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# HEMDAT YAMIM

## Parashat HaShavua

Tazria Metzora, 3 Iyar 5777

### Laws of Family Purity - Avoiding Misconceptions

Harav Yosef Carmel

The laws of purity and impurity are a part of the Torah that is seemingly beyond human conception. The Torah defines these laws in Bamidbar (19:2): "This is the *chok* of the Torah." Rav, the great *Amora*, when discussing laws relating to our *parasha*, states: "It is one source – the Torah made it impure, and it made it pure" (Nida 35b). Nevertheless we will try to explain a few principles and what they are meant to teach us.

1) Blood, in and of its self, does not cause impurity. We find blood of *nida* and blood of *tahara* (purity). This fact nullifies any connection between the women's monthly cycle and classic impurity. This misunderstanding caused many incorrect *minhagim* in many communities, whose source seems to be from the Karaites, leading to mistakes in halacha and distancing women from *shul* and their connection to Torah. (See for example Rambam, Isurei Bia ch. 15, and the harsh words of Rav Ovadia Yosef in Yabia Omer IV, YD 11.)

2) The difference between the laws of a baby boy and girl is connected to the distinction between systems of time which apply to men and women, respectively. The male year is mainly influenced by the solar calendar and, therefore, is focused on a daily or yearly time frame. The female year is mainly influenced by the moon and is, therefore, focused on a monthly cycle. Therefore, only men are obligated in time bound *mitzvot* (which are connected to the difference between day and night, or festivals which are influenced by the solar calendar). In contrast, *mitzvot* that are connected to women are focused on months and not years.

3) The laws of family purity are one of the foundations of a halachic /spiritual way of life. The man is obligated to channel his wants and desires based on the natural cycle of his wife. This consideration and sensitivity turns their relationship into a more emotional and principled one, based on love and friendship. It helps develop married life into something more sublime than an outlet for dopamine and other chemicals. This relationship merited to be the symbol of our relationship between Hashem and *Knesset Yisrael*.

4) The *mitzva* of *brit mila* appears quite surprisingly in the middle of this section. Its placement here comes to teach that specifically the man and not the woman needs to make himself suitable "to minimize himself." The concept of *brit mila* in its simplest explanation is to show that even this part of the male anatomy has to be subservient to the service of Hashem. The meaning of this is: "Look at the covenant, and do not be corrupted by your desires." Here there is a similar guidance that was given to the moon: "Go and make yourself smaller" (Chulin 60b), only this time it refers to the man.

Based on our analysis, there is double commandment. First, to sanctify ourselves by holding back even that which is permitted to us. Furthermore, there is an obligation to think of the needs of our spouse before our own. Specifically in these whirlwind times, we have an obligation to strengthen the bonds of the family unit, elevate its holiness, and fill the Jewish home with sensitivity and consideration for our spouse.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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# Ask the Rabbi

by Rav Daniel Mann

## Ma'aser Kesafim from Proceeds of a Damage Suit Settlement

**Question:** I was injured in a car accident a few years. I had and will have large, related medical expenses. I just received a large damages payment. Should I give *ma'aser kesafim* from it?

**Answer:** *Refuah shleima!* It is important to realize the nature of the practice of *ma'aser kesafim*. *Tzedaka* is a *mitzva* from the Torah, but its practical parameters are hard to define and quantify. *Maa'ser kesafim* gives a moderately ambitious (depending on a person's circumstances) *tzedaka* formula (compare Rambam, Matanot Ani'im 7:1 and ibid. 5). In general, there are three opinions as to whether the practice of *ma'aser kesafim* is a *mitzva* from the Torah (Tosafot, Taanit 9a), a Rabbinic obligation (Maharil 54; Taz, Yoreh Deah 331:32), or a proper practice for one to accept (Bach, cited Taz ibid.; Shut Chatam Sofer, Yoreh Deah 231). The latter is the stronger possibility.

Most *poskim* rule that if one receives money as a gift and has freedom to use it as he likes, he is obligated in *ma'aser kesafim* (see Chikrei Lev, Yoreh Deah III:102). If the money is earmarked for a certain purpose, it is as if he received that matter as a present, and, according to many, he is exempt (see *Tzedaka U'mishpat* 5:(26)), especially if giving *ma'aser kesafim* will effectively preclude his obtaining that matter.

In your case, on the one hand, you can use the money for whatever you wish. However, medical expenses are primarily necessities one cannot reasonably ignore. One can suggest a proof that *ma'aser kesafim* does not apply to damage payments that relate to medical expenses (=ripuy). *Ripuy* is intended and calculated so that medical expenses should not harm the victim's financial situation. It is conceptually optimal for the damager to directly arrange medical services for the victim rather than give an estimated lump sum of money for past and future expenses (Bava Kama 85a). Lump sum payments, when done, are a matter of practicality and convenience. If one had to give *ma'aser* on those payments, he would sustain a net 10% loss, and we do not find *halachot* of adding 10% to *ripuy* to cover the *ma'aser*. (One can deflect the proof on technical grounds, arguing that the obligation to pay damages is a Torah law, which does not take the victim's worthy *tzedaka* practices into account, especially assuming they are Rabbinically-mandated or less. We would counter that the practice of *ma'aser kesafim/tzedaka* does consider the fact that *ripuy* is not general profits but necessarily earmarked payment, which it would be wrong to "tax.")

In most cases, it is possible to at least approximate the breakup of the elements of large lump sum payments based on an itemized insurance claim or a court or arbitrator's ruling). Major injuries can include loss of income, which should (halachically and legally) be compensated for, and here, the halachic logic is different. Since such payments are in place of earnings that are presumed to be lost, this element should be treated as income, which is **subject to** *ma'aser kesafim*.

We explained in *Living the Halachic Process*, vol. I, F-5 that people who cannot afford to give significant amounts of *tzedaka* should not do so, as their obligations to their families come first. While some injured people have no financial worries, many in this situation should consider their present and future financial outlook. Considering we do not know your situation, we will share our suggestion to the average person receiving large lump-sum damage payments. Since the payments are planned for long-term use, it is logical to set up a fund to be invested, with a certain amount being freed periodically. If you take that approach (we are not giving financial advice), it is fine to give any appropriate *ma'aser* only from the periodic payments (minus the portion that relates to medical or other injury related expenses. Do not give from the lump sum in the beginning. Thereby, as time goes by, you can see whether you will be able to give full *ma'aser kesafim* or the extent to which you will be able to fulfill the wonderful *mitzva* of *tzedaka*.



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# Ein Ayah

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

## Can Miracles Happen for Insignificant Things?

(condensed from Ein Ayah, Shabbat 5:2)

**Gemara:** It once happened that a man's wife died and left a baby who needed to be nursed. He didn't have the funds to hire a nursemaid. A miracle happened and he grew breasts and nursed his son.

**Ein Ayah:** Miracles and nature were both created by the same architect, the Master of the Universe, may He be blessed. There is no order or path of action that the divine wisdom, kindness, and splendor have not investigated in order to reveal the light of His goodness and kingship. The natural development as well as surprising changes, order as well as haphazardness, are all weighed by the wisdom of the G-d of knowledge, in order to bring a certain reality to fruition, to disseminate the flow of life and goodness.

We, due to habit, define things as nature or miracle, based on the systematic periods or lack thereof that events occur. However, just as the rule, so too is the exception to the rule, a part of the whole. Miracles and nature join together to form an entire course of actions and reality.

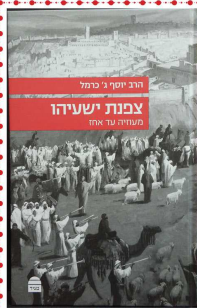
We have become used to thinking that only for a great necessity of importance to a whole community, will Hashem perform a miracle. However, we must acknowledge that when we look with a more holistic vision, it will be impossible for us to decipher what is considered something small and what is something great.

Everything connects and becomes unified, everything gets elevated, and there is nothing that can be so small and insignificant that cannot be the foundation for something grand and of great importance. There is no difference between them other than thousands of years, which is just like a drop of water in the ocean in the "sea of eternity."

Therefore, in a circumstance that the divine wisdom has earmarked a miracle to occur, that is when and where it will take place. This demonstrates the strength of life and changes within the natural realm. We should not be surprised if it seems small and insignificant in our eyes. [However, the next passage does stipulate that only a person who is focused on the nation or community and not on themselves alone should be worthy of having such miracles occur to him.]

We should bear witness to the fact, that in truth, there is nothing that is really small, for everything is of importance, for it all came through the Master of the World. His actions are great and wise with no limit. Surely, He has preordained that at a certain place, in a certain time, it is fitting for the order of nature to collide with the order of miracles. "Great are the wonders of Hashem, sought out by those who seek them" (Tehillim 111:2).

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### Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

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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## Was There an Agreement to Increased Pay?

(based on ruling 75039 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) helps clients receive mortgages. The defendant (=def), owner of a building company which cooperated with pl, used his services personally, and they agreed on a payment of 1% of the loan def sought (2.5 million shekels) if successful. According to pl, when the task proved to be particularly difficult, def agreed that he would pay an additional 25,000 shekel if successful, which they were. Def gave pl two checks of 25,000 shekels. One was used, and the other did not clear the bank because of a mistake in its date. Def denied agreeing to a second payment and said the second check was written on behalf of a client for a mortgage that did not materialize.

**Ruling:** The second check, including its sum, certainly fits well with pl's claim. Def's explanation of that check is illogical and totally counterintuitive. Pl also presented videos of conversations with def which corroborate his claim, including showing discussions about rewriting the second check due to its mistake. The replacement check was written with an irregular initialing of yet another mistake, and def claims it was a forgery. However, there are several indications that this was a contrived claim. In their summary of claims, def did not even bother to respond to the evidence in the videotapes against him.

The Rosh (Shut 107:6) rules that when a litigant refuses to produce relevant materials or to give coherent answers to critical question, a *dayan mumcheh* (seasoned) can rule based on his strong impression that this represents proof that he is withholding incriminating information. The Shulchan Aruch (Choshen Mishpat 15:4) accepts this in the case of a *mumcheh* who is singular in his generation. However, in our case, we will rule based on our overwhelming impression that def knows he owes the money based on the following two factors: 1) the parties signed our arbitration agreement, and our publicized policy is that we are authorized to rule based on very clear impressions. 2) the strong circumstantial evidence, including videotapes.

Def claims that even if he originally owed the extra money, he has an offsetting claim since he let pl keep a sign publicizing its business on def's property. Def contradicted himself on whether he had explicitly demanded compensation for it at the time of the display, and a witness that def brought, when claiming that he made demands on def's behalf against pl, implied that no claims were raised at the time in regard to the signs. Therefore, *beit din* rejects the offsetting claim.

The general policy of halacha and thus of our *beit din* is that litigants each pay their own legal expenses and share the *beit din* fee. The exception is when *beit din* has evidence that one side acted in bad faith, e.g., when they must have been clearly aware they were wrong. Ours is a classic case of that phenomenon. Therefore, def must pay 15,000 shekels for the expenses he caused pl in the adjudication, including lawyer's fees, court fees in previous rounds of adjudication before coming to our *beit din*, time pl had to take off from work for adjudication, and the *beit din* fee.

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