale that a case is usually heard in the defendant's place is that "one whose teeth hurt should go to a doctor." This implies that this is when the defendant is able to deny the allegations outright and win. However, in this case, *pl* demands that *def* continue to pay her support, and, regarding support before divorce, it is the husband's burden to prove that he does not owe it (see Rama, Even Ha'ezer 70:12 and Shulchan Aruch, EH 154:3). Because of these circumstances, *def* should go to Israel to try to prove his case.

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