More Copper in the Holy Courtyard
Harav Yosef Carmel

This week we will try to understand how Moshe’s actions in the aftermath of the conflict with Korach impacted on generations.

Korach and his close associates were joined by a group of 250 prominent people. Moshe challenged them to sacrifice incense in troughs of copper. As a result, the opposition of Moshe and Aharon were killed by a fire from Heaven. In the aftermath, Moshe was told to take the copper remains and turn them into a netting around the altar to serve as a reminder that those are not from the family of Aharon not step forward to bring incense in the sanctuary (Bamidbar 17:1-5). While the idea was a Divine decree, there was a clear message that the story of Korach’s rebellion not be forgotten. Moshe took a bold step in using copper in another context. He accepted the mirrors that women had brought in order to use for the washing cup (kiyar) (Shemot 38:8). He felt this was appropriate despite the connection of the mirrors with arguable vanity and physical attractions, thereby showing his high regard for the women. The kiyor served as a constant reminder, along with the other copper reminder of the dangers of the rebellious dignitaries of Korach.

The broader and bolder than expected use of copper is notably present in the Beit Hamikdash built by Shlomo as well. The following structures in the courtyard of the Temple are found in the sources: 1) Two enormous copper pillars (around the size of a four-story building) named Yachin and Boaz were erected (Melachim I, 7:15-22). 2) There were ten copper washing cups instead of the one in the Mishkan. 3) Each of the cups had a large and elaborate copper basin. 4) A large pool made of copper known as the yam was erected, which also added some type of purification element. 5) Twelve replicas of cattle were displayed, three in each direction, in the courtyard, as a remembrance of the Israelite encampment in the desert.

What is fascinating about all of these copper utensils and structures is that they do not follow the instructions for the Mishkan as found in the Torah and are not mentioned in the list of utensils and materials that David left for his son based on Divine instruction (see Divrei Hayamim I, 28:12-19). From where did Shlomo get the idea and the gall to introduce these elements?

It is very possible that the precedent for these additions was in Moshe’s special use of copper in the courtyard of the Mishkan, which was an inspiration to not only use the copper as a historical remembrance but as model of future behavior.

Let us pray that we will have the merit to be involved in the complete rebuilding of the Beit Hamikdash with all of its basic elements and all of its additions.

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**Question:** A friend of mine goes to a hospital that has Jewish patients to make Kiddush on behalf of those who are unable to do so. When Shabbat begins late and people eat before Shabbat, he makes Kiddush before accepting Shabbat and returns home. Can his Kiddush still work for others?

**Answer:** At first glance, your friend is making Kiddush at a time when he is not obligated to do so on behalf of those who have (presumably) accepted (or are accepting) Shabbat and are thus obligated in Kiddush. In general, one who has already discharged his obligation of a certain mitzva can perform the mitzva with its beracha to fulfill the obligation of one who has not yet done so (based on the concept of arvut) (Rosh Hashana 29a). However, the mishna limits this. The one who performs the mitzva must be as obligated in it as the one for whom he is doing it. We must consider: is your friend considered obligated in Kiddush because generally it applies to him, like one who already fulfilled his obligation? Or should we say that one for whom the time is such that the mitzva does not apply is not considered obligated at all?

Regarding cases similar to this, Acharonim cite a Yerushalmi (see Tosafot, Ye'amot 14a) that says that inhabitants of un-walled cities cannot read the megilla on behalf of those from walled cities (whose obligation is a day later). We see that one who is obligated in theory but not at this time is not considered obligated. R. Akiva Eiger (to Shulchan Aruch, Orach Chayim 277) in regard to our case, raises the following distinction. Here, the one who has not accepted Shabbat can accept it and become obligated immediately. Therefore, the obligation is considered relevant even before he did so. However, R. Akiva Eiger left the matter as an unsolved doubt.

Several recent poskim have tried to resolve the doubt. Tosafot (Berachot 48b) says that one who did not eat is considered obligated in regard to reciting Birchat Hamazon on behalf of one who ate, because he could eat. Rav S.Z. Orbach (Minchat Shlomo I, 3), makes the following distinction between that case and ours. At the time of Birchat Hamazon, the mitzva applies to the one who has not eaten if only the circumstances were that he had eaten. In contrast, before Shabbat is simply not a time that Kiddush is relevant for one who has not accepted Shabbat even if he could do so.

On the other hand, we should consider whether it is clear that Kiddush is inappropriate before Shabbat. The Rambam apparently does not accept the concept of tosefat Shabbat (the ability/obligation) to usher in Shabbat. Yet he (Shabbat 29:11) says that it is possible to recite Kiddush toward the end of Friday afternoon. This lends credence to the concept that Kiddush (as well as its parallel, Havdala) applies and can be done close to the time of the transition between Shabbat and weekday. Thus the obligation of Kiddush may already apply on a certain level soon before Shabbat even for one who has not accepted Shabbat. While it is difficult to rely on this thesis, it can be thrown in to the mix when contemplating grounds for leniency in various related cases (see Minchat Shlomo, ibid.).

Important poskim have differed as to whether it is proper to rely on R. Akiva Eiger’s more lenient position and allow one who has not accepted Shabbat to make Kiddush for others. In a case such as ours where one is doing a mitzva by doing so and it is not easy to replace him with someone else who can make Kiddush in a better way, we feel that it is proper to be lenient on the matter (see Tzitz Eliezer XII, 25; Yabia Omer VIII, OC 46). While it is best if someone who is hearing the Kiddush should be eating upon it at that time, it is possible that even this is not an absolute necessity (Tzitz Eliezer XII, 24). (The details of that issue are beyond our present scope.)

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[We will now examine in regard to what mitzvot the dispute of yeish kinyan or ein kinyan (a non-Jew has or does not have the ability to remove the sanctity of Eretz Yisrael) applies.]

The machloket whether yeish kinyan or ein kinyan is found in the context of ma'asrot. The Bavli (Gittin 47) assumes the machloket extends to bikurim. Although the derasha of “degancha” refers to ma’asrot and “admatcha” to bikurim (Bava Batra 81a), Tosafot (ad loc.) holds that one who learns from one can learn different things from the other. The gemara, in asking on the opinion of ein kinyan regarding ma’aser, asks from bikurim, which implies that whatever opinion is correct for one would be right for the other.

If so, we would expect that the machloket on kinyan of the Land will determine its status for all mitzvot hateluyot ba’aretz. Indeed Tosafot, when investigating a proof if agricultural mitzvot that apply in chutz la’aretz (e.g. kilayim, chadash) apply to a non-Jew’s land, deflects it by saying that the source follows the opinion of ein kinyan. In contrast, the Rosh (Shut 2, 1) assumes that the machloket does not extend to orlah and that all agree there is orlah even on a non-Jew’s property. He learns this from the mishna that assumes a prohibition of kilayim on a non-Jew’s field, which he understands to be accepted also by the opinion that yeish kinyan.

The Chazon Ish (Shvi’it 1:2) distinguishes between positive mitzvot that require an action and mitzvot of prohibition. The machloket of yeish kinyan applies to positive mitzvot such as giving ma’asrot. Since only one who is obligated in mitzvot do these things, these mitzvot do not apply to a non-Jew’s land. However, the prohibitive mitzvot applies to the land and fruit more directly and, since the land’s kedusha is not uprooted, these mitzvot still apply. Therefore, orlah applies to a non-Jew’s field. He is not sure whether shemitta is primarily a prohibitive mitzva on the field or a positive obligation on the farmer to cease working. He learns from the Yerushalmi that kilayim depends on the owner’s activity, as it is violated only if he is happy with the mix of species. However, it is difficult to say that kilayim is more based on the owner than on the field.

The aforementioned Yerushalmi is difficult for the Rosh, who says that kilayim applies to a non-Jew’s field even if one holds yeish kinyan. Perhaps the matter is a dispute between the Bavli and Yerushalmi. The latter holds that there is a machloket Tannaim if yeish kinyan, in which case the mishna indicates that kilayim applies to a non-Jew’s field can hold ein kinyan. The Bavli posits that according to one Amora all agree that yeish kinyan. Therefore, it must be possible to explain the mishna even if yeish kinyan by saying that kilayim and orlah are different. Tosafot (above) who says that the mishna holds ein kinyan may refer only to an issur d’rabbanan. The Rosh would agree that according to the Yerushalmi, the machloket applies to orlah as well. The different approaches between the Bavli and Yerushalmi stem from the different derashot they use to justify the different opinions [the fascinating indications of this thesis’ veracity are beyond our scope.]

Tosafot reasons that shemitta depends on the general machloket; the Rosh’s view is unclear.

According to the Rambam [see last week] that if yeish kinyan, it is possible to remove the kedusha permanently, this applies to every land-linked mitzva. This would explain a discrepancy regarding orlah in the Rambam between the Commentary on the Mishna and the Yad Hachazaka (a later work). In the former work, the Rambam held yeish kinyan, explaining why orlah would not apply to a non-Jew’s field. However, in the latter he posits that ein kinyan and subsequently he held that orlah applies to a non-Jew’s field.
A Look Back at the Last Year's Piskei Din
(based on Halacha Psuka, vol. 45)

Vol. 45 of Halacha Psuka is dedicated to looking back at the past year, both regarding joint action and decisions of the cooperative batei din (Mishpat V'Halacha B'Yisrael, the Gazit network, and Mishp'tei Eretz) and in summarizing some fundamental principles found in the piskei din that were presented. We will now share the latter. The foregoing does not necessarily represent the opinion of the specific batei din involved in the cooperative effort but presents opinions of various batei din over the decades. We will break up the principles based on topics.

A. P'shara (Compromise)

The Obligation of a Litigant to Allow a Beit Din to Rule Based on P'shara - There is a difference of opinion on whether beit din can force parties to sign an arbitration agreement that allows either din (the strict law) or p'shara. In practice, standard arbitration agreements include permission to beit din to rule either for din or p'shara. Under certain circumstances, beit din may make a p'shara between the litigants even if they did not sign in the arbitration agreement a clause that authorizes it.

Beit Din's Authority Within the Framework of P'shara - Fundamentally, the legal authority that litigants furnish beit din when they authorize p'shara is broad. In practice, beit din uses it only in the following cases:
1. Where there is halachic doubt.
2. In place of administering an oath.
3. When the straightforward din causes a loss to both sides.
4. When p'shara brings the argument to a rest better than the din.

In practice, Mishpat V'Halacha B'Yisrael and the Gazit network do not use p'shara extensively, even in regard to the first two cases.

B. The Effectiveness of Contracts and Obligations

Signing a Contract Without Understanding it - Fundamentally, one who signs a contract is bound by what he signs even if he did not read it. However, we saw piskei din that posited that when one thought that he was signing something else, his signature does not obligate him.

Unreasonable Clauses in a Contract - A contract that contains an unreasonable clause requires a special kinyan to make it effective. For example, if one is said to rent an apartment forever, this is an unreasonable obligation. When the simple reading of a contract's clause renders it to contain such an obligation, beit din should prefer to interpret the contract according to the general spirit of the contract, thereby producing a reasonable obligation.