

HEMDAT YAMIM

PARASHAT VAYISHLACH

16 KISLEV 5769

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This edition of Hemdat Yamim is dedicated to the memory of
R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

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The Danger of Slow Travel

Upon returning to the Land of his Fathers, Yaakov took a slow path southward, as he had told Eisav he would (Bereishit 33:14). Hashem was less than happy with the delay. In Bereishit 35:1, He prodded Yaakov along, telling him to go already to Beit El and make an altar to Hashem who revealed Himself to Yaakov when he fled Eisav. According to one version of Rashi, Hashem had punished Yaakov with the troubles to his daughter, Dina, because he had spent too long on the road. According to another version, it was for not fulfilling his oath to erect a house of worship at Beit El. The Chizkuni asks that Rashi seems to contradict himself, for on 32:23 he writes that the troubles regarding Dina were a punishment for not allowing Eisav to marry her, as she could have had a positive influence upon him. He answers that the two factors were technically related (see there). It is worthwhile to investigate if there could be a deep common denominator between the two pieces of criticism.

Let us proceed with a simple question. Why did it take Yaakov so long to make it home, especially considering his parents' age (actually, Rivka died soon before he returned)? The following suggestion could not only answer the question but also shed light on the previous issue. Yaakov told Eisav that he had to go slowly, according to the pace of the children. Perhaps he was referring to their spiritual development. He had taken them out of the influence of their grandfather, Lavan, but as we see from some of the stories (see Bereishit 35:2), a process of purification was needed. Perhaps Yaakov felt that it was not yet the right time to present his children to his holy father, before they reached his expectations.

If this is the case, then there is a connection between Yaakov's delay and his refusal to have Dina marry Eisav. He lacked sufficient trust in his children's spiritual ability to cope with challenges. Generally, being extra careful because of the concern that one's child is not ready to cope may be prudent. However, when one refrains from an important *mitzva*, in this case, honoring one's parents or saving one's brother's spiritual state, underestimating the children can be a serious offense. The unnecessary delay also prevented his children from being positively influenced by Yitzchak and, to the contrary, they struggled with tests along the way.

We can now answer the following question. If Yaakov was late in fulfilling his oath, why did that happen? Actually, Yaakov said that his side of the deal would begin when Hashem would enable him to return in peace to his father's home (Bereishit 28:21). Yaakov had not yet returned, so how was he late? The answer is that Hashem had done His part in enabling him to return. The fact that he was unnecessarily hesitant did not entitle him to say that he had not returned; therefore, he was already obligated to build the "house of Hashem."

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Question: If one is sitting *shiva* in his apartment and there is a *minyan* in the building's *miklat* (bomb shelter), is it acceptable for the *avel* (mourner) to go down to the *minyan* if it is not easy to gather a *minyan* in his apartment?

Answer: Two issues come into play in this case: the positive element of a *minyan* taking place in the *shiva* house, and the problem of an *avel* leaving his house. We will deal with one at a time.

The Rama (Yoreh Deah 384:3) says that the deceased has *nachat ruach* (a spiritual good feeling) when people *daven* in the place he died. Therefore, if the deceased died in the *shiva* house, significant efforts should certainly be made to hold a *minyan* there. There is a difference of opinion whether *davening* in a *shiva* house in his honor causes *nachat ruach* when he did not die there (see Divrei Sofrim 384:25). This element would not seem to exist if the *minyan* was held in a different area of the building. The Har Hacarmel (Yoreh Deah 20) gives two other reasons why it is good to *daven* in a *shiva* house. 1) Often an *avel* says *Kaddish* for the deceased (i.e. for a parent), and so it is better that he has a place to do so without conflicting with other mourners. He says that the *minhag* was accepted across the board, even when the *avel* does not say *Kaddish*. 2) It is forbidden for the *avel* to leave the house and, therefore, the *minyan* enables him to not miss his *mitzvot*. Let us, then, see if this problem of leaving the house applies within the same building.

The Shulchan Aruch (YD 393:2, based on Mo'ed Katan 23b) rules that an *avel* should not leave his house during *shiva*. The Terumat Hadeshen (I, 290) explains that this is to keep his mind on mourning, which is compromised when one leaves and interacts with others. The Terumat Hadeshen, based on this reasoning, allows one who has a need to do so to go from the *shiva* house to a nearby house at night, when there is little activity on the streets.

Poskim considered the relative value of allowing an *avel* who does not have a *minyan* in the *shiva* house to go to *shul*. The Magen Avraham (694:8) implies that if it is just to take part in a *minyan*, the mourner should stay home. Note that the Terumat Hadeshen assumed that *davening* in *shul* is worse than walking home at night because in *shul* there is likely to be interaction with others. This is different from people gathering in the *shiva* house, where the focus is on the *shiva*. The Eliyah Rabba (132:4), though, says that if the mourner is a son, who says *Kaddish* for the deceased, he should go to *shul*; many accept this opinion (see P'nei Baruch 21:(16)). The Chochmat Adam (Matzevet Moshe 8) went further, suggesting that any *avel* who would be missing *davening* with a *minyan* may go. Although he is reluctant to rule against the Magen Avraham, he says that if the *shul* is in the same courtyard and does not require him to pass through the public domain, all agree he should go. This opinion is accepted by later *poskim* (see Pitchei Teshuva 393:2; Divrei Sofrim 393:42). The *minyan* that you describe is equivalent to that permitted case.

However, the permission to go to the nearby *minyan* does not justify not making an effort to have a *minyan* in the *shiva* apartment, as those who are lenient discuss cases where the *minyan* not being held is a fact. Therefore, even without going outside or meeting anyone on the street, the proper thing is that the mourner takes part in a *minyan* that is special for the *shiva* for his deceased. Since different levels of difficulty and other factors impact on a possible case in a manner that we cannot anticipate, it is hard for us to give an absolute ruling. However, either for the positive reasons of *nachat ruach* or negative reasons of leaving the house, a *minyan* in the *shiva* house should be strongly pursued over having him participate in the *miklat minyan*.

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Ein Ayah

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

The Power of Prayer (from Ein Ayah, Berachot 68)

Gemara: Rav Elazar said in the name of Rabbi Chanina: the blessing of a simple person should never be light in your eyes, for two great leaders, David and Daniel, were blessed by simple people and their blessings were fulfilled.

Ein Ayah: The Divine manner of leading the world places all existing matters, both in the physical and spiritual realms, within a system of wonderful wisdom, in a way that their goals will be met. The main goal is that spiritual potential, which is the desired fruit of all existence, should be strengthened. Indeed, Hashem established within the existence of the world a rule that *tefilla* (prayer) should be effective in obtaining results. Hashem arranged matters in this way in order to attain the ethical gains that can emanate from *tefilla*, to elevate the soul and to stay away from that which is evil. [See *Ein Ayah, Berachot 1:56*, which we discussed in *Hemdat Yamim of Toldot*. There Rav Kook writes that when *tefilla* is effective, people recognize Hashem's impact on the world, fear Him, and follow His commandments.] Hashem also established a situation in the world whereby a blessing is an effective device to bring good to another. The purpose of this matter is that it encourages people to live in peace and love one with another, so that they will be worthy of their counterpart's blessing.

That is why the blessing of a simple person should never be light in one's eyes. After all, the blessing's effectiveness does not depend only on the individual value of the one who offers the blessing. Rather, it is a general rule of nature from the perspective of the completeness of the world as a whole, in regard to its moral standing. However, it is understandable that once necessity brought this rule of nature into existence, there still is an advantage to the blessing of one person in relation to another, and thus one cannot compare the blessing of a simple person to that of a great and righteous person. [Rav Kook apparently means that one will feel more connected to Hashem if the blessing of a holy person is more effective than the blessing of a simple one.]

The Proper Way to Rebuke (from Ein Ayah, Berachot 70)

Gemara: Rabbi Yochanan said in the name of Rabbi Yossi: one "lashing in the heart" of a person is more effective than several physical lashings, as the *pasuk* says: "She will run after her lovers... and she will say, 'I will go and return to my first husband, for it was better for me then than now'" (Hoshea 2:9).

Ein Ayah: Here the Rabbis taught us the pleasantness of the approach of education, for not through beatings is a person educated but rather in the manner of pleasantness. The true fear that one is supposed to have [for Hashem] is the awe of His greatness that comes along with reliable love.

Until the most recent times, the scholars of the field of education did not arrive at this realization, and their education employed the "stick of those who damage" (see Zecharia 11:7). Only in these times, did great amounts of experience prove to them that they should understand that which our Rabbis taught us in their holy spirit.

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P'ninat Mishpat

Damage Payment for One Who Tripped in a Store

(based on Halacha Psuka, vol. 49 - A Condensation of a P'sak by Beit Din Gazit of Tzefat)

Case: A customer (=pl) entered a store and tripped on a slightly elevated tile, resulting in a fractured rib and complications that caused him much anguish, two weeks of missed work, and a restriction on lifting heavy items. Pl demands significant compensation for all of the above, especially considering that if the storeowner (=def) were insured, the insurance would have been obligated to pay generously.

Ruling: The *gemara* (Bava Kama 49b) deals with a *machloket* among *Tannaim* and *Amoraim* regarding if one is obligated to pay for damages caused by a "bor" (pit, and other equivalent situations) that exists in the defendant's own property. The Shulchan Aruch (Choshen Mishpat 410:6) rules that if one dug a bor in his own property and relinquished his rights to the property in a manner that masses may enter, he is obligated. This is the situation regarding a store, where one invites whoever wants to enter. However, *beit din* toured the store and found that the tile upon which pl fell was higher by only a tiny amount and, the store's longtime workers attest that in the many years that the situation existed nobody had fallen. Therefore, there is at best a *safek bor* (a possibility that a "pit" exists).

In our times, when authentic *semicha* no longer exists, there are certain areas of adjudication that our *dayanim* cannot perform. Among them are matters of payment that exceed the actual damage. The *poskim* dispute whether our *dayanim* can judge matters of bor (Shvut Yaakov I, 136) or not (Shach, CM 1:2, in the name of the Maharshah), but the Pitchei Teshuva (1:1) and others accept the opinion that they can.

The payment for damages caused by a bor consists of what is known as *nezek*, which is permanent damages that would result in the lowering of the person's value were he to be sold as a slave. However, other payments, such as for medical bills, missed work, embarrassment, and anguish, do not apply to bor (Shulchan Aruch, CM 410:34). In our case, there is no long-term damage, as pl's situation is improving and is expected to return to normal. *Beit din* has found out that pl's claim that he will never be able to lift heavy items is not medically sound. Since we are talking about a *safek bor* and the payments do not fit under the category of those that can be levied, *beit din* cannot obligate def to pay.

However, it is standard practice for businesses to insure themselves for cases such as these, and it is clear that had def done so, def would be entitled to significant payment. If he had sued (improperly) in secular court he would have likely received significant payment. Therefore, def accepted *beit din's* request that he agree to pay, based on the concept of willing compromise, for the anguish he caused. *Beit din* set the payment at 2,000 shekels.

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