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PARASHAT HASHAVUAH

Ki Teitzei 9 Elul 5769

The Removed Shoe Harav Moshe Ehrenreich

When a man refuses to marry his sister-in-law, wife of his deceased brother who left no children, the process of *chalitza* is done. Part of the process is that she removes his shoe, as the assembled call him "the one whose shoe was removed" (see Devarim 25: 9-10 with Rashi). What is the deeper significance of this strange sounding action?

Let us begin by finding others whose shoes are removed. At the burning bush, Moshe had to remove his shoes because he was standing on holy ground (Shemot 3:5). Yehoshua had to do the same upon meeting Hashem's "chief of staff" on holy ground (Yehoshua 5:15). Chazal made a general rule of it: shoes should be removed at any place where there is an open display of Divine Presence, which is why the *kohanim* served in the Beit Hamikdash without shoes (Shemot Rabba 2). What is the connection?

The Ktav V'kabala gives two explanations. One is that it is a sign of making oneself subservient. The other is that one cannot wear shoes that were impacted by having treaded on impure things.

The *gemara* (Shabbat 152a) says: "One who sits on a horse is a king; on a donkey, is a free man; if he is wearing shoes, he is a human being; if he has none of these things, then the deceased who are buried are better than he." The Malbim explains that the most significant difference between man and the animal kingdom is not related to speech or even the ability to do sophisticated things. Rather, an animal does what his instincts tell him to do, and man has the power, as one who had Hashem's spirit blown into his midst, to act in a manner that is against his natural instincts.

When a human wears shoes, which are usually made from animal hide, he demonstrates that he is not like an animal that steps directly on the ground and is connected to the physicality the land represents. He steps on top of the animal-based shoes to remind him that he is a level above the animal. He is to strive for holiness. When he comes to ground which is indeed holy, he is to remove the shoe and put his feet directly on the soil.

The Torah saw such importance in *yibbum* that it permitted that which otherwise would have been incest. But what if someone "does not desire to take his sister-in-law," in other words, he prefers his feelings to the choice to follow what the Torah wants of him? In that case, we remove his shoe to show his resemblance to an animal that cannot separate himself from his nature.

It is interesting and apparently not coincidental that *kinyan sudar*, which is an overarching form of accepting obligations on oneself, is described in Tanach as involving giving a shoe (Ruth 4:7). In this way, the one who accepts the obligation declares that he understands that he has the power to make noble decisions and to keep to them even if they go against his natural desires. It is appropriate that one of the times we use this type of *kinyan* (albeit, not with a shoe these days) is on the day of one's wedding.

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On the passing of his mother, Malkah **Toibeh**, o.b.m.

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Ask the Rabbi

Question: I am about to have my wedding invitation printed, and I am not sure for what time to call the *chupa*. The *mesader kiddushin* is presently very busy with personal matters and I do not want to bother him, but I am afraid that I may choose wrong as to whether the wedding should be before or after sunset, which I guess should be his decision. Is it right to decide on the time without consulting with him?

Answer: Mazal tov! A wedding can take place right before sunset or right after sunset, and it is not necessary to know in advance which it will be, as we will explain. A *chatan* and *kalla* have enough (happy) headaches to worry about. Considering also that this matter of time is not always something they can totally control, it is the *mesader kiddushin* who can and usually should arrange to accommodate the couple's preferences.

The main reason people assume they need to know in advance if their wedding will be before or after nightfall (we will assume that this follows sunset, although this is not as simple as it sounds) is the date on the *ketuba*. Indeed, a pre-dated *ketuba* is *pasul*. The reason for the *p'sul* is actually quite mundane. A *ketuba* is a monetary document, designed to provide the wife with some financial stability under unfortunate circumstances. This *ketuba* can be used to extract payment from the husband's property, including that which he sold after the time he obligated himself to its terms. Therefore, one who buys property from a man has a right to search for liens on the property, including from a *ketuba*, which at least in theory, can be of any face value the couple decides on. If one were allowed to pre-date a *ketuba*, it is possible that one would buy a field when there was not yet a lien from a *ketuba*, yet a woman could come to *beit din* and falsely "show" that her husband had made a lien on his property before the sale.

This problem can be overcome when preparing a *ketuba*. While the *ketuba* is meant to accompany a wedding, a *chatan* can create the obligations included in it and the related liens before the marriage ceremony. In that case, if the date on the *ketuba* is the pre-nightfall date and the wedding was delayed until after nightfall, the *ketuba* is fine as long as the *chatan* made a *kinyan sudar* on the obligation before nightfall. Except for those who have a custom (notably, many in Yerushalayim) to hold off with the *kinyan sudar* until the *kiddushin* has taken place under the *chupa*, this anyway takes place a good half hour before the *chupa* takes place (and it can be done even days before).

In a case where the couple thought the *chupa* would take place at night and it ended up happening in the day (theoretically possible even at a Jewish wedding) there also would not be a problem according to almost all opinions. In this case, the bride foregoes her lien for one day, which does not render the *ketuba* invalid. She still has a valid *ketuba* and additionally by the time the couple is in the *yichud* room (the cut off point might be even later anyway), the date has probably already come (see Shulchan Aruch, Rama, and Ezer Mikodesh, Even Haezer 66:1).

We would suggest to a *mesader kiddushin* to ask the couple to choose a time for the *chupa*, add 15 minutes (to be realistic) and prepare a *ketuba* based on the date at that time. (He may want to keep the date blank until things become clearer. The date on the invitation and the *bentcher* are not relevant). While it is generally respectful to discuss the time issues with him before the invitation is printed, if it is unfair to disturb him now, you can safely assume that he can handle the timing issues later.

The issue that remains for you is that the Jewish date the *chupa* takes place sets the last day of *Sheva Berachot*, particularly in regard to the *berachot* at the end of *bentching*. If you can live with that uncertainty (a party may be held without the *berachot*, which anyway sometimes happen if the *bentching* gets drawn out until after sunset of the seventh day), you should be okay.

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Ein Ayah

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

A Time of Hidden Mercy and Clear Power

(based on Ein Ayah, Berachot 2:27)

Gemara: After he would finish his prayers, Rabbi Yochanan would say: "It should be Your will ... that ... You dress Yourself (*titlabesh*) with Your mercy and cover Yourself (*titkaseh*) with Your power ..."

Ein Ayah: A *levush* (the same root of *titlabesh*) refers to an undergarment and a *k'sut* (the same root as *titkaseh*) refers to an outer garment.

Realize that when Bnei Yisrael are in exile, Hashem's power is not recognizable, as other nations enslave His children, prompting people to declare: "Where are His acts of might?" (Heaven forbid) (based on Yoma 69b). However, at those times, Hashem's mercy is very recognizable, as "a single lamb survives among seventy wolves" (based on Tanchuma, Toldot 5), and without His daily mercy they would stand up against us to destroy us.

However, at the time of Israel's greatness, His mercy will be in hiding. While He Who protects Israel will protect us from all sorts of bad things that could arise, it will not be felt at the time of greatness. As the dangers will not be so visible, so will the need for mercy go unnoticed. In that way, mercy will be rightly described as an undergarment, which is not noticeable. To the contrary, the power will be noticeable, as Israel's greatness will be famous throughout the world. We will then correctly pray that Hashem should dress Himself with mercy, internally, for both the individual and the collective will always need His mercy. However, we ask for a time where His power will become famous, as the nations of the world will know that there is a G-d over Israel and "all of the nations of the world will know that the Name of Hashem is called upon you [Israel]" (Devarim 28:10).

The Light of Torah as a Replacement for Physical Pleasures

(based on Ein Ayah, Berachot 2:31)

Gemara: After he would finish his prayers, Rabbi Chiya would say: "It should be Your will ... that Your Torah should be our craft, our heart should not be saddened, and our eyes should not be darkened."

Ein Ayah: A person's heart naturally yearns to deal with matters of this world, in a life of social affairs. In these matters, he is full of interest, and his eyes are satiated only with pleasures of the senses according to the specifics of each. When one elevates himself by separating himself from indulgence in these pleasures, he is on the right path if he is able to do so in a manner that he will not acquire a "darkening of his spirit" due to abstention from physical pleasures. Rather his spirit will be full of light and happiness. This is possible if he will be wise enough to enthusiastically see the great value of the exchange in lifestyle, so that the light of Torah will fill the void left when he distanced himself from a life of senses and related activities. Only in that way will he acquire true completeness.

This is what Rabbi Chiya meant by the Torah being the person's craft. Such a person could be on the highest level of limiting physical pleasures, but because of the involvement in Torah, he will not need to be involved in the activities of the world and the senses. He asked that his heart should not be saddened by the lack of natural interaction among those who are occupied with the physical world and that his eyes should not be darkened by a yearning to enjoy sensual pleasures. Rather his limitation of pleasures should be done with love and an uplifting of the spirit.

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P'ninat Mishpat

The Manner in Which a *Shomer* (Watchman) Becomes Obligated (based on Sha'ar Ladin, Halacha Psuka, vol. 58)

The *gemara* deals with a case of one who borrows an object from a friend and the lender regrets the loan. As for rentals, once the borrowing has taken effect, the lender cannot back out during the agreed upon borrowing period. When, though, is the point of no return? One opinion is that it is when the borrower begins using the object. However, the *gemara* accepts the opinion that it is from the time the borrower performs the act of *kinyan* one would use to acquire the object. The Rambam (Sechirut 2:8) says that until that *kinyan* takes place, a *shomer* is not obligated in payment should something go wrong to the object. Let us look at the *sugyot* of the *gemara* on this matter.

The *mishna* (Bava Metzia 81b) says that if one asks his friend to watch something for him and the latter says, "place it before me," he is a *shomer chinam* (an unpaid watchman). The *gemara* says that acceptance of being a *shomer* obligates him. Tosafot (ibid. 89a) says that the obligation is not dependent on there having been a *kinyan*. As opposed to the Rambam, they posit that *kinyan* is relevant only regarding backing out. According to the Rambam, the *gemara* must be discussing a case where the object was in the *shomer's* domain, a situation which is itself a *kinyan* (*chatzer*) when he accepted the *shemira*. The Ran cites a compromise opinion. Regarding a borrower and a renter, who have rights in the object which require a *kinyan*, their obligations are also dependent on it. Regarding a simple *shomer*, where *kinyan* is not naturally relevant, the obligations begin when he accepts to watch the object. The Ran himself feels that regarding a paid *shomer*, the *kinyan* is significant as it represents the beginning of the work for which he is paid and thus becomes responsible too. Conceptually, both opinions in the Ran are like Tosafot, just that the *kinyan* becomes a significant indicators if it creates new rights.

One can ask, according to Tosafot: what actually obligates the *shomer* before a *kinyan*, which is usually that which creates monetary consequences? The K'tzot Hachoshen (307:1) says that a *shomer* is like a worker, in regard to whom the beginning of the work is the time that the mutual obligations and rights begin. This is not simple for two reasons: he admits that according to the Ran, it is *kinyan*, not the beginning of work, that begins the consequences; it is not clear that a *shomer chinam* is a worker.

The stronger explanation seems to be along the lines of *arev* (a guarantor). The *gemara* (end of Bava Batra) says that if one is willing to lend money only if there is an *arev*, the *arev* becomes obligated by the loan if necessary without a *kinyan*. Many learn a broad concept from here: one becomes obligated by an assurance he gives someone where the latter acted based on the assurance. This applies in the case of a *shomer*, as the object's owner leaves the object based on the *shomer's* assurance that he is watching it and will pay if he fails to do so properly.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Elul 3 – Elul 9, Baba Batra 2-8

Damage by Viewing (lack of privacy)

Rav Ofer Livnat

This week in the Daf Hayomi, we begin to learn masechet Baba Batra. The first sugya (passage) deals with two neighbors who have a shared yard and want to divide the yard between them. The Halacha is that hezek reiyah (damage by viewing) is considered to be damage. In other words, the ability of the neighbor to see into one's yard is considered damage, and therefore, each neighbor can force the other to build a fence between the two parts of the yard.

However, in the continuation of the masechet, we will learn that, even in a situation where one neighbor is damaging the other, if he has a chazaka on the item causing the damage (ie-it has existed for a certain period of time without any objection from the neighbor), he does not have to remove the item causing the damage. The Rishonim therefore ask, why does the Gemara in our sugyah not state that, if the neighbors co-existed without a fence for some time, then they each obtain a chazaka on the hezek reiyah, and, in such a situation, one cannot force the other to build a fence.

The Rif (in a response quoted by the Ri Migash 2a) learned from this that hezek reiyah is considered to be such a serious form of damage, that one does not waive his objection, and there is therefore no chazaka for hezek reiyah. According to the Rif, if a person opens a window from which he can see into his neighbor's property, he does not obtain a chazaka, and even after a long period of time, the neighbor can force him to seal the window.

The Ri Migash disagrees with the Rif. He claims that there is a chazaka for hezek reiyah, and therefore one who opens a window can obtain a chazaka. He offers two explanations as to why neighbors with a shared yard do not obtain a chazaka. The first is that a chazaka is obtained only when one side is causing the damage, and the other is being damaged, since the one being damaged didn't object, it is proof that he waived his right to object. However, in a shared yard, each neighbor is damaging the other, and thus each can claim that he didn't object, because he was sure that the other neighbor would be willing to build a fence, in order to remove the damage from himself as well. The second explanation is that, in order to obtain a chazaka, a positive action to create the item that causes the hezek reiyah is required, such as opening a window, but here the damage is pre-existing due to the lack of a fence.

The Rosh (1, 2) also disagrees with the Rif and gives two explanations as to why there is no chazaka in a shared yard. The first explanation is similar to the first explanation of the Ri Migash. The second is that the damage in a yard is much more serious than the damage by a window, since one doesn't look out from his window constantly, as opposed to a yard that is constantly used. Therefore, although one may waive his right to object for hezek reiyah from a window, he does not do so for a yard.

The Shulchan Aruch (154, 7-8) rules in accordance with the Ri Migash and the Rosh; that, in general, one can obtain a chazaka for hezek reiyah. However, regarding a shared yard, he writes that a chazaka is not obtained, because there was no action involved in creating the damage, as the Ri Migash explained in his second explanation.

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