

HEMDAT YAMIM

PARASHAT TOLDOT

2 KISLEV 5769

This week....

- **Investing in the Future- A Glimpse from the Parasha**
- **Is it permitted to take things on Shabbat and write down the purchase after Shabbat?- Ask the Rabbi**
- **Prayer With the Community and The Purpose of Prayer - from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **The Foundations of the Laws of Hiring Workers – part I**
(based on Halacha P'suka 46, a condensation of a ruling of the Supreme Rabbinical Court)

This edition of Hemdat Yamim is dedicated to the memory of
George Weinstein
and
Jack Levin –

Chaim Yaakov ben Shlomo Yitzchak HaLevi – by his family.
As well as
R' Meir ben Yechezkel Shraga Brachfeld
o.b.m

Hemdat Yamim is endowed by Les & Ethel Sutker of Chicago, Illinois in loving memory of
Max and Mary Sutker
and **Louis and Lillian Klein, z"l.**

Investing in the Future

The exchange between Yaakov and Eisav regarding the sale of the *bechora* (rights of the firstborn) raises many questions. There are different opinions as to whether the sale related to financial rights in Yitzchak's estate (Rashbam, Ibn Ezra), rights to lead in the service of Hashem (Rashi), or some type of undefined prominence (Ramban). There is also disagreement as to whether the meal Yaakov served was the whole payment, or whether Yaakov paid money and the meal confirmed the deal.

In any case, Eisav said that he did not value the *bechora* because he was to die and finally disgraced the *bechora* (Bereishit 25:34). *Midrashim* say that he denied *techiyat hametim* (resurrection of the dead). Where do we see this denial? If we follow elements of Eisav's life, we find a preoccupation with the present and a disregard for that which happens after death. *Chazal* tell us that the day of the sale was the day that Avraham had died, at which time Eisav started sinning seriously (see Rashi to 25:30). Respect for his illustrious grandfather may have kept him somewhat in check, but with his burial, Eisav felt freer to sin. Later on in the *parasha*, we find Eisav wanting to kill Yaakov but only after Yitzchak dies (27:41). In other words, he wouldn't want to cause pain to his father, but after he dies, "what he doesn't know doesn't hurt him."

This attitude may explain other things regarding Eisav's behavior. Taking Rashi's approach to the *bechora*, for example, Yaakov wanted to bring *korbanot* in the *Beit Hamikdash*. Of course, Yaakov never got to that, as such *avoda* was hundreds of years away. Eisav remarked: what do I need rights to things that will reach fruition after I am dead? Yaakov's concern was for his legacy, whether it would be carried out by himself or by his offspring. Yaakov used this distinction to calm Eisav later. Upon meeting, as Yaakov returned to Canaan, Yaakov pointed out that he did not seem to have benefited from his father's blessing of the fats of the lands and the dew of the heavens (see Rashi to 32:6). Yaakov knew that the blessing would find expression centuries later in the nation that bore his name, but he knew that Eisav was not moved by the future. Eisav's focus on the present can also explain Yaakov's use of the word "kayom" (like today) regarding the sale. "From the perspective of today, Eisav, it is a good tradeoff."

This is perhaps the idea of denying *techiyat hametim*. *Techiyat hametim* is not just a question of whether something new and miraculous will happen in the future. It is also about whether a person should care what happens to him after he dies. Will he "live" to see, both physically and spiritually, *nachat* from what he passed on to his children, after his death. For us, the investments that our forefather, Yaakov, made on our behalf are still paying large dividends. Our distant cousins did not merit the same concern from Uncle Eisav.

Let us pray that the world will understand that the real dominion is Hashem's and all will want to attach themselves to His Kingdom. **Eretz Hemdah** is the premier institution for training young rabbis to take the Israeli Rabbinate's rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities

Question: In my yeshiva, someone sells baked goods in the following manner. The proprietor leaves the products in a box accompanied by a price list and a sign-up sheet. Students are trusted to take, write down their names and a tally of their purchases, and pay periodically. Is it permitted to take things on Shabbat and write down the purchase after Shabbat?

Answer: It is forbidden to buy things on Shabbat and *Yom Tov*, either because commerce may lead to writing or because the *navi* warns against “looking for your interests and speaking matters on Shabbat” (*Beitza* 37a with *Rashi*). However, the *mishna* (see *Beitza* 29a) permits acquiring a product even from a storeowner on *Yom Tov* and (almost unanimously- see *Beit Yosef*, *Orach Chayim* 323) Shabbat. This is permitted if the item is to be used on the holy day and the acquisition is done in a way that avoids classic signs of commerce (*Shemirat Shabbat K’hilchata* 29:17).

What must one be careful about? One of the issues, measuring quantities or perhaps even using a measuring utensil without actually measuring, does not apply assuming the baked goods are sold by unit and are not weighed. However, it is a problem to mention the purchased item’s price when discussing its acquisition (*Shulchan Aruch*, *Orach Chayim* 323:4). One also should not mention the term “buy” but something like “receive” (*Mishna Berura* 323:1). Here, there is obviously no explicit mention of a price. After all, as one acquires (buys?) the object on the honor system there is no one with whom one needs to interact. On the other hand, one can argue that since the price is listed and the buyer is acquiring the food in the same basic manner it is done during the week (see *Beitza* 29a) it may still be considered a forbidden sale by price.

In truth, though, the fact that a price is found in writing need not be a problem. In fact the *Rama* (OC 323:4) uses the existence of a known set price as an alleviating factor. In discussing what one should not say, the *gemara* mentions the idea of *s’chum*, which usually means a total. The *Rishonim* dispute whether it is permitted to mention only the measure of the specific item one is acquiring without adding it to previous purchases to arrive at a sum total. The *Rif* seems to go as far as to say that one can ask for a certain object at a certain price as long as he doesn’t add up various obligations (see *Beit Yosef*, *ibid.*). The *Rama* accepts this opinion, on provision that the price is a known one. In that case, the mention of the price is viewed not as a commercial discussion but as a means of identifying the amount of product that one wants (see *Mishna Berura* 323:19). Although the *poskim* question whether we should rely on this leniency (*ibid.*:20; *Shemirat Shabbat K’hilchata* 29:19), we see at least that the fact that a price is clearly known does not render the transaction forbidden. Even the *Shulchan Aruch* (*ad loc.*, whose stringent opinion is accepted by Sephardim (*Yalkut Yosef* 323:1)), who says that a single price should not be mentioned, does not object to an object’s price being clearly known when agreeing to the transfer.

One thing one must avoid is studying the price list, as it is forbidden to read detailed written accounts of transactions, called *shitrei hedyotot* (*Mishna Berura*, *ibid.*). The *Mishna Berura* (*ibid.*) also points out that one should not put pins next to the name and amount of money that corresponds to the details of the transaction. (It is possible that the pin or similar system can be used for *mitzva* purposes such as recording pledges at an appeal (*ibid.*), but that is beyond our present scope).

Although issues of Shabbat do not prevent taking the baked goods on credit, one should make sure that he is allowed to take them without immediately writing down his debt. It is possible that the seller may trust him not to lie but not to remember to update the account after Shabbat.

“Living the Halachic Process” - We proudly announce the publication of our first book in English. “*Living the Halachic Proces*” a selection of answers to questions from our Ask the Rabbi project. A companion CD containing source sheets for the questions is also available.
In honor of the book’s debut we offer it at the special rate of \$20 (instead of \$25).

Contact us at info@eretzhemdah.org

Have a question?..... e-mail us at info@eretzhemdah.org

Ein Ayah

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

Prayer With the Community and The Purpose of Prayer

(from Ein Ayah, Berachot 1:56)

Gemara: Whoever prays behind a *beit k'nesset* is called a *rasha* (wicked person). Abaye said: This is said only if he did not turn his face toward the *beit k'nesset*.

Ein Ayah: A *beit k'nesset* is a gathering place for the *tzibbur* (community) in the service of Hashem. The rule is that a person, even if he is very noteworthy for his level, must include himself with the community. Then he can benefit from the *tzibbur*, and the *tzibbur* can benefit from him. However, if he will choose a path, even concerning his service of Hashem, of separating himself from the path of the *tzibbur*, this will not find favor in Hashem's eyes and he will continuously deteriorate. This idea is hinted in the idea of praying behind a *beit k'nesset*, which implies that he considers himself worthy to "build his own altar" for the use of his unique service of Hashem.

Abaye's distinction of the direction in which he prays outside the *beit k'nesset* also contains a hint. The above criticism of one who separates himself applies only if he separates himself totally, in order to chart a course of service of Hashem according to the viewpoint of his heart. If so, even if he is otherwise a giant among giants, he is considered an evil person. However, if his goal is to be included in and to participate with the community, just that occasionally he needs to follow an approach to service according to his status and situation, this is not a problem.

In another place, we hinted about the imagery of the back of a *beit k'nesset* in the following regard. There are two purposes of a *beit k'nesset* [or, actually, of prayer in general, for which purpose a *beit k'nesset* is used]. One is to glorify and exalt the Name of Hashem. In truth, the main purpose of the creation of prayer is for that goal, so that people can recognize Hashem's impact on the world, fear Him, and follow His path for their own good.

The second purpose is an offshoot of the first. Prayer enables one to obtain that which he asks for. If the ethical element [the first mentioned above] was missed and only receiving that which one asked for was achieved, there would be a theological difficulty. What is the purpose and logic of prayer? After all, it is impossible for Hashem to experience a change of heart, so why does He need our prayer? [In other words, if that which we desire is something that Hashem would like us to have, He would provide it without our request, and if He does not want us to have it, our prayer will not change His mind.] Rather, there is an ethical element to prayer. Specifically, by realizing that everything comes from Hashem, man's ethical status will improve, and righteousness and straightness will increase. This by itself makes it very worthwhile for prayer to exist.

The main, inner goal of prayer, which is its ethical side, is hinted at by the inside of the *beit k'nesset*, representing the main reason for its existence. The secondary element of fulfillment of requests is metaphorically referred to as behind the *beit k'nesset*. That's why the *gemara* says that one who prays only behind the *beit k'nesset* and does not relate to its ethical side is considered a *rasha* whose prayer is despised. This is along the lines of the *pasuk*: "Someone who removes his ear from hearing Torah" and thereby does not look to improve himself, "his prayer is an abomination" (Mishlei 28:9). This is because prayer from which no improvement in one's actions will grow is like blasphemy to Hashem because it implies that, Heaven forbid, Hashem changes His mind. Therefore, Hashem desires only the prayers of those who are straight, for in all of their prayers they draw the internal characteristic of elevating the soul, which is the purpose of prayer.

Responsa B'mareh Habazak, Volumes I, II, III, IV, V and VI:

Answers to questions from Diaspora rabbis. The questions give expression to the unique situation that Jewish communities around the world are presently undergoing. The answers deal with a developing modern world in the way of "deracheha, darchei noam". The books deal with the four sections of the Shulchan Aruch, while aiming to also take into consideration the "fifth section" which makes the Torah a "Torah of life." (Shipping according to the destination)**Special Price:** 6 volumes of Responsa Bemareh Habazak - \$75 (instead of \$90)

P'ninat Mishpat

The Foundations of the Laws of Hiring Workers – part I

(from Halacha P'suka 47, Harav Akiva Kahane)

In the laws of workers, the *gemara* has little discussion of the employer's social obligations toward the worker or vice versa. One could almost suffice with the general rule that the *mishna* (Bava Metzia 83a) sets down: "One who hires workers and then told them to come early and leave late: if it is a place where the practice was not to wake up early and leave late, he is not allowed to force them. If it is a place where the practice is to feed [the workers], he should feed... Everything follows the practice of the place."

The main discussion in the *gemara* is about the power of the connection between employee and employer. How is it created? Under what conditions can one abrogate the agreement? What compensation is provided to one side when the other does not fulfill his obligation?

The *baraita* (Bava Metzia 76b) states: "One who hires craftsmen and they deceived the employer or the employer deceived them, neither has rights to the other beyond *taromet* (moral grounds for grievance). When are these words said? When they did not go, but if donkey drivers went and did not find grain, or workers went and found a moist field, they have to pay their salary in full. However, one who comes [back] with a load cannot be compared to one who comes empty-handed, [nor can] one who does work [be compared to] one who sat idly by." The rule then is that if the workers just went to begin their work, the employer already became obligated to employ them and cannot back out. However, until that point, neither side is obligated to the other, beyond the matter of *taromet* considerations. Many *Rishonim* (including the Nimukei Yosef 46b in the pages of the Rif) say that the beginning of the job is like a *kinyan* (an act of finalization).

Tosafot points out that, at times, an employer cannot back out even before the worker sets out to begin his task. In a case where, due to prior agreement between the parties, the worker turned down other employment opportunities and if the employer backs out they will be unable to replace the work with another job, the employer must compensate the worker for the lost income even if the work was not begun. Tosafot explains that the reason for this compensation is the laws of *garmi* (semi-direct damages). The K'tzot Hachoshen (333:1) asks that we find obligations of *garmi* only for losses. In this case, though, the worker does not lose something existing but just does not have the opportunity to gain as he might have. Indeed he cites *Rishonim* who do not make such an employer pay. The Ramban says that the payment is not one of damages but stems from an obligation that an employer tacitly accepts upon himself to pay should the situation arise. The Netivot Hamishpat (333:3) says that the obligation is only of rabbinic origin, designed to deal with a social problem.

Do you want to sign your contract according to Halacha?

The Rabbinical Court, "Mishpat Vehalacha BeYisrael" serves the public in the matter of dispute resolution according to the Halacha in a manner that is accepted by the law of the land.

While drawing up a contract, one can include a provision which assigns the court jurisdiction to serve as an agreed upon arbitrator.

Tel: (02) 538-2710 beitdin@eretzhemda.org Fax: (02) 537-9626

**Founder and President: Harav Shaul Israeli zt"l Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360**

Tel: 972-2-537-1485 Fax: 972-2-537-9626

Email: info@eretzhemda.org Web: <http://www.eretzhemda.org>