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Founder and President

HEMDAT YAMIM

חיים תמיד

PARASHAT HASHAVUAH

Haazinu, Tishrei 13, 5773

Farewell Song

Harav Shaul Yisraeli – based on Siach Shaul pp. 550-551

Once again we will hear the eternal song of Haazinu, bursting forth from the ancient Torah scrolls, and the ear will never be tired of hearing it. Again we will we accept with feelings of embarrassment and guilt the echo of the testimony of the two important witnesses, the heavens and the earth, who witnessed the conditions spelled out in the song. They heard the balance between blessing and curses and have seen our behavior over the generations.

Slowly the parchment is disappearing from the left-side pillar of the Torah as we reach the end of the Torah and the description of the end of the life of *Moshe Rabbeinu*, the greatest prophet in the history of our nation. As we read the *parshiyot* of his parting from the nation, we see that it is not the matter of the end of his life that concerned him, but the knowledge that he did not complete his life mission. The Land to which he strove to lead the nation and which now was laid out before him to see he would not be able to enter. "For from the opposite side you will see the Land and there you will not go to the Land that I am giving to Bnei Yisrael" (Devarim 32:52).

It is with a heavy heart that he takes leave of his flock. He knows that great tests stand before them. The contact with the people of the Land can cause them to stumble and learn the ways of people who bow down to man-made idols. It is enticing to accept a worship that does not ask of man to sanctify himself in everything he does in life. Moshe can picture how everything he worked to achieve in regard to the people's behavior could be lost, how the people could forget their potential and their role and turn into a nation like any other. That which Moshe would be unable to continue in deed, he tried to accomplish with words, and thus left the people with a final prophecy that they would remember for all generations: the song of Haazinu.

When were these words said? It seems like it was just yesterday. They are so fresh and so reliable. It is as if a mouth was given to history itself, telling us what would happen. It seems to blur the separation of time and shows the future with the confidence of one telling about the past. We hear prophecies such as "Israel became fat and kicked" (ibid. 15), and the historical parallels to the times of the kings and the later prophets flash before us. The words reverberate during those times but they are not always able to succeed in returning the people to the right path. The *p'sukim* that tell of future destruction thunder in the ears of all, as chained captives went out to exile.

On the other hand, words of encouragement and consolation are also present, helping us to constantly keep our eyes looking forward with a spark of hope and anticipation for the end of days. Even if it has taken longer than we would like, the days will certainly come. "The nations will sing the praise of His nation, for He shall avenge the blood of His servants, and He will return retribution upon His oppressors, and He will appease His Land and His nation" (Devarim 32:43).

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Ask the Rabbi

Disqualifications of an Etrog

by Rav Daniel Mann

Question: When does discoloration of an *etrog* render it not kosher?

Answer: The *mishna* (Sukka 34b) discusses an *etrog* upon which a *chazazit* (a blister-type formation, which is uncommon in our times) appears and says that a *chazazit* disqualifies the *etrog* only if it covers the majority of the *etrog*. The *gemara* (ibid. 35b) says that a *chazazit* can disqualify an *etrog* even if it is only on a minority when: 1. the blemishes are in a few places, making the *etrog* look spotted; 2. the blemish (of any size) is on the *chotem* (literally, the nose; details to be discussed below).

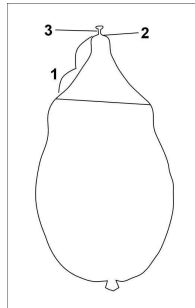
The nature of these rules of disqualification is that when a blemish has a serious visual impact, it causes the *etrog* to not be *hadar* (see Beit Yosef, Orach Chayim 648), i.e., pleasing to the eye. The location of the blemish on the top part of the *etrog* or spread out like a leopard's spots makes the *etrog* fail the '*hadar* test.' The Torah describes the *etrog* as *hadar* (Vayikra 23:40), and *Chazal* understood that this is a general requirement of the four *minim*. A major question is whether blemishes (or other cases of lack of *hadar*) disqualify the *etrog* only on the first day of Sukkot when the mitzva is of Torah origin (Rambam, Lulav 8:9; Shulchan Aruch, OC 649:5), or throughout the seven days of Sukkot (Rosh, Sukka 3:4; Rama, ad loc.; see Mishna Berura 649:34-35).

The *Rishonim* extended the laws we find in regard to *chazazit* to other changes of color and visible form: when part of the *etrog* is black or white (Shulchan Aruch, OC 648:15; see Mishna Berura 648:45) or very dry (according to most opinions- see Shulchan Aruch ibid. 12 and Mishna Berura ibid. 47). Black spots can come from different sources, but one should assume that any black spot that does not come off with rubbing is problematic (Kashrut Arbaat Haminim, pg. 21). However, spots that are too small to be noticed by looking casually do not count (ibid. pg. 199).

Another common situation is *bletlach* (scab-like formations, which occur at a spot that a leaf leaned on the growing *etrog*). The *poskim* are indecisive about whether *bletlach* are like a blemish if they protrude from the *etrog's* surrounding skin (Rama, OC 648:12; Mishna Berura 648:50). It is possible that since *bletlach* are a common part of the normal growth of an *etrog*, it is not considered a blemish but the normal look of an *etrog* (Rama, ibid.). While a dark green color disqualifies an *etrog* (Shulchan Aruch ibid. 21), since it suffices for the *etrog* to start turning yellowish, there can be green spots in sensitive areas (see Mishna Berura ibid. 65).

Where is the *chotem*, where small blemishes are a problem? There are four opinions in the *Rishonim*, three of which are identified in the sketch below. Rashi seems to say that it is on the top of the widest spot. The accepted opinion is that it is where the *etrog* starts angling toward its point at the *pitum* (#1) (Shulchan Aruch, ibid. 12). The Biur Halacha (to 648:9) says that, in any case, the *chotem* can begin only in the top half of the *etrog*.

Most authorities say that blemishes in multiple places disqualify only if the total area where the blemishes are (measured by encircling them) covers the majority of the *etrog*. According to most authorities (see Magen Avraham 648:13), it is even if it covers a majority of the width of the *etrog*, not the entire surface area (the Chazon Ish, OC 147:5 disagrees).



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Ein Ayah

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

Satisfaction with the Way Things Are Going

(condensed from Ein Ayah, Berachot 9: 175)

Gemara: Yehuda bar Natan was walking behind Rav Hamnunah and saw that he was sighing. He said to him: “Do you want to bring torment on yourself, as the *pasuk* says: ‘For I feared a fear and it came upon me, and that which I dreaded came to me’ (Iyov 3:25)?” He responded: “Doesn’t it say: ‘Praiseworthy is one who is constantly fearful’ (Mishlei 28:14)?” That is referring to fear in matters of Torah.

Ein Ayah: The source of fear and anguish are different within the spirit. A person has to look with a positive outlook at existence as a whole and to the way Hashem runs the world. As such, he should make peace with that which exists in the world, in light of the fact that he is not disjointed from it but a part of the big picture. Then he will not be afraid and will not be tormented. He will not be fazed by unpredictable events that take place because he will already know that this is part and parcel of the way life is. He should be happy and at peace with all the ways of the world, as this is the perfect order that Hashem set out for it. He should not express discomfort over the way the world is run, even though it often does not find favor in the eyes of those who are shortsighted. Rather, he should be one of those who have learned to desire only that which is desirable in truth.

In the beginning of the weakening of one’s spirit, he will begin to become afraid of frightening things, which illustrate the possibility of occurrences that he does not at all want to happen. The resulting depressed feeling can bring one to look in a negative light at his existence in general, which in turn brings him anguish. This is because, for the most part, anguish has to do with a person’s inner being. A happy spirit sees the world with a heart full of light and security, and then even that which would cause anguish to others does not cause anguish to him. He is able to see or believe in the good that comes even from ostensibly difficult events.

In contrast, whoever cannot find happiness in the world as it is will have a life full of anguish. It is not possible for a person to live in peace and tranquility in this world unless he teaches himself to go along with the world and the conditions that exist within it. One who can do this will not experience things he has to fear, unless it is necessary due to sins, and will not be seen sighing about things that depress him.

The exception to this rule is in matters of Torah, which is the essence of one’s spiritual self- perfection. In that realm it is positive to be less than satisfied, as there is always room for improvement. However, since a person knows that his lack of satisfaction is so that he can reach a higher state, he will not use it in a way that weakens his spirit. Rather, he will use it to push away elements of laziness and refuse to settle for the level he is presently at by thinking that it is higher than actually is. Still, though, his heart will be full of light and power, which will enable him to be wise and succeed.

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P'ninat Mishpat

Haazinu

Friendly Buy-Out? – part I

(condensed from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) worked successfully for an Israeli hi-tech company (=IHTC). The owners of IHTC (=def), along with pl, started a similar company in America (=SCA), managed by pl, which did not work out well, for reasons that are disputed. Def told pl to return to Israel, replaced him with a different manager, and offered \$68,000 to buy pl out. The parties argued about whether pl must commit to not compete with IHTC, and therefore the agreement was not carried out. Pl demands that the deal be carried through, as he already agreed to not compete. Def claim that the agreement never reached a stage of finalization and that they were not aware of the bad state of SCA until they assumed control of it. As a result, they also countersue for \$68,000 for the irresponsible way pl ran the company.

Ruling: From the communications presented before *beit din*, it is clear that pl's need to commit to not compete was a stumbling block in the negotiations. Pl was not able to prove that he agreed to the condition during the time that the negotiations were active. There is also evidence that the sides agreed that the buy-out would not be complete until a contract was signed, which never took place. In the absence of a signed contract, there was no action of *kinyan*, and therefore there was at best an oral commitment to carry out the buyout.

The *gemara* (Bava Metzia 48a) says that while oral agreements are not binding, the Rabbis are displeased with those who break them. When no halachically-based *kinyan* was done but something was done which, based on law or local practice is seen as being binding (*situmta*), then halacha recognizes it as well (see Bava Metzia 74a; Shulchan Aruch, Choshen Mishpat 201:1-2). The Radvaz (I:380) says that this is so even if the agreement was purely oral, if this is the practice, as it is according to Israeli law. In contrast, the Rosh (Shut 12:3) says that *situmta* works only by means of some sort of action, not by words alone. The Rosh's logic is that there is a need for some extra, concrete action so that people realize that their agreement is now complete and irrevocable. Otherwise there can always be a question as to the point at which an agreement is indeed final.

In this case, though, it seems that the agreement was not final. First, there does not seem to be a point where the two sides acknowledged that all conditions necessary for the agreement were fulfilled. Second, the sides communicated that the agreement would not be binding until a contract was signed. Therefore, def is not required to go through with the buyout or pay \$68,000.

[Next week we will deal with the question whether def can compete with IHTC.]

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