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# HEMDAT YAMIM

המדת ימים

## PARASHAT HASHAVUAH

**Ha'azinu 8 Tishrei 5770**

### White Clothes

Harav Yosef Carmel

The last *mishna* in Ta'anit tells that on the wonderful days of 15 Av and Yom Kippur, the girls of Yerushalayim used to borrow white clothes so as not to embarrass those who were lacking. They would go in circles in the vineyards and say to the single men who assembled that they should look at them but not focus on beauty. It finishes off with a *pasuk* about King Shlomo's crown that he received from his mother on his "wedding day" and "the day of his heart's happiness," which hint, on a national level, to the giving of the Torah and the building of the *Beit Hamikdash*, respectively. We will join the many people who have tried to understand the connection between matchmaking and Yom Kippur and other related topics.

The white clothes of the girls connect to the white clothes that the *Kohen Gadol* wore when he entered the Holy of Holies on Yom Kippur. He must wear white and not the regular "gold clothes" not only to not arouse reminders of the Golden Calf. Rather, there is also a need for humility when encountering the Divine Presence in that most holy place. The idea of the white clothes not embarrassing those who do not have applies to the *Kohen Gadol*, who is lacking when compared to the Holy One, Blessed Be He. He would not impress Hashem by wearing the most expensive clothing.

Brides wear white as they involve themselves in the building of "a complete and eternal structure" on a personal level. Representing the nation, the *Kohen Gadol* enters the inner sanctum in white almost like a *kalla* entering a *yichud* room. This great affection found expression in the cherubim, which "embraced each other" when relations between Hashem and His nation were going well. The *mishna* we cited does its part in describing the historical events that highlight the connection between Israel and Hashem in terms of wedding days.

Every Jewish wedding has an element of building a personal mini-*Mikdash* between the two hearts. But the comparison to the Beit Hamikdash hints that this relationship must also be based on humility and minimizing the centrality of one's ego. The male-female relationship must also be based on sanctity and purity, modeled on the entry into the Holy of Holies. *Chazal* knew that with all the involvement in sanctity that we have on Yom Kippur, one must not ignore the strong human tendencies toward illicit relationships, which is a major topic from the Torah reading. If man's relationship with a woman is based on *yetzer* (physical desire), the connection with the *yotzer* (Creator) is compromised.

Today's media presents relationships as something that is divorced from striving for a proper lifestyle, and the pursuit of gold is advanced before the pursuit of whiteness. May we remember the message of Yom Kippur, when white replaces gold and people look for the proper things for the proper reasons when they look to build a complete and eternal structure.

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# Ask the Rabbi

**Question:** If someone has to eat for health reasons on Yom Kippur in a manner that he has to eat, at times, more than a *shiur* (the amount that constitutes a full violation), does he have to be careful about the *shiur* the rest of the day?

**Answer:** When possible, a sick person who must eat ingests food and drink in small quantities to minimize the level of the necessary violation of eating on Yom Kippur (Shulchan Aruch, Orach Chayim 618:8). (You are apparently aware of how this is done.) Your question is whether or not this effort is all or nothing. In other words, if he anyway has to fully break the fast, does it make a difference how many times this happens? (We are assuming that the need to be careful each time is not itself going to negatively impact the sick person.)

If the question related to other eating violations (e.g., a sick person had to eat non-kosher food), the answer is simple. Just because one was forced to perform a major violation once is no reason for it to be less severe later. The question is whether eating on Yom Kippur is a normal "eating violation," wherein every *shiur* of food is a violation, or whether it is a violation of the obligation to fast. If the latter is true, then arguably, once one was forced to suspend his fast, further eating does not fundamentally change things.

The Shulchan Aruch (OC 568:1) says that when one has to fast on a specific day (even if it is self-imposed) but ate, he must continue fasting and cannot say that fasting the rest of the day will not help. This would seem to answer our question. However, the Binyan Tzion (34) suggests that this requirement to continue the fast might only apply if he ate improperly. In contrast, when halacha allowed him to break his fast (by eating a full *shiur*), we might say that there no longer is a fast to continue. At that point, whether or not he eats a full *shiur* or is careful to eat small amounts and take breaks might be irrelevant. The Mikraei Kodesh (Yamim Noraim, 39) goes a step further, saying that even if one were to get better and not need to eat any more, it would still arguably be halachically permitted to eat.

There are certain indications that eating on Yom Kippur is not a classical prohibition on eating but a *mitzva* to go through a day-long fast: The Torah says (Vayikra 23:27) to "afflict yourselves" (as opposed to "do not eat"); in that context, it says from "evening to evening," implying that there is a single unit; the *shiur* is not the usual *k'zayit* but a larger one that "puts his mind at ease" (Yoma 81a). (The matter of putting the mind at ease should not be exaggerated. The violation is not when one goes from a state of hunger to one of relatively less hunger. After all, one who ate half an hour into Yom Kippur and is still satiated from the *seuda hamafseket* still commits a full violation. Rather, the violation is to eat significantly in a way that generally suffices to put one's mind at ease that he has eaten (S'fat Emet, Yoma 73b).)

The crucial source in trying to resolve this matter is the *gemara* in Kritut (18b). In looking for a case of one who violated prohibitions that would require separate *korbanot* but having done so on Yom Kippur, the day one gets atonement for sins, the *gemara* mentions eating forbidden fats in the morning and afternoon. Tosafot and the Rosh (in Shita Mekubetzet) (ad loc.) ask why the *gemara* didn't just talk about one who is obligated in two *korbanot* for eating anything twice on Yom Kippur. The Binyan Tzion suggests that this might only obligate in one *korban* because, as above, once he ate there is no fast to break. However, the aforementioned, more authoritative sources do not give that fundamental answer, and give less satisfying technical answers. This suggests that which most *poskim* (see also Yalkut Yosef, Moadim, pg. 96) seem to posit: although there is a positive element of fasting a whole day, every act of eating is a violation of eating on a day when eating is forbidden.

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# Ein Ayah

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

## Two Elements of Evil Speech

(based on Berachot 2:44)

**Gemara:** My Lord, withhold my tongue from evil and my lips from speaking *mirma* (deceit)...

**Ein Ayah:** The tongue relates to the inner content of language, and the lips refer to the external element of language. [Thus the prayer discusses both elements of speech.] Because the true evil is the evil of false philosophies, the prayer requests that Hashem should protect so that the internal content of his speech should not turn toward the evil of damaging views. It asks also that the external element of speech should not express things that differ from one's internal intention, which could cause damage to those who are easily deceived. That is what deceit is: saying things that are against what is in one's heart.

## The Task of an Individual in his Life

(based on Berachot 2:46)

**Gemara:** My Lord, until I was created I was not worthwhile, and now that I was created, it is as if I was not created.

**Ein Ayah:** During the infinite time from the beginning of time until I was created, there was nothing in the world for which I was needed, for if there were something in the world for which I was needed, I would have been created at that point. Eventually, the time arose for me to do something to complete an element of the world. If I would have focused my actions for the purpose for which I was created, I would now be worthwhile. However, since my actions are not going toward that good goal, but rather to do that which my heart desires, I have not reached my goal. Thus, I still, as previously, am not worthwhile.

## The Importance of Yisurin

(based on Berachot 2:50)

**Gemara:** When Rabbi Yochanan would complete the Book of Iyov, he would say: "A person is destined to die, and an animal is destined to be slaughtered, and all are destined to die. Fortunate is one who grew in Torah ...."

**Ein Ayah:** Rabbi Yochanan gave the following solution to the existence of *yisurin* (torment) in the world. The endpoint of life is death. A person finds his real purpose after the end of his life on earth. If *yisurin* did not slightly weaken a person's connection to the material world so that his spirit could separate from it and find a restful respite, then the spirit's strong connection to the love of the physical world would detract from his spiritual completeness. The spirit would maintain, based on habit, longings for the body and its activities. Therefore, Hashem, in His wisdom, arranged matters so that the spirit would not find full satisfaction in this world. The reason is as Rabbi Yochanan said: "A person is destined to die and an animal, which does not have a spirit with deep feelings, is destined for slaughter. In other words, the animal can die suddenly without being introduced to it with a gradual weakening. It does not need to have its desire for life removed slowly. Since all are destined to die, it was appropriate to give the example of slaughter for the animal, which is a classic case of a sudden death. Even if an animal dies naturally, it does not experience a person's type of trials and tribulations. A person in his old age will find a certain level of comfort for the spirit in his death, which allows him to rest in peace. The fortunate part of passing away is allowing the soul to grasp the true ideas that it was incapable of grasping while still engaged in material pursuit. Therefore, one who grew in the Torah is particularly fortunate.

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# P'ninat Mishpat

## The Status of Municipal Regulations Regarding Home Expansion – part II

(based on Et Ladin, Harav Nir Vargon – Halacha P'suka, vol. 28)

[Last time, we saw the concept of communal regulations as something that halacha recognizes as legitimate and which in some ways can take on a halachic status.]

Why are the Laws of Neighbors so affected by local custom? The Chatam Sofer (Shut V, 79) points out that living situations clearly must have undergone great change from the time that Jews lived in their own land to when they lived in exile. Nevertheless, the Talmudic *chachamim* of Bavel were able to judge issues that arose among Jews, and that which they ruled became Torah law and determined what is appropriate from a Torah perspective. The Chazon Ish (Bava Batra 12:6) writes similarly that it is the *chachamim's* authority to determine what is considered a person acting on his own prerogative in his property and what is considered damaging one's friend. Whatever they decided, says the Chazon Ish, became the Torah law.

The logic behind these ideas is that the basis of the Laws of Neighbors is that one is forbidden to steal from his friend. Regarding movable objects, stealing consists of taking another's object. Regarding living quarters, where one has rights to use the property, there are gray areas in regard to what actions infringe on another's rights to use his property as he deserves. The *chachamim* had to draw the lines. It is possible that in regard to a place where the government or municipality supplies the population with the right to build and live, the guidelines they set have a strong impact on the related halacha.

What happens when the local regulations do not add restrictions but take away from the protection that halacha gives members of the community? Sometimes, at least according to certain opinions, we do not follow the local *minhag* in these matters. Rabbeinu Tam (Tosafot, Bava Batra 2a) says that when the local custom is to make a fence between the properties of two partners that does not uphold privacy needs, we do not follow the *minhag*. The Rosh (Shut 18:15) says that even when the practice among the non-Jews is to allow one to build in front of another's window and cause darkness, local Jews may not do this to their friends.

In other words, local practice can add restrictions but cannot eliminate those that are halachically mandated. By adding restrictions, one is not going against the halachic rulings, as the permission had been contingent on the prospect that it would not infringe on another's own acquired rights. When local practice gives him more rights, it is as if he acquired additional property. The *gemara* (Bava Batra 22a) says that one has to leave four *amot* next to a neighbors wall so that people's walking next to the wall will strengthen it. The Maggid Mishneh (Shcheinim 9:9) explains that it refers to where the property was acquired from the king, which, according to local practice, means that an additional four *amot* were put at his disposal for this purpose.

## Mishpetei Shaul

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tishrei 2 – Tishrei 8, Baba Batra 30-36

## Ruling when there is Doubt

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara (34-35) deals with the question of how a Beit Din should rule in a case where the ownership of a certain property is in doubt. The basic rule is that the burden of proof falls on the one coming to take the property out of the possession of the original owner, but what happens when the property is not in the possession of one of the sides?

We see from the Gemara that there are three possible solutions:

1. Yachloku- dividing the property equally between the two sides.
2. Shuda Dedayney- the Beit Din rules as it sees fit.
3. Kol De'alim Gevar- the Beit Din does not rule and allows the sides to fight it out.

When both sides are holding on to the object in dispute, such as when two people are holding on to a garment, the solution is Yachloku. When the property is not in possession of either of the sides, and it is not possible to find out who the owner is, the solution is Shuda Dedayney. An example of such a case is when each claimant produces a contract of sale for the same land, and both were written on the same date. However, when the property is not in possession of either of the sides, and it is possible that one of the sides will be able to bring proof in his favor, the Beit Din prefers not to interfere and allows them to fight between themselves, thus Kol De'alim Gevar.

The Rosh (3, 22) explains that Kol De'alim Gevar is not just that the Beit Din prefers not to interfere, but rather the Sages saw this as a solution, since the true owner will probably put forth a greater effort to overcome the other. Based on this, The Rosh claims that once one side overcomes the other, the Beit Din will not allow the other to continue fighting and the property will remain in possession of the first. However, the opinion of the Tosafot (Baba Metzia 6a d"h veba) is that, even after one grabbed possession of the item, the other can retake possession.

The Shulchan Aruch (139, 1) rules like the Rosh; that once one side overcomes the other, the Beit Din does not allow the other to retake possession. However, the Shach (ibid 2) quotes the opinion of the Tosafot and other Rishonim who disagree, and he rules that if the second retook possession, we will not remove the property from him (it is possible, however, that ideally, even according to the Shach, a continued fight should be prevented).

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