

HEMDAT YAMIM

PARASHAT **Tetzaveh**

10 Adar I 5768

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Hemdat Yamim is dedicated in memory of **Yehoshua ben Yaakov z"l (Egon Mayer)** by Ernest & Judith Gottdiener
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The Torah Connection

One might look at our *parasha's* careful description of the articles of clothing of the *kohen gadol* (High Priest) and the regular *kohanim* as a verbal display of special but archaic fashion. Actually, wherever one turns, there are concepts and moral and spiritual lessons.

The *efod* (roughly, an apron) covered the *kohen gadol's* torso. Over the *efod* was the *choshen* (breastplate). The two were connected by a blue string, whose purpose the Torah describes as "*v'lo yizach hachoshen me'al ha'efod*" (the breastplate shall not be separated from the *efod*) (Shemot 28:28). Remember this *pasuk* as we take a look at the linguistic proof that an important *gemara* learns from it.

The *gemara* (Chulin 6b-7a) tells the story of R. Yehuda Hanasi, who arrived at a major leniency regarding *ma'asrot* (tithes) in the region of Beit She'an. He was asked how he could do such a thing considering that his predecessors had assumed differently than he. If his thesis were true, would his more illustrious predecessors have missed it? He answered by citing a *pasuk* about Chizkiyahu (Melachim II, 18) who destroyed the copper snake that Moshe had used in the desert because people were attributing powers to it and straying from Hashem. Although previous great removers of idolatry, Asa and Yehoshafat, had left it, the "Heavens left room for him to act with greatness." So too, said R. Yehuda, the Heavens left him room to uncover information that warranted changing the assumptions about Beit She'an.

The *gemara* concludes that from here we learn that if a *talmid chacham* says something surprisingly novel, we do not pressure him to retract it (Rashi, ad loc.). The *gemara* gives three similar-sounding options for the word used to be tolerant of the *talmid chacham*. One of them, *mazichin* is derived from our *pasuk*, "*lo yizach*," do not separate. At first glance, use of our *pasuk* is only technical/linguistic. However, there may be more to it.

How can we trust a rabbi to arrive at something that appears new? Isn't Torah scholarship based on tradition, not innovation? The *choshen (hamishpat)* is named for its connection to expertise in the field of justice and is the base for the *urim v'tumim*, which reveals Divine secrets. The *gemara* may be hinting that in any generation, a true "secret" can be uncovered with Divine assistance. Even the discovery's timing may be Divine. On the other hand, there is an important implied condition. It is forbidden to remove the *choshen* from the *efod*, which must be connected by a special string (Yoma 72a). As the *efod* served as atonement for idol worship (Zevachim 88b), it must work positively with the heart it covers to connect one to fear of Hashem. Similarly, a Torah innovator must be connected by a chain of tradition to the Torah and fear of Hashem, like R. Yehuda Hanasi. Then he is entitled to the benefit of the doubt that his ideas are not a break from a tradition but an addition of a link.

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Ask the Rabbi

Question: I was at a Shabbat bar mitzva at a hotel in Israel. We *davened* in a makeshift *shul* (with an *aron* and *sefer Torah*) near the room we ate, which is often used when separate parties are going on. Should we have recited *Me'ein Sheva* (*Magen Avot*) at the end of *Maariv*?

Answer: The phenomenon of *Me'ein Sheva* (=MS) is interesting. It is like a shortened *chazarat hashatz* (repetition of *Shemoneh Esrei*), which is surprising at *Ma'ariv*, which does not usually have a *chazarat hashatz*. The *gemara* (Shabbat 24b) says that we recite it because many *shuls* were in dangerous places, so the Rabbis wanted to stretch out the *davening* to give latecomers time to finish before everyone else finished and left.

Because of the unusual nature of the institution of MS, it is not surprising that *Rishonim* limit it to circumstances that resemble the original situation. The Ra'avya (see Tur, Orach Chayim 268) says that the danger the *gemara* discussed is no longer prevalent and that although we continue the practice, we only do so with a *minyan*. The Beit Yosef (ad loc.) and Rivash (40) say that it does not apply to makeshift *minyanim*, as it is not as likely for people to come from all over to *daven* and for one to come late. This approach is accepted by the Shulchan Aruch (OC 268:10).

What is considered close enough to a regular *shul*, which warrants the saying of MS? The Taz (268:8) seems to have a relatively broad definition, as he says that when a group goes to an area and sets aside a place to *daven* for a few days, they do recite MS. This is more set than the cases of a *minyan* formed in a home where *sheva berachot* or a *shiva* period is held, where the Shulchan Aruch says not to recite it. There is some disagreement as to whether the few days have to be consecutive days or could be on weekends only (see opinions in Minchat Yitzchak X, 21), as is likely the case in the hotel in question. The Eliyahu Rabba (268:19), in bringing this Taz, adds the necessity that a *sefer Torah* be present (possibly because he did not feel it was likely that they would go without one), and the Mishna Berura (268:24) also adds this as a requirement. On the other hand, some *poskim* say that the presence of a *sefer Torah* suffices without other requirements (see opinions in Yabia Omer II, OC 29). It is also possible that if the area is part of the same complex as the hotel's main *shul*, it is considered an extension of it and would thus be considered a set *beit kneset* (see a similar idea in D'var Moshe, cited, Minchat Yitzchak, *ibid.*). On the other hand, there is logic to say as follows. The main distinction should have to do with the nature of the group that assembled more than with the history of the place in which they meet (unless it is a full-fledged *shul*). In this case, the bar mitzva group is a one-time thing and MS should not be recited.

In the final analysis, your case is one of a *safek* (doubt) as to which definition to accept. What does one do in such a case? Firstly, some rule (based on kabalistic sources) that once instituted, MS is to be said at any *minyan*; this appears to be the *minhag* in Yerushalayim (Rav Pe'alim III, OC 23; Har Tzvi OC I, 152). Secondly, the Magen Avraham (268:14) says that even in a case where the indications are that one should not recite MS, one need not correct those who are doing so. It is possible that even if not required, it may not be a problem for a *minyan* to recite it anyway, as they are close enough to the institution to make it acceptable. However, the Pri Megadim (MZ 268:8) raises the possibility that those who recite MS out of doubt run the risk of a *beracha l'vatala* (in vain). Thus, in the final analysis, it is safer to rule that one should not have recited MS, but if they did (which I guess most groups do) there was insufficient reason to try to dissuade them.

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Autopsies – part III(condensed from Amud Hay'mimi, *siman* 34)

[There are three issues that need to be discussed in regard to the possibility of performing autopsies: halanat hamet (delaying a burial); leaving certain body parts out of burial; nivul hamet (disgracing the deceased). After concluding that based on the Rambam, we should not accept one's permission to delay his funeral, we continue with the issue of not burying all parts.]

The Mishneh Lamelech says that there is no *mitzva* of burial on a *k'zayit* (olive-size piece) of a body. Rather the *mitzva* refers to the head and majority of the body. The Ohr Hameir says that this is so only when the body will be buried in parts, but if the body as a whole is being buried, every part of it must be included. The Gesher Hachayim (I, 16:2) also says that if one finds a limb or a *k'zayit* of flesh of a body that was one buried, he must bury that as well.

This approach is not compatible with the Mishneh Lamelech, as is clear from his context that regarding a small piece of the body that is beyond the head and the majority of the body that was slated for burial, there is no obligation. This is also the Bach's opinion. The Mishneh Lamelech does acknowledge that according to the Tosafot Yom Tov, one must bury even a *k'zayit*. However, it appears from the Tosafot Yom Tov's context that the reason to bury a small part of the deceased is not the *mitzva* of burial but the prohibition to receive benefit from a deceased's body along with the rule to bury things from which it is forbidden to benefit.

There is another possible explanation of the Mishneh Lamelech, which we will present after the following introduction. *Chazal's* outlook on the standard burial is strange, as if one carries out the body to the public domain on Shabbat it is not considered a full violation of Shabbat but a *melacha she'eina tzricha l'gufa* (an action that does not produce the classic positive result associated with the form of work). The Meiri wonders why this should be, considering that the *mitzva* to bury should make the carrying a positive *melacha*. One possible answer to his question is that the positive *mitzva* is only on the first day and that the *mishna* is talking about after that point. It is more likely to answer that the positive *mitzva* is only for those that were executed or that the *mitzva* of burial will anyway not be able to be done even for a *met mitzva* (one with no one to bury him) on Shabbat. The only thing that compels the burial is the negative commandment of *bal talin* (not to leave the body over) but that is not considered a positive thing but rather the removal of a negative one.

If this is so then we can similarly say that the Tosafot Yom Tov is correct that there is a need to bury even a *k'zayit* of the body. The Yerushalmi that indicates that the *mitzva* is only for the head and majority of the body is talking about the positive *mitzva*, which applies to the person as a whole. Regarding the negative commandment, we lack a limiting phrase to eliminate smaller parts of the body and thus practically these pieces must be buried.

While the above explanation of the Tosafot Yom Tov is plausible, the Tosafot Yom Tov probably does not distinguish between the positive and the negative. In any case, it makes more sense to accept the Mishneh Lamelech's simple meaning that the *mitzva* does not exist on small pieces despite the possibility that the Tosafot Yom Tov argues. We will thus assume that there is no *mitzva* to bury small parts that might be removed during an autopsy. Although they would eventually need to be buried because it is forbidden to benefit from them, as long as the parts are monitored during their use for medical research for a set time, we need not fear that they will be misused. Thus, the status of the individual piece is not the reason to forbid an autopsy.

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P'ninat Mishpat

Partnership in a Corporate Venture (based on Halacha Psuka, vol. 39, condensation of a *p'sak* of Beit Din Mishpat V'Halacha B'Yisrael)

Case: The plaintiff (=pl) invented a game and entered an equal partnership with the defendant (=def) to sell its rights to a company. Def was to market the game to a specific international company, whose CEO is a friend of his. The company ended up rejecting the game. In light of the failure, pl wants to end the partnership and market the game to a smaller Israeli company which requires less marketing for a smaller profit. He is willing to pay def only 20% of profits, as his special value was in regard to that one company. Def responded that he is not responsible for the failure and wants to continue under the original conditions, marketing the product to other large companies.

Ruling: Pl cannot claim *mekach ta'ut* (misrepresentation) that voids an agreement despite the importance of def's claim to a strong connection with the company. The relationship seems to exist; the company's rejection of the product does not disprove that claim. There is also no indication that def's work was deficient. Even if it was, that would not be grounds for more than possible reimbursement, but not of voiding a properly formed partnership.

Pl's assertion that he is the sole owner of the product who controls its destiny despite his agreement to share profits with def is wrong because of the following reasons: 1) Def took part significantly in designing the game. 2) Def invested in it. 3) Equal sharing of profits is generally a sign of a qualitatively equal partnership.

Was the agreement binding? A *kinyan* of the object of a partnership makes the agreement binding, but this does not occur when artisans agree to do work as partners (Shulchan Aruch, CM 176:1-3). There is significant halachic debate as to whether an idea can be owned and traded like an object, but even if it cannot, the Shulchan Aruch (ibid.) brings an opinion that such agreements do not need a *kinyan*. In general, when two parties intended to have a partnership, it is proper to look for halachic justification of its mechanism (see Maharshach II, 229).

The disagreement over how to market the product at this point resembles the following halacha. If one partner wants to sell fruit immediately and one wants to age it and sell it later for more, we sell it right away (if it is a reasonable time to do so) (Shulchan Aruch ibid.:14). Therefore, since it is easier and reasonable to market it in Israel, pl can do so. There is no indication that the agreement had been to market the product only abroad.

If a party wants to dissolve a partnership for which no set time had been set and it is not feasible to split it, it is sold to a third party and they divide the proceeds (ibid.:16). While it is better to give one an opportunity to buy out his partner (Shach 176:29), this is only if the buying party is willing to pay the full value of half the business immediately.

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