HEMDAT YAMIM חמדת ימים

Parashat Hashavua

Vayeira, Cheshvan 20, 5787

Harav Shaul Israeli zt"l
Founder and President

When the Attribute of Judgment and when of Mercy?

Harav Yosef Carmel

The Ramban (see his commentary to Bereishit 18:20 and elsewhere) raises our attention to the fact that in the Torah portions dealing with Avraham, there is a switching back and forth regarding the Name representing strict judgment (*Elokim*) and the one representing mercy (what we refer to as Hashem, The Name). Let us present the relevant themed sections, as they appear in Lech Lecha and Vayeira.

A. **17:1-2** – Hashem told Avraham that he was the recipient of a covenant with Him based on his fulfillment of "being complete" and that he would have a large progeny. Hashem revealed Himself to Avraham with the Name of Mercy.

B. **17: 3-17** – This is a much longer prophecy on much of the same topics of the covenant and its extension to generations of offspring, as well as the central, practical *mitzva* of *brit mila*. In this section, all references to Hashem use the strict-oriented *Elokim*, and this occurs no less than nine times.

C. **18:1-15** – Here we have moved into Vayeira. This section consists of the story of the angels coming to Avraham to tell him, again and more specifically, about Sarah's future giving birth, and the reaction of Sarah and Avraham to this news. In this section, only the Name representing the Attribute of Mercy is used, and it comes up four times.

D. **18:17-33** – This section deals with the destruction of Sodom. Interestingly, it is the Name of Mercy that is used, and it is actually thirteen times that it is used.

E. **21:1-6** – This section records the birth of Yitzchak to Avraham and Sarah, and the actions of the new parents with and around their son. In this section, for the first time in this exercise, we find a mix of usage of the two Names. What would explain this phenomenon?

When the Name appears in a manner that is interacting with Sarah, the Attribute of Mercy is invoked. This is related to the idea that mercy is called ***rachamim***, and the Hebrew word for womb is ***rechem***. When the context involves Avraham, the Name used is that of judgment. This fits with the fact that Avraham was commanded in and put in charge of *brit mila*, the inscription in the body of the rules of engagement between man and Hashem. So, the revelation about the birth of Yitzchak was presented once as judgment and once as mercy, and the actual birth also includes both. This fits with the concept, "Hashem spoke once; I heard two things" (Tehillim 62:12).

The biggest surprise is that the destruction of Sodom uses the Name of Mercy. We learn that even mercy can be turned into judgment by the indecent actions of man (Ramban ibid.). Indeed, one must not have mercy for the cruel. Only Hashem can judge them with mercy, because in regard to Him, there is no difference.

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Ask the Rabbi

Vayeira

by Rav Daniel Mann

What One Can Take to the Hospital

Question: If my wife needs to go to the hospital to give birth on Shabbat, what am I allowed to take with me? Does it make a difference how we get there?

Answer: We will suffice with an overview of the issues and possibilities, for reasons we will explain later. We begin by answering your second question – it is significant how you get there. There are advantages, especially regarding the trip itself, to use a local *goy shel Shabbat* or arrange going with a reliable non-Jewish car service, if these are available. (If a need to get to the hospital quickly arises, such considerations are irrelevant.) Being taken by a non-Jew can also help in regard to what you can take.

Certainly, you can take whatever might aid having a safe, smooth birth, including necessary documentation. Beyond that, let's explore the potential halachic problems for things that are useful beyond a healthy birth. As a general guideline, actions that are twice removed from an *issur d'orayta* (*shvut d'shvut*) are permitted for several **significant** needs, and the preferred "second removal" is using a non-Jew (Shulchan Aruch, Orach Chayim 307:5).

Carrying outside an *eiruv* (uncommon in Israel) – To permit carrying non-*pikuach nefesh* (=*pn*) objects, one needs a *shvut d'shvut* and a *mitzva* use or serious need. Some *poskim* (see Minchat Yitzchak VIII:30) rely on the important opinions that our streets are not *reshut harabim d'orayta* (see Shulchan Aruch, OC 303:18) to remove it one level. Another possibility is to put together the non-*pn* with *pn* objects, so that one does not do an additional *melacha* but is just *marbeh b'shiurim* (adding to the quantity); there is a *machloket* whether this is forbidden *mid'orayta* or *miderabanan* (see Ran, Beitza 9b of Rif's pages; Mishna Berura 318:13). If one cannot use a non-Jew, there might be other possibilities, including carrying uninterrupted between two *reshuyot hayachid* (e.g., building, car) through a *karmelit*, having two people share the carrying, or carrying in an unusual way (see Torat Hayoledet 17:4). Even if the car goes out of the *eiruv*, the objects while in the car remain in a *reshut hayachid* (Shemirat Shabbat K'hilchata 40:(161)).

Techum (movement between living clusters) – Usually, two places in the same city are in the same *techum*, but from rural areas (e.g., *yishuv*) to a city or city to city (e.g., Beit Shemesh to Yerushalayim), there is a violation. The violation applies both to people moving and to moving objects (Beitza 37a). Ostensibly, even a non-Jew moved it, it will be forbidden to move it in its new place (Shulchan Aruch, OC 405:9). One important leniency is that the permission for the people to go out of the *techum* due to *pn* will apply to his objects, whose *techum* mirror him (Minchat Shlomo I:15).

Impact on car – Some raise an issue that putting something extra in a car causes more gas to be burnt (Torat Hayoledet 18:1). Many are not concerned about that because any change is unimportant and imperceptible (Teshuvot V'hanhagot V:89).

Muktzeh – One may take a *kli shemelachto l'issur* if there is a good chance he will need it on Shabbat (see Living the Halachic Process III, C-18). Regarding full *muktzeh*, there is some logic to putting it, before Shabbat, among non-*muktzeh* objects; on the other hand, we are supposed to remove *muktzeh* if we can (see ibid. II, C-21; Pninei Halacha, Shabbat 27:6). (Taking a cell phone is permitted on multiple grounds.)

After presenting this synopsis, we elect not to render a clear-cut ruling. While all agree when faced with the problems of out of *eiruv*, *techum*, or *muktzeh*, one should not take that which is not somewhat important, this is quite dependent on the individual. There is also a wide gamut of halachic approaches on these matters. (See the quite lenient Peninei Halacha ibid. and the strict Torat Hayoledet, ch. 17-18. Shemirat Shabbat K'hilchata 40:77-78 falls somewhere between them.) This type of question benefits from discussion with a personal rabbi who is better equipped to make halachic determinations and applications that fit the individual's situation.

"Behind the Scenes" Zoom shiur

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Moreshet Shaul
(from the works of Hagaon Harav Shaul Yisraeli zt"l)

An Interview about HaTorah V'haMedina – part II

based on Siach Shaul, Pirkei Machshava V'Hadracha p. 107

[*We continue in an interview with Rav Yisraeli about the halachic periodical he edited, HaTorah V'HaMedina. We are in the midst of the question of how they approach halachic inquiries about the operation of the State. Rav Yisraeli just presented the idea that attacks from parts of the religious community and of the not religious community both begin with a premise that the State cannot be run according to Halacha.*]

Q: What approach do you take in these inquiries?
A: … The only way to keep Halacha in the State according to some religious people is with the coming of *Mashiach*. Therefore, those in the religious community who put the stress on Torah and only Torah conclude that it is impossible for the State that we have arrived at, according to all its factors, with the mix of population and form of government it has, and with the natural historical assumption that life progresses as it is, that this could be a State ordained by Hashem and a beginning to the process of redemption. Consequently, the State must be delaying the coming of *Mashiach* and believing Jews must not have anything to do with it.

The opposite approach puts the stress on the State and says that for the State to succeed, one should give up on the strictures of Halacha, which, they claim, only work for the individual but not the broad public. Clearly, according to both opposing approaches, there is no need to clarify the halachic view of challenges of the State.

However, our approach is in contrast to both of the above, both in regard to the view of the State and in regards to the applicability of the laws of the Torah. In our view, the State is an expression of divine grace, as a first step on the path to full redemption. Therefore, it is wrong to act with disinterest as important things happen here, even if we were able to build a mote around ourselves. We see it as an obligation to guide the State to a proper spiritual path, without letting up, even if the goal seems far away. We also believe that the Torah is a Torah of life and that Halacha does not make the State unviable. To the contrary, the Torah has the power and ability to direct the State onto its correct path of life, to give it its Jewish form that will raise its value and attain for it the most respected status among the nations.

Q: What is the halachic approach of the individual articles?
A: What has already been said above gives a picture of the articles in "HaTorah V'haMedina." Namely, it is a clarification of the Halacha according to the sources. First and foremost, this refers to classical sources – Talmud Bavli and its commentaries. Of course, the articles delve into the depths of the Talmudic topics, elucidating the words of the early and late authorities which touch on the topic. The authors try to reach a conclusion, and to the extent this is possible, make use of Responsa Literature, which deal with the actual lives in various communities and the way societies worked in the lands in which Jews had a certain amount of autonomy.

There were those who criticized us – why don't our articles present the issues simply, and hand the reader a clear, bottom-line conclusion. However, the criticizers do not realize that these matters are not discussed explicitly in the Talmud and the halachic decisors. The only way to extract a conclusion is by analysis, distinctions, and comparisons, in order to find the principles that guide us in the situation as it exists today. As was written in one of the editorials: "We have, at this point, only those who chisel down the stones. The builders will come later." However, we are certain that the work that has been done is very important. From now on, whoever deals with these issues that have been dealt with in these pamphlets will not be able to ignore them, if he wants to do the topic justice.

We *daven* for a complete and speedy *refuah* for:

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Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima
Arye Yitzchak ben Geula Miriam
Neta bat Malka
Tal Shaul ben Yaffa
Avraham ben Gitel
Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

Fallout from Failure to Install Elevator – part IV

(based on ruling 85007 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=*pl*) rented commercial space from the defendants (=*def*) for their retail business for 38,000 NIS a month. The agreement obligated *def* to install an elevator to the store, which was critical to attract sufficient clientele. Installing the elevator was more difficult than expected, and *pl* did most of the work instead of *def*. In the interim, *pl* reduced, only partly by agreement, the rent they paid. After several months without progress in installing the elevator, *pl* declared the rental agreement void and sued for approximately 2 million NIS. This includes return of rent paid and damage to the young business's prospects. *Def* responded that the elevator was delayed for several reasons: *pl* failed to leave security checks, pay full rent, and pay on time; there were also technical constraints beyond *def*'s control. *Def* are countersuing *pl* for incomplete rent and, if *pl* leave the premises, for the cost of returning the property to its previous layout. [*We saw that pl could discontinue the rental. This time we will focus on how much rent pl had to pay for the months they were there*.]

Ruling: **Rent for the months *pl* remained:** It was already decided that *pl* could opt out of the rental agreement due to the absence of the elevator. The contract in fact said that if for whatever reason there was no elevator after seven months, *pl* could opt out. The question is whether they could do so within seven months.

Beit din posits that *pl* can uproot the rental within the seven months based on *mekach ta'ut*, as it was expected that the elevator would be installed within a few weeks. This is strengthened by *def*'s commitment to work immediately on the installation, which they did not do. If *def* were working on the elevator, then even if it had been delayed, it is likely that *pl* would have waived the delay considering the fifteen-year lease. However, considering the rental is ending, no one would have entered such an agreement for several months without an elevator, and therefore the rental is void from the beginning.

There is a question of whether we should invoke *mekach ta'ut* when it is possible to fix the problem. The Magen Avraham (527:7) says that if a condition was made about an issue, then there is *mekach ta'ut* even if it can be fixed. Mekor Chaim (537:7) distinguishes between cases based on whether it costs money to make the fix in order for the acquired matter to be useable for its main purpose. According to either, there should be a claim of *mekach ta'ut* here.

When a rental agreement is voided, but in practice the renter used the property, the payment due is determined by the value of the benefit he received from the property. Although in this case the volume of sales dropped significantly, the store was also used as a base for internet sales and for storage for the merchandise. *Beit din* estimates the benefit at 30% of the original rental price – i.e., 11,400 NIS.

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