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HEMDAT YAMIM

ח'מ'ת'ת'מ'ח'מ'

Parashat HaShavua

Emor, 14 Iyar 5776

Holy of Holies

Harav Shaul Yisraeli – based on Siach Shaul, p. 340-2

The first half of our *parasha* is dominated by the special laws that apply to the *kohanim*. The heart of these laws is summed up: "It shall be holy for you, for I am holy, I am Hashem who makes you holy" (Vayikra 21:8). This follows *Parashat Kedoshim*, where the entire nation is commanded to act in holiness since Hashem sanctified the entire nation (ibid. 19:2). Thus, the *kohanim* have an even higher level of sanctity and expectations for appropriate behavior than the rest of the holy nation.

The essence of Judaism is separation and sanctification, as the *pasuk* says at the end of the previous *parasha*: "You shall be holy ... and I separated you from the nations to be for Me" (ibid. 20:26). There is separation based on nature (inherited) and sanctification based on nurture (the actions we are required to perform and refrain from). The two together make us a special group within mankind.

Judaism does not believe in absolute equality, if that includes blurring differences. Distinctions are that which enable the world to develop, and the ability to distinguish is at the root of all wisdom (Berachot 33a). We contrast, in *Havdala*, between light and darkness, Shabbat and weekday, and between Israel and the nations. Only these distinctions are responsible for the multi-faceted and creative elements of the world. There is a need for a nucleus of sanctity within mankind in order for the latter to function normally.

Within the holy nation, there is a group that stands out for its even higher level of sanctity. It started with Aharon, who was singled out as holy of holies (Divrei Hayamim I:23:13), first himself and continued with his descendants. When Hashem addressed the "*kohanim*, the sons of Aharon," it relates to their natural selection. But it does not stop at that, as they became responsible for a slew of requirements and prohibitions. These, not nature, are that which serve to fill the *kohanim's* lives with sanctity. They must avoid impurity and choose their spouse with extra care and restrictions. If they do so, then "they will be holy."

Just as the existence of Israel as a special nation is not just for themselves but for the whole world, so too the *kohanim's* status is for the purpose of the whole nation. That is the reason that the non-*kohanim* must treat the *kohanim* with the honor due to sacred people. The existence of *kohanim* is the guarantee that the whole nation will be sacred. They are needed as teachers and role models (see Malachi 2:7). A classic example of this arises in our *haftara*, as the family of Tzadok is singled out as guarding the Temple, apparently both literally and figuratively, as Bnei Yisrael and other families of *kohanim* faltered spiritually. This is what protected the whole nation and made them worthy of distinction and reward.

Refuah Sheleymah to Orit bat Miriam

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Ask the Rabbi

by Rav Daniel Mann

Maariv around the Time of Chatzot


Question: When I have the chance to *daven Maariv* only close to *chatzot* (astronomical midnight), dilemmas arise. Sometimes I have time to either recite *Kri'at Shema* or *Shemoneh Esrei* before *chatzot*, but not both; which has precedence? Other times, I can *daven* all of *Maariv* before *chatzot* at home, but if I go to our local "minyan factory," the *minyan* misses *chatzot*; which is better?

Answer: The answer to the first question is clear for a few reasons. First, we accept the opinion that while by Torah law, one may recite *Kri'at Shema* until the morning, the Rabbis instructed us to do so by *chatzot* (Berachot 2a; Shulchan Aruch, Orach Chayim 235:3), whereas not all agree whether *Maariv* has to be said by *chatzot*, as we will discuss. Second, *Kri'at Shema* at night is a *mitzva* from the Torah, whereas *Maariv* is at best a Rabbinic *mitzva* (see Rambam, Tefilla 1:1), and we rule that it is an originally optional *tefilla* that became accepted (ibid. 6). Third, while there are times it is justified to say *Shemoneh Esrei* before *Kri'at Shema* and its *berachot* (Shulchan Aruch, OC 236:3), we prefer not switching the accepted order (ibid. 2). Therefore, if it is close to *chatzot*, start with *Kri'at Shema* even if *Shemoneh Esrei* turns out to be after *chatzot*.

The more serious question is the relative importance of *davening* all of *Maariv* by *chatzot* vs. *davening* with a *minyan*. (Certainly, one should recite *Kri'at Shema* without its *berachot* before *chatzot*, even if means coming late or missing a post-*chatzot* *minyan*, as a *minyan* does not override even Rabbinic obligations. The question is whether he should go to a *minyan* and repeat *Kri'at Shema* within *Maariv*.)

The *mishna* (Berachot 26a) says that there is no set time of night for *Maariv*, and the Rambam (ibid. 6) mentions having all night for it without distinguishing between before and after *chatzot*. The Levush (108:3) is perhaps the earliest source to imply otherwise, as follows. One can do *tashlumin* (makeup) for a missed *tefilla* only during the next *tefilla* time slot (Shulchan Aruch, OC 108:4). The Levush comments that one who missed *Mincha* makes it up during *Maariv* time, but not the whole night. While the Malbushei Yom Tov argues with the Levush, one suggestion of the Eliya Rabba (108:4) is that the Levush limits the makeup time until *chatzot*, as it makes sense that the time of *Maariv* is limited like that of *Kri'at Shema*, which is a component of *Maariv*. The Pri Megadim (108, MZ 3) prefers the Eliya Rabba's other suggestion, that the Levush only meant to say *Maariv* by *alot hashachar* (dawn), even though the night arguably continues beyond that. The Mishna Berura (108:15) cites both opinions without a clear preference.

The Tzelach (Berachot 26a) understood from the silence of the early *poskim* that there is no *chatzot* limit and wonders why not. After all, the reason regarding *Kri'at Shema*, that we want to avoid situations where people will forget, should apply to *tefilla* as well! He gives two main answers: 1. *Tefilla* is modeled after placing certain *korban* parts on the altar, which can be done all night. 2. Since *Maariv* is not a full obligation, they were less concerned about mistakes. Because there are significant opinions who say that one should say *Shemoneh Esrei* by *chatzot*, we find contemporary *poskim* who say that *Maariv* by *chatzot* takes precedence over a *minyan* (Ishei Yisrael 28:15; Ohr L'Tzion II:15:9). This makes a good deal of sense from a purist perspective. However, not all agree (see Tefilla K'hilchata 3:53). Since all agree that one may *daven* after *chatzot* and the question is whether it should, *l'chatchila*, be done by *chatzot*, it is logical to let the individual decide which setting is better for his *tefilla*. Consider that these matters are not just about fulfilling obligations, which is accomplished in any case, but of having the best *tefilla*. Time plays a role, but so do other things. Realize that a *minyan* is impactful in having the *tefilla* accepted, by joining with other Jews (see sources in Living the Halachic Process II:A-5).



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Ein Ayah

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

Avoid Overstepping the Boundaries of Trust

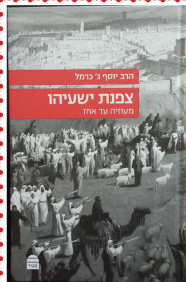
(condensed from Ein Ayah, Shabbat 2:192)

Gemara: Rav would not pass in a ferry in which a non-Jew was sitting, as he would say: "Perhaps there is a decree upon him, and I may be affected along with him." Shmuel would pass only in a ferry in which a non-Jew was sitting, as he would say: "Anger against the members of two nations will not have dominion." Rabbi Yannai would check [for holes in the ferry – Rashi]. Rabbi Yannai was consistent in his approach, as he would say: "A person should never stand in a place of danger and assume that a miracle will happen to him, for not always is a miracle done for him, and if a miracle does occur, it is subtracted from his merits."

Ein Ayah: There is no characteristic in the world that cannot be corrupted by people, in which case it can cause an opposite result to the desired result of the characteristic. Therefore, great people must be a positive example in the way they lead their lives to show how to follow a straight path. That way, others can learn from them the characteristics and proper manners, as they remain within their appropriate borders and their essential purity.

One of the holiest attributes is that of *bitachon* (trust) in Hashem, which should be ever increasingly present in a person's spirit. The purpose of this *bitachon* is to draw people close to Hashem. This itself is a great realization of personal completeness and a manifestation of the power of spirit to follow the strength of Hashem in times of need, when a person consistently finds refuge in Hashem's protection of him. Even when all natural factors are powerless to save him from a negative fate, the power of Hashem will give him strength.

Still, a person has to be very careful that this special attribute of *bitachon* should not become a destructive force. Specifically, it should not encourage him to be lazy and inactive, which are traits that are antithetical to true human completeness. Therefore, the closer a person is to Hashem and is fortified with a high level of *bitachon* in Him, the more he should be vigilant and diligent in regards to actions he is expected to take. This helps ensure that the entire nation will know that the glorious crown of *bitachon*, like all holy attributes that stem from knowledge and pure fear of Hashem, will only bring people good results for those who follow His path truthfully and without stumbling. It is for this reason that Rabbi Yannai checked the ferry before he entered it. He indeed took all the steps of proper precaution, without withholding any hard work that is up to a person to do to save himself from failure and stumbling.



Tzofnat Yeshayahu - Rabbi Yosef Carmel

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In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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P'ninat Mishpat

Real Estate Agent's Fee Without Clear Agreements – part II

(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).

[Last time, we saw that def has to pay the agent's fee for purchasing the business from Mr. B despite the fact that there was no contract and that the exact amount of the fee was not discussed.]

Ruling: While pl claimed that it is standard to receive a 10% fee for the sale of a business, he did not bring any proof that this indeed is the going rate. Def claimed that the original amount that pl requested after the sale went through was 5%, and that only "in honor" of the adjudication did his claim rise to 10%. He also did not bring proof of going rates for commercial deals. In general, when price is not discussed, one pays the going rate, and when there is a range of prices, the defendant pays according to the lower edge of the range (Shulchan Aruch, Choshen Mishpat 332:1). Def originally agreed to pay 20,000 shekels and said that when he discussed, with his lawyer before the deal, the possibility of paying a fee, the lawyer said that it would not end up being no more than 50,000 shekels. When a certain fact does not appear to be determinable, *beit din* is authorized to set it based on compromise (ibid. 12:5). In this case, *beit din* decides on 50,000 shekels including V.A.T.

Although we obligated def to pay an agent's fee for the purchase of the business from Mr. B, we will not do so for the rental of the hall from Mr. C, as there are several differences between them. First, the law requiring payment for agents only when the client signs an agent's contract certainly applies to real estate rentals. In this case, it was also far less clear that there was a relationship of agent-client. For one, def did not find out about Mr. C from pl, but as part of the negotiations with Mr. B. Secondly, pl became involved in negotiations with Mr. C as part of their effort to bring about the purchase of Mr. B's business, and so it was not clear that they were acting as agents in regard to def-Mr. C. These factors make it unlikely that def has to pay pl an agent's fee for their involvement in the rental from Mr. C.

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