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HEMDAT YAMIM

Parashat HaShavua

Matot Masei, 2 Av 5778

The Women of Menashe Go West

Harav Yosef Carmel

Last week we discussed to what extent Ephrayim came before his older brother Menashe, and we pledged to return to discuss the matter in the context of the daughters of Tzelofchad receiving a part in the Land.

We mentioned that Ephrayim was the head of one quarter of the encampment in the desert. Actually, their special position was maintained in *Eretz Yisrael*, in that they were closest to the Tribe of Binaymin in whose portion the *Beit Hamikdash* was found. Despite this fact, the people of Menashe did not accept the prominence of the Tribe of Ephrayim.

When Bnei Yisrael conquered the area of the Gilad on the east bank of the Jordan and the Tribe of Menashe received it as their portion before the rest of Bnei Yisrael conquered the Land of Canaan, the Sons of Menashe felt that they had "a leg up" on Ephrayim. This was especially true of the family of Machir, children of Menashe from an Aramite concubine (see last week), who were the main ones to inhabit that area. The spiritual problem with this approach is that it gave more importance to the land east of the Jordan, even though it was not part of *Eretz Yisrael* proper. This issue arose again at the end of *Sefer Yehoshua* when the tribes of the East Bank built an altar on the border.

The daughters of Tzelafchod were granddaughters of Chefer, the son of Gilad, the oldest son of Machir. Thus, the natural place for the family plot was on the East Bank, with the rest of the Machir family. In the description of the daughters of Tzelofchad story in *Yeshoshua* (17:4-7), the implication is that they made a specific issue of asking for their portion to be in *Eretz Yisrael* proper. By their love of *Eretz Yisrael*, these special women made up for the lack of respect that the rest of their brethren showed.

This helps us appreciate the *midrash* (Bamidbar Rabba, Pinchas 21:10). The *midrash* states that the women had much more love and dedication for *Eretz Yisrael* than the men did. That is why the men died out in the desert and the women entered the Land. The *midrash* goes on to say that because of this great love of the Land, the daughters of Tzelofchad were actually given two plots of land – one in the east with their cousins and one in the west, where they requested their portion.

This is one more indication of the regard we should have for the daughters of Israel, who showed their love for the Land and were recognized and rewarded for it by Hashem.

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Ask the Rabbi

by Rav Daniel Mann

Zimun for a Sephardi, an Ashkenazi, and a Katan

Question: I am Ashkenazi. I was eating with a Sephardi and a *katan* (under *bar mitzva*). Were we supposed to do a *zimun*?

Answer: We start with the only source I found on the topic, which provides practical (intuitively logical) guidance without explanation. Then we will provide the background and critique the ruling. V'zot Haberacha (p. 132), basing himself on communication with Rav Auerbach, Rav Eliyahu, and Rav Scheinberg, gives the following compromise. *Zimun* can be done, led only by the Sephardi. If there are nine and a *katan*, the Ashkenazi should answer the *zimun* without Hashem's Name.

The *gemara* (Berachot 48a) accepts Rav Nachman's opinion that a child counts toward *zimun* if he knows to whom we *bentch*. So rule the Rif, Rambam (Berachot 5:7), and Shulchan Aruch (Orach Chayim 199:10), whether for a *zimun* of three or of ten. (Only one of the quorum can be a *katan* – Mishna Berura 199:25). You seem aware that this is the *minhag* among Sephardim. On the hand, the Rosh (Berachot 7:20) cites and accepts the implication of the Yerushalmi that only youngsters with two pubic hairs (the sign of basic physical maturity) count toward *zimun*; the Rama (OC 199:10) and Ashkenazi practice accept the Rosh. Indeed, then, we have a conflict between *minhagim*. In a mixed group, whose *minhag* should "win out"?

One thing to investigate is: how important is each side's ruling to them? According to the Sephardi ruling, is there an obligation to do *zimun* or is it only optional? There is an opinion in the *gemara* (Berachot 45) that there is an optional *zimun* when two eat together. However, I did not find any indication in the *poskim* that a *zimun* including a child is deficient in any way. Therefore, the indications are that the Sephardi member of the group should feel a need to do *zimun*, for when a *zimun* is called for, it is forbidden to *bentch* without it (Shulchan Aruch, OC 193:1).

Is it forbidden (i.e., for an Ashkenazi) to do *zimun* which is not required? From the discussion of an optional *zimun* for two, we see that according to the opinion that it is not optional (which we accept), it is forbidden. What is problematic about a *zimun*'s words? The Shita Mekubetzet (Berachot 45b) says that even a *zimun* of three is a mini *davar shebekedusha* (something that requires ten), making it forbidden without its (reduced) quorum even without uttering Hashem's Name. The Pnei Yehoshua (Berachot 45b) says that it is a disgrace to call out to a single counterpart to praise Hashem, as it is not sufficiently significant.

Is it better to err on the side of recitation or omission? Note that the stronger indications are that a *katan* counts for a *zimun*. The implication of the Mordechai (Berachot 172) and Rama (Darchei Moshe, OC 199:4) is that we refrain from *zimun* in order to be on the safe side. Thus, out of doubt, one would not do a *zimun*. So how can the *poskim* we cited expect an Ashkenazi to risk an improper *zimun* in order to afford his Sephardi friend a "less important" opportunity?

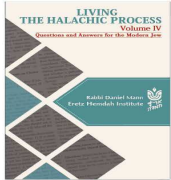
Apparently, the *poskim* reason that the main problem with an unwarranted *zimun* falls on the initiator (i.e., the *mezamen*). Once the Sephardi asks the Ashkenazi to praise Hashem, answering is less of a problem and actually it is a problem to refuse to praise Him. Using Hashem's Name makes it *beracha*-like, which is problematic even without initiating. We can appreciate, then, why the Ashkenazi should neither say the Name as part of ten nor lead the *zimun*.

This resembles the situation of a Sephardi who calls out Barchu at the end of Monday-Thursday *davening* in an Ashkenazi shul. The *minhag* is to answer, probably because once it is reasonable to call it out, how can one not respond. In some ways our case is worse. Regarding Barchu, even when there is not a need, the ten provide a *tzura* (form) of a proper recitation. In contrast, if a child does not count, the *zimun* is innately lacking.

In the final analysis, there is logic both to and against the *poskim* we cited. In the absence of contrary sources or compelling logic, we obviously accept their ruling.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.





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Ein Ayah

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

Energy for Torah Study

(condensed from Ein Ayah, Shabbat 6:71)

Gemara: That which it says in the *pasuk* (Kohelet 11:9), “Be happy, young man, in your childhood, and let your heart make you feel good while you are single, and follow the paths of your heart and that which your eyes see” – until this point the *pasuk* is referring to Torah study. “... and know that Hashem will bring you to justice for all of these” (ibid.) – from this point on, it is referring to righteous actions.

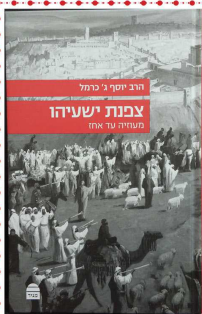
Ein Ayah: In essence, there is no bad among all of life’s inclinations. All of their healthy expansions are for good purposes, just like they spread out in the spirit in regard to matters of the material world and the spiritual world. We all wait for times in which the inclinations will not need to be stopped, as all will be directed toward the proper goal which they were created to enable.

However, at this point, the world has not yet come to that level of perfection. In these times, when the physical and spiritual inclinations spread out from their pure state, they miss the mark, and therefore they need to be checked by the Torah and the intellect. However, the internal force within a person’s spirit, which can eventually make all the extensions of his inclinations end up being for the loftiest goals, requires that man will reach this level in his intellect before it becomes part of his nature. For that reason, a person’s analytical thoughts and emotions have to develop broadly so that he can use them to reach the highest levels that a man can reach.

This is referred to as the Torah of the person’s youthful period, when he is freest and follows his eyes and his heart. Indeed, from the perspective of the Torah, the person is already ready for an ideal life. It is just that this high level of Torah has not yet been deeply enough rooted in his heart with all its power, and his heart of stone has not yet been turned into a heart of flesh.

For that reason, practical ethics need to have a more limited scope. The person must be reminded of the truth that Hashem will reckon with everyone and hold them responsible for their corrupt and evil ways, which can be brought about by the freeness of a person’s youth and the exposure to a variety of things that his eyes perceive.

This is only in regard to practical life, which follows the way matters are in the present. In that realm, his inclinations can take him to horrible places. However, while one is involved in Torah study, he is elevated to a world that is all good, and the light of Hashem that will exist in the ideal future throughout the world will already show its aura to each person according to his value and his preparation to receive this light of Torah. That is why the intellectual inclinations, which analyze everything within the prism of Torah, have to remain at their broadest. In that realm he will be able to grasp the ways of Hashem in the depths of his own spirit, and through that gaze into a world that is full of grandeur.



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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P'ninat Mishpat

Compensation for the Flaws of a Used Car – part II

(based on ruling 70061 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl), a used car salesman, sold the defendant (=def) a car for 10,000 shekels in installments with a standard contract. An expert test-drove and inspected the car and recommended it for def over other cars. Pl told def that there had been an electrical problem that was professionally fixed. Def is experiencing several problems, the most important being that during the first 24 hours after rain, he is often unable to get the car to start. Due to this, def is refusing to replace the last 700-shekel check (the original had a mistake). Pl demands that def pay the final payment and points out the contract's clause that pl checked the car and relinquishes the right to complain about flaws. Pl also says that the problem that needed fixing was the car's shaking due to it not working on all cylinders; the present problem is a new one for which he is not responsible. Def claims that pl told him that the problem was an electrical one having to do with wetness, i.e., the present problem. Def does not want to nullify the sale but to reduce the price. In addition to the outstanding 700 shekels that he does not want to pay, he demands the return of another 700 shekels. Beit din spoke both to the person who sold the car to pl and to an expert on cars. According to their "testimony," it is difficult to know whether the present problem was pre-existing.

Ruling: [Last time we saw that it is possible in theory to uphold the sale and demand a refund since neither side wants to nullify the sale.]

Is the clause waiving claims of flaws valid if there were indeed serious flaws at the time of the sale? The Shulchan Aruch, Choshen Mishpat (332:7) rules, based on the Rambam, that a general statement that one waives the right to back out of a deal when the sales object is flawed is an invalid clause. However, the S'ma (332:16) and the Shach (332:4) rule that if the seller specified a certain flaw to be waived or states the value of the flaw and the actual flaw conforms to it, then the clause is valid.

In this case, def stated that pl told him that there was an electrical problem in the car that had to do with winter rain, which had been fixed. Pl knew that a winter had not passed since the repair, which would confirm that the repair had been successful. When knowing that this could be an issue, having an expert advise him, and signing an agreement to waive claims of flaws, this is considered waiving the rights at least in regard to such a known issue. He should have known that such a problem could have remained an issue.

One must realize that when he buys a used car, especially when it is cheaper than the list price, he is taking a risk that there may be serious problems. Had it been demonstrated that pl deceived def, then there is room for a claim despite the above. However, it was not demonstrated that this was the case here.

[Due to a couple of relatively minor issues, the amount of payment due was slightly reduced.]

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