

*This week.....*

- **Cherubim After the Golden Calf** - A Glimpse from the Parasha
- **A Group Eiruv Techumin**- Ask the Rabbi
- **The Intersection of the Intellect and Emotion**
- from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l
- **Maintaining Certain Conditions Under a New Agreement**- P'ninat Mishpat
- **Ganav versus Gazlan** - Studies in Choshen Mishpat Related to the Daily Daf

This edition of Hemdat Yamim is dedicated to the memory of  
**R' Meir ben Yechezkel Shraga Brachfeld**  
o.b.m

Hemdat Yamim is endowed by  
Les & Ethel Sutker of Chicago,  
Illinois in loving memory of  
**Max and Mary Sutker**  
and **Louis and Lillian Klein, z"l.**

## Cherubim After the Golden Calf

Harav Yosef Carmel

Why, after the sin of the Golden Calf, did Hashem command Bnei Yisrael to erect cherubim in the *Mishkan*. These images are so reminiscent of *hagshama*, the idea of a physical image representing the bodiless Divine Being. Hadn't the recent sin showed the associated dangers?

Use of the cherubim was actually a timely move in the right direction. We see in *Tanach* that both the cherubim and the calf were related to the *merkava*, the "chariot" associated with the Divine Presence in the heavenly world. Let us explain the significance without getting into any unduly sublime secrets, which we are commanded to avoid.

Yechezkel describes the *merkava* and its four faces with different images twice in nearby *p'sukim*. First, the images are: a person, a lion, an ox, and an eagle (Yechezkel 1:10). The second time (ibid.:14), the ox is replaced by a cherub. *Chazal* explained as follows. Yechezkel requested that the image of the father of the calf (ox) not be present, where it could conjure up associations with the sin of the Golden Calf; Hashem acquiesced (Chagiga 13b). *Chazal* also connect between the *merkava* and the sin in the following manner (Shemot Rabba 42). Hashem told Moshe that He would come down to Sinai only to find that Bnei Yisrael had taken something from the *merkava* and used it to anger Him. The *midrash* cites the *p'sukim*: "The face of an ox was to the left of the four" (see above) and "They replaced the Divine Honor with the form of an ox" (Tehillim 106:20).

These statements of *Chazal* lead to the following conclusions. The Golden Calf was an flawed attempt to serve Hashem. The use of cherubim was a process that was done to reverse the misuse of the calf/ox. We must understand an ox's significance. The *pasuk* (Mishlei 14:4) states: "A multitude of wheat through the strength of an ox." Indeed, in Biblical times, the ox was a critical part of economic success. Thus, placing the ox in the center and bowing down to it, even if it is part of the *merkava*, is forbidden and dangerous, as representing enslaving oneself to the world of materialism. The cherubim, though, are a part of the *merkava* representing how Hashem runs the world in a manner more removed from materialism. While it is certainly forbidden to worship the cherubim, we can use them as a symbol of the dwelling of the Divine Presence. This strengthens the concept that while we should sanctify the physical, it should be in the form of "The cherubim's wings were spread facing upward" (Shemot 37:9) and not in the form of an "ox eating grass" (Tehillim 106:20).

Financial success is not our Jewish State's goal. Rather, it is a means for building a society that is built around spiritual aspirations.

**Eretz Hemdah** is the premier institution for training young rabbis to take the Israeli Rabbinates' rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities worldwide.

**Question:** A few friends alternate going to a community outside the *techum Shabbat* to *lain* on Shabbat. We have a place to put an *eiruv techumin* that enables us to get there. Do we have to do the procedure each week? What do we do about the fact that a different person each week needs it?

**Answer:** One may make an *eiruv techumin* for a period of many *Shabbatot* (Shulchan Aruch, Orach Chayim 413:1). (One has to use something with a long shelf life and ensure it is in a safe place.) The declaration that accompanies placing the *eiruv* (see Shulchan Aruch, OC 415:4), he should include that it takes effect only on *Shabbatot* when he wants to make use of it (Biur Halacha to 413:1). This can be important for the following reason. An *eiruv techumin* does not increase the distance one may walk but changes the central point around which the 2,000 *amot* radius is calculated. On a week you are not going to *lain*, you might want mobility in a different direction. The food that was put aside for that purpose for one week can be reused. You do not need to know before a given Shabbat if you are going to activate it that Shabbat, but can rely on the original global declaration (Shulchan Aruch, OC 413:1). This is because we can say that certain details of a halachic process can be retroactively determined (*b'reira*) regarding rabbinic halachot. (*Techum Shabbat* on walking above 2,000 *amot* is rabbinic up to 24,000 *amot*. The *eiruv* is effective only up to a maximum of 4,000 *amot*.) In this case, the *eiruv* is functional based on the original declaration, and the days for which declaration will apply can be determined later (see Mishna Berura 413:8).

The next question is if everyone in the group can share an *eiruv*. The Shulchan Aruch (ibid., based on Eirubin 82a) says that one can place an *eiruv techumin* on behalf of a group of people and that this works even if it is unclear who will be included in that group (e.g., all the people who will go to the house of mourning- *mishna* ibid.). This, again, can be determined by *b'reira*.

There are, though, a few conditions that must be met. First, the people to whom it will apply need to be made aware of their possible inclusion in the *eiruv* before the given Shabbat begins, even though they do not have to decide at that point whether they want to be included (*gemara* ad loc.- see Mishna Berura 413:7). Someone also must have acquired a requisite portion of the *eiruv* (even in the open-ended manner) for each person who is to be included. As the amount is enough food to eat for two meals (which, according to the standard opinion, is up to a little more than a pound of bread- Netivot Shabbat 31:(38)) this may be challenging.

There are at least two ways to solve the problem. One is to use a food that does not require much quantity. Unlike an *eiruv chatzerot*, which must be of bread, an *eiruv techumin* can use any food (Shulchan Aruch, OC 409:7). One only needs the amount of the given food that would be used in a classic meal (ibid.). For drinks, this is two *revi'iot* (approximately, a cup). Regarding foods that are used as relish with bread or other foods, including salty water, the amount is how much would be consumed in a meal, which is very little (Shulchan Aruch, OC 386:6). Thus, using salty water (ibid.), a bottle could probably be enough for the entire group of people who will end up going to *lain*. The other system is that each week, after using the *eiruv*, the person who used it does a *kinyan* (the easiest is a *kinyan sudar*, in which the transferred object does not have to be present) to pass it on to the next person or back to a central person who is in charge of making a *kinyan* on behalf of the relevant participants. According to the Shevet Halevi (VI, 44) it is not even necessary to make a *kinyan* back, as the present may be only for a Shabbat at a time.

**"Living the Halachic Process"** - We proudly announce the publication of our first book in English. "Living the Halachic Process" a selection of answers to questions from our Ask the Rabbi project. A companion CD containing source sheets for the questions is also available. In honor of the book's debut we offer it at the special rate of \$20 (instead of \$25).  
Contact us at [info@eretzhemdah.org](mailto:info@eretzhemdah.org)

Have a question?..... e-mail us at [info@eretzhemdah.org](mailto:info@eretzhemdah.org)

# Ein Ayah

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

## The Intersection of Intellect and Emotion

(based on Ein Ayah, Berachot 1:136)

**Gemara:** “Who is like the wise, and who knows the *peshet* (literally, the deeper understanding, but here, compromise) of the matter?” (Kohelet 8:1). Who is like Hashem Who knows how to make a compromise between two *tzaddikim*, Chizkiyah (the king) and Yeshaya (the prophet)? Chizkiya said: “Yeshaya should come to me, as we have found that Eliyahu went before Achav ...” Yeshaya said: “Chizkiya should come to me, for we have found that Yehoram the son of Achav came before Elisha...” What did Hashem do? He brought afflictions onto Chizkiya and said to Yeshaya to go visit the sick.

**Ein Ayah:** The power of prophecy that Hashem bestowed upon Israel during its era had the goal of fulfilling the eternal needs of the nation. It was meant to make eternal spiritual life attainable and to teach the ways of life to be used to obtain constant existence, so that its spirit would last forever and merit eternal national existence.

The power of the monarchy was to strengthen Israel’s national life in the present. Realize that there are ways of leading that add power to the nation in the short term but detract from its future prospects. Similarly, there are many things that weaken the nation in the short term but provide power and resolve in the future.

Following an extreme is always difficult and dangerous. If the nation is concerned only with future success and pays no attention to present needs, marauders will come to plunder and kill in a way that will endanger the people’s spiritual status and their hopes for eternal existence. On the other hand, the destruction can be immense if the heart of the nation is seduced to place its concerns only on short term life and strength. In so doing, they will trip and fall after a generation.

Hashem, Who guards Israel, regularly arranges factors that cause a balance between the power of the immediate and the future survival so that the nation does not trip in its path and will survive for many generations into the future. “As the new heavens and the new land stand before Me, so too will your offspring and your name stand” (Yeshaya 66:22).

Therefore, Yeshaya was concerned that if he gave precedence to the power of the monarchy [by going to Chizkiya], the nation’s spirit might fall and forget their efforts for eternity. Chizkiya was concerned that if the nation would see the power of the kingdom as weak in relation to that of prophecy, they would lose political strength. This could cause bad outcomes for their moral status, even in regard to Torah, fear of Hashem, and good *middot*, which the king’s power supported.

Hashem made a compromise between them. The eye of providence saw that according to the status of Israel at that time, they needed an exactly equal balance between the concerns. The public perception had to be that the kingdom had ultimate power and strength of the nationhood. Yet, those seeing the inner situation would see the king surrendering his temporary leadership for the welfare of prophetic eternity. This was Hashem’s compromise. Chizkiya was afflicted; Yeshaya went to visit the ill. Openly, the king was primary, for Yeshaya went to him. Internally, it was the king who suffered. This showed that sometimes, the immediate outlook of national strength has to cede when it rivals the eternal goals. From the external perspective of sensual desires, people need to be held in check by a powerful [righteous] kingdom. However, internally, regarding one’s intellect and desires for sanctity, he needs to be lead by a more gentle dominion, which shows the positive path, and out of love choose the path of good [represented by prophecy]. This is along the lines of the Rambam (Melachim 2:5) that although, externally, the king should have an advantage over a prophet, Yehoshafat privately would rise from his chair to honor *talmidei chachamim*.

### Responsa B'mareh Habazak, Volumes I, II, III, IV, V and VI:

Answers to questions from Diaspora rabbis. The questions give expression to the unique situation that Jewish communities around the world are presently undergoing. The answers deal with a developing modern world in the way of “*deracheha, darchei noam*”. The books deal with the four sections of the Shulchan Aruch, while aiming to also take into consideration the “fifth section” which makes the Torah a “Torah of life.” (Shipping according to the destination) **Special Price:** 6 volumes of Responsa Bemareh Habazak - \$75 (instead of \$90)

# P'ninat Mishpat

## Maintaining Certain Conditions Under a New Agreement

(Based on Halacha Psuka 54- A Condensation of Piskei Din Rabbaniim, VIII, pp. 112-123)

**Case:** The plaintiffs (=pl) work for the defendants (=def). In the past, pl gave significant bi-annual bonuses for the *chagim*. A new employment agreement was finalized, increasing the workers' wages. The contract does not mention the bonuses. Pl say they are still supposed to get them, whereas def say that the new agreement replaces all the old provisions, including the bonuses.

**Ruling:** The Rivash (478) discusses a community that exempted its *chazan* from taxes during his first year of service. When they extended his contract, that issue was not addressed. The Rivash ruled that if the exemption during the first year was explicit, even if it lacked witnesses, it stands unless there is evidence that it was rescinded. He explains that there is no need for an explicit *kinyan* on the conditions of employment; rather, whatever conditions are presently assumed are fully binding as it is. The fact that some new conditions were implemented does not mean that old ones were dropped.

It is possible, though, that the Rivash's logic applies only when there were not intensive negotiations over a new agreement. After negotiations, we may say that all conditions are likely to change and whatever is included in the new agreement nullifies that which was in the old one. The Levush (Choshen Mishpat 333:8) applies the Rivash's logic even to cases where there were new negotiations. However, the Shach (333:42) says that if a new salary amount was mentioned and the old conditions were not addressed, they are no longer binding. The Chemdat Shlomo says that the Shach discounted the original conditions if any changes entered in the original agreement. According to the Shach, pl should ostensibly no longer be entitled to the bonuses.

However, we can make the following distinction. The Shach discussed a case where the employers could have ended the employment and, therefore, there is nothing to make the earlier conditions continue. However, in our case, def could not fire pl or rescind their rights. In such a case, the Shach would agree that we do not suspend the original rights. Furthermore, the raises that many of the plaintiffs received were only around 10% of their salary. It does not make sense that under those circumstances, we would expect that, without stipulation, they regressed regarding a major bi-annual bonus. Therefore, *beit din* understood that the new pay arrangement was intended only to streamline the complicated pay system, which included different levels of overtime, and not change their accepted practice of bonuses. Another piece of logic to continue the bonuses is that they may be viewed as a [binding] present to deal with expenses of the *chagim*, not salary. If so, the new salary negotiations should not be expected to address such extraneous matters and the obligation remains.

**Mishpetei Shaul** – Unpublished rulings by our mentor, Maran Hagaon HaRav Shaul Yisraeli zt"l in his capacity as dayan at the Israeli Supreme Rabbinical Court. The book includes halachic discourse with some of our generation's greatest poskim. The special price in honor of the new publication is \$20.

## Baba Kama 77-83

### Ganav versus Gazlan

This week in the Daf Hayomi (79b) the Gemara deals with the question of when a thief is considered a *Ganav*, and when he is considered a *Gazlan* (robber). This question is very important, for only a thief who is, by *halacha*, deemed a *Ganav*, is fined to pay double what he stole. A *Gazlan*, on the other hand, is obligated only to return what he stole and does not incur any fines beyond that.

In general, it appears from the Gemara that the main difference between a *Ganav* and a *Gazlan* is that a *Ganav* tries to conceal his actions, whereas a *Gazlan* commits his act in the open.

This, the Gemara explains, is the reason the Torah was stricter with a *Ganav*: "The students asked Rabbi Yochanan ben Zakai, 'Why was the Torah stricter with a *Ganav* than with a *Gazlan*?' He said to them, 'This one (i.e. the *Gazlan*, who stole openly,) equalized the honor of the slave with the honor of his master, whereas this one (i.e. the *Ganav*, who attempted to steal secretly,) did not equalize the honor of the slave with the honor of his master.'" In other words, while the *Gazlan* is admittedly not worried of Hashem seeing his actions, he is, nevertheless, no more worried of people seeing his actions. By contrast, the *Ganav*, though clearly not worried of Hashem seeing his actions (for Hashem, of course, sees all), is nevertheless worried of people seeing his actions. This, it appears, adds to the act of the *Ganav* - beyond the crime of robbery which he shares with the *Gazlan* - an implicit insult to God. For this, he receives the additional punishment.

Another difference between a *Gazlan* and a *Ganav* is that the *Gazlan* uses force. This can be seen from an example the Gemara gives to define the act of a *Gazlan*. The Gemara gives the example of Benayahu ben Yehoyada (Shemuel II, 23:21), who "stole the sword from the Egyptian and killed him with it" (and the verse uses the term *Vayigzol* to describe this act). Benayahu ben Yehoyada, without any weapon, was able to overpower the enemy and take his weapon.

The Rambam (*G'neiva* 1:3; and see also *G'zeila* 1:3 and *G'neiva* 7:11), too, when he defines the difference between a *Ganav* and a *Gazlan*, includes both of the two aforementioned points: namely, that the *Gazlan* - as opposed to the *Ganav* - both commits his crime in the open, and also that he uses force.

In light of the fact that the sources in the Gemara and the Rambam both highlight two distinctions between the *Ganav* and the *Gazlan*, the question is immanent: Which of these two distinctions is the defining difference in Halacha between the *Ganav* and the *Gazlan*: the publicity of the act, or the use of force?

Rav Nachum Rabinovitch, in his commentary *Yad Peshuta* on the Rambam (*G'neiva*, 1:3), explains that the defining difference between a *Ganav* and a *Gazlan* lies in the tactic each uses to take what belongs to someone else. Naturally, every person tries to protect what belongs to him and to prevent others from taking his property. Hence, there remain two main plausible methods by which one may attempt to take that which belongs to someone else. One method is to do so without the owner seeing, and in this way the owner will not be able to protect his property. The second method is to use force; in this case, even though the owner is aware that his property is being taken, he is unable to prevent it because of the great force applied against him. In this, explains Rav Rabinovitch, lies the fundamental difference between a *Ganav* and a *Gazlan*. The first method is that of the *Ganav*, and therefore he has to do his act without being seen. The second is that of the *Gazlan*, and therefore he does not mind being seen. Thus, the main difference between the *Ganav* and the *Gazlan* is that the *Gazlan* uses force, and as a result of this he does not mind doing it openly because he does not need to hide. However, the *Ganav*, since he does not use force, has to do his deed without being seen - so that he will not be stopped.

According to this understanding, we can understand another reason why the Torah was stricter with the *Ganav*. The Rambam writes in the *Moreh Nevuchim* (III:41),

"A robber is not ordered to pay anything as a fine... The reason of this rule is to be found in the rare occurrence of robbery (the act of a *Gazlan*). Theft is committed more frequently than robbery, for theft can be committed everywhere; robbery is not possible in towns, except with difficulty; besides, the thief takes things exposed as well as things hidden away; robbery applies only to things exposed; against robbery we can guard and defend ourselves; we

cannot do so against theft; again, the robber is known, can be sought, and forced to return that which he has robbed, whilst the thief is not known. On account of all these circumstances the law fines the thief and not the robber."

From these words of the Rambam in the *Moreh*, we learn that even on the basic level of society's need to prevent such crimes, there is a greater need for laws deterring thievery than there is for laws deterring from robbery. Hence, in this practical way, as well, the Torah was logical in its choice to be stricter with the *Ganav* than the *Gazlan*.

\*\*\*\*\*

***Do you want to sign your contract according to Halacha?***

The Rabbinical Court, "[Mishpat Vehalacha BeYisrael](#)" serves the public in the matter of dispute resolution according to the Halacha in a manner that is accepted by the law of the land.

While drawing up a contract, one can include a provision which assigns the court jurisdiction to serve as an agreed upon arbitrator.

Tel: (02) 538-2710 [beitdin@eretzhemdah.org](mailto:beitdin@eretzhemdah.org) Fax: (02) 537-9626

Founder and President: Harav Shaul Israeli zt"l Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich  
ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360

Tel: 972-2-537-1485 Fax: 972-2-537-9626

Email: [info@eretzhemdah.org](mailto:info@eretzhemdah.org) Web: <http://www.eretzhemdah.org>