



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

הֵמְדַת יָמִים

PARASHAT HASHAVUAH

Bereishit 29 Tishrei 5770

Considering Others is not Capitulation

Harav Yosef Carmel

Last year, we raised the question: Why, in the first description of creation, does just the name "Elokim" appear, while in the second description the name we call Havaya ("Ado...") also appears. One of the answers is in Rashi and is based on the fact that Elokim represents the attribute of *din* (strict judgment), whereas Havaya represents mercy. Hashem's first thought was that the world would be created based on *din*, but as Hashem saw that it could not survive, He incorporated mercy before *din*.

This answer, in some ways, raises more difficult questions than it resolves. What does it mean that the omniscient Hashem changed His mind? We therefore cited the S'fat Emet's explanation: ideas should arise based on *din*, without considering the challenges raised by a world of physicality. One must aspire for the ideal. When it comes to carrying matters out, the attribute of mercy must be factored in, in order that the matter can be maintained.

We also mentioned that the first description represents the approach of Beit Shammai, while the latter is in line with that of Beit Hillel. Let us now demonstrate from a different perspective, why we generally accept Beit Hillel's rulings.

We have just begun to pray for rain by mentioning the strength of Hashem's rain giving power. We will soon (in Israel) add the request for rain. Water is a "life sustainer." All sorts of organisms need H₂O, including the crown of creation, man. Water on earth is described twice in the *parasha*. The great bodies of water are all connected at one level to form the oceans and seas, which sounds like a harmonious ideal. There is a second reference to a river that separates into four "heads." The number four in Jewish thought hints at multiplicity and differentiation, which seems regrettable. However, the water of the oceans cannot sustain human life as long as they remain salty, whereas rivers provide us with our fresh water supply.

The separation of the four symbolizes the reality that there will be splits among people, including in their approaches to things. We need not strive to remove differences of opinion. Allowing other opinions is not giving in but is a sign of *hitchashvut*, of considering the rights and needs of others, which is a strength. Indeed, the *gemara* (Eruvin 13b) says that the opinion of Beit Hillel was accepted because they were humble and would present the view of Beit Shammai before their own. This consideration is higher than the Beit Shammai approach of attempting to reach the ideal. Both approaches are *divrei Elokim chayim*, they both have a prominent place in the world, but the world must run on the Beit Hillel approach.

We will remind ourselves that both Beit Shammai and Beit Hillel believed in social interaction and unity between them and, despite their disagreements, made sure that their different rulings, including on matters of family and personal status, would not prevent the daughters of one from marrying the sons of the other (Eiduyot 4:8).

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

Hemdat Yamim is dedicated
to the memory of the
Prof. Emeric Deutsch, z"l
member of Eretz Hemdah's Amuta

This edition of Hemdat Yamim
is dedicated to the memory of
R' Meir ben
Yechezkel Shraga Brachfeld
o.b.m

Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinates' 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 worldwide.

ERETZ HEMDAH

Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich

5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360

Tel: 972-2-5371485 Fax: 972-2-5379626

Email: info@eretzhemdah.org

web-site: www.eretzhemdah.org

Ask the Rabbi

Question: With concern about “swine flu” so high, many would consider it hygienically prudent to wash their hands with soap and water before doing *netillat yadayim* with a jointly used washing cup and eating. Is it possible to do *netillat yadayim* with a *beracha* when you know that your hands are clean already? If one can, should he dry his hands before doing *netillat yadayim*?

Answer: The Shulchan Aruch (Orach Chayim 165:1) deals with the problem of one who has just left the bathroom and is ready to eat. If he does *netillat yadayim* once for both needs, he will have a problem of whether he should first make the *beracha* of *Asher Yatzar* for doing his needs, or first make the *beracha* on the *netillat yadayim* followed by *Hamotzi* and only afterward recite *Asher Yatzar*. Either way, there are issues of *hefsek* (improper break) in between the time the second *beracha* became necessary and when it was recited. Therefore, the Shulchan Aruch says to wash two times, the first to be followed by *Asher Yatzar*, and the second one by *Al Netillat Yadayim*. So we see that the fact that the hands were just washed does not preclude doing another formal washing for eating bread.

Does that mean that a second *netillat yadayim* is a *mitzva* that requires a *beracha* even if it adds nothing practical, except that now it is done for a bread meal? That seems to be the subject of a *machloket*. The *Beit Yosef* (OC 158) understands from Tosafot's (Pesachim 116b) statement regarding the two washings that we do on *sefer* night that if one does a lower level obligation *netillat yadayim* for non-breads dipped in liquids and then needs to do one for bread, the latter *netillat yadayim* is a full obligation. However, the *Darkei Moshe* (as the author rules in the Rama, OC 158:7) says that this is so only when a while passed in between washings so that we can assume that he took his mind off his hands. Otherwise, one would not make a *beracha* on the second *netillat yadayim*.

Similarly, in the former context, the Mishna Berura (165:2) cites *Acharonim* that the first washing done to enable reciting *Asher Yatzar* should be a washing of cleanliness, not one of a valid halachic nature. One way to do this is to not use a washing cup (and preferably not use the first spurt of water from the faucet- see Tzitz Eliezer VIII, 7), which is a requirement for *netillat yadayim*. If one touched a covered part of the body or some other "dirty" thing that makes *netillat yadayim* necessary in between the washings, the *netilla* would be necessary (I imagine that this would undo much of the hygienic gains you want to accomplish).

This leaves the matter of whether one should dry his hands in between the hygienic cleaning and the *netillat yadayim*. There is a similar case that is discussed by the *poskim*. The Shulchan Aruch (OC 162:2) talks about pouring some of the *netillat yadayim* water on the hands to remove dirt prior to the main *netilla*. The *Biur Halacha* (ad loc.) says that there is no mention of a need to dry the hands after doing this, which could be necessary if we said that the water becomes *tameh* (impure) in the process and would ruin the *netilla*. He says that this is either because this pre-washing is part of the *netillat yadayim* process, whereby water can become *tameh* and be removed by the second washing, or, to the contrary, that other than regarding poorly executed *netilla*, water that gets on the hands is not considered *tameh* (based on the Magen Avraham 162:10). While the *Yalkut Yosef* (OC 159:1) agrees with this approach, there are significant *poskim*, both Ashkenazi and Sephardi, who disagree (Ben Ish Chai, Shemini 11; Chazon Ish 24:20; K'tzot Hashulchan 33:4). They say that in that case, one should dry the hands from the questionable water before commencing the real *netillat yadayim*. Without getting into the intricacies, it would seem that our case is more lenient than the one these *poskim* discuss, and thus it would seem that drying the hands that were washed for hygienic reasons is not necessary.

“Living the Halachic Process” - We proudly announce the publication of our first book in English. “Living the Halachic Process” 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@erezhemdah.org

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

Ein Ayah

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

Things That Delay Redemption

(based on Berachot 2:59)

Gemara: The rabbis of Yavneh had a favorite statement: I am a living creature, and my friend is a living creature. My work is in the city, and his work is in the field. I wake up early for my work, and he wakes up early for his work. Just as he does not encroach on my work, I do not encroach on his work. Maybe you will say that I have a lot and he has little? We have learned: whether one does a lot or does a little, the main thing is that he should direct his heart to the Heaven.

Ein Ayah: There are many specific reasons why true love between friends is so often lacking. However, the basic reason is that love of oneself overruns all boundaries. It comes from a misunderstanding. In regard to feelings, one feels only himself, and he does not use his intellect to realize that the conditions of his existence and that of others are essentially the same.

The following are ideas that a person should consider, which will automatically bring love of other people into his heart.

1) In regard to the basis of life, the love of life, and one's basic needs, there is no difference between him and others. Even if there are major differences regarding their respective levels of wisdom and other things, this does not affect the basic desire for life and the right to live.

2) The differences between people's levels are not intrinsic, which would cause them to have greatly different emotions; rather, these differences are external.

This is why the statement says that the subject and his counterparts are both living things. The fact that one works in the city and one works in the field is not a reason to detract from each one's right to live.

3) One feels his advantages and disadvantages according to his own situation. He must imagine how these advantages and disadvantages exist in every situation, so that everyone can bring benefit to the world according to his circumstances. That is why they would say that "I wake up early for my work" and he does for his.

4) A person is apt to notice that his friend does not share many of the positive attributes that he feels he possesses. Reuven should consider that Shimon has attributes, according to Shimon's situation, that Reuven does not possess. For example, while his friend may lack wisdom, he may possess generosity. That is referred to by the matter of not infringing on each other's work. He does not pretend to be able to do the things that I can, and so I should not think that I can accomplish what he does.

The only thing left that would make a person feel that he is superior to his friend is in that he might think that he does more of that which is important in Hashem's eyes. He may think that he does more and the other does less. However, this is foolishness because that which is important to Hashem is the completeness and purity of the heart. In this regard, no one can know what is in his friend's heart. There are times when, according to his level, intellect, and situation, his friend's heart is very good in Hashem's eyes because he reached his potential and the "objectively more complete" person may not have fulfilled the obligations that come with his potential. That is what it means: "whether one does a lot or a little, the main thing is that he should direct his heart to the Heaven." The main thing is up to the heart, and that is hidden from mankind. Therefore, every person, including one who is great in wisdom and in honor, should view others as people on his level, who are fitting to be truly loved and respected.

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 Right to Strike – Part I

(based on Eit Ladun, Halacha Psuka, vol. 29)

What does halacha have to say about one of the most divisive of phenomena in modern society: the right to strike? There are two areas of halacha to investigate: the obligation of workers to fulfill their commitment to their employer and the workers' power to create rules of business practices.

The *gemara* (Bava Metzia 10a) says that a worker can back out in the middle of the day, which is what separates him from a slave, a status we should not have in relation to another human being. However, the *baraita* (ibid. 77b) says that if backing out will cause an actual loss to the employer, the worker may back out only if there is an *ones* (extenuating circumstance). Based on this, Rav Chayim D. Halevi (*Aseh Lecha Rav* II, 64) says that, under normal circumstances, one is not allowed to strike. Rav S.Z. Orbach (*Techumin* V, pg. 287) says that in standard modern cases, strikes are worse than they were classically because they (sometimes) abrogate agreements that were made publicly, which make the agreement the equivalent of a case where a *kinyan* was made. Under such circumstances, *beit din* can force the workers back to their jobs (see Shach, *Choshen Mishpat* 333:4; *Pitchei Teshuva*, ad loc.:2). Rav Orbach also posits that a worker may back out only if he is seeking freedom from work, but if he wants to continue working for his employer with better compensation, he may not break his agreement. The situation is even clearer regarding many strikes where the employee stops working while preventing others from replacing him.

Rav Avraham Shapira (*Techumin* V, pg. 297) distinguishes between one who wants to back out to raise his wages, which is not valid, and one who does so to compensate for the wages' decreasing buying power or the employer's failure to fulfill conditions of the agreement. In the latter case, the worker is entitled to take steps based on *avid inish dina l'nafshei* (limited rights to "take the law into one's hands").

The Tzitz Eliezer (II, 23) and Igrot Moshe (*Choshen Mishpat* I, 59) divorce the matter of strikes from that of ceasing to work, as the worker wants to continue working with different conditions. Rather, the relevant halachic parallel is that of agreements within groups of craftsmen. The Shulchan Aruch (*Choshen Mishpat* 231:28) says that just as the residents of a city may set regulations, so can the members of a trade group. However, in regard to the latter, since they are acting for their own personal interests, they need the agreement of an "important man" who is responsible for the welfare of the community. After meeting those conditions, they can decide that when a group strikes, peers will not be allowed to "break the strike."

Mishpetei Shaul

*Unpublished rulings by our mentor, Maran Hagaon HaRav Shaul Yisraeli zt"l
in his capacity as dayan at the Israeli Supreme Rabbinical Court.*

The book includes halachic discourse with some of our generation's greatest poskim.

The special price in honor of the new publication is \$20.

Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tishrei 23 – Tishrei 29, Baba Batra 51-57

Purchasing Real-Estate from a Gentile (54b)

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara (54b) illustrates a very interesting situation that can arise when a gentile sells real-estate to a Jew. When purchasing real-estate there are three forms of kinyan by which the land is transferred from the seller to the buyer: kesef (giving money), shtar (contract of sale given to the buyer from the seller), and chazaka (an act demonstrating ownership done on the land by the buyer).

However, when a gentile sells land to a Jew, if the payment is given before the shtar, a legal anomaly is formed. On the one hand, the gentile, after receiving the payment, removes his ownership from the land. On the other hand, the Jew does not intend to acquire the land until he receives the shtar, the proof of the sale. In this intermediate stage, the Gemara states that the land is hefker, not belonging to either of them, and a third person can attain ownership over the land by doing a chazaka on it. However, the Gemara states that, if there is a government law regarding the purchase of real-estate, then we follow that law.

The question arises; does the third party who attained ownership have to pay to the buyer the amount that he paid the gentile for the land? The Rashbam (d"h harei) and the Rosh (3, 65) claim that he does not have to pay, since the land was hefker. However, Rav Hai Gaon (Sefer Hamekach Vehamemcar 14 d"h aval), Rabeinu Chananel (quoted in the Rosh), the Rambam (Zechia 1, 14) and the Ramban (54b d"h nichsei) all state that the third party who attained ownership must pay the buyer what he paid the gentile.

However, if the land is really considered hefker in this intermediate stage, why does the third party have to pay? From the various Rishonim there appear to be three perspectives as to why he has to pay:

1. Rabeinu Chananel- even though the buyer did not attain ownership over the land, he acquired a lien on it for the amount that he paid.
2. Ramban- since the third party was able to attain ownership only due to the fact that the buyer paid for it, he must pay the buyer for the benefit he received from him.
3. Rav Hai Gaon- the land is not considered absolutely hefker, but rather the third party was only given the option to enter in the buyer's place in the purchase from the gentile. Therefore, he too is considered a buyer and must pay for the land.

The Shulchan Aruch (194, 2) rules according to the majority opinion of the Rishonim, that the third party must pay the buyer what he paid the gentile.

Do you want to sign your contract according to Halacha?

The Rabbinical Court, "[Mishpat Vehalacha BeYisrael](#)"

Tel: (077) 215-8-215 beitdin@eretzhemdah.org Fax: (02) 537-9626

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.