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# HEMDAT YAMIM

חֶמְדָּה יָמִימִים

## PARASHAT HASHAVUAH

**Ki Tavo 16 Elul 5769**

**Serve Hashem With Joy**  
Harav Moshe Ehrenreich

Our *parasha* opens with the discussion of the bringing of *bikurim* (first fruit) to the Beit Hamikdash. In this context, the Torah says: "You shall rejoice in all the good Hashem gave to you and to your household - you, the Levi and the newcomer in your midst" (Devarim 26:11).

Is this envisioned joy a blessing or an imperative? From the section of *tochacha* (rebuke), which is also found in our *parasha*, it sounds like the latter. It says: "...because you did not serve Hashem, your G-d, with joy and a good heart from an abundance of all" (ibid. 28:47). We will investigate the nature of the apparent command to be happy.

Rashi cites *Chazal* as saying that the idea of joy sets the time for the fulfillment of the *mitzva* of *bikurim*. One can bring the *bikurim* with the accompanying declaration only between Sukkot and Chanuka, the season when one is happy with the harvest. According to the Ibn Ezra, the happiness is indeed a condition for the proper fulfillment of the *mitzva*, but it relates not so much to the timing but to the manner of rejoicing. One must share his happiness and his bounty with the dependent in the community, i.e., the Levi and the newcomer in your midst, whom the *pasuk* mentions. It is imperative to share the crops with these people who did not receive a set inheritance in the Land.

As he does so often, the Meshech Chochma opens new vistas in regard to this *pasuk*. He learns that one is to serve Hashem in joy even at times of distress and of exile. When there is not such an abundance of good, one should still be happy about the fact that what he did receive was from Hashem, which is an assurance that He still loves the person.

The second thing to rejoice about is an abundance that Hashem gave us for always, but not necessarily a physical present. Rather, the greatest gifts of all are the values and the intellectual and spiritual wonders that are contained within the Torah that Hashem gave to us. The constant presence of Torah, at any time in our lives and at any time in Jewish history, is always something that should keep us happy and grateful.

It is a holy responsibility of our leaders to strive that the entire nation, whether those who consider themselves religious or those who do not consider themselves such, should come to appreciate the great gift and source of joy that the Torah and the service of Hashem is for our nation. As the Radak says: "One's service of Hashem should not be a burden but should be done with happiness and a good heart." One thing the rabbinical leadership should keep in mind is that when one strives to follow all of the most stringent rulings so that no doubts remain, there is likely to be a sacrifice regarding the positive outlook on a life of service of Hashem. This could, Heaven forbid, turn a religious lifestyle into an unnecessarily burdensome chore.

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

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# Ask the Rabbi

**Question:** I saw a situation on Shabbat in which, unexpectedly, a digital camera fell out of the carriage my friend was pushing, onto the sidewalk. The question arose whether she was allowed to move it or whether she had to leave it, with the likelihood it would be taken. If it is *muktzeh machamat chisaron kis* (= *mmchk*) an object that is so precious that its owner will use it only for its main purpose, one which is forbidden on Shabbat, then I assume there is no way to move it. However, if it is cheap enough that the owner would use it for other things, then as a *kli shemelachto l'issur* (= *klishmli*- a utensil whose main use is for forbidden activity), would it be permitted to make up a use for the camera at home (e.g., as a paperweight) that would enable it to be moved?

**Answer:** The categorization of an object as *mmchk* depends on the specific owner, object, and circumstances. All we can say is that usually digital cameras fall under that strict category. Yet, according to most *poskim*, it is still possible to protect the object.

The *gemara* (Shabbat 43b) discusses whether *tiltul min hatzad* (moving something *muktzeh* by pushing it with a non-*muktzeh* item he is holding) is forbidden. We rule that it is permitted when one does the moving for the purpose of using an adjacent non-*muktzeh* object or to make the place of the *muktzeh* item available; it is forbidden when the *muktzeh* object is indirectly moved for its protection (Shulchan Aruch, Orach Chayim 311:8).

*Rishonim* are bothered by the *mishna* (Shabbat 141a) that says that if one wants to sleep on a bed where pieces of straw are laid out uncomfortably, he may not straighten them out with his hands but may do so with his body. Why isn't the latter *tiltul min hatzad*, which should be forbidden in order to use the rearranged straw? The Rosh (Shabbat 3:19), as understood by most *poskim* (see Shulchan Aruch *ibid.*; Mishna Berura 308:13), says that moving something with a part of the body one does not usually use for moving things is not forbidden *tiltul* and is permitted even to use or protect the *muktzeh* object. Ostensibly, then, one can kick the camera to a place where it will not be as vulnerable.

Two minority opinions will reject this leniency. The Pri Megadim (introduction to Mishbetzot Zahav 308) says that the leniencies regarding indirect *tiltul* do not apply to *mmchk*. This opinion is not widely followed by the *poskim* (see Shemirat Shabbat K'hilchata 20:(80)). A second problem is that the Chazon Ish (OC, 47:12) says that the Rosh is too widely applied, as he only explains why the *mishna* allows one to inadvertently move the straw while lying down on it but did not permit using unusual parts of the body to purposely move *muktzeh* for its protection. While some *poskim* adopt this opinion (Igrot Moshe, OC V, 22.6), most permit this type of moving (Mishna Berura 308:13, Shemirat Shabbat K'hilchata 22:34). One may certainly be lenient in a case of possible significant loss (Igrot Moshe, *ibid.*) like that of the camera.

Regarding your idea of employing the leniency of moving a *klishmli* for a permissible function (Shulchan Aruch, Orach Chayim 308:3), this can be entertained if you can determine that the camera is not *mmchk*. Even when the main purpose is to protect the *klishmli*, the Magen Avraham (308:8) allows moving it when it will be used for a permitted use. The Mishna Berura (308:16) accepts the premise of a secondary intention, but perhaps only for an existing need. The Machatzit HaShekel (to Magen Avraham *ibid.*) and Yalkut Yosef (Orach Chayim 308:3.7), though, allow contriving a need. However, your friend would have had to have a real plan to use the camera on Shabbat after bringing it home. Realize also that some *poskim* require that the situation is where there is no non-*muktzeh* object readily available for that use (Mishna Berura 308:12; the Shemirat Shabbat K'hilchata 20:8 is equivocal on the matter). In any case, if you can be creative enough, your idea could also solve the problem.

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# Ein Ayah

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

## Fear of Sin in a Life of Activity

(based on Ein Ayah, Berachot 2:33)

**Gemara:** [*The prayer that this gemara focuses on is known to us as Birkat Hachodesh (as we declare the new month)*]. It should be Your will ... that we have ... life that has in it the fear of sin ...

**Ein Ayah:** The idea is that the fear of sin should be in the midst of the life. There are people who have fear of sin, but it is not strong within them. These people can maintain their fear of sin when they are able to distance themselves from the activity of life. However, when they come into the social elements of life and get involved in commerce in a major way or in different areas of science, the fear of sin will leave them because it is not meshed into their life. That is why the author of this prayer asked for life that has in it - in the midst of the life itself - fear of sin. This follows the concept of what *Chazal* say on the *pasuk*, "I will walk before Hashem in the lands of the living" (Tehillim 116:9). *Chazal* posit that the *pasuk* refers to the marketplaces (Yoma 71a).

## The Root of Love and Fear of Hashem, Respectively

(based on Ein Ayah, Berachot 2:36)

**Gemara:** [*We continue with the same prayer.*] It should be Your will ... that we have ... a life that there should be in us the love of Torah and *yirat shamayim* (literally, fear of Heaven) ... life within which the requests of our heart will be fulfilled for good.

**Ein Ayah:** Love of Hashem and fear of Him each come from a different recognition. In the higher ways of Hashem, there are ways in which man can, to a certain degree, emulate Hashem. This, *Chazal* capture with the charge, "Just as He is merciful, so should you be merciful ..." (Shabbat 133b). When a person goes about emulating Hashem, this causes him to love Hashem more and more.

Fear of Hashem comes when one contemplates His greatness and the ways in which He is beyond our comprehension and our ability to approach His ways, as they are so perfect that they are out of our grasp.

Because of this dichotomy we say that the love of Hashem is analogous to the love of Torah. That is because the foundation of Torah is to make a person one who follows in [those of] Hashem's paths [that man is capable of following]. This is what the Torah describes about Avraham, who educated his family to "guard the path of Hashem to do charity and justice" (Bereishit 18:19).

Fear of Hashem is called fear of Heaven, in other words, the awe from His loftiness, to the extent that he is more powerful than our intellectual grasp and our capabilities. As the *pasuk* says, "Go high to the Heavens, what can you do?" (Iyov 11:8).

Regarding "life within which the requests of our heart will be fulfilled for good" – since the heart desires imaginary pleasures, it is not possible to fulfill all of its requests. After all, if one has 100 *zuz*, he will desire 200 *zuz*. Therefore, we ask that our requests be fulfilled to the extent that they are for the good.

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# P'ninat Mishpat

## Dayanim With Authentic Semicha

(based on Sha'ar Ladin, Halacha Psuka 27)

Moshe Rabbeinu was the first *dayan*. When Yitro's advice to appoint more *dayanim* was accepted, the chain of existing *dayanim* giving *semicha* to new ones began. These judges are called *dayanim semuchim*, whereas even a knowledgeable *dayan* who lacks authentic *semicha* is called a *dayan hedyot*. Some areas that can be dealt with only by *semuchim* include capital and corporal punishment, levying penalty payments, declaring the new month, and deciding on leap years.

The *gemara* (Sanhedrin 2b) debates whether the Torah requires *semuchim* for monetary matters, and the *Rishonim* differ as to which opinion to accept. *Tosafot* (Sanhedrin 3a) says they are not required; the *Rosh* (ad loc. 1:3) and the *Tur* (Choshen Mishpat 1) say that Torah law requires them (a rabbinic institution allowed others to judge).

Why would someone who knows how to rule be disallowed if he lacks *semicha*? The *K'tzot Hachoshen* (3:1) says that the issue is not the ability to decide matters but the authority to enforce a ruling when both sides do not accept it. When they accept the judges and the judgment, the Torah does not require *semuchim*. Capital and corporal punishment are forced upon the person who is judged, thus explaining why *semuchim* are required. The same idea applies to matters of a public nature.

The uninterrupted chain of *semicha* from *dayan* to *dayan* ended during the period of the *Amoraim*. How then, will we have *semuchim* at the time of *Mashiach*? Will it require the resurrection of deceased *semuchim*? The *Rambam* (Sanhedrin 4:11) suggests that if all of the scholars of *Eretz Yisrael* agree to appoint *dayanim* and give them *semicha*, this will be effective, thus creating *semicha* that can then be passed on to others. The loss of *semicha* was seen as a tragedy because the dispersed nation found it difficult to get everyone together to agree to carry out the process.

The *Rambam* reasons that this must be the case because Hashem promised to return our judges as of old. Since *Mashiach* cannot change the Torah, he cannot create a process that does not exist. Therefore, there thus must be an existing mechanism and, indeed, the re-advent of the Sanhedrin will be a harbinger of the coming of *Mashiach*. One could argue that just as Moshe was the recognized Torah authority and thus was the head of the courts who could give *semicha*, so too in the future an authoritative leader would assume this position.

At different times in history there have been attempts to implement the *Rambam's* suggestion (in the *Mishneh Torah*, his view on implementation is vague). The most famous and serious attempt was done in Tzfat at the time of the *Mahari Beir Rav* (16<sup>th</sup> century), when his colleagues gave him *semicha*. This was opposed by the community in Yerushalayim, headed by the *Maharalbach*. He opposed on fundamental grounds, as many disagree with the *Rambam* and say *semicha* will return only with the coming of *Mashiach*. They also argued that all of the scholars of *Eretz Yisrael* would have to come together in agreement, whereas at that time, the scholars of Tzfat did the whole thing themselves.

Unfortunately, despite more recent efforts by *Rav Yisrael Mishiklov* and *Rav Maimion*, we are still without *semuchim*.

## Mishpetei Shaul

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Elul 10 – Elul 16, Baba Batra 9-15

## Dissolving a Partnership

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara deals with the issue of dividing something owned by partners. The Mishna (11a) states that: if something can be divided and still be used for its original function, then one of the partners can demand that it be divided. However, if following the division it will not be able to be used for the original function, then one partner cannot force its division.

What can be done in such a situation? The Gemara states that in such a situation a partner can demand "gud or agud"- either buy my share or sell me your share. The principle is that, a person cannot be forced to remain in a partnership forever, and therefore, when something cannot be divided, the partner can demand to absolve the partnership by giving the second partner the choice to either sell his share to him, or to buy the first partner's share.

The Rishonim disagree whether in every partnership "gud or agud" can be demanded. According to Rabeinu Yona (13b d"h Ala Beyadeinu) "gud or agud" can only be demanded in a partnership that was created unwittingly. For example, if two people inherited something or received something as a present, then one of them can claim that he does not want to be a partner with the other and demand "gud or agud." However, if two people bought something together, since they bought it intending to be partners, one cannot later demand "gud or agud."

However, the opinion of the Rambam (Shechenim 1, 3) is that in any type of partnership, even if people bought or rented something together, a partner can demand "gud or agud." The Rashba (responsa volume 1, 913) explains that the reasoning of the Rambam is that a person can claim that, although at first he thought that they would be able to be partners, now he is no longer able, and he therefore can demand that the other partner either buy his share from him, or that he will sell him the other share.

From the ruling of the Shulchan Aruch (171, 9) it appears that he follows the opinion of the Rambam, that in any type of partnership a partner can demand "gud or agud."

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