

# HEMDAT YAMIM

PARASHAT SHEMINI

24 NISAN 5769

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.....*

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## The Connection Between the Bull and the Calf

Harav Yosef Carmel

Before the *Mishkan* began normal operation, Aharon and Bnei Yisrael were commanded to bring special *korbanot*. Aharon had to bring a calf as a *chatat* (sin offering) (Vayikra 9:2). Bnei Yisrael had to bring a goat as a *chatat* in addition to a calf (ibid.:3). The *midrash* (Sifra, Shemini 1) relates the following exchange between Moshe and Aharon. Moshe told him the calf was needed for atonement for his part in the sin of the Golden Calf. Bnei Yisrael required not only atonement for the calf but also for that which the goat represents, the selling of Yosef, which was concealed when the brothers dipped his coat in goat blood. These two sins share a powerful connection. Both have had major consequences throughout history. The Torah says: "On the day I reckon, I will reckon upon them their sin" (Shemot 32:34). Rashi (ad loc.) cites the *midrash* that all punishments Israel receive will partially be a payback for the Golden Calf.

Regarding the sale of Yosef, the chilling *midrash* that is famous from the Yom Kippur davening tells that a Caesar told ten great Jewish leaders that they should be executed in place of their forefathers who sold their brother, Yosef. There is no shortage of stories of anti-Semites claiming that the Jews deserved what they got. However, this *midrash* says that a Divine message confirmed that this punishment should come for that reason.

What is the connection between the sins? The Malbim explains with an argument we call *mah nafshach* (either way you want it) that the sins are intertwined. One of the excuses for the sale was that the brothers saw in Divine Spirit that a descendant of Yosef (Yeravam) would erect statues of a calf in Beit El and Dan to keep people away from Yerushalayim. If calf statues justify execution, then the brothers' offspring, who sinned with a statue of a calf, also deserve execution. He also suggests another similar idea. After the Golden Calf, the people explained themselves, that they had good intentions of using the calf to help their service of Hashem. Of course, the results were horrendous. Yosef's brothers had the opposite approach. Although they had tried to kill Yosef and remove him from the nation, his resulting journey to Egypt was actually necessary for the fledgling nation, as had been decreed long before, and led to their national development. They wanted the positive results to erase the negative intentions. Whether the bad result or the bad intentions are the biggest problem, acts that were problematic for each reason should have doomed Bnei Yisrael.

In any case, we see from the *midrashim* that the historical (and ongoing) sins of between man-and-man and between man-and-G-d are intimately connected. We must strive for excellence in both and look forward to the day in the rebuilt Beit Hamikdash when Hashem will say, "I have forgiven."

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**Question:** I spent time in Hong Kong in the fall of 2007 and, planning to return the next summer, I left some things there, including a bottle of scotch. I forgot about it until I returned in May 2008. Is it *chametz she'avar alav haPesach* (=chshaalhap; chametz owned by a Jew over Pesach)? While I did not include it in my *mechirat* (sale of) *chametz*, did my *bitul* (nullification of) *chametz* help?

**Answer:** We accept Rabbi Shimon's opinion (Pesachim 30a) that *chshaalhap* is a rabbinic injunction forbidding one to eat or benefit from *chametz* owned by a Jew because one (could have) violated *bal yeiraeah bal yimatzei* (=byby; the prohibition to possess *chametz*). When *byby* does not apply, neither does *chshaalhap* (ibid.). One might think that if he did *bitul chametz*, thus removing the Torah prohibition of *byby*, *chshaalhap* should not apply. The Yerushalmi (see the Rosh, Pesachim 2:4) cites a *machloket* on the matter. We accept R. Yochanan's ruling, who forbids it due to concern that one will abuse the system (Shulchan Aruch, Orach Chayim 448:5). The Rambam (Chametz U'Matza 1:4) and Shulchan Aruch (ibid.:3) says that *chshaalhap* is forbidden even when one left the *chametz b'shogeg* (accidentally) or *b'oness* (due to extenuating circumstances). The Biur Halacha (to 448:3) seriously considers the view that when combining the grounds for leniency (i.e., *bitul* and the fact that one did not purposely violate *byby*) *chshaalhap* doesn't apply. However, he focuses primarily on a case of *oness*, whereas your case of *shogeg* is likely more stringent.

There is, however, an important point of leniency in your case. Since you left Hong Kong more than 30 days before Pesach and did not have intention to return until after Pesach, you were not required to do *bedikat* (search for) *chametz* before leaving (Pesachim 6a; Shulchan Aruch, OC 436:1). There is a major *machloket* whether this exemption is only from *bedika* or whether one is even exempt from removing known *chametz* (see Mishna Berura 436:5). According to the lenient opinion (including the Ritva, Pesachim 6 and Pri Chadash 436), you did nothing wrong, as such a person may rely on *bitul* wherever he will be (although we would recommend *mechira*). If so, there certainly would not be a problem of *chshaalhap*.

What should be according to the opinion that you should have taken care of the *chametz* you knew about? When you were removing the *chametz* from your regular house, whether by formal *bedika* or other preparations (including *mechirat chametz*) you should have sold the *chametz* in Hong Kong or got someone to get rid of it. Your failure to remember the Hong Kong *chametz* is not fundamentally different than doing *bedika* but forgetting to look under the couch. Regarding a case that one did an imperfect *bedika* and a *bitul*, the Mishna Berura (448:25) brings strong indications in either direction whether *chshaalhap* applies. He concludes that in a case of significant loss, one can sell the *chametz* to a non-Jew, which is usually forbidden for *chshaalhap* but is permitted according to some opinions when one did *bitul*.

Depending on your location (Western US?) and when you did *bitul* on the night of *bedika*, there could be a complication because Hong Kong is 13 hours ahead of US's Eastern Time. *Bitul* can only be done until an hour before *chatzot* (halachic midday) (Shulchan Aruch, OC 434:2). Although most *poskim* say that in such matters, we follow the owner's place, not the *chametz's*, the Igrot Moshe (OC, IV 94) says that if the *chametz* is in a place where the timing doesn't work out, it becomes forbidden (see *Mechirat Chametz K'hilchato* 3:17 and *Living the Halachic Process*, D-17). However, given the other indications for leniency (including one we did not mention), we still say that if the loss of some (expensive?) scotch is significant to you, you may sell it to a non-Jew.

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## Linking Liberation to Prayer

(based on Ein Ayah, Berachot 1:143- part II)

**Gemara:** What [did Chizkiya] mean by saying: "I did that which was good in Your eyes"? Rav Yehuda said in Rav's name: he put liberation next to prayer. Rabbi Levi said: he buried the book of medical remedies. [*Last time, we discussed Rabbi Levi's statement. When the nation is on a high level, it is better for it to exert its own efforts and see Hashem through nature. When on a low level or as the nation emerges, the nation needs to recognize Hashem through miracles. At Chizkiya's time, it was good to bury the remedies. Now we focus on Rav Yehuda's statement*].

**Ein Ayah:** The idea of putting liberation right before prayer teaches us that our liberation will come only from the Hand of Hashem. It is important for us to know this because the knowledge of the great Hashem is the goal of liberation. Therefore, we should know that liberation is close to prayer and the good will from Hashem that accompanies it. When we are on a high level in service of Hashem and *shleimut* (completeness), liberation is close to prayer, as it truly is, even when the liberation comes through natural events and our own efforts. However, when, due to our sins, our standing is diminished and we are distanced from the *shleimut* of knowing Hashem, then, in our view, liberation is not near our prayers unless there are clear miracles.

Chizkiya tried to do that which is good in Hashem's eyes. Specifically, this refers to that which brings us closer to the ethical goal, even if people do not see it as good, and that is putting liberation next to prayer. In his time, this was accomplished by making lesser efforts to succeed in a totally natural manner until he succeeded in reaching the highest level of trust in Hashem. [*As we saw last time, he did not actively fight the forces of Sancheriv, who surrounded Jerusalem, but davened to Hashem to accomplish victory Himself through a miracle.*] Rabbi Levi related the concept of lessening human efforts to the private realm, regarding medical needs and remedies.

## Influence of a Great Man

(based on Ein Ayah, Berachot 1:145)

**Gemara:** "Let us make for him [the prophet, Elisha] a small attic" (Melachim II, 4:10). Rav and Shmuel disputed the matter. One said that there was an open attic and they closed it in. The other said that there was a great hall, and they broke it into two parts.

**Ein Ayah:** The ways of *shleimut* can be divided into the *shleimut* of the individual and helping complete the standing of another person. Regarding the complete *tzaddik*, it is unclear which to focus on. Is it better for him to focus on perfecting himself, and his influence on perfecting others will come by itself by means of people who are close to him? Or is it perhaps better to give up on some of his personal greatness in order to influence others for the good?

One who wants to spend a lot of time by himself will be happy to go up into an attic so that comers and goers in the house will not disturb him with too easy access to him. However, one who is interested in directly impacting others, by being close to them at the price of his own lower intensity, will chose to be in a great hall. Admittedly, within the hall there may need to be a partition so that he will have a place to which to retreat when he needs to concentrate on his own growth, but it will still be easier to mingle with him. Since so many need his guidance, he should be in a place that is nice enough to honor those who come to visit and so that they will be reminded of the grandeur of the man of G-d. All of this would be unnecessary if the point was a place for the prophet to work on himself, for which a small attic without luxuries and extras would be right.

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## Refund for a Student Kicked Out of Yeshiva

(based on Halacha Psuka 56)

**Case:** A student was expelled from a yeshiva (=def) soon after the year's half-way point for failure to attend classes and davening consistently, after he and his father (=pl) were warned. Pl wants the yeshiva to return the year's tuition, as they did failed in teaching his son, or at least for the half year after he was expelled. Def responds that the contract stated that tuition would not be returned if the student left and that at an established yeshiva which uses this clause applies it even if a student is kicked out. Def did not fail in teaching the student, who is to blame for insufficient effort.

**Ruling:** A school may decide that a student is no longer suitable for their institution. Their lack of success at motivating him need not indicate that their efforts were flawed. Pl did not begin claiming that def was negligent until his son was asked to leave.

The contract's clause regarding denying refunds can be understood to refer only to voluntary leaving or possibly even to removal by the yeshiva. Beit din prefers pl's reading on both linguistic grounds and because, if def's reading is accepted, it would give def unreasonable power. After all, def was already allowed to kick out the student based on reasonable but not compelling grounds. To be able, in that case, to keep the entire tuition as well is unreasonable. Another institution's use of such a policy is irrelevant; the two sides to an agreement must agree to such a clause. The Shulchan Aruch (Choshen Mishpat 215:8) says that regarding terms of negotiation, we follow the common meaning of the people of the place. Regarding ambiguous language, it should be assumed that pl did not agree to grant def unreasonable power.

Once we assume that the contract does not mandate def keeping full tuition, let us examine if according to halacha they deserve it. The Shulchan Aruch (CM 334:1) rules that if one hires someone to do a job and the possibility to complete the job disappears, the worker is not entitled to pay unless it was only the employer's fault for not anticipating the work stoppage. In our case, the employer (pl) should not have to pay for the part of the work that was not completed. Yet, we should analyze the halacha's rationale. The S'ma (334:3) says that since we are uncertain who should be held responsible, the employer is exempt because he is in possession of the money. The Gra (334:5) says that the employer is held responsible because he should have made a stipulation regarding work stoppage. According to the S'ma, if the employer already paid (as pl did) he does not get reimbursed out of doubt. According to the Gra, the worker has to return the money.

The majority rule is that since def could conceivably have kept the student, it was their (legitimate) decision to stop the work. Therefore, they should not get paid for work they did not do and should return half a year's tuition.

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