

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.**

This week.....

- **The Parameters of Responsibility** - A Glimpse from the Parasha
- **Bedikat chametz** - Ask the Rabbi
- **Learning From the Divine Example**- from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l
- **An Obligation for One to Testify in a Felony Case** - P'ninat Mishpat
- **Damage Bound to Heal**- Studies in Choshen Mishpat Related to the Daily Daf

The Parameters of Responsibility

Harav Yosef Carmel

Much of our *parasha* deals with the *korban* of one who sins *b'shogeg* (by accident). Let's explore one's responsibility for accidental wrongdoings.

Chazal were clearly strict with an accidental wrongdoer in a couple of areas. One is in regard to one who damages. The *mishna* (Bava Kama 26a) says that one is liable to pay in full for damages that he (as opposed to his property) causes, whether he acted on purpose or accidentally, was awake or sleeping, and even if it occurred *b'oness* (under circumstances beyond his control). Thus, obligation for one's own damages is nearly total. (There is a well-known *machloket* between Tosafot and the Ramban as to the parameters of this rule's exceptions.)

Another area of responsibility for mistakes *b'shogeg* is mentioned in Pirkei Avot (4:13): "One should be careful regarding *talmud*, for *shogeg* regarding *talmud* is like purposeful sin." Rashi (Bava Metzia 33b) explains that this is a warning to one who *paskens* halacha (makes rulings). If he ruled improperly due to a mistake in learning a halachic topic, such as by not knowing the reasons behind the sources and thereby comparing matters falsely, it is as if he did so purposely because he did not ask his teachers.

The *gemara* (Bava Batra 21a, see Melachim I, 11:16) assumes the same idea applies to a Torah teacher. Yoav, David's general, fought Amalek until he killed all the males. David asked him why he left the women. He answered that the Torah said to wipe out only *zachar* (the male of) Amalek. David corrected him that it is read *zecher* (the memory of) Amalek. Yoav returned to his teacher, who confirmed that he had taught Yoav, *zachar*. Yoav considered killing him because the responsibility of a school teacher to teach correctly makes him considered as warned that there will be consequences (such as being fired) if he makes such mistakes. This story also reminds us of the price Shaul paid for making a mistake regarding the fight against Amalek. Apparently, that matter was particularly serious because of Shaul's reluctance to take responsibility for his mistake.

The Ramban tries to explain why, in the context of serious religious sins *b'shogeg*, a *korban* is needed for atonement. He says that sins blemish the soul so that it is not be allowed to greet its Maker unless it is purified from sin. The *korban* allows one to draw closer to Hashem, Who gave man his soul. As they explain in the "world of *yeshivot*," a Torah violation is an *issur cheftza*, an intrinsic problem, which must be remedied even if there was no cognitive intention to sin. On the other hand, the Netivot (234:3) says that if one violated "only" a rabbinic violation, the matter does not require atonement if this *issur gavra* (devolving on the person) was done without the person's intention to rebel against religious authority.

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: Must someone in charge of a *shul* do *bedikat chametz* in the *shul* in addition to telling people to remove any *chametz* from their places?

Answer: The Yerushalmi (Pesachim 1:1) says that *shuls* and *batei midrash* need *bedikat chametz* because certain meals are held in them. The Tur (Orach Chayim 433, accepted by the Shulchan Aruch, OC 433:10) says that *shuls* of his time required it because small children would bring in food. Major *Acharonim* (Magen Avraham 433:19; Mishna Berura 433:43) say that this is to be done with the rules of *bedikat chametz*, such as doing it on the night of the 14th by candle light. The Shulchan Aruch Harav (433:36) and Mishna Berura (ibid.) complain that *shamashim* are not sufficiently careful to do this *bedika* on the 14th at night.

Let us take a better look at the reason for this *bedika*. In general, there is a *machloket Rishonim* why we need to do *bedikat chametz*. Rashi (Pesachim 2a- see Ran, Pesachim 1a) says that it is to avoid the prohibitions of *bal yeira'eh bal yimatzei* (=byby; not to possess *chametz* on Pesach). Tosafot says that Chazal instituted *bedikat chametz* to distance people from coming to eat *chametz*.

It is unclear if the first reason applies to *chametz* that might have been left behind in a *shul*. The Chidushei Hagahot (on the Tur, ibid.) says that without the precedent of the Yerushalmi, we would say there is no need for *bedika* in *shul*, as *byby* could not apply to a public place that is not owned by an individual. The Perisha (433:11) says that we would have said that *byby* and *bedika* do not apply because whatever is left there becomes *hefker* (rendered ownerless). He points out that we see that the Yerushalmi assumes that we are more stringent regarding *shuls* than the regular rules would indicate. The Da'at Torah (on the Shulchan Aruch ibid.) seems to assume that the problem is that the community becomes partners in whatever is left in *shul* and that partners can violate *byby* in their joint possession. However, he questions whether there is much chance that there will be a significant amount (*k'zayit* per person), which would cause that issue.

The Aruch Hashulchan (OC 433:12) and Da'at Torah (ibid.) assume that, specifically in *shul*, the *bedika* was instituted because of concern that someone will come to eat it and, therefore, neither is convinced that one should make a *beracha* on it. This is because the main institution of *bedikat chametz* with a *beracha* was for possibilities of *byby*. The Shulchan Aruch Harav and Mishna Berura (ibid.) say that one should do it with a *beracha*. Many suggest (see Yechaveh Da'at I, 5) that to remove oneself from doubt of a *beracha l'vatola*, he who checks the *shul* should check first his house and then go directly to the *shul* to check there based on the original *beracha*. The traveling is not a *hefsek* (break) regarding the *beracha*.

Some hold that *bedikat chametz* in *shul* is not a public obligation per se but that we are concerned that whoever might have left *chametz* such as a father of the young child we mentioned) would violate *byby*. The *shamash* is obligated to look out for members who might unknowingly be in that situation, and, in any case, whoever else is willing to help may search with a *beracha* on behalf of nondescript others (see B'er Sarim IV, 68-69; Kinyan Torah Bahalacha V, 33).

Based on the above, it is logical that *bedikat chametz* in *shul* is an exception to the rules. Therefore, one can claim that there is not a similar obligation of formal *bedika* in other public facilities. However, we do note that Rav Ovadya Yosef (Yechaveh Da'at I, 5) assumes that public institutions such as bus companies and airlines should check their vehicles just as a *shul* does.

"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

Have a question?..... e-mail us at info@eretzhemdah.org

Ein Ayah

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

Learning From the Divine Example

(based on Ein Ayah, Berachot 1:135)

Gemara: [There are five similarities between a soul and Hashem: they, respectively, fill the body/ world; they see and are not seen; they nourish their environs; they are pure; they sit in an inner place.] “That which has these five qualities should praise He Who has these five qualities.”

Ein Ayah: The main purpose of praise is to bear fruit. This occurs by the one who praises desiring to cling to Hashem’s straight ways. Therefore, if the soul did not have any of the same characteristics as Hashem that are said in the praise, it would not have received the same type of benefit from praising because it would not have had the possibility of being similar to its Maker. However, since the soul has powers that resemble Hashem’s powers, when it praises its Maker, it adds strength to recognize His greatness and the completeness of His leadership. This adds blessing to the soul’s leadership of the body similar to Hashem’s leadership of His world.

Immediate Vs Eternal Needs

(based on Ein Ayah, Berachot 1:137)

Gemara: [Yeshaya told Chizkiya, a righteous king, that he was going to die in this world and be excluded from the world to come. Chizkiya enquired why he deserved such a strong punishment.] “Because you did not take part in procreation.” Chizkiya explained: “It is because I saw in *ruach hakodesh* (Divine revelation) that bad children will come from me.” Yeshaya responded: “What do you have to do with Hashem’s secrets?”

Ein Ayah: Chizkiya, who, as a king, was concerned with the present, feared for the nation’s present situation. He saw, with the spirit of Hashem he possessed, that if he would beget children, they would be destructive, which would cause much destruction if they would sit on the throne.

However, Yeshaya said to him: “What do you have to do with Hashem’s secrets?” The significance of these words is as follows. Prophecy looks at the eternal situation of the nation, in regard to which the days of one generation are not considered to have much importance. If the chain of kingdom would be stopped and leave the ruling family, this could cause an eternal fall. In contrast, the stumbling block that could be caused by one wicked king who emanated from the seed that Hashem chose would pass because, at the end, the seat would be set on the base of justice and straightness. Therefore, Yeshaya was telling Chizkiya that he had no right to interrupt the eternal dynasty due to a temporary vision that appeared to him in *ruach hakodesh*.

Emotional and Intellectual Prayer

(based on Ein Ayah, Berachot 1:141)

Gemara: “Chizkiya turned his face to the wall and prayed” (Yeshaya 38:2). What is the wall? Rabbi Shimon ben Lakish said: from the walls of his heart.

Ein Ayah: There are prayers that come from an intellectual feeling. This occurs when the intellect looks at the crucial need to pray and recognizes prayer’s great value. Realize that the intellect is related to the spirit of the heart that dwells in the cavity of the heart. However, when one powerfully requests mercy, to the point that the physical powers are also moved by the emotion of prayer, and it turns out that the prayer works on the body and not only the soul, it is called a prayer from the wall of his heart. In other words, it does not come only from the cavity of the heart but also from the involvement of the flesh, as the *pasuk* says: “My heart and my flesh will sing out to the Living G-d” (Mishlei 27:22). (Mishlei 27:22).

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

An Obligation for One to Testify in a Felony Case

(based on Halacha Psuka, vol. 55 - A Condensation of a Psak by the Beit Din of Beit El)

Case: The plaintiff (=p) was involved in an altercation, during which he hit and injured someone. The injured person filed a complaint that was heard by the secular courts, and p was found guilty. He was compelled to pay for damages and was given an additional penalty. P demanded of the defendant (=def), who witnessed the event, to testify in court and, if he is unwilling to do so, to assume p's obligated payments. Def says that he does not have a clear recollection of the details and anyway would not be able to alter the outcome of the trial.

Ruling: The Shulchan Aruch (Choshen Mishpat 28:1) rules: "Whoever knows testimony about his friend, is fit to testify, and it is a situation where his friend could benefit from the testimony is required to testify when he is demanded to do so, whether he has another witness with him or whether he is on his own."

There are three sources that justify this halacha: 1) There is a direct obligation to testify (see Vayikra 5:1); 2) There is a prohibition to stand idly by as one is damaged; 3) There is a *mitzva* to return a lost item. The latter two sources apply even to testimony in secular court, as a manifestation of the obligation to assist a counterpart in trouble. Regarding the formal obligation to testify, the Divrei Yatziv (CM 79) cites the Chik'kei Lev (CM 26) who leaves it as an open question if the *mitzva* to testify applies in secular court. Regarding a felony case, it is even possible that the governmental secular courts are the proper venue, in which case the Chik'kei Lev might agree that the *mitzva* to testify applies.

It is a question whether the obligation to testify applies to a single witness. The Shulchan Aruch's language implies that it does. The K'tzot Hachoshen (28:3) says that it applies in regard to the *mitzva* to return a lost item. The Netivot Hamishpat (28:1) says that for one witness, there is only a rabbinic obligation.

The Shulchan Aruch (ibid.) says that even if one did not fulfill his obligation to testify, he is not obligated to pay for losses that resulted from this refusal. However, he has a *chiyuv latzeit y'dei shamayim* (a moral obligation) to compensate. In this case, there are specific reasons to exempt def from paying. Def told police who investigated the matter that both parties were involved in the physical contact. Thus, he already let law enforcement know that the event was not a one-sided attack, and the courts were already made aware of this. Furthermore, in his ruling, the judge said that he would have held p liable for these payments even if he would have accepted fully p's version of the story. Finally, even if it were possible that the information that def withheld would have enabled p to have won the case, he did not prove that claim to *beit din*.

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 84-90

Damage Bound to Heal

This week in the Daf Hayomi the Gemara deals with the payments that a person who injured another person has to pay. While a person who damages property only has to pay for the damage (the loss of value of the object he damaged), a person who caused physical damage to another person has to pay, in addition to the damage payment (calculated based on the loss of work ability), four more payments: Shevet (loss of work days), Ripui (medical expenses), Tza'ar (compensation for the pain of the injury), and Boshet (compensation for the embarrassment caused by the injury). However, one is not obligated to pay all types of payments in every case, and the Gemara delineates when all the payments are applicable and when only some are.

One of the cases the Gemara (85b) discusses is when a person caused an injury that will heal completely. The question is whether the damager is obligated to pay the basic payment of damage, for there is a temporary loss of value, or not, since the injury will heal and the person will return to his former value, and he should only have to pay for the loss of work days (and the other payments if applicable). Regarding this question, there is a dispute between Abayey and Rava, and the Halacha is according to Rava's opinion that there is no payment for the damage in this case and only for the loss of work.

The Rishonim disagree regarding a case where a person injured another person's animal, causing an injury that will heal. The problem regarding this case is that, as stated above, one is obligated to pay for loss of work only when he damaged a person, and not when he damaged someone's animal or property. Indeed, the opinion of the Chachmei Tzorfat (quoted in the Rosh Baba Metzia 8, 4) is that the damager in this case is exempt from paying, even though the owner of the animal could not work with his animal for a few days, since payment for the loss of value for the animal cannot be applied, as the animal is bound to heal, and there is no payment for loss of work for damage to an animal. However, the Rosh says that there are those who disagree and claim that only regarding damage to a person do we not take into account the temporary loss of value, since a person is not for sale. However, since an animal can be sold at any point of time, even a temporary loss of value is considered damage and the damager is obligated to pay.

These two opinions are quoted by the Shulchan Aruch (307, 6) and the Ramma ruled in accordance with the Chachmei Tzorfat (and there are those who attempted to prove that this is the ruling of the Mechaber as well from 340, 2). The Shach (307, 6) rules that since this issue is in doubt, one cannot obligate payment.

The Netivot Hamishpat (340, 3) suggests that if the injury to the animal will not heal on its own but only through medical care, then the damager has to pay for the medical expenses. And, although normally, one who injures an animal does not have to pay for the medical expenses, in this case where, without the medical care, there will be permanent damage, one has to pay, as the medical care is essentially the fixing of the damage one caused.

The Chazon Ish (Baba Kama siman 13, 1-2) disagrees with the Netivot and states that, in any case, an injury that will heal is not considered damage even if medical care is required. Therefore, he claims that if one caused an injury to an animal that will heal, he is exempt from paying, since this is not considered to be damage, as the damage is temporary, and there is no payment for medical expenses for damage to an animal. However, the Chazon Ish states that this is only true for an injury to an animal, since, when the animal heals, it returns to its former state, and it is as if the damage never occurred. However, if a person damages an object, even though the damage can be fixed, the fixed object is considered to be something new, and therefore the damager must pay for the damage in such a case.

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 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 Web: <http://www.eretzhemdah.org>