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R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

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This week.....

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Nazir - To New Heights or From a Cliff?

A *nazir* has restrictions in three areas: ingesting grape products, cutting hair, and coming in contact with the dead. What is the idea behind *nezirut*, which is not for everyone but apparently is appropriate for some?

The key may be in understanding the word *nazir*. In several places in Tanach (see Vayikra 22:2 for one of many), the root means to stay away from things. A *nazir* refrains from things others do not. Rashi (Bamidbar 6:2) takes this approach to the word's etymology. However, the same root has another, different meaning. A *nezer* is a crown (see Vayikra 21:12). Rav Hirsch puts the stress on this meaning. This disagreement may be based on different views of *nezirut*. Is it designed to protect one from corruptive influences (Rashi), or is it an attempt to elevate him (Rav Hirsch)?

Chazal (Berachot 63a) seem to support Rashi's thesis: "Why did the Torah place the section on *nazir* next to that of *sota* (a woman suspected of infidelity)? To tell you that whoever sees a *sota* in her disgrace should separate (*yazir*) himself from wine." However, Rav Hirsch has strong textual support. The Torah explains that a *nazir* cannot be in contact with the dead because Hashem's *nezer* is on his head (Vayikra 6:7).

Probably both meanings and theses share truth. The Torah uses (ibid.: 5,8) the term of *kadosh* (holy), as Rav Hirsch stresses, as the *nazir* sanctifies himself. On the other hand, Rashi (19:2) says that *kadosh* refers to staying away from problematic things. In fact, a holy person or object (*kohen*, *korban*, etc.) must stay away from things that others do not. Conversely, one who voluntarily stays away from certain things becomes holy. Yet, a *nezer* is also a sign that someone does not "mix into the crowd."

Actually, the *p'sukim* hint that the question of whether a *nazir* is about making a positive change or avoiding the negative depends on the halachic restriction. "*Kadosh*" appears regarding two of the three restrictions, avoiding the deceased and not cutting hair, not regarding wine-related products. A corpse is not corruptive but *kohanim's* holiness, for example, requires that they avoid it. Cutting one's hair is not corruptive, but one might refrain from it because he wants to ignore physical concerns such as his appearance, as befits one who wants to be on a peculiar but potentially high level. On the other hand, wine has lowered many people's levels. One may want to avoid it just to remain a good average person, not a *kadosh*; thus, the Torah omits *kadosh* in that context. Actually, Chazal's statement about avoiding the pitfalls of promiscuity mentions refraining from wine alone - so as not to be negatively impacted.

Our lives of service to Hashem are replete with *sur me'rah* (avoiding negative) and *aseh tov* (doing positive). May we succeed in finding a proper balance in an effective, appropriate manner for our (hopefully) noble goals.

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Question: When one person gets *maftir* (the last *aliya*) and makes the *berachot* on the *haftara* but someone else reads it, must the *oleh* read along? If we read from a *klaf* (a Torah-like scroll for the *navi* being read), must he do so specifically from the *klaf*?

Answer: First we will summarize the matter of an *oleh* reading along the regular *kriat hatorah*. The Shulchan Aruch (Orach Chayim 141:2) rules that it is critical for the *oleh* to read along because, if not, his *beracha* will not be connected to any reading of his and would be *l'vatala*. For the same reason, the Shulchan Aruch (OC 139:3) says that a blind man cannot have an *aliya* because he must read from the *sefer Torah*. The Rama (ad loc.) argues that now that the *oleh* only makes the *berachot* and does not read the Torah for the community to hear, the blind, as well as those who do not know how to read along, may get *aliyot*, as is the practice. The Rama does not dispute the requirement that the *oleh* read along. The Biur Halacha (to 141:2) presumes that regarding those who cannot read along, the Rama relied on the lenient opinion that reading along is not absolutely necessary to avoid the divisive situation where many people would be denied *aliyot*. However, he agrees that, normally, one should read along.

Are the halachic “dynamics” of *haftara* reading as strict as those for *kriat hatorah*? Some *poskim* approach the question in the opposite direction, as we will explain. The Rama (OC 284:4) says that one who received *maftir* should be the one who reads the *haftara*. Only if he cannot read the *haftara*, should someone else read the *haftara*. Why can't the *maftir* just recite the *berachot* on the *haftara* and have someone else *lain* it? The Pri Megadim (284, EA 3) seems to say that just as regarding regular *kriat hatorah*, one cannot only recite the *berachot* without reading, so too for the *haftara*. Thus, he implies that just as we have the *oleh* read along quietly for regular *laining*, the same can be done for the *haftara* (The Minchat Yitzchak IX, 22 says that the Pri Megadim views this as a *b'dieved* situation, although he does not understand why; the Pri Megadim can be read differently.) The Mishna Berura (284:8) and Yaskil Avdi (VII, 14) also equate *haftara* to *kriat hatorah* regarding someone other than the *oleh* reading.

The Chayei Adam (31:40, accepted by the Mishna Berura, *ibid.*) says that the Gra instituted a change in *minhag*. Instead of having the *oleh* for *maftir* make the *berachot* and *lain* the *haftara*, he separated the two by insisting that a *klaf* be used, which can be read only by experts. This raises the next question: does the reading along need to be from the *klaf*, when it is used, or not? First, we should understand that the idea to require a *klaf* was raised by the Levush (against the prevalent *minhag* of his time, cited by the Mishna Berura 248:1), who assumed that the rules of what a *haftara* is read from is like that of a Torah or a *megilla*. Despite the fact that the Magen Avraham (284) and Taz (284:2) justified the old *minhag* (see Divrei Yatziv, OC 129 at great length), the use of *klaf* spread with the encouragement of later *Acharonim*. It is quite accepted that if people read along from a *chumash*, they are covered even if the *maftir* does not read from a *klaf* (see Biur Halacha to 284:5). Therefore, if the *oleh* for *maftir* reads along because he cannot make *berachot* without reading, even reading from a printed *haftara* suffices. If one feels that one must read from a *klaf* because it is no different from Torah reading, then just as a regular *oleh* must read from the Torah, so must the *oleh* for *maftir/haftara* read along from the *klaf*. The latter approach appears to be a *chumra*, but it is hard to track *minhagim*.

We suggest that if an *oleh* can easily read along with the *lainer* from the *klaf* he might as well do so. However, one need not insist on this, and it could be counterproductive for an *oleh* who cannot read effectively without punctuation.

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The Need for the Spirit of the Law to be Accompanied by the Letter of the Law

(based on Ein Ayah, Berachot 1:162)

Gemara: [In the *Beit Hamikdash* they would make a *beracha*, read the Ten Commandments, *Shema*, “*V’haya im shamo*,” “*Vayomer*” (the commandment of *tzitzit*), ...] Even outside the *Beit Hamikdash*, they tried to institute the daily recitation of the Ten Commandments, but this practice was already cancelled because of the arguments of the heretics.

Ein Ayah: The heretics are mistaken when they say that the main goal is the spirit of the Torah, in other words, its true ideas and the good moral attributes that it promotes. Based on this, they distinguish between that which they consider central philosophical themes and other stories and *mitzvot*. However, they are very mistaken for thinking that the philosophical ideas are already the final goal. In truth, the goal of human *shleimut* (completeness) is truly achieved when one can live and act, both on a general and on a specific basis, based on these philosophies and the good attributes seen through the Torah. To accomplish this, one needs all of the matters of the Torah, which make the entire nation used to a proper approach to life.

When even a small part of the Torah is not followed in practice, the philosophies will remain as an independent thing, and life will run as according to a person’s desires and whims. Under such circumstances, even the more general ideas of the Torah will, Heaven forbid, be undone. They will not succeed in having part of the Torah, as Hashem, whose word stands forever, instructed how success must be reached.

It is heretics who rail against the practical *mitzvot*, which incorrectly seem to them as a burden and unnecessary because they see the philosophical side as the main thing. However, this is a mistake because the actions all direct a person generally and specifically toward a path of life. When one’s specific actions are not delineated based on the Hashem’s Torah, the ideas cannot play their role at all. As time goes on, opposition to the proper ideals will increase, based on the habit of actions that the individual chooses. These random actions are antithetical to the pure ideals, and thus the philosophical idealism will be forgotten over time and nothing of them will last. Only about those who follow the Torah does it say “And this is My covenant with them, said Hashem: My spirit that is upon you and My word that I put into your mouth will not stray from your mouth and the mouth of your offspring and the mouth of your offspring’s offspring, said Hashem, from now and forever” (Yeshaya 59:21). The spirit refers to the general spirit of the Torah; the word refers to the specific required actions. When they are followed in detail, then they will not stray from your mouth, referring to those things that need to be pronounced with the mouth because the heart does not remember them by themselves like those things that are “My spirit that is upon you.” Under such cases, there is an eternal covenant of “from now and forever.”

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Overpricing as a Reason to Nullify a Sale

based on Halacha Psuka, vol. 58- condensation of a *p'sak* by the Regional Beit Din of Haifa)

Case: The plaintiff (=pl) bought a computer with some software from the defendant (=def), who sold an individual computer and is not a professional salesman, for 3,500 shekels. Pl claims that after the sale, he discovered that the computer and software is worth only 2,400 shekels and presented a written estimate from a computer technician, who put the value at between 1,600-2,000 shekels. Since the discrepancy in price is more than 20%, pl wants to nullify the sale due to extreme mispricing.

Ruling: *Beit din* asked of three computer technicians to estimate the value of the computer and the relevant software. Two of them set the price at 2,000 shekels; the third estimated the price at 3,000 shekels.

The Shulchan Aruch (Choshen Mishpat 103:2) rules: "Three people estimated the value of an object: if one said it is worth 100 *zuz* and two said it is worth 200 *zuz*, or one said 200 *zuz* and two said 100 *zuz*, the minority opinion is dismissed." Therefore, we should set the value of the computer at 2,000 shekels. Even if we were to average out the estimates, it would come only to 2,333 shekels. Either way, there is more than a 20% price differential between the market price and the price that was charged. Based on the rules of *ona'ah* (mispricing), if the difference is more than a *shtut* (what the Talmud calls 1/6th, according to a system of arithmetic known as *milebar*), which comes to 20%, the sale can be voided.

The Shulchan Aruch (Choshen Mishpat 227:23) says that when a non-merchant sells one of the utensils from his household and overcharges, the laws of *ona'ah* do not apply because had the buyer not paid more than the regular price, the owner would not have been willing to sell it. Therefore, there is room to say that *def*, a non-professional who sold his computer, is unaffected by the laws of *ona'ah*. However, *beit din* decided that the Shulchan Aruch referred to the case of an object that has sentimental value to its owner and does not apply to the computer at hand. In this regard, this seller is like any other, and the sale may be voided.

Furthermore, according to one of the opinions in the Shulchan Aruch (ibid.:24) the exception for non-merchants is only when the mispricing is up to a *shtut* (20%), not beyond it. As we showed, in this case, the *ona'ah* clearly exceeds a *shtut*.

Therefore, pl has the right to void the sale.

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Baba Metziah 29-35

Two Partners who Borrowed or Took a Loan Together

This week in the Daf Hayomi, we begin the third chapter of Baba Metziah. The chapter opens with the Halacha that if a person received an object from someone else to guard and the object was stolen from him, if he pays the owner for the object and later the thief is found, he receives the fine of double the stolen object (=kefel) which the thief is required to pay. The Gemara raises a few cases which pose interesting dilemmas regarding this Halacha. What if the guardian paid only half of the value of the stolen object and the thief was found, does he receive half the kefel? The Gemara follows with a similar case, what if two partners borrowed an object and it was stolen from them, and one of the partners paid his share, does he receive half the kefel?

The Ran (Shevuot 17a in the pages of the Rif) explains that the dilemma in the second case is based on the dilemma in the first one. If we assume that a person who paid half does not receive half the kefel, it is still possible that by partners that one of whom paid half will receive half the kefel. The reasoning is that in the first case, the person was required to pay the entire amount, and thus it is possible that until he pays all that he was required to he does not receive any portion of the kefel. However, in the case of partners, since the partner paid all that he was required to it is possible that he does receive his portion in the kefel.

This explanation of the Ran raises the issue of whether when two people borrow an object together or take a loan together, each one is really only required to pay half. The Yerushalmi (Shevuot 5, 1 quoted in the Rif Shevuot 17a) states that two people who took a loan together, each is responsible and guarantees the other. It appears from the Yerushalmi that this is true also by two people who received an object to guard. From this Yerushalmi the Rishonim learnt that two people who took a loan together, or borrowed together, or received an object to guard, each one is required to pay the entire amount. The question is, how can this be resolved with the Gemara we just learnt, from which it appears that each partner is required to pay only half?

The Ran gives two answers to this question. His first answer is that although the lender can demand the entire amount from each of the partners he chooses, the partner who paid the full amount can demand a return on half the payment from his partner. According to this, it is still possible to see a partner who paid half the amount as having paid all that he was required; in the sense that he paid all that he was required to pay on his account.

The second answer of the Ran changes the definition of the obligation of two people who lent or borrowed together. In his second answer the Ran claims that two people who lent or borrowed together, each partner is only obligated to pay half the amount, and on the second half he is considered a guarantor for his partner. Therefore, the lender must initially demand from each partner to pay half the amount. Only if one of the partners cannot pay, then he can demand payment for the second half from the other partner, as a guarantor. According to this, a partner who paid half the amount really paid all that he was required to pay directly, as his obligation on the second half is only as a guarantor.

This point is in debate amongst the Rishonim. According to the Rosh (Shevuot 5, 2), when two people take a loan together the lender can demand the entire amount from each one of them that he chooses. However, according to the Rambam (Malveh Veloveh 25, 9) and other Rishonim, each partner is required to pay only half, and is a guarantor on the second half. The Shulchan Aruch (Choshen Mishpat 77, 1) rules according to the Rambam that initially the lender must demand only half from each partner, and only if one cannot pay may he demand the remainder from the second partner.

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