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HEMDAT YAMIM

המדת ימים

Parashat HaShavua

Kedoshim, 29 Nissan 5776

Danger to Two Sons

Harav Yosef Carmel

[Since we did not have a parasha sheet for Acharei Mot and in honor of our friends abroad who are reading it this week, the d'var Torah on the parasha will relate to Acharei Mot.]

The parasha begins with mention of the death of two of Aharon's sons, Nadav and Avihu (Vayikra 10:2-6). Reams of paper have been used to analyze the cause of their death. We would like to add an insight as well.

Let us remember others whose sons died (or could have died) and look for connections. The Torah creates symmetry between the lives of two rival brothers, Yehuda and Yosef. Among other things, Yehuda, who, due to the sale of Yosef, caused his father to be shown Yosef's cloak and had him asked "haker na ... (do you recognize this as ...)" (Bereishit 37:32), was himself shown an upsetting object and asked a similarly worded question (ibid. 38:25). And indeed, in a related manner to that story, two sons of Yehuda died at very young ages.

There were other major participants in the horrible sale: Reuven Shimon, and Levi. We may recall that in *Sefer Bereishit*, Reuven offered to have his two sons killed – if he did not succeed in returning Binyamin to his father, Yaakov, after bringing him down to Egypt by order of the disguised Yosef (Bereishit 42:37). Reuven understood the appropriateness of taking responsibility that if Binyamin would also disappear, he would shoulder responsibility in the form of two sons' death. However, at the end, since Reuven came out against killing Yosef and he was not present when Yosef was sold, he escaped the fate of losing his sons. Levi, who was one of those who decided to kill Yosef and went along with the plan to sell him, paid the price in that two of his prominent great-grandchildren, Nadav and Avihu, were killed. *Chazal* indicated that there was a connection between Aharon's participation in the Sin of the Golden Calf and the deaths of his sons, and we have indicated in the past that there are significant connections between that tragedy and the sale of Yosef. (We will discuss some other time the price that Shimon had to pay for his involvement.)

The selling of a brother, with its accompanying harming of the unity of the nation, can be the cause of serious divine displeasure. Unity and peace between siblings is beloved to Hashem and causes divine pleasure. We should mention the explanation of *Chazal* of the prophecy of Hoshea (4:17): "Ephrayim is connected to idols; leave him." They explain: "Great is peace, for when Israel were worshipping idols but there was peace between them, Hashem said that he does not want to harm them. In contrast, regarding when there is dispute, it says: 'Their heart was split; now they will be blamed.' Thus, peace is great, and dispute is despised" (Derech Eretz 7).

We should all try to internalize this idea, especially at the time of *sefirat haomer*, when we commemorate the death of the students of Rabbi Akiva, for not showing respect to each other. That historical event also ended the chance of Israeli independence in its Land, something that required almost two millennia to rectify.

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Ask the Rabbi

by Rav Daniel Mann

Mezuzot on Both Doorposts?

Question: I am unsure to which doorpost to affix a *mezuzah*. May I affix one on both sides, or is that prohibited as *bal tosif* (adding on to a *mitzva*)?

Answer: We will start with some of the basic rules/opinions of *bal tosif*. Tosafot (Rosh Hashana 16b) asks how we can blow shofar both before and during Musaf without violating *bal tosif* and answers that there is no *bal tosif* on repeating a *mitzva* more times than necessary. The Rashba (Rosh Hashana 16a) says that one does not violate *bal tosif* if the additional activity is mandated by *Chazal*. (The Rambam (Mamrim 2:9) says that if the Rabbis formulate their Rabbinic law as if it is a Torah obligation, they are in violation of *bal tosif*.)


Many *Acharonim* compare the matter of two *mezuzot* due to a doubt to that of two sets of *tefillin* due to a doubt, and the latter is the subject of much discussion. The Shulchan Aruch (Orach Chayim 34:2) says that one who wants to don the “*tefillin* of Rabbeinu Tam” in addition to “the *tefillin* of Rashi” should, if possible, don both pairs at the same time. The Shulchan Aruch just requires avoiding *bal tosif* by having in mind that while whatever is really the correct *tefillin* is for the *mitzva*, the other one is “no more than straps.” (Tosafot Yeshanim, Yoma 57a says that adding to a *mitzva* just for the purpose of eliminating doubt is not subject to *bal tosif*, but this is not the accepted opinion.) The Tur (OC 34) rejects the relevance of *bal tosif* more fundamentally, saying that it applies, for example, when one has five compartments in the *tefillin*, but not by wearing two separate pairs of normal *tefillin*.

Many take issue with the Tur based on a *gemara* in Eiruvim (96a), which says that one who finds *tefillin* on Shabbat outside an *eiruv* and wants to wear them so that he can bring them to safety may not wear two pairs at a time, among other reasons, because of *bal tosif*. While we cannot summarize all the discussion on the matter, we mention that the Magen Avraham (34:2) says that one can don two pairs of *tefillin* only if one of them is not kosher. The Mishna Berura (34:8) says that the Shulchan Aruch’s case is permitted only because it has two factors that minimize *bal tosif*: 1. the extra element is separate from the basic one (see Sanhedrin 88b); 2. one of the entities is unfit for the *mitzva*. Even then, one should intend that only one of them (we do not know which) is for the *mitzva*.

Along the lines of the *gemara*, the Pitchei Teshuva (Yoreh Deah 291:2) says that one who puts two *mezuzot* on the same doorpost violates *bal tosif*. This is not as strange an occurrence as one might think. *Poskim* discuss, for example, one who rents an apartment from a Jew who is not very careful about *mitzvot* who has a tiny *mezuzah* case covered by paint, which the renter does not have permission to remove. Then, the question is whether he can affix another one.

Regarding your question of putting *mezuzot* on two posts, where only one can be obligated in a *mezuzah*, *Acharonim* disagree. The Binyan Tzion (99) says that the *mezuzah* that is on the wrong door post has no more halachic significance than the wrong pair of *tefillin*, and therefore the Shulchan Aruch’s idea of donning two pair of *tefillin* can be applied to *mezuzot* on the two questionable posts. The Maharam Shick (Yoreh Deah 287) argues that a kosher *mezuzah* affixed to a door post, even when it is to the doorpost that does not have an obligation, falls within the realm of the *mitzva*, making it subject to *bal tosif* when it is opposite a *mezuzah* in the right place.

Among contemporary *poskim*, while there is no clear consensus (see Yabia Omer VI, OC 2), the stronger opinion is to not sanction *mezuzot* on opposite door posts, whether as a clear ruling (Minchat Yitzchak I:9) or as a practical preference (Shevet Halevi III:150; Bemareh Habazak (IX:35)). In addition to formalistic *bal tosif* issues, it is problematic policy to create a an odd-looking new phenomenon of two *mezuzot*, even if it is out of a desire for stringency/covering all bases, which itself is very often a two-edged sword.



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Ein Ayah

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

A Bridge from State to State

(condensed from Ein Ayah, Shabbat 2:190)

Gemara: How are men checked (i.e., in what type of situation do their sins “catch up with them”)? Reish Lakish says: When they pass over a bridge. Only a bridge? In other words, cases like a bridge.

Ein Ayah: [The following is a quite difficult and esoteric piece, which we have tried to explain as well as we can.]

Nature and *melacha* (that which man does) together determine a person's life, but, of the two, it is nature that is the foundation, and *melacha* is built on top of it. As long as man is in “the hands of nature,” he is safe from failure, as the Creator made the world in a manner that nature will protect those who fall in line properly.

Man is beyond the point at which he can rely only on nature, and he has to complement it with *melacha*, both in the material and in the spiritual realms. This world that man augmented will be successful to the extent that the individual has a strong natural base. Then, he will not take the damaging step of trying to destroy his nature. If, though, he tries to fight the positive parts of his nature and replace it with something artificial, then he is in danger of the entire structure collapsing.

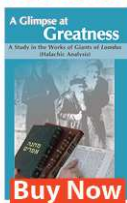
A person does not live forever with only the nature with which Hashem created him. However, passing from one form to another can be artificial, and enabling the transfer is a proper use of *melacha*. When a person has a strong natural base that connects well with his *melacha*, it will be easier to make the transfer. If he has a weak base, then he will be vulnerable, and everything might collapse during the transfer.

The idea of a bridge over water is an excellent metaphor for what a person has to survive when going from one state of grounded area (i.e., stability) to another, with an area of “water” in the midst serving as an impediment. There are many such places of passage, in which a person and his acquisitions go through a change. Sometimes the person has a strong connection with both the previous and the subsequent stage. There are other times when the transfer is between areas in which there does not seem to be a possibility of passage. It is still possible, though, if the *melacha* can connect itself to the nature and if one is able to truly recognize that the *melacha* is a form that the nature, which Hashem provided, takes.

These phenomena occur both in the physical world, such as the state of his body, and the spiritual world, such as a person's beliefs, practices, and aspirations. It is critical for the person to recognize the way of Hashem to the degree possible, and it must come along with a moral conviction that is consistent with the morality of the world. The power to proceed is strengthened within his nature when the person has followed the path of Torah and has been nourished by the wisdom of the Torah.

This is the deeper level of what the *gemara* means that men are checked when they pass over bridges or things that resemble bridges. Passage from stage to stage is dangerous, physically and spiritually, and one must be careful in the process. The most important thing is that one must be prepared to take the step, including the step in the upward direction, and know how to remove the stumbling blocks along the way. Hashem's eyes are everywhere in the world, and therefore, man has to be worthy of His help in order to succeed.

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P'ninat Mishpat

Real Estate Agent's Fee Without Clear Agreements – Part I

(condensed from ruling 73131 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) is a real estate agents' firm, which knew that Mr. B, a catering hall proprietor, wanted to sell his business. Mr. A, one of pl's agents, passed on this information to his brother-in-law (=def). Mr. A and others at pl were involved in negotiations between def and Mr. B, although they never met at pl's office, and def was not asked to sign a contract with pl. During negotiations, it surfaced that Mr. C owns the physical hall, so that def had to make a rental agreement with Mr. C to complete the purchase (basically, of its name/reputation) from Mr. B, and pl helped in this. Pl is asking 10% (100,000 shekels) for buying the catering business and \$40,000 for the rental deal (two months' rent). Def claims that pl does not deserve pay because according to the law, they must have a signed agent's contract. Also, the idea of an agent's fee was raised only soon before the signing, after def already had a binding agreement with Mr. C on rent. Finally, the sides never agreed on the rate of any agent's fee, and the sum claimed is exaggerated and ever-increasing (as the legal process proceeded).

Ruling: Halachically, there are two possible grounds to obligate one who used the services of an agent without explicit agreement to pay. One is implied acceptance of payment, especially when it is customary to pay for such a service (see Shut Harashba IV:125). The other is *neheneh* – benefit received from another even when the latter worked without authorization (see Bava Metzia 101a). Even within the rules of *neheneh*, there must be an assumption that the worker did not intend to work for free. The Rama (Choshen Mishpat 264:4, contrary to 363:10; see Pitchei Choshen, Sechirut 8:31) says that when one provides a service, we normally assume that it was for a fee. This is generally true even if a relative provides the service (Shulchan Aruch, CM 246:17). In this case, Mr. A was anyway acting on his employer's behalf.

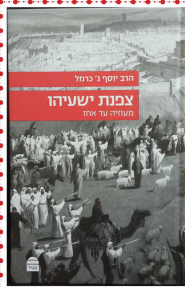
Based on testimony and other indications, it is apparent that pl should have known all along that he was expected to pay an agent's fee. He admitted that pl told him before he signed the contract with Mr. B, and his claim that he had already signed a rental contract with Mr. C is not corroborated by the facts. The law does state that an agent is entitled to a fee only if a contract was signed. In general, this is a logical law regarding cases where it is questionable whether the buyer knew the agent was acting as an agent. In our case, though, we have determined that he was aware, and it is difficult to apply the law to exempt one who is obligated to pay based on halacha. Furthermore, the law applies only to an agent for real estate. In this case, the purchase of the business from Mr. B was a sale of reputation, not a sale or rental of land, and we have seen no proof that the law exempts such a buyer when there is no contract. Therefore, def has to pay for the transaction between Mr. B and himself.

Next time, we will discuss the rate of fee and the agency for the rental from Mr. C.

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