

This edition of Hemdat Yamim is  
dedicated to the memory of  
**R' Meir ben Yechezkel Shraga  
Brachfeld**

o.b.m

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*This week.....*

- **Looking for the Right Attributes - A Glimpse from the Parasha**
- **Is a plaintiff who is certain a defendant owes money, permitted to extract money when the defendant is unsure? - Ask the Rabbi**
- **When to Raise One's Head - from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **A Retainer Contract Voided in the Middle of a Period- P'ninat Mishpat**
- **When is a Sale Final?- Studies in Choshen Mishpat Related to the Daily Daf**

## Looking for the Right Attributes

In order to save Bnei Yisrael from destruction due to the sin of the spies, Moshe invoked a special trick he learned from Hashem. He preceded his request for forgiveness with a recitation of Hashem's attributes of mercy (Bamidbar 14:18 with Rashi). We first and most prominently find this formulation after the generation's other major sin, the Golden Calf (Shemot 34: 6-7). The latter is what we say during *selichot* (for Nusach Sephard, every day) and is known as the thirteen attributes of mercy. What many people do not realize is that in our *parasha* around half of the attributes are omitted. Why is that? Obviously, Hashem's attributes did not change!

The Torah Shleima (Shelach 129) cites a *midrash* that six of the attributes were off limits because of the *lashon hara*. The Zohar (III, Shelach 161b) says that "truth" was omitted (*rav chesed* appears without *ve'emet*) because the spies lied. However, there is a different approach that it was not that the people did not merit the missing attributes, which are meant, after all, for sinners. The Midrash Aggada (Bamidbar 14:17) says that *rav chesed* implies that if Hashem would give people what they deserved, no one would survive. Indeed, the Ramban says that this is the reason that Moshe specifically left out *emet*. He continues that Moshe did not invoke the forefathers' virtue because they had been promised the Land and here the offspring had turned their back on that present.

The Ramban questions why *rachum v'chanun* (merciful and compassionate) was omitted. He suggests that Moshe knew that full forgiveness was impossible at the time. One can suggest that these were more general matters of compassion that were less focused on forgiving sin, as we say: "Just as He is *rachum* and *chanun*, so we should be." It is interesting that even when Moshe chose the attributes to mention, he included "*v'nakeh lo anakeh*" (I will clean [the slate]; I will not clean), which means that Hashem will only forgive those who repent (Shvu'ot 39a). Moshe's approach was not to seek full mercy but to allow restitution in a manner that would allow Bnei Yisrael to survive. First the people repented. Second the punishment was to be stretched out over time and not be meted out immediately (see Rashi to Shemot, *ibid.*). Moshe realized that business could not resume as usual. Thus, Hashem was able to say the famous words, "*Salachti kid'varecha*" (I have forgiven as you said) and continue that the generation would not merit to see the Land (Bamidbar 14: 20-23).

We have a special right to ask and often receive mercy from Hashem for our personal and national sins. Moshe found a way to tailor-make the request for the need. However, we will not succeed and should not even ask for magical forgiveness that makes sins disappear without consequences or rectification.

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**Question:** In my *yeshiva*, one of the *madrichim* is our middleman with a laundromat. He usually keeps a ledger of how much we owe. We usually pay after they return the laundry, and he then crosses out the entry in the ledger. Recently I used the system and am sure I paid but he didn't erase the debt. He is sure I did not pay. Must I pay a second time? I am asking this with my *madrich's* blessing. While we may work things out on our own, we want to know the halacha.

**Follow-Up Questions:** 1) When one incurs a debt to the *madrich*, does he sign to this on the ledger? 2) Does the *madrich* have a policy that one who owes the money must make sure himself that the debt entry is erased? 3) Did anyone see you incur this debt or admit to it prior to your claim that you returned the money? 4) Does the *madrich* get paid for this service?

**Response to Follow-Up Questions:** 1) There are no signatures, as we trust each other. 2) There is no stipulation about the erasures. He usually takes care of it quickly. 3) We do not think that anyone saw me incur the debt. 4) He does not get paid.

**Answer:** There is a *machloket* in the *gemara* (Bava Kama 118a) whether a plaintiff who is certain a defendant owes money can extract money when the defendant is unsure. We rule that he is not required to pay (Shulchan Aruch, Choshen Mishpat 75:9). However, if there had been a definite debt, the plaintiff is sure it still exists, and the defendant is unsure if he paid, the defendant must pay (*ibid.*). When the defendant is confident he does not owe money, he is exempt from paying, whether he claims that he never incurred the debt or that he paid it back. This is so even if there are witnesses he once owed the money and he just claims he paid back (Shulchan Aruch, CM 70:1).

If a lender wants to ensure that the borrower cannot claim he paid, he has a few options. He can tell the borrower that he must pay in front of witnesses (*ibid.*). He can draw up a *shtar* (contract). Then the borrower either has to have the *shtar* ripped up when he pays, have witnesses of the payment, or have a valid receipt drawn up. In your case, there was no IOU, contract, or even witnesses. Therefore, it is clear that you are not obligated "straight out" to pay money.

Nevertheless, when it is one person's word against another's, the defendant must make a rabbinic level oath that he does not owe the money (Shulchan Aruch, CM 75:7). Since the *minhag* of *batei din* is to not administer oaths, *beit din* can impose a compromise in which the oath is "redeemed" with a minority but more than symbolical payment of a percentage of the money claimed. This is especially true in a case like this where your *madrich's* claim is not something you would dismiss as a ploy to extract payment, but a sincere belief with reasonable grounds that you do owe money. We would add that it seems somewhat morally problematic for people to make free use of your *madrich's* efforts on the group's behalf and leave him possibly losing money (either of you could be remembering wrong) when there are questions of this sort. While he might want to protect himself better, the right thing for you would be to pay at least most of the money.

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## When to Raise One's Head

(based on Ein Ayah, Berachot I, 165)

**Gemara:** One bends his knees at the word "*baruch*." He straightens his body at the mention of His Name, as it is says: "Hashem makes the bent-over erect" (Tehillim 146:8).

**Ein Ayah:** The path to *shleimut* (completeness) requires one to first bend over (suppress) several bad powers. Therefore, the way to *shleimut* is to enter through the narrow pathway. However, that is only when a person is lacking in his status. When he reaches the goal, which is true knowledge of Hashem, he will feel that by adding work, all of the powers of his spirit grow and become more powerful, since they were turned into good powers. Thus it is true that humbling oneself and breaking some of his power is needed in the service of Hashem. However, this is only in regard to preparing oneself to reach the ideal state. The goal, though, is to reach a point where one gives off the light of Hashem with great power and joy, when all the powers of his spirit will stand up straight with much might and wonderful, elevated vigor.

That which the *pasuk* says, "Before My Name he lowered himself" (Malachi 2:5) is talking only about before His Name, when one is at a point on the path where he must conquer the bad powers that are preventing him from reaching the *shleimut* of knowledge of Hashem. It does not say that he lowers himself "in Hashem." Rather, another *pasuk* says, "I will make you powerful, as you know My Name" (Tehillim 91:14). The root of the matter is that man's spirit is essentially good, and any good thing can provide it with more vigor. His bad parts are just "by chance" due to the darkness of his body. Therefore, when one has already conquered these external problems, the more strength he adds the better. Weakening the spirit, which those who lack wisdom think must come with fear of Hashem, is not the highest level. Rather, the highest level is the vigor of the spirit and its dependency on the living G-d.

## Embarrassment as a Cleansing Agent

(based on Ein Ayah, Berachot I, 169)

**Gemara:** Whoever sins and is embarrassed is forgiven for all of his sins.

**Ein Ayah:** When bad things become powerful and are incorporated in the essence of one's spirit, the sinner is unable to feel any embarrassment because the bad fits in with his lowered self-honor. Therefore, such a corrupt soul is not fit to stand among the holy to see the pleasantness of Hashem, for there is the storehouse of goodness and "evil will not live with You" (Tehillim 5:5).

However, when a person elevates his spirit above the lowliness of corruption, he will be embarrassed by his bad actions and the pain of embarrassment will cause him to more completely despise bad and desire the good he is missing. Even if he is yet to strengthen the good, the bad has already stopped being so naturally entrenched in his spirit. Under such circumstances, his sins are forgiven because the feeling of good embarrassment that is aroused in the spirit spreads to cause him to despise all evil. Therefore, his spirit is already fit to be among the righteous and holy. The remaining evil that clings based on actions must be removed by punishment and affliction, which Hashem will mercifully do, but the root of the spirit will be saved. It is different for a brazen person who knows no embarrassment and for whom evil is an acquired matter. He will not be cleansed like souls that have chance stains of evil. He needs a change in the soul's nature, for which *gehinom* (hell) is designed. Therefore, the brazen are set for *gehinom* and the embarrassed are set for *Gan Eden* (Avot 5:20) to enjoy Hashem and His goodness.

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## A Retainer Contract Voided in the Middle of a Period

(based on Halacha Psuka vol. 58- condensation of a *p'sak* of Beit Din Gazit, Beit Shemesh)

**Case:** A non-profit organization (=def) hired an advertisement agency (=pl) to prepare different publicity projects on a "retainer" basis, whereby def pays a set fee for six months irrespective of the amount of time pl puts into the project. Things worked smoothly for two months, with pl primarily learning about def's operations and the target group of the campaign. Pl's director traveled abroad for two weeks during the third month, leaving his staff instructions how to proceed with the project. At that time, def needed an immediate publicity product. Pl's staff put in many extra hours to get it done, thereby harming its reputation by being late on other projects. The work pl did for def would have been done in any case, but it was scheduled to have been done later. Def was unsatisfied with the work and ended the contract with two weeks notice, as their contract allowed. Pl demands extra payment for the work they did at an accelerated pace, as the work was not within the realm of normal according to the contract. They estimate the work as two and a half months work. Def responds that the work was to have been done anyway and that since def were unhappy with the project, they never received anything of value. Therefore, they demand a return of the payment for the first two months.

**Ruling:** Although the work pl did on def's behalf would have taken place in any case, the accelerated pace that was demanded makes it unusual work that went beyond the contractual obligation. After all, they were allotted six months to do the work, and def demanded to have it done in the third month.

On the other hand, the deliberations in court make it evident that had def not opted out of the contract, pl would not have demanded extra pay. Therefore, one might claim that pl relinquished rights to demand extra payment. However, this is incorrect because pl agreed to push forward the work only based on the assumption that they would be paid for six months of work. Def cannot win on all sides by making pl do six months work in just over two months and then fire pl so that he is paid for only two months. However, *beit din* rejected the manner in which pl determined the value of the work it provided during that time and entitled them to extra pay of two weeks according to the rate as found in the contract.

Def claimed that they received no benefit from the first two months of work, which were essentially only preparatory, considering that a final finished product was never used. *Beit din* rejected the argument. It is only appropriate that preparatory work be done, and it is not pl's fault that def decided not to allow pl to finish the period of time covered by the contract.

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Baba Metziah 43-49

## When is a Sale Final?

This week in the Daf Hayomi, the Gemara (47b) deals with the important question of when the sale of movable items is considered final. Every act of selling includes three stages. The first stage is the verbal agreement between the buyer and seller to sell the item at a certain price. This stage is termed "devarim" by the Gemara. The next two stages are the payment (= "ma'aot") and the transfer of the item to the buyer (= "meshicha"). It is possible to first pay and then transfer the object, or to first transfer the object and then complete the payment later.

There is agreement amongst Chazal that even after the devarim, the verbal agreement, each side can renege on the deal. Nevertheless, the Sages (48a) state that if one does so, then "the Sages are not pleased with his actions." However, there is disagreement amongst Chazal regarding the following stages: According to Reish Lakish, from the perspective of the Torah, the item becomes in the possession of the buyer only after its transfer, meshicha, and until that point each side can renege. According to Rabbi Yochanan, from the Torah, the item becomes in the possession of the buyer only after the payment, ma'aot. However, continues Rabbi Yochanan, the Sages instituted that it becomes in the possession of the buyer only after meshicha. The reason for this institution is the following concern. If the buyer pays for the item before the seller transfers it to him, then, according to the Torah, it already belongs to the buyer even though it is still in the seller's property. If a fire will start in the seller's property, it is possible that he will refrain from saving the item, since it is no longer in his possession. Therefore, the Sages instituted that the buyer does not take possession until meshicha, the transfer of the item. Most Rishonim rule in accordance with Rabbi Yochanan, and so does the Shulchan Aruch (Choshen Mishpat 198, 1).

At first glance, it appears that after the institution of the Sages, there is no difference between Rabbi Yochanan and Reish Lakish, as both agree that meshicha is what creates the change in ownership. However, we find a few cases in which Chazal upheld the law of the Torah, that the payment affects the transfer of ownership. A few of the cases we will learn in the Daf Hayomi (46b, 47a, 49b) and some appear in other places in Shas. One interesting case, which does not appear in the upcoming pages, is from Masechet Chulin (83a). The Gemara there states that on four days during the year, the days before four holidays, because of the great demand for meat, the ownership of the meat is transferred through payment alone. According to some Poskim, this is also true regarding buying wine on Friday before Shabbat (Choshen Mishpat 199, 3).

Following this logic, the Poskim raise a few more cases where it is possible that the payment will affect the kinyan. According to the Mordechai (Baba Metziah 449), since the reason the Sages instituted that payment does not finalize the sale, is due to the possibility of fire, in a case where there is no concern for fire, the payment finalizes the sale. The Beit Yosef (198, 1) suggests that if the buyer and seller agree that the change in ownership will take place with the payment, then again, the payment is effective. Both opinions are quoted by the Ramma (ibid, 5). However, the Shach (ibid, 9-10) disagrees, claiming that even in a case where there is no concern for a fire, and even if the buyer and seller stipulated that the payment will create the transfer of ownership, meshicha is still required, as the institution of the Sages is binding in all cases.

Another interesting case, that the Pitchei Teshuvah (ibid, 6) raises, is when the item is insured. In such a case, even if a fire will occur and the seller will not save the item, the buyer will not lose, as he will be compensated by the insurance company. However, the Pitchei Teshuvah concludes that even in such a case meshicha is required, for two reasons; firstly, in accordance with the reasoning of the Shach that the institution was for all cases, and secondly, that we should be concerned for the loss of the insurance company as well.

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