

# HEMDAT YAMIM

PARASHAT TERUMA

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HaCohen Kaplan

as well as

R' Meir ben Yechezkel Shraga

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*This week.....*

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## Build Carefully

Harav Yosef Carmel

This week's *haftara* deals with the *Beit Hamikdash*, the permanent counterpart to the *Mishkan*, upon which our *parasha* focused. The *Beit Hamikdash* was built under King Shlomo's leadership. The *navi* linked his reign's moral success and the longevity of the holy structure, as we will see.

In the midst of discussing the completion of the building (Melachim I, 6), the *navi* paused to encourage Shlomo: "This house that you are building – if you follow in My statutes, My laws you will do, and My commandments you will observe to follow them, I will uphold for you that which I said to your father, David. I will dwell in the midst of Israel, and I will not leave My nation, Israel" (ibid.: 12-13). The *pasuk* then repeats similar language about the completion of the construction, indicating that the previous *p'sukim* were inserted to break up the description. The *perek* ends by saying that the whole job took seven years.

*Perek* 9 refers to the time that Shlomo completed the building of the *Beit Hamikdash* and other projects related to his kingdom and again relates Hashem's exhortation to him. Here, though, along with the positive reinforcement, there is also a stern warning: "If you will turn away, you and your children, from before Me and will not follow My statutes... I shall cut off Israel from the face of the Land that I gave to them and the house that I consecrated for My name I shall send from before Me and Israel will be as a parable and a conversation piece to all the nations" (ibid. 9: 6-7). The section is completed with the dating - that it was twenty years that Shlomo had built the house of Hashem and the house of the king.

Apparently the *Beit Hamikdash* complex was built in two stages. The main part where the service was done was completed in seven years. However, afterward there were additions that included the encompassing region which was the heart of the city, which now served as both the religious and the monarchical center of the nation.

According to a prominent opinion in *Chazal*, Shlomo's kingdom itself was broken into two periods. According to Rabbi Yudan (see *Kohelet Rabba* 1), Shlomo actually ceased to be king for a period in the midst of his reign, after a failure. It is likely that the construction also ceased at that time and when he returned, Hashem warned him that his behavior would have to regain its level if he and his descendants wanted to avoid punishment. Since Shlomo did not remain as faithful as required, Achiya Hashiloni prophesied that much of his kingdom had been decreed to be torn away from his family.

Even Shlomo, who was called "Hashem's beloved," lost favor and had his rule interrupted and limited. No one has an assurance that whatever leadership he has will last if his behavior does not warrant it.

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**Question:** I have heard that there is an issue with long hair being a *chatzitza* (problematic separation) with regard to *tefillin shel rosh*. What is the halachic cut off point?

**Answer:** Some *poskim* say that long hair is a *chatzitza* for *tefillin*. However, regarding most cases of long hair, these opinions are difficult, and the length is not the main issue, as we will see.

One puts the *tefillin shel rosh* where the hair grows (Shulchan Aruch, Orach Chayim 27:9). As one is not required to shave his head frequently, hair could not possibly be a *chatzitza* regarding *tefillin*. Why not? The *gemara* (Zevachim 19a) discusses whether hair from the head that hangs down between the *kohen's* clothes and his body is a *chatzitza* and does not resolve the question. On this backdrop, the Machatzit Hashekel (27:4, cited by the Mishna Berura 27:15) says that a *blorit* (probably, a clump of hair in the front of the head) is a *chatzitza* for *tefillin*. He says that, for a *blorit*, one cannot apply the rule that anything that exists normally (*r'vitayhu*) is not a *chatzitza* because it is "abnormally big." Presumably, if the hair whose roots are in the *tefillin's* location are combed down neatly to one's waist, it would not be a problem because the part of the hair that the *tefillin* is on is the same as it would be if he cut the long part. The problem would be only if at the point where the *tefillin* sit there was noticeably more hair than expected. If one wanted to be strict, a relatively conservative side part could be more of a problem than long hair with a middle part (see the Aruch Hashulchan, OC 27:14). We have not heard people being careful about the former.

Igrot Moshe (OC IV, 40.18) goes further, saying that transplanted hair is not a *chatzitza*, since it cannot be removed from the head without cutting (unlike a toupee) and the person wants it to be there. Rav O. Yosef (Yechave Da'at II, 2) points out that mourners have to grow their hair at least for thirty days and some do so for twelve months, yet the *poskim* do not warn about *tefillin*. He also points out that there is a double doubt pointing that hair is not a problem of *chatzitza*, as the Rashba (Shut III, 282) also suggests that *chatzitza* is a problem for *tefillin shel yad* but not *shel rosh*.

There are two areas in which some *poskim's* concerns raise serious questions of *chatzitza* specifically for people who, by our standards, have long hair. One is that on the sides of the head where the straps of the *shel rosh* hold down the *tefillin*, there could be several layers of hair, much of which would not be there at all if his hair was of normal length. Be aware that, on one hand, the Rama (OC 27:4) says that *chatzitza* applies only to the boxes of the *tefillin*, not the straps. On the other hand, the Mishna Berura (27:16) says in the name of "the *Acharonim*" that one should not be lenient in regard to the part of the straps that are used to fasten the *tefillin* to the body. Another issue is raised by the Mishna Berura (27:15). He says that, in addition to problems of *chatzitza*, a lot of hair can prevent the *tefillin* from being secured in the right place. Apparently, he means that the *tefillin* are supposed to be on the head, which may be accomplished even if there is hair in between. It is not supposed to be sitting on a clump of hair, which happens to be supported by the head (see Shulchan Aruch *ibid.*:5 who distinguishes between a thick and a thin hat). Sometimes, especially regarding those with curly long hair, the *tefillin* don't seem to be resting on the head to any significant degree.

In summary, in all but the most extreme cases presented above, there is ample reason to say that long hair does not prevent the fulfillment of the *mitzva* of *tefillin*. We would note that many of the *poskim* who raised the issue combat the phenomenon of long hair for males (primarily?) based on other halachic, social, and philosophical elements (see Bemareh Habazak V, 25).

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# Ein Ayah

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

## The Attraction to a Country

(based on Berachot 1:116)

**Gemara:** “They emptied out Egypt” (Shemot 12:36). Rav Ami said: this teaches that they made it like a trap without grain. Reish Lakish said: they made it like a net without fish.

**Ein Ayah:** From the Torah’s warning not to return to Egypt, we see that there was a need for vigilance that the nation would not be drawn there over time. There they might return to the lowly spirit and the slavery, accompanied by the Egypt’s abominations. Therefore, He Who shapes history prepared an idea well in advance to undo Egypt’s pull on Israel.

One draw to a country is if it has bountiful food and is a good place to acquire wealth. Every great nation desires such things, and nations can be drawn even to lands that are distant, geographically and spiritually. Beyond this, a nation that is accustomed to a certain land from which it was distanced may be drawn by love of the land’s society. This can be prevented only when the society’s order is broken; no one wants to live in a desolate land.

Rav Ami spoke of a trap without grain, for when its wealth [represented by food] is lost, people are no longer drawn there to make riches. This broke the Israelites attraction toward Egypt. Reish Lakish felt that this was insufficient because of Israel’s leaning toward and familiarity with Egypt. Therefore, Hashem arranged well into the future that Egypt would be so lowered by its affliction that it was unable to lead a normal society, making it like a net without fish. When a net has fish, other fish stream there for the love of companionship regardless of practical advantage.

## Bigger Miracles Are Not Better

(based on Berachot 1:118)

**Gemara:** Why did Eliyahu say “answer me” twice? Once that the fire should descend from the heaven and once that Hashem should occupy their minds so that they won’t attribute it to sorcery.

**Ein Ayah:** The goal of true belief is to attain *shleimut* (completeness) in actions and attributes. Intellect’s insight is very great, as the Chovot Halevavot says. It can be achieved without miracles, by means of pure recognition of the fear of G-d and the desire of good attributes; this is the goal of the heights of the spirits. Therefore Divine Providence always saw to it that miracles should occur in a manner that prepares the spirit to go on the straight path based on intellectual insight.

Therefore, it is better, if possible, that a miracle not be a major wonder but something that resembles nature. Thereby, one who wants to deny the miracle can say it was sleight of hand or sorcery, so that cognitive recognition will take part in deciding on the good path of Hashem, ways of full pleasantness and paths of peace. Only when necessary were obvious miracles performed.

Eliyahu used the miracle of the fire although one could claim it was witchcraft so that Israel would use intellectual insight to leave idol worship’s darkness and return to the service of Hashem from an internal recognition that is everlasting, true *shleimut*. It would have been different if they had repented due to an undeniable miracle. In that case, the heart would have no part in the purity, as the intellect would have to accept it, and the impact would not last. Therefore, Eliyahu asked Hashem to help prepare their hearts to love Him and grasp His truth. The miracle of fire from the heaven separated them from the bad habit of idol worship; if they chose good internal recognition, they would not consider bad thoughts to claim sorcery. Indeed whatever accompanies goodness and internal justice and straightness is accepted by the heart of one who is wise and seeks Hashem.

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# P'ninat Mishpat

## Beit Din's Authority to Interpret Charters

(based on Halacha Psuka, vol. 53 - A Condensation of a Psak from Piskei Din Rabbaniim VII, pp. 324-331)

**Case:** The plaintiffs (=p) are members of a political organization, which is governed by a charter. The charter includes rules for the selection of the organization's "committee," its highest body. The rules for selection are as follows: the election for the committee is personal; the members of the organization plenum (=def) set the rules of the elections; the members of the committee are selected through election by ballot. Def decided that members of the executive would be members of the committee without needing to stand for election. Pl claim that this rule contradicts the organization's charter and is thus invalid. Def claim that since they are in charge of election rules, they can make such a decision, which is clearly a wise one for the effective running of the organization.

**Ruling:** The Rashba (Shut IV, 308) asks about one who was authorized to adjudicate any provision related to the people of the city and any unclear language in their charter. The question was whether he could judge such matters based on logical appraisal of the public welfare or whether all had to be based on interpreting the charter's language. He said that if authority had been given to judge regarding any new question, then there would have been broad authority to decide based on one's own logic. However, the language of the charter the Rashba dealt with talked about judging unclear language, not about deciding. Therefore, he could only determine the language, without adjusting the matter based on his personal opinion about the people's welfare. According to the Rashba, *beit din*, in this case, also cannot consider what is the ultimate good of the organization but what is the proper understanding of the charter. Therefore, def's claim that efficiency makes it necessary to have members of the executive automatically on the committee is irrelevant.

Regarding the provisions of the charter for selection, the apparent contradiction between two of the provisions must be resolved. On one hand, the charter says that members of the committee must be voted in. On the other hand, it gives authority to the plenum over the process. One could claim that the organization's welfare mandates that the need to be elected refers only to people other than the members of the executive. However, the Rosh (6:30) says that any initiative that was made for the people of a city, even if it is related to taxes and there are those who do not pay taxes, still applies to all, unless stipulated otherwise. So too in our case, since the provision about elections was written in an inclusive manner, it applies to everyone even if logic dictates otherwise.

The plenum may only make decisions about how the elections to the committee will be carried out, but they can exempt no candidate from standing for election.

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Baba Kama 56-62

## The Limits to One's Responsibility for Damages

This week in the Daf Hayomi (62a) the Gemara makes an important distinction between a situation where a person actively damages with his hands and a situation where a person indirectly causes damage through his negligence. An example of the second situation is where someone was supposed to guard an object and did not guard it properly. The situation the Gemara discusses is regarding a person who gave someone a gold coin to watch, but told him it was a silver coin. The problem in this case is that the coin is really a gold one, but the watcher thinks it's a silver coin whose value is much less. The Gemara distinguishes between two ways the one given the coin can cause damage to it. If he directly damaged the coin, such as by throwing it into the sea, he has to pay its real value as a gold coin. However, if he did not guard the coin properly and because of his negligence the coin was lost, he only has to pay for a silver coin. The Gemara explains the reasoning behind this distinction as follows: in any case, he should not have directly damaged the coin, and he therefore has to pay its real value. However, when the coin was damaged as a result of his insufficient watching, since he only accepted upon himself to guard a silver coin, he cannot be made to pay for more than that.

From this statement it appears that when a person directly causes damage he is liable for the entire value of the damage that he did, regardless of what he thought he was damaging. However, a few lines later, the Gemara appears to contradict this conclusion. The Gemara deals with a case where a person took someone else's box that was used for storing money and threw it into the river. The owner of the box claimed that the box contained a very expensive stone. The Gemara deliberates whether people would normally put an expensive stone in such a box. However, this discussion appears to be irrelevant in light of the above conclusion. Since the damager in this case did the damage in a direct fashion, even if people do not normally put an expensive stone in such a box, he should be liable.

The Rishonim gave different solutions to this question. The Tosafot (d"h Mi) explain that in a situation where a person could not have been aware that he was damaging what he ended up damaging, he is exempt even if he did the damage directly. Tosafot claim that the deliberation of the Gemara is even in a situation where the box owner had proof of the stone's presence in the box. Therefore, if people do not usually put expensive stones in such a box, one cannot obligate someone who threw away such a box for damage of an expensive stone. However, in the case where someone gave a gold coin for keeping and told the keeper it is a silver coin, the keeper could have realized that it is really a gold coin, and the giver only told him it was silver because he was afraid that if he knew it was gold he would not agree to guard it.

The Rambam (Chovel U'Mazik 7, 18) and other Rishonim disagree and claim that if the box owner had witnesses that there was an expensive stone in the box the damager would have to pay for it, since he did the damage in a direct fashion. The deliberation of the Gemara was in a situation where the box owner did not have such proof. The Sages instituted that in a situation where a person caused damage but does not know what he damaged or its value, like the case where the damager threw a box into the river without knowing its contents, then the person who was damaged can swear as to the value of the damage and receive full payment from the damager. However, if the one who was damaged claims that there was an item in the damaged object that is not generally there, such as an expensive stone in a box usually used for money, in this situation, the Gemara deliberates whether he can swear as to the presence of an expensive stone. Therefore, the Rambam rules that a person cannot swear in such a case, and only if he has proof as to the presence of the stone would the damager be obligated to pay.

The Shulchan Aruch (388, 1) rules in accordance with the view of the Rambam, that one who directly damages is liable for the entire value of the damage, even if he could not have been aware of the value of the damaged objects. However, if the one damaged does not have proof of the presence of such objects, he would not be able to swear that they were indeed there. The Remma rules in accordance with the Tosafot, that even if he directly causes damage, he is not liable for what he could not have been aware of. The Shach (ibid 6) claims that most of the Rishonim agree with the Rambam and he rules this way as well.

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