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# HEMDAT YAMIM

הֵמְדַת יָמִימ

## PARASHAT HASHAVUAH

**Vayeira 20 Cheshvan 5770**

### "The Right Place at the Right Time"

In the middle of our action-packed *parasha* sits an innocuous *pasuk*. "Avraham traveled from there to the Land of the Negev, and he lived between Kadesh and Shoor and dwelled in Grar" (Bereishit 20:1). Whenever someone as great as Avraham makes a decision to move, even if still within the Land, and the Torah decides to write about it, commentators (and hopefully we too) will want to know why he did so.

As usual, there is no better place to start than with Rashi. He posits that it has to do with the previous story, which dealt with the destruction of Sodom. He provides two specific reasons why that episode could have prompted Avraham to move: 1) after the destruction, there were fewer passersby with whom to interact; 2) word got out that his nephew, Lot, had cohabitated with his daughters, in the aftermath of the destruction, causing disgrace to Avraham. Rashi's general approach, that Avraham was, on some level, escaping, is supported by the words "traveled from there."

There are others who stress the positive gain of Avraham's moving. The Radak suggests that Avraham wanted to live in another region of the country in order to strengthen his hold on the gift of the Land, for the benefit of future generations of the nation that would emerge from him. The Seforno also takes a positive approach, in regard to what he could gain from his new location. He claims that Kadesh and Shoor were both large cities, so that being between them awarded him the opportunity to spread the "Name of Hashem" in prominent and apparently new areas where he had not previously done so sufficiently. It is of course a strategic question if one has more influence on the world by concentrating on the quantity of people or the quality of the impact.

Rav S.R. Hirsch has a fascinating explanation that teaches a lot about the importance one should give to education and the steps needed to ensure success in that realm. He says that since Avraham was told that his son from Sarah was soon to be born, he had to already prepare the proper environment for his upbringing. Avraham chose the southern, desert region, where it would be easier to achieve the environment of social isolation for his son, so that he not be harmed by spiritually dangerous influences. On the other hand, he said, Yitzchak would need some exposure to populations that thought differently than the way his father was teaching him. One who is totally isolated does not develop educational "antibodies" to outside "infection" and, upon finally being exposed, is likely to get very sick. Therefore, he chose a place in the desert place that was near populations, and, says Rav Hirsch, the Plishtim were a somewhat less corrupt nation than many of the Canaanites of the Land.

Indeed, when one moves, he is sometimes running away and sometimes running to. But, as we can learn from Rav Hirsch's commentary, the perfect environment is one that may need to be prepared years in advance and must provide a variety of almost self-contradictory resources and influences.

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# Ask the Rabbi

**Question:** I know that one may not talk during *kri'at hatorah*, neither during the actual *leining* nor in between *aliyot* (*bein gavra l'gavra = bglg*). What I have not found in the Mishna Berura is when this halacha ends. After the seventh *aliya*? *Maftir*? *Hagba*? *Haftara*? Putting back the *sefer Torah*?

**Answer:** We will focus on the limitations on speech only regarding the special factors that relate to *kri'at hatorah*. Many topics and modes of discussion are forbidden at any time of the *tefilla* and in fact, in a *shul* at any time.

The *gemara* (Sota 39a) says: "Once the *sefer Torah* is opened, it is forbidden to speak even in matters of halacha." Two sources from the *nevi'im* are cited: one focuses on being quiet and one mentions the need to listen. *Bglg* is not explicitly discussed, and according to several authorities (apparently the Rambam, Tefilla 12:9; Bach, Orach Chayim 146, cited by Magen Avraham 146:3 and others; B'er Sheva, Sota ad loc.) it is permitted to talk then. In fact, in regard to another matter of disgrace to the Torah, walking out in the middle, the *gemara* (Berachot 8a) says that it is permissible to go out *bglg*. It is Rabbeinu Yona (Berachot 4a of the Rif's pages) who says that once the Torah is opened, it is forbidden to talk until the end, including *bglg*. The Beit Yosef (OC 146:2) explains that the prohibition must be based on our concern that the person will continue talking after the reading continues.

*Poskim* discuss how broadly to extend this concern. Most permit learning quietly by oneself *bglg*, where it may be easier to stop and he at least does not disturb others (see Ateret Paz I,3, EH 13). If there is an organized break, such as when someone says *divrei Torah* to the whole congregation at that time, the problem likely does not exist (Yecheveh Da'at V, 17). Distinctions are also raised regarding the length of the *bglg* break (Magen Avraham ibid.: Aruch Hashulchan OC 146:3).

Interestingly, the Shulchan Aruch (OC 146:2), while accepting Rabbeinu Yona's stringency, adopts the Rambam's timeline for the matter. The *gemara* and Rabbeinu Yona speak about from the time the Torah is opened; the Shulchan Aruch and Rambam posit that this is only from the time the reading actually begins. (The Ateret Paz tries to explain why it is easier to stop talking before the initial reading than *bglg*.) One could have explained Rabbeinu Yona's opinion to mean that it is disrespectful to speak during the entire unit of *kri'at hatorah*, including its breaks, but the Shulchan Aruch explains his ruling on more pragmatic grounds.

This point is important for the following reason. Other than the length of the break for *Kaddish* (during which one is anyway forbidden to speak) and *hagba*, there seems to be no difference regarding the chance of continuing talking from the beginning straight through the *haftara* (the Shulchan Aruch ibid.:3 forbids talking during the *haftara*). On the other hand, regarding the matter of a unit, there is a big difference. The original *takana* of *leining* on Shabbat did not include the *haftara* or *maftir*. Along with the institution of the *haftara*, it was instituted that he who gets the *aliya* to read from the *Navi* should read also from the Torah, so as not to equate an *aliya* for reading *Navi* alone to that of reading the Torah (Megilla 23a). We even separate between the two sections of Torah reading with *Kaddish*. Therefore, it makes sense that after the seven *aliyot*, it is no longer considered *bglg*. In fact, Rabbeinu Yona himself says that the prohibition is in place until he "finishes the *parasha*," which implies after the seventh *aliya*. (We did not find *Acharonim* who discuss the matter.)

As hinted, there is logic to say that the Shulchan Aruch might argue. However, since he is trying to comply with Rabbeinu Yona, it makes sense to not extend the stringency to the less stringent section of *kri'at hatorah*. Considering that we did not find someone who forbids the matter (albeit, we did not find one who permitted it either), we do not feel that one can forbid appropriate speaking before the readings of *maftir* and the *haftara*.

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# Ein Ayah

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

## Differences between this World and the Next

(based on Berachot 2:64)

**Gemara:** The following was a favorite saying of Rav: "The world to come is not like this world. The world to come does not have eating and drinking, or procreation, or commerce; it does not have jealousy, hatred, or competition. Rather, *tzaddikim* sit with their crowns on their heads, and they enjoy the aura of the Divine Presence."

**Ein Ayah:** Physical deficiencies will disappear totally when existence will reach its ultimate level of *shleimut* (completeness). In this world, where we are to progress toward *shleimut*, there are actually deficiencies that bring on higher levels. In fact, they are irreplaceable in obtaining certain attainments without which the world cannot be sustained.

Three areas that, according to the values of this world, are considered positive things, are: 1) eating and drinking; 2) procreation; 3) commerce. In order that these sustainers of life as we know it will exist, there is a need for negative traits to sustain them.

The existence of eating and drinking and, for that matter, any of a person's needs, requires jealousy. If not for jealousy, no skilled activity would come to fruition and people would not obtain those things that they need. This is the gist of the *pasuk*: "I saw the toil and the skill of activity, that it is the jealousy of man against his counterpart" (Kohelet 4:4).

Procreation has to do with the system of families. In order for it to exist, there must be a concept of hatred, for there could be no love without the existence of hatred, as love can be discerned only in contrast to hatred. Without it, there would be no place for families.

Because it is necessary for people to be involved in commerce, there is a need for competitiveness, which is the pillar of commerce. Only in this way does one merchant try to improve on that which another merchant offers, regarding such things as quality of the product, its delivery, etc.

All of these things, though, exist only in this world, where things are considered advantages as if by chance, without intrinsic value. This is because the advantages are just relative to the deficiencies that exist at that time. In contrast, when the world will reach its ideal state of *shleimut*, it will be a world of good alone. Then all of the contributing factors will also be real *ma'a lot* (high levels).

The *shleimut* of humankind is when man perfects his power to choose well to the extent that he is capable of doing. A person should truly desire to see how all of the existence will perfect his power of choice to its fullest. One of the concepts related to the *shechina* (Divine Presence) is the fulfillment of the Divine desire by means of human choice. There is no way of estimating how great this success will be. For the idea of *shleimut* through choice is great and wonderful in a way that we will understand only when it will be achieved.

The great spiritual attainment which surpasses the natural world is called an *atara* (crown). That is why the *gemara* describes people in the world to come as sitting with crowns on their heads. In other words, they possess that which they acquired through good choices in addition to the personal *shleimut* that they had naturally. The enjoyment they have is from exposure to the aura of the *shechina*, in other words, from the pleasantness of realizing the value of fulfilling the Divine desire through human choice. Therefore, the more one is able to succeed as a human to improve and become greater, the greater the pleasantness in the world to come. The significance of the aura of the *shechina* depends on the level of recognition of the value of the *shleimut* they achieved through choice. The absolute knowledge of the value is indeed known only to Hashem. However, the level of human understanding increases as a person goes from strength to strength.

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# P'ninat Mishpat

## How to Elect Public Officials – part II

(based on Eit Ladun – Rav Nir Vargon - Halacha Psuka, vol. 30)

*[We saw last time that national leaders need not be appointed by the Sanhedrin or a prophet but can be appointed by the will of the people, which could be established by consensus or even by majority vote. We will investigate details about majority decision in this regard.]*

The *gemara* (Sanhedrin 3b) establishes that a majority decides matters both in regard to monetary and capital cases. The Rama (Choshen Mishpat 18:1) based on the Rashba (Shut V, 289) says that this system of decision-making applies to courts but not to the adoption of ordinances for the public.

This seems to contradict the Rama's own ruling (in the name of the Maharam) that we do follow the majority. The Chatam Sofer (Shut CM 61) says that the Rashba's limitation on using the majority is based on the fact that the *gemara* (Chulin 11a) needs to bring a proof from a *pasuk* that we follow the majority. This indicates that following the majority is not a matter of simple logic. The proof from the *pasuk* is enough to apply majority rule to Torah-mandated groups such as Sanhedrin and a regular *beit din* that has to decide matters under its jurisdiction. However, regarding groups that convene to decide matters that are not mandated by the Torah but depend on the opinions of people, there needs to be an agreement of the whole group. The Rama's ruling in the name of the Maharam, says the Chatam Sofer, discussed a case where there was a disagreement from the outset with between the people of the community, which they got together to work out. In that case, it is clear that they got together in order to solve the matter by the decision of the majority. It follows from the Chatam Sofer that majority rule, while not applicable regarding voluntary matters, still is valid and binding when the group previously decided to follow the majority. If agreement can extend majority rule where it normally does not apply, then it should follow that agreement of a group can also implement any system of decision-making that the group arrives at.

In a different responsum (ibid. 116), the Chatam Sofer says that the idea of following the majority should not be applied sparingly. Rather, he says, the *minhag* in his whole region was that a wide variety of decisions were decided by majority. He explains that if matters would have to be resolved by unanimous decision, then practically no issues would ever be resolved.

*Next time we will discuss what happens under the majority system when some of those who were eligible to vote do not do so.*

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Cheshvan 14-20, Baba Batra 72-78

## Selling a Shtar (76-77)

Rav Ofer Livnat

This week in the Daf Hayomi the Gemara deals with the question of how one can transfer ownership of a shtar chov (proof of debt, promissory note). As opposed to most objects that have intrinsic value, the shtar's value is not intrinsic, since it is only proof of an existing debt, and thus its value lies in the ability to collect a debt with it.

The Gemara (77a according to most Rishonim but not the Rashbam) rules that in order to transfer ownership of a shtar, ketiva and mesira are required. Mesira means to give the shtar to the new owner. Ketiva means to write an additional shtar which states that the shtar with the debt written in it is given over to the new owner. This additional shtar must also be given to the new owner.

The question is how do the ketiva and mesira join together to transfer the shtar. What is the role of each of these actions? The Ba'al Haterumot (sha'ar 51 chelek 3 se'if 4) quotes a dispute between the Ra'avad and the Ramban regarding this question.

According to the Ra'avad, when a shtar is being transferred, one needs to transfer the shtar itself, i.e. the paper it is written upon, and the lien created by the debt. The function of the mesira is to transfer the shtar itself, and is similar to a kinyan (act by which ownership is transferred) for a regular object. The function of the ketiva is to transfer the lien. The Ramban disagrees with the Ra'avad. He claims that transferring a shtar is in no way similar to transferring a regular object, since the main function of the shtar is in what it represents, which is the debt. Therefore, the function of both the ketiva and the mesira is to transfer the lien on the debt. The reason that both ketiva and mesira are required is that, when a person receives both the shtar and an additional shtar stating that the shtar was transferred to him, he is sure that he attained ownership, and therefore this is considered a kinyan.

The ramification of this dispute is whether the mesira can be substituted with a different kinyan used for objects, such as chalifin.

<sup>i</sup> According to the Ra'avad, the mesira can be substituted with chalifin or any other kinyan used for transferring objects, since the function of the mesira is to transfer the shtar itself. According to the Ramban, the mesira cannot be substituted with a different kinyan, since the function of the mesira, like the ketiva, is to transfer the lien on the debt, and the Sages instituted that this can be accomplished only by transferring the shtar itself.

### **Summary and Ruling:**

The Shulchan Aruch (Choshen Mishpat 66, 4) rules like the Ramban that a shtar can be transferred only through ketiva and mesira, and chalifin cannot substitute the mesira. However, later on (ibid 20), the Shulchan Aruch quotes the opinion of the Ra'avad that the mesira can be substituted with a different kinyan. The commentators thus find difficulty explaining this apparent contradiction. The Shach (66, 70) rules like the opinion of the Ramban that mesira is required and cannot be substituted with other kinyanim.

<sup>i</sup> Chalifin is a kinyan based on the principle of exchanging one object for another. In order to purchase an object that is not present, another object (usually a piece of cloth or a pen) is transferred and, through this, the intended object is transferred.

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