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HEMDAT YAMIM

הֵמְדַת יָמִיִּם

PARASHAT HASHAVUAH

Sukkot 15 Tishrei 5770

The Confidence to Love

After surviving and hopefully thriving with the Yom Kippur experience, we move on to the holiday of Sukkot. Some of the classical Jewish thinkers posited that Yom Kippur is related to service of Hashem through *yirah* (fear), whereas Sukkot is related to *ahava* (love). Let us take a look at Sukkot with this distinction in mind.

During Yom Kippur, we are fortunate enough to have the opportunity to receive atonement for many sins, which certainly is a happier prospect than receiving the full punishment we deserve. However, the service is still one with the "gun against the temple." On Sukkot, we should have the feeling that we have, for the most part, made it through that stage and celebrate as those who can concentrate on the positive elements of our relationship with Hashem.

The Ramban (Shemot 20:7) famously makes the distinction between positive and negative commandments, saying that the latter is based on *yirah* of Hashem, while the former is based on *ahava*. Indeed, someone who fears tries to stay away from mistakes, whereas one who loves looks for opportunities to display the love, with less fear of what might go wrong. Yom Kippur is a day when we demonstrate the element of fear to an extreme. Not only do we refrain from problematic things, but we even refrain from such basic bodily needs as eating. We do not trust our connection with the natural physical world, and try to approach Hashem in a manner that is divorced from the physical world as much as possible. In contrast, on Sukkot, we fulfill two active *mitzvot* (*sukka* and the four *minim*). We take representatives of different things from nature into our hands, and we envelope ourselves in the "leftover of the winepress and the silo."

Our interest to engage the broader world also expands on Sukkot. We would sacrifice 70 bulls in the *Beit Hamikdash*, corresponding to the 70 nations, for whose ultimate success we pray. This is also related to our focus on Sukkot on the coming of Mashiach (the *haftarot*, the references to the hide of the Leviatan, etc.). Rav Kook writes in several places (including the first piece of Ein Ayah) that during the time of exile, when the Jewish people are physically and spiritually vulnerable, we are to be inwardly focused to ensure our survival. Only when we return to our Land and the Days of Mashiach begin can we reach our full potential as a nation of priests and lead the world toward universal service of Hashem. The other nations will lose their prominence as leaders and, like the decreasing number of bulls offered as Sukkot progresses, they will be happy to follow our lead as they come to see the "G-d of the house of Jacob" in Yerushalayim (Yeshaya 2:3).

May we merit seeing the increasing confidence to show our love of Hashem on the world stage as we continue to move toward the days of full liberation.

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Ask the Rabbi

Question: I own a kosher restaurant and would like to keep it open on Sukkot. However, there is no place for me to put a *sukka*. May it operate anyway, and, if so, are there conditions I must meet?

Answer: You do not want your restaurant to be responsible for people eating improperly. While women's eating in a *sukka* is optional, a male is generally forbidden to eat a meal outside the *sukka*. On the other hand, is it your job to play police any more than you do regarding people making *berachot* on the food? Actually, there is a difference between the issues. Normally, you provide your customers with kosher food, which is the most you can do. Regarding many people, you can assume they will or may make *berachot* as they should, and if there is someone who you are sure will not, he would act the same wherever he eats! (This is a simplified treatment; see also Minchat Shlomo I, 35). Here, though, some of the customers would likely eat in a *sukka* at home or another kosher eatery if yours is closed.

Let us take a look at the prevalence of people who are exempt from eating in a *sukka*. Travelers, even for non-*mitzva* purposes, are exempt from sitting in the *sukka* during their travels (Shulchan Aruch, Orach Chayim 640:8). That may apply to many men who will visit your restaurant. There are limitations on the use of this leniency (see Igrot Moshe, OC III, 93, who is particularly strict). The most important one is that it must be that he does not have easy access to a *sukka* (Mishna Berura 640:40). Even if you can assume that most people do not need a *sukka* (which we cannot determine from here), it will not help when you recognize people as locals, who prefer your cuisine to their *sukka*.

Anyone may eat outside a *sukka* when he is not having a halachically recognized set meal (Shulchan Aruch, OC 639:2). This means eating bread the size of an egg, but also applies to foods from the major grains (foods upon which one makes *Mezonot*, except for rice) eaten in a serious manner (*ibid.*). Exactly how much one has to eat of non-bread products is a matter of dispute, as is the question if other foods can be eaten in a meal-like manner outside the *sukka* (see Mishna Berura, ad loc.:16; Biur Halacha, ad loc.; Teshuvot V'hanhagot I,178). If you wanted to use this avenue of leniency, there is what to talk about with a reasonable amount of improvising (which we could try to help you with). If you set up a situation whereby you have reasonable menus that can be eaten out of a *sukka*, then you could even serve some bread with a visible note that says that those who need a *sukka* should have less than *x* amount of bread. Then you can use the rule of *tel'ah*, that you may assume that an object you give someone will be used properly if there is a reasonable possibility that this is the case, even if the person may be apt to use it in a forbidden manner (see Avoda Zara 15b). This idea would help regarding most scenarios of take-out.

It is usually problematic to get paid for work done on *Chol Hamo'ed*, but it is permitted when done for *ochel nefesh* (to facilitate eating on the *chag*) (see Biur Halacha 542:1). While it might be against the spirit of the law to use a leniency for the needs of the *chag* in a manner that lessens the *mitzva* of *sukka*, halachically, it is still *ochel nefesh*.

Let us summarize as follows. If you are in a place that lacks kosher eateries, it would be religiously worthwhile to use legitimate leniencies to stay open and try to arrange things so that few if any people will violate their obligation to eat in the *sukka*. If there are plenty of options with a *sukka* (in which case, the volume of customers at a kosher restaurant without a *sukka* would not be that great), it would be best to give yourself and your workers a deserved rest on the *chag*. (We also would understand if your *hashgacha* would not allow you to open.) However, in these difficult economic times, we do not want to rule out the possibility of working things out, as we began to outline.

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Ein Ayah

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

The Long-Term Impact of the Wise on Others

(based on Berachot 2:53)

Gemara: Fortunate is he who ... grew with a good name and expired from this world with a good name.

Ein Ayah: The point of having a name is not for the sake of the person himself. After all, a person does not need to use his name in relation to himself. Rather, it is necessary for him to have a name so that others can use it to refer to him. We learn from the story of Iyov as well [*the gemara's statement was said at a siyum on Sefer Iyov*] that every person of a high moral standing is obligated not only to reach personal *shleimut* (completeness) but must involve himself in the *shleimut* of others. This involvement in others' self improvement is the matter of a good name.

The impact one has on others can grow increasingly greater as the generations progress. Sometimes the words of a wise man are not accepted by the people of his generation, as they may not recognize his greatness or delve into his words as they might have. Therefore, his ideas are not able to have their full potential impact on people's *shleimut* in his lifetime. Rather, in future generations, when the jealousy and the over-familiarity, which blind the eye, subside, then his words will become clear and many will follow his light.

This is what Shlomo said in his wisdom: "A name is better than good oil" (Kohelet 7:1). Good oil is a reference to those who are anointed, which means that their generation agreed to accept their leadership. Sometimes, those leaders have an impact only on their generation and in their lifetime. However, for the wise man, whose main contribution is to bring *shleimut* to the masses, the day of death is greater than the day he was born. That is because after his death, his light can shine brightest, as his good ideas, which he left for future generations, either in his writings or by means of the students whom he "nursed from the breasts" of his wisdom, are absorbed by others.

Dedication to Advance

(based on Berachot 2: 54-55)

Gemara: Make a firm decision with all of your heart and soul to know My ways and to remain diligently by My doorways on a daily basis.

Ein Ayah: This comes to exclude the opinions of those who say that knowledge of the ways of Hashem comes specifically by analyzing that which exists without trying to purify their actions to go in the way of Hashem. That is why it says that to know Hashem, one should make a decision with all of his heart and soul toward that end. One will not succeed in knowing Hashem's way without making a clear decision in his heart to fulfill all of the matters of morals and ethics that emanate from one's philosophical inquiries.

Diligence (*sh'kida*) is a sign of consistency. The idea behind being constantly by Hashem's doorway is related to what the Rambam said (introduction to Moreh Nevuchim). Sometimes a person will have a brilliant intellectual insight that will light the way of one who seeks truth, while most of the time he walks in intellectual darkness. Therefore, it pays that he should always be by the doorway, for the door is that which closes off the otherwise exposed area. A person should try to understand even if there is a closed door in between him and understanding. If he does this every day, then he will merit that at certain times the door will open for a moment, and he will see precious light.

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P'ninat Mishpat

Litigants' Agreement to Special Rules of Adjudication

(based on Sha'ar Ladin Halacha Psuka, vol. 29)

The *mishna* (Sanhedrin 24a) discusses a case where the litigants agree that someone who should be invalid to testify or judge in their case, e.g., a sinner or a relative of one of the litigants, will be able to testify. Rabbi Meir says that the litigants can back out of the agreement; Rabbanan say that they cannot. The *gemara* concludes that they are arguing about a case where one wants to back out of the agreement after the *g'mar din* (the end of the court case, when the ruling is rendered), and the halacha is that he cannot back out. However, prior to that, either side can back out of the agreement to allow an invalid witness or *dayan*. If a *kinyan* (act of finalization) was made, no one can subsequently back out.

Rishonim dispute how a *kinyan* prevents the sides from backing out of their agreement. The Nimukei Yosef (Sanhedrin 4b in the pages of the Rif) posits that the *kinyan* is not of a directly monetary nature, but comes to concretize the procedural agreement. The Ra'avan says that the litigants must make a *kinyan* on the money in dispute to be paid according to the decision.

Rishonim explain that not only regarding the viability of witnesses and *dayanim* but in regard to a variety of rules of adjudication, the sides can alter the regular rules. These include beginning deliberations at night, using translators, etc. These changes are not limited to technical issues or matters of a specific Torah preference but apply as well to matters of serious content that could easily affect the case's outcome. For example, a sinner as a witness is suspected of lying for financial gain, yet he can testify if so agreed. The use of translators also can hinder the *dayanim's* ability to understand and interrogate the litigants. (One area where agreement is invalid is about going to adjudicate under the auspices of a secular court.) The reason that these agreements are accepted is that since the goal is to resolve arguments between the parties, there is little reason to prevent people from using a framework with which they are satisfied.

Regarding present day practice, the signing of an arbitration agreement is deemed to be a form of *kinyan* to the agreements between the sides based on the rule of *situmta* (whatever is considered binding by society becomes halachically so). That is why special rules that a given *beit din* employs that are referred to in the arbitration agreement are binding. It is common now, for example, to allow adjudication to take place at night. Regarding matters of content, many *batei din* receive authority to extract money even when there is a (minority) opinion that payment should not be made. Sometimes the law of the land is accepted relatively broadly. It is possible to validate a ruling, even if it ends up being based on a mistake, or to allow the *dayanim* to rule either based on strict law or based on compromise. Examples of rulings where this was employed can be found in editions 26-27 of Halacha P'suka.

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Hemdaf HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tishrei 9 – Tishrei 15, Baba Batra 37-43

Canceling a Sale or a Present

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara (40) deals with the issue of a person who wishes to preemptively nullify the validity of a sale or a gift that he is about to give. The way this is done is by stating before witnesses that the sale or present one is doing is not being done willingly but rather out of coercion. The witnesses then write down this declaration. This is termed moda'ah by the Gemara.

The Gemara distinguishes between a moda'ah on a sale and a moda'ah on a present. For a sale, the witnesses must know that the seller was indeed coerced into selling and must write this in the moda'ah. Otherwise the moda'ah is not valid. However, for a present, the witnesses need not know that the giver was indeed coerced. The question arises, what is the reason for this distinction between a sale and a present?

The Rashbam (40b d"h gilui) explains that for a present, like a sale, the moda'ah is valid only if the giver was indeed coerced. The difference is that, for a present, we believe the giver when he states that he is being coerced into giving, since if he wasn't being coerced, why would he give a present that he doesn't want to? However, for a sale, we are concerned that the seller is lying when he states that he is being coerced, since it is possible that he wants to sell because he needs money, and he wants the moda'ah so that he will have the option of cancelling the sale if he ends up receiving money from somewhere else. Thus, for a sale, we have to be sure that he is indeed being coerced.

The Rosh (3, 32) and the Rambam (Mechira 10, 3) disagree with the Rashbam. They claim that, for a present, it doesn't matter if the giver is really being coerced or not. The Rosh explains the reasoning as follows: for a present, it is enough that the giver is not really interested in giving for the present to be cancelled. However, for a sale, we are concerned that the seller is really interested in selling, due to a need for money, and he is only stating that he is being coerced so that he will be able to cancel the sale at a later point in time, when he has money. Thus, we must know that he is really being coerced into selling.

The Rambam, as stated above, agrees with the Rosh. However, his line of reasoning appears to be slightly different. A present is a one-sided act by the giver. Thus, a present is totally dependent on the giver's wish, and if he is not really intent on giving, then the present is not valid. However, a sale is a bilateral act done by both the buyer and the seller. The seller cannot cancel the sale on his own. Thus, only if he is really being coerced is the moda'ah valid.

The Shulchan Aruch (242, 1) rules like the Rambam and Rosh; that anytime a moda'ah is done before the giving of a present, it voids the gift, even if the giver was not coerced.

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