



Harav Shaul Israeli zt"l
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HEMDAT YAMIM

Parashat Hashavua

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Where is *Tofel*?

Harav Yosef Carmel

The word *Tofel* is found in our *sefer's* opening *pasuk* as a place where Bnei Yisrael spent time during their sojourns, but it is not mentioned anywhere else in *Tanach*. The root appears in a handful of places in *Tanach*, with the meaning of lacking taste or positive content.

Commentators saw the "place" as a reference to unreasonable complaints, negative events, or bad times. Some examples are: 1. Complaints about the *manna* (Avot D'Rabbi Natan I:34). 2. Foolish complaints against Hashem (Midrash Aggada here, referring to Bamidbar 11:1). 3. The episode with Korach (Pitron Torah p. 229). 4. The events of Taveira, the place they cried about the prohibition on incest (Aderet Eliyahu of the Gra). 5. It reminds us of the Three Weeks, as the previously mentioned Paran, was the place of the spies (on Tisha B'av) and *Tofel* refers to the idol worship (the Golden Calf) that occurred on 17 Tammuz. The Ramban and Abarbanel both say that these were places where Bnei Yisrael acted in a manner that warrants rebuke, without being specific about *Tofel*. These ideas do not focus on direct hints from the text of *Tanach*, which we will try our hand at.

David's friend and later his nemesis, who assisted Avshalom's rebellion, was Achitofel. Achitofel's father is not mentioned in *Tanach*, which prompted some to surmise that Achitofel was a convert, which would cause him to not have a halachic father. If so, his name could mean our brother who came from the world of *tofel*, i.e., idol worship. This would explain why his father was referred to indirectly in the following manner: "Achitofel saw that his advice was not followed, and he saddled his donkey, and got up and went to his house in his city, and he gave instructions to his household and hanged himself and died, and he was buried in his father's grave" (Shmuel II, 17:23). Only after Achitofel gave the horrible advice to Avshalom to kill his father and cause such a terrible breach between father and son did he realize his mistake. *Chazal* explain that he had an unclear vision from which he concluded that he would become the next king, which convinced him to take blatant steps to arrange this. He was not aware that the king was supposed to come **from** him, not **be** him. Shlomo's mother, Batsheva, was Achitofel's granddaughter (Sanhedrin 101b). When he realized how low he had gone, he decided to commit suicide, and in the process lost the right to be buried in a Jewish cemetery. Therefore, he was buried in his father's, the idol worshipper's, plot.

Tofel then is a reference to idol worship, and a look through *Tanach* fleshes this out. There is also support for Achitofel being a convert from the name of his son, Eliam, which is reminiscent of Ruth's declaration of conversion: "Your *am* is my *am*, and your *El* is my *El*" (Ruth 1:16). Achitofel's granddaughter Batsheva was also married to a convert, Uriya Hachiti. So, the whole family came from a background of *tofel*, idol worship. This strengthens some of the explanations above.

Let us pray that these days of national mourning will turn into days of national rejoicing, as Zecharia prophesied would happen (8:19) as a result of "truth and peace may you love" (ibid.)

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by Rav Daniel Mann

Sitting on the Floor on Tisha B'Av

Question: A major challenge for me on Tisha B'av is sitting very low. My back is chronically sensitive to this, but I have never experienced longer-term repercussions. I usually stand quite a bit during the long *Kinnot* I take part in. Would it be better to sit on a slightly low chair (I have been lazy about getting one)? What do I do if *Kinnot* finishes after *chatzot*, as I see some but not all people sitting normally then?

Answer: The *gemara* (Ta'anit 30a) says that all *mitzvot* of *aveilut* during *shiva* apply to us all on Tisha B'av. As we know (although the sources on this are complicated – see Beit Yosef, Yoreh Deah 387), an *aveil* does not sit on a regular chair, and therefore the same should be true on Tisha B'av. However, when the Shulchan Aruch and Rama (Orach Chayim 559:3) codify this practice for Tisha B'av, they say that it is only for part of the day.

Some explain that the time limitation stems from the fact that sitting low on Tisha B'av is apparently a *chumra*, as there are no explicit Talmudic sources about sitting low, and so we are lenient (see Mishbetzot Zahav 559:4). The Taz (OC 559:4) says that it is a full-fledged *halacha*, but that the *gemara*, by presenting a broad rule that equates between *shiva* and Tisha B'av but leaves sitting low off the list of examples, hints at a compromise regarding its duration.

The Bach (OC 559) argues that one's sitting on Tisha B'av should not be derived from *aveilut* because the comparison is only for negative commandments. The Taz (ibid.) responds that sitting low is indeed a negative commandment (not to sit regularly), not a positive one (to sit low). He therefore posits that standing is fine, because only improper sitting is forbidden. According to him, standing or lying down is neutral. Even if there is a positive *mitzva* to sit low, it is hard to imagine one being required to remain seated the whole time. Rather, there should be a significant amount of sitting low, and the whole time this applies, it is forbidden to sit normally.

There is a lack of clarity as to how low this should be. *Rishonim*, including the Ramban (Torat Ha'adam, Aveilut 63) and the Tur (OC 559) speak of sitting on the ground, and this has a basis in the *gemara* and even *Tanach* (see Iyov 2:13). However, it is permitted (and perhaps preferred – see Nitei Gavriel, Bein Hametzarim 2) to put something between him and the ground (Mishna Berura 559:11). When it is difficult to sit that low, one can sit on a low chair/bench (ibid.). While many assume the cutoff point is three *tefachim*, others say it is enough that it is noticeably lower than normal (see opinions in Dirshu 559:13). Certainly, whatever is acceptable during *shiva* is permitted on Tisha B'av.

Regarding your discomfort, on the one hand, the practice is supposed to make it uncomfortable. On the other hand, it is not intended to cause someone qualitatively more pain than the average person. If a low chair will work for you, it behooves you to obtain one, and if you decide not to bother and it is not damaging to you, it was your decision to handle the discomfort and/or stand part of the time. Since even by *aveilut* it is accepted that those for whom it is truly difficult may sit on a normal chair (Aruch Hashulchan, YD 387:3), if it becomes truly difficult you may sit as you need to. In summary, the order would be: using a low chair, certainly if it is less than three *tefachim*; standing as much as you need; and finally, sitting on a regular chair when it is **necessary**.

Regarding the timing, while there are sources about staying seated low until finishing *Shacharit/Kinnot* is over (see complex language of the Rama, OC 559:3). Important sources, including the Magen Avraham (559:3) and Pri Megadim (559, MZ 4) mention *chatzot* specifically. Nitei Gavriel (ibid. 68:13) posits that the proper position for *Kinnot* is sitting, even after *chatzot*, but his support for this claim is weak. So, while those who are *machmir* while *Kinnot* continue have basis, even one who is often *machmir* need not do so if it is difficult.

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“Fathers for Their Children’s Sins”

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 171 – Address from Siyum of Youngsters

Introductory Gemara – Miriam the daughter of Bilga, apostatized and married a Greek official... When the Greeks entered the Holy Temple, she kicked with her shoe on the altar, and said: “Lucas Lucas, how long will you use up the money of Israel and not stand up for them in their time of need?” When the Rabbis heard this, they sealed the ring and closed the window of the [*kohen*] group of Bilga [in the Temple]... Because of the daughter they penalized [the father]? Abaye said: Yes, as people say: A youngster’s speech in the marketplace is either from his father or his mother” (Sukka 56b).

The penalty on parents based on the daughter’s actions is surprising, as the *gemara* asks. The Torah indeed stresses: “Fathers will not be put to death due to sons” (Devarim 24:16). This is also very logical according to the Torah outlook of free choice and that every adult is fully responsible for his own actions. Why did the Rabbis hold the parents responsible for their daughter based on the assumption of poor education? Abaye’s explanation seems beside the point, as it refers to a child who is too young to understand and decide the matter himself, in which case the parents are responsible. How does that apply to a case where the daughter was an adult who acted on her own?

Notice that this woman apostatized and married a Greek official, and yet her father was penalized not for that but for her speech. The Rabbis knew the great test standing before a Jew at the time of enticing Greek dominance with its false sheen. Luxuries and convenience are always enticing, and it requires self-discipline to conquer one’s inclination and not get drawn in. Judaism requires self-restraint, which is difficult. It is difficult to be a Jewish farmer, or to observe Shabbat properly, as it is for one deeply involved in commerce to set time for Torah study and be fully honest in business. It is difficult not to be drawn in by sports, theater, cards, or idle speech – activities that require less toil than learning a page of *gemara* and understanding the Rabbis’ “words and riddles.” For that reason, men fail, and “one out of a thousand I have found” (Kohelet 7:28). It requires great investment of effort until one can distinguish between the true path and a worthless one that presents itself as true.

Miriam bat Bilga was not the only one who was enticed to convert and marry a distinguished Greek, at this time of strong Greek inroads into Jewish society. However, she may have been unique in allowing herself to speak with such disdain about that which is holy in Israel. It is for this that her father’s group of *kohanim* were penalized. Even one who strays from the path, choosing what is easy and convenient, will be wary about expressing herself with disdain toward one who serves Hashem truthfully, bringing sacrifices with good will and dedication. Mainly people who sin respect the holy trepidation of a Shabbat observer toward every detail of its laws or have reverence for the Torah’s standard bearers, scholars and leaders. He appreciates one who cares for his friend’s every asset and gives with joy charity to the needy and Torah institutions, even if he does not follow their practices. He will be careful not to mock the sacred before the observer.

Miriam bat Bilga would not have done this if she had seen her father show affection for the holy, or felt his happiness to do *mitzvot* when he entered the Temple to serve. She would have then felt a guilty conscience when the Greeks entered the Temple and defiled everything that was sacred and pure in Israel for generations. If so, she could not have said what she did. Considering what she said, she must have observed him treating service as a nuisance or an act of rote, not treating it with the proper seriousness. He must have also disgraced it, as Rashi (ad loc.) comments. Degradation and mocking must have been the approach of her father’s house.

These ideas should be on our heart and be an “ointment for our eyes.”

We daven for a complete and speedy refuah for:

Itamar Chaim ben Tzippora
Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Neta bat Malka

Avraham ben Gitel
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Meira bat Esther

Together with all cholei Yisrael

P'ninat Mishpat

Quitting after Preparing Incomplete Plans – part I

(based on ruling 86018 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) hired the plaintiff (=pl) to emend an architect's plans for expansion and serve as the job's engineer for 10,000 NIS. After receiving a 1,500 NIS down payment, doing significant work, and paying a draftsman 1,800 NIS, it was discovered that a neighbor (=ngbh) submitted expansion plans that def felt compromised his project. When he asked pl to help oppose ngbh's plan, pl realized that he was hired to do engineering work for ngbh. Pl refused to oppose ngbh's plans, which he said were fine, and def delayed his project open-endedly, after grumbling about conflict of interest, until there was clarity about ngbh's expansion. Pl asked for additional partial pay, and def was reluctant to pay a substantial sum, claiming that pl did next to nothing. Pl said that under the circumstances, he would not continue with def, and def said that if so, he will not pay anything.

Ruling: Conflict of interest: Def claimed that pl should have offered to leave the job because of his involvement with ngbh and unwillingness to fight him, and to return the down payment. Pl countered that there is no conflict of interest, as he represents ngbh not in a planning role but just for technical engineering work, and that he need not oppose plans he thinks are fine.

Beit din does not think there are grounds to nullify the agreement due to conflict of interest. First, almost all of the work was done before ngbh's plans became an issue. Undoing the agreement retroactively would require def to convince them that he was unfit to do the job he was hired for (*mekach taut*), which he did not do. Furthermore, continuing to work with pl after finding out about the issue waives any right of *mekach ta'ut* (see Shulchan Aruch, Choshen Mishpat 232:3). Second, pl was not hired to present objections to others' plans. Although pl justified his refusal with the fact he did not agree with the objection, this does not conflict with his right to refuse the task for no reason. Since def did not claim that pl was incapable of doing a proper job at what he was asked for, there is no *mekach ta'ut*.

Was pl justified in quitting? Whether pl was justified seems dependent on whether he had a right to demand payment when he did. The contract lists four times for payment: 15% at signing, 50% upon presenting the plans to the regional board, 15% upon presenting engineering plans, and 20% upon completion of the job. Had the project not been frozen, pl admits that it was too early for further payment. The contract does not make provisions for early payment due to delays, and while we might assume it for def's frivolous delay, here there were extenuating circumstances. Notably, it is not unusual in Israeli commercial life to have to wait months for payment. Since it is difficult to extract money when a contract is unclear (Shulchan Aruch, CM 42), def might have prevailed in a *din Torah* on the timing. Nevertheless, pl was justified in quitting, because def justified his non-payment with an unreasonable claim (as *beit din* verified) that pl had done practically nothing, which made it very possible def would continue to resist justified claims in the future.

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