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PARASHAT HASHAVUA

Vayakhel, 22 Adar I 5774

Mishkan Vs. Shabbat

Harav Shaul Yisraeli – based on Siach Shaul, p. 299

“Moshe assembled all the congregation ... ‘these are the matters ... do not burn fire in all your living quarters on the day of Shabbat” (Shemot 35: 1-3).

The *mitzva* of Shabbat, which Moshe taught before an assemblage of the people, is connected to and is actually an introduction to and a prerequisite for the building of the *Mishkan*. Setting the boundaries between these two lofty goals is one of the most difficult things to do correctly. Work on the *Mishkan* was a *mitzva* and on Shabbat is an *aveira*. However, one can still make mistakes in drawing the lines between one sanctity and another. That is why it is necessary to assemble everyone together so that there not be different versions on the matter from different factions in the nation.

The *Mishkan* represents the sanctity of place, and Shabbat represents the sanctity of time. Which is pushed off in the face of which? On the one hand, the sanctity of the *Mishkan* is created by man's work in a manner that draws to it divine sanctity, as commanded: “You shall make for Me a Sanctuary.” Moshe blessed the people: “May it be His will that the Divine Presence will dwell in the work of your hands” (Rashi, Shemot 39:43). On the other hand, Shabbat is all decreed and prepared from Above: “Therefore, Hashem blessed the day of Shabbat and sanctified it” (Shemot 20:10).

The ultimate purpose of erecting the *Mishkan* was to achieve “I shall dwell in their midst.” Shabbat as well is intended to be “an eternal sign between Me and Bnei Yisrael” (Shemot 31:17). It is not just a remembrance of the creation of the world but also a time of rest for the ox and the donkey, the maid-servant and the foreigner (ibid. 23:12). The different elements are all interwoven, where one is nourished by the other and germinates it. But one must still note that Shabbat is from above and is unchanging, and the *Mishkan* is created by human action at a specific time in history. The decision is that the building of the *Mishkan* does not push off the fulfillment of Shabbat.

Of all the work that is forbidden on Shabbat, the Torah highlights fire (ibid. 35:3). Fire represents the work of man. *Chazal* tell us that the first productive work man did was to take two rocks, rub them together, and produce fire (Bereishit Rabba 11:2). Since this was done after Shabbat, we make the *beracha* on fire at that time. There was no fire during creation; man first produced it. It is only possible, hint the Rabbis, to speak about the contribution of man after the divine creation was complete. It cannot take the place of the actions of Hashem, which would destroy the source from which it must emanate, but it continues them. The sanctity of man must be nourished by the divine sanctity.

It is interesting that specifically the prohibition of making fire on Shabbat was the heart of the dispute between the authentic Rabbinic approach and between the Karites. The latter divorced themselves from the continuation of the giving of the Torah, which took place through the Oral Law. The Karites misinterpreted the prohibition of fire on Shabbat and required people to sit in the dark, not realizing how man can continue that which Hashem gave him to work with.

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Ask the Rabbi

by Rav Daniel Mann

Folding Over a Page in a Book

Question: Is it permitted to fold the page of a book on Shabbat so that I will be able to find the page I left off on?

Answer: We will start from the related question of making simple marks in a book to highlight a specific place on the page, which is discussed in classical sources.

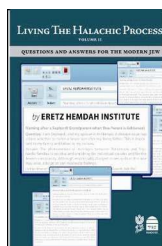
The Tur (Orach Chayim 340) says that it is permitted to make a mark with one's fingernail on a book because it does not last. The Bach (ad loc.) argues because Rabbi Yossi (Shabbat 103b) says that the etchings made on the beams of the *Mishkan* were a classic example of *kotev* (the Torah prohibition of writing) and the lack of permanence only reduces the violation to a Rabbinic level. One strong response to the Bach is that we accept the opinion that argues on Rabbi Yossi, and since a simple mark is only Rabbinically forbidden, it is permitted when it is not permanent (Eliya Rabba 340:13). Other answers are given to lower the issue to no more than a Rabbinic level.

The Shulchan Aruch (340:5) allows making a mark in a book, but the Mishna Berura (340:25 and Biur Halacha ad loc.) is stringent on the matter, especially regarding a scratch on paper (as opposed to parchment), as the Taz (OC 340:4) says that it is considered a permanent mark. In our generation, the Yalkut Yosef (340:6) permits it, whereas the Shemirat Shabbat K'hilchata (28:15) forbids it.

Folding a certain page to help one find it later is significantly more lenient than making a mark. Certainly, if one folds the page gently, even if the pressure on the book makes the line impression stronger over time, that indirect consequence is likely not considered a violation of Shabbat. However, even if one presses down hard, his intention is not to make a line but to create the effect of a folded page (which helps both by "thickening" the page and creating a tab-like indentation at the corner where the folded part is "missing.") Several authorities (including Yalkut Yosef *ibid.*) say this is an example of *p'sik reishei d'lo niche lei*. In other words, although the ostensibly permitted action that one is doing (folding) includes a definite, direct, forbidden outcome (a line), the forbidden outcome is not desired (one has no interest in having a line after unfolding the page). While most *poskim* forbid *p'sik reishei d'lo niche lei*, many say it is permitted when the violation is only Rabbinic in the first place. (See Yabia Omer V, OC 28, who is lenient. The Mishna Berura 314:11 is among many who generally rule stringently). In our case, the situation is even more lenient, as even purposely making the mark is permitted according to many important authorities. Therefore, it is not surprising that the consensus of *poskim* is that it is permitted to fold the page (see Yalkut Yosef *ibid.*; Shemen Afarsimon 7; Piskei Teshuvot 340:19).

It seems to me that there is a more fundamental reason to permit the folding. Some *melachot* are quite subjective, and without a certain level of intent for the outcome, the action/result is not considered a *melacha* at all. It seems to me that leaving an imprint that is neither a word nor a picture is such a case. Thus, even according to the opinions that *p'sik reishei d'lo niche lei* is forbidden even regarding Rabbinic violations, folding without intent for the line is permitted. This thesis can explain why the line that is made when one folds a napkin is not considered writing (see Shemirat Shabbat K'hilchata 11:40, who permits simple folding). *Poskim* struggle with the reason it is permitted to walk on soft ground with shoes that have writing on the soles that leaves an imprint on the ground (see Yabia Omer *ibid.*). Yet, the question is not even raised on shoes without writing, even though they also leave a clear imprint. Our thesis can explain why there is no question in such cases. (Thank you to my son for presenting this idea to one of the leading authorities on *Hilchot Shabbat*, who agreed with the analysis.)

For one reason or another, it is quite clear that it is permitted to fold the pages of a book on Shabbat.



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Ein Ayah

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

The Relationship between Rich and Poor

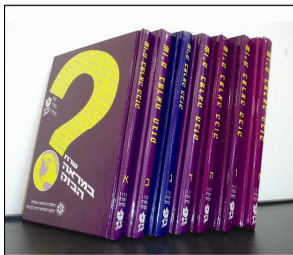
(condensed from Ein Ayah, Shvi'it 12)

Mishna: If [a borrower] returns a loan during *Shemitta*, [the lender] should say "I absolve [you from paying the loan]." If [the borrower] said: "Despite this," he should receive the payment, as the *pasuk* says, "This is the matter [lit., the saying] of *Shemitta*."

Ein Ayah: The main purpose of absolving loans during *Shemitta* is because *Shemitta* was called for Hashem, which includes removing the heavy burden that is caused due to the rich having control over the poor. When a poor person at some point needed a loan from the wealthy person, a relationship developed whereby the poor person is subservient to the wealthy one to the point that there is an element of psychological servitude, based on the maxim that "the borrower is a servant to the lender" (Mishlei 22:7). This dominion is liable to cause the straight-hearted to be subservient to the forceful wealthy people who lend money. Therefore, *Shemitta* comes to "untie the knots" in a manner that declares so-to-speak that the foundation behind human ownership of property is connected to the general and higher purpose of the world, which is the common good of all mankind, the creations of Hashem.

On the other hand, the world does not come to its ultimate, lofty goal by means of uprooting the concept of individual ownership of property and riches. Rather, there should be a division of wealth in a manner that shows concern for the possible negative impact of one person's advantage over another. All proper paths require vigilance so that those who embark upon them should not develop bad characteristics when they follow the path beyond its intended point. Therefore, the absolution of loans during *Shemitta* must be done with safeguards. Specifically, the borrowers must not lose the sensitivity to honesty and justice that should distance them from touching their fellow man's property.

The balance was thus reached in the following manner. It is enough that the lender says, "I absolve you from paying the loan." This declaration eliminates the psychological anguish of subservience of the borrower to the lender. However, the Torah left a place for the feeling of honesty and purity that should continue to operate. The pure spirit that is appropriate for the Jewish person who is guided by the laws of Hashem's Torah does not want to benefit from the wealth accumulated by another person through the latter's toil. Therefore, the borrower should say "Despite this," and the lender should then receive the money from him. This shows that even in the special time of *Shemitta*, the boundaries of honesty are not totally moved. Rather they should be adjusted in a properly balanced and lofty manner whereby people will declare the principles of *Shemitta* in both its material and its spiritual aspects.



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Bonds with One Son Listed as a Recipient

(based around Igrot Moshe, Choshen Mishpat I: 17)

I was asked for my opinion on the case of bonds bought by Reuven, listing him as the primary recipient and listing his son (Chanoch) as another recipient. Reuven has died and Chanoch, who was previously unaware that he was listed as a recipient, now wants to receive the payment and not include it in the estate to be divided between him and his brother. The brother claims that Chanoch was written just because banks often ask for another name to be written. The widow is confident that Reuven had no intention of giving the bonds as a present for Chanoch and that Reuven was confident that Chanoch would not take the money for himself. The family dynamics do not give any indication that Reuven would have wanted Chanoch to get more than his brother.

Assuming it cannot be determined what Reuven's intention was, does the fact that the bonds list Chanoch and that the bank is willing to release the money only to him make him *muchzak* (the possessor out of whose hands one needs proof to extract)? In general that which is known to have been owned by a deceased person is considered *muchzak* by all the inheritors even if practically it is under the control of one of them. Regarding the fact that it is in Chanoch's name, we find that under certain circumstances, documents in the name of one inheritor are assumed to be their own and in others cases not (see Bava Batra 52a; Choshen Mishpat 62). However, we see from the discussion that it depends on the likelihood that it is that brother's own money. We do not say that the fact that it is in his name makes him *muchzak*. Rather we see from Bava Batra 36a that *muchzak* applies to those objects that a person normally would control only if it is his.

Even if we were to assume that Reuven intended that specifically Chanoch would receive the bonds' payment after Reuven's death, it is not clear that he employed the necessary mechanism to make that possible. It is agreed that during Reuven's lifetime, he wanted to have sole rights to the money. Regarding a present that one wants to take effect after death, we say that one is not able to give a present after his death. Only when the present is given when the giver is on his deathbed do we employ a special institution of *matnat shchiv mei'ra*, whereas in this case, the bonds were bought when Reuven was healthy. While it is possible for one to give a present that begins immediately and is completed after death, there is no indication that Reuven did that in this case.

Apparently also the money due to one by means of a loan contract is transferred to another only if he gave over the contract to the recipient in writing and by also handing over the contract. In this case, where Chanoch admitted that he did not even know his name was listed, such a transfer of the bonds obviously never happened.

Therefore, it is my belief that the money should be divided as inheritance between the brothers. Since it is difficult to rule definitively on such matters, it is proper that they arrive at some sort of compromise.



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