



# HEMDAT YAMIM

הַמִּדָּה יָמִימִים

## PARASHAT HASHAVUAH

### EIKEV

HaRav Shaul Israeli zt"l  
Founder and President

18 Av 5769

### Speaking the Holy Language Harav Moshe Ehrenreich

In the famous section of *V'haya Im Shamo'a*, found in our *parasha*, the Torah instructs us to "teach them to your children to speak in them" (Devarim 11:19). Rashi cites the Sifrei: "From the time the child knows how to talk, teach him *"Torah tziva lanu Moshe"* (Devarim 33:4) ... from here they said: when a small child begins to speak, his father should speak with him in the Holy Language and teach him Torah, and if he did not do so, it is as if he buried him." The Tosefta in Chagiga also stresses the matter of speaking in Hebrew to one's child. On the other hand, the *gemara* in Sukka says that when a child can speak, his father should teach him *Kri'at Shema* and Torah but mentions nothing about speaking Hebrew with him.

The Rambam, in explaining the *mishna* that one should treat "light *mitzvo*" as seriously as severe ones, mentions *simchat haregel* (being joyous on the holidays) and learning Hebrew as examples of light *mitzvot*. The severe ones are the ones whose strict punishments are mentioned explicitly. This seems to put teaching Hebrew on equal footing with a full-fledged *mitzva* from the Torah like *simchat haregel*. Why, then, did the Rambam omit this *mitzva* from his halachic work, *Mishneh Torah*.

A few years ago I met a *dayan* of the Satmar *beit din* in New York. He asked me what language I give *shiur* in and I told him that, of course, I give it in *Lashon Hakodesh / Ivrit* [ed. note- this and other of Rav Ehrenreich's *divrei Torah* are translated from Hebrew]. He was very surprised that I "diverged from the practice of *gedolei Yisrael*," who taught in Yiddish.

I responded in a few ways. Firstly, the great majority of *gedolim* over the centuries, including Rashi, the Ramban, and the Rambam, gave *shiur* in Hebrew. Also, the Kuzari says that based on logic and tradition, Hebrew is the language which was used by the great Biblical characters, from Adam and Chava through Ever, after whom the language is named. Avraham spoke Aramaic, but kept Hebrew as a language he would use as a special, holy language.

Also, as the *geula* has begun to unfold, so too has the usage of Hebrew come to life again. The Torah Temima explains that the *poskim* barely discuss the importance of speaking Hebrew because it became too difficult in the Diaspora. He also gives another explanation. In line with Berachot 28b, a fear developed that if people knew Hebrew too well, they would be tempted to explain *p'sukim* in *Tanach* based on the simple meaning and not through Chazal's "eyeglasses." Based on this idea, looking at the Rambam's formulation of the *mitzva* to educate his children (Talmud Torah 1:5), he may imply that we are indeed supposed to teach our children Hebrew but that the methodology of doing so is through the teaching of the *p'sukim* of the Torah.

Let us end off by noting that one of the miracles of modern Jewish history is the rebirth of the Hebrew language.

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# Ask the Rabbi

**Question:** I am working on a client's will. He wants the contents of his home to be divided among his children in the following manner. They should divide the contents by consensus. Regarding items about which agreement is not reached, a system of lots should be used, whereby whoever wins the lottery gets the object. How can this be phrased so that it will be halachically binding, as there seems to be a problem of *bereira* (retroactive determination) when giving objects to an unknown person?

**Answer:** There are four theoretical ways to go about accomplishing this end result. We will explore very briefly which one(s) works and suggest how to proceed most simply.

The manner that you seem to be assuming is that the father will transfer his property during his lifetime to his children in a manner that what he is giving to whom will be determined based on some later event (the lots). This does appear to be an issue of *bereira* - that it is a problem to give something to a person whose identity is yet to be determined. One example is when one gives rights in a *Korban Pesach* only to the son who arrives first in Yerushalayim, which works only if one posits that *bereira* works (Pesachim 89a). We assume that *bereira* does not work in regard to Torah laws (Beitza 38a). The same applies when the people are determined (e.g., his children) but the objects they will receive is not. A famous application is close to home. The Land of Israel was divided by lot to the first generation and, after death, divided among their descendants. The *gemara* says that if we hold that *bereira* does not work, we will not say that each one received the part that was destined to him, but that each inheritor "sold" his rights to the other (Gittin 25a). Thus, this system is problematic.

There is a concept that one can, before he dies, create a duty upon his inheritors to follow his instructions regarding dividing his estate. This concept is called *mitzva l'kayeim divrei hamet*. However, this is a moral obligation, not a legal transfer of monetary rights and the cases to which this applies are limited (see Shulchan Aruch, Choshen Mishpat 252:2 and Shach ad loc.:7). Thus, this too is an unreliable system.

Another potential approach is to give the children all the property as equal partners but impose upon them a certain system of dividing the property. If partners can create conditions for their mutual rights in the partnership, then one who gives them their joint rights should be able to impose the same conditions. On the other hand, the *gemara* (Bava Batra 3a) says that it is too abstract (*kinyan devarim*) for partners to promise to divide land in a certain manner that is otherwise not halachically prescribed. Since development of this issue is complicated beyond our scope, let us present the following straightforward solution.

The whole idea of wills in which the division will not follow the Torah's standard guidelines (e.g., daughters receive a portion; the firstborn does not get double) has for several hundred years employed a system called a *shtar chatzi zachar* (which you probably use in writing halachic monetary wills). (See Rama, CM 257:7, whose ruling is a main basis of the practice.) It basically works by the father admitting that he owes a large sum of money (or creating the obligation) to each of the desired "inheritors." The obligation becomes payable right before his death and is binding on his inheritors unless they fulfill the instructions that he leaves behind in a written will. The inheritors choose between paying the large sum and following the instructions. The instructions are not bound by halachic issues such as *bereira* because the straightforward monetary obligation already exists and they only determine whether the conditions of removing it have been fulfilled. Therefore, you can use a regular "halachic will" format and have the specific part of the instructions clear in conforming to your client's interests.

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# Ein Ayah

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

## Transience and Purity

(based on Ein Ayah, Berachot 2:14)

**Gemara:** Why were *ahalim* [apparently to be read like *ohalim* (tents)] compared to streams (in Bamidbar 24:6)? It is to teach you that just as streams take a person from impurity to purity, so too tents [of Torah] bring a person up from a position of spiritual deficiency to a position of merit.

**Ein Ayah:** The fact that a person is purified from any type of impurity through the medium of water hints at a spiritual concept. The impurity of a person's actions, attributes, and opinions all come from his failure to view himself, as an individual in the world, as a visitor and not a permanent dweller. As such, he should use things that he finds in the world only for the purpose of furthering himself in regard to his lofty, eternal goals.

This is why it is appropriate to envelop oneself in water, which shows a person that his position is to be seen as transient. After all, a person cannot remain permanently under water, but only for a short time and by means of some preparation. A person should use that realization to help him understand that also in regard to his stay on earth, which sits on top of water, he is just a visitor. He should yearn to make his main goal to obtain goodness, wisdom, justice, and straightness, which are everlasting.

This same idea applies to tents, which is a catchphrase that hints at a setting to absorb wisdom. This is a temporary structure, which brings one to lead his life in the most appropriate manner, enabling the coarse images of his permanence in this physical world to be removed. Only based on the study of Torah and the logic of wisdom will his view in this matter be perfected and will he go from a negative to a meritorious state by which he concentrates on everlasting things. In addition to the improvement of his attributes that come through study, when he uses his mind to determine what things are good for him to do, being set in "tents" brings upon whoever comes to enjoy its shade a holy natural emotion. As such, his feelings will go from being coarse to being elevated and holy, just as one who enters the water for immersion comes out pure, as the perfect Torah sets down for us as a holy rule.

## Remembering the Value of Things One is Not Involved in

(based on Ein Ayah, Berachot 2:15)

**Gemara:** Rabbi Ami and Rabbi Assi were tying together a wedding canopy for Rav Elazar. He said to them: "In the meantime, let me go and hear something in the *beit midrash*" ... He came back and told them [the halacha that he had learned]. They said to him: "Had we come only to hear that thing it would have sufficed for us."

**Ein Ayah:** From these complete words we learn the ways of righteousness in two elements. One is that even when one is preoccupied with the happiness of his heart, he should still look toward the Torah and consider even a little idea that he will be able to pick up as a great fortune. This we see from Rav Elazar's desire to hear something and to share it with the others.

From the statement: "Had we come only to hear that thing it would have sufficed for us," we learn that even when one is busy with a good thing, even a big *mitzva*, it is still proper not to forget the dearth of valuable things that he cannot be involved in then and to appreciate them. For even when they were involved in the *mitzva* of helping others and preparing for the *mitzva* of a marriage, they expressed their excitement about a new Torah idea. This comes from a heart that is broad and full of the love of Hashem and His Torah. This is in contrast to "small people," who, when involved in a good deed and *mitzva*, say that there is no value to other things and do not recognize the good that extends over an endless expanse, for "your *mitzva* is very broad" (Tehillim 11:96).

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# P'ninat Mishpat

## Laws of Shomrim (Watchmen) – part III – A Shomer Who Gave to Another Shomer (based on Sha'ar Ladin - Halacha Psuka, vol. 60)

The *gemara* (Bava Metzia 36a) discusses a *shomer* who handed over the object to another to watch without the owner's permission, whereupon the object was lost from the second *shomer*. R. Yochanan says that the first *shomer* is obligated to pay even if he ostensibly raised the level of the watching by paying the second *shomer* (making him a *shomer sachar*), whereas the first *shomer* was only a *shomer chinam*. Rav says that the first *shomer* is exempt if that which happened to the object does not obligate a *shomer* of his type.

The *gemara* presents two explanations of R. Yochanan's ruling to obligate the first *shomer*. Abayei says that it is because the owner can say that it is against his will for his object to be in the hands of someone other than whom he entrusted. Even if the object was lost by *oness* (extenuating circumstances) it is a case of *techilato b'p'shiya v'sofa b'oness* (= *tbpvsb*- something that began as negligence, which obligates even if at the end there was an *oness*).

Rava says that while it was not negligence per se to give the object to the second *shomer*, the owner does not have to accept the second *shomer's* oath regarding what transpired (assuming no one can prove what happened to the object). No one can swear: the first *shomer* does not know for sure, and the second one is not believed. Rava posits that a *shomer's* oath is not valid because it convinces *beit din* but because it was accepted by the owner. He cannot refuse to accept the oath of the one whom he entrusted with the object, but he can refuse the oath of someone else. We accept R. Yochanan's opinion according to Rava's explanation, and, therefore, we obligate the first *shomer* unless he can prove what happened to the object. He is also exempt if it can be shown that the owner trusts the second *shomer*.

There are noteworthy elements in the Rambam's presentation (Sechirut 1: 4-5). On one hand, he follows Rava. Yet he says that if the second *shomer* had a lower level obligation than the first, he is obligated because of negligence even if he was a *shomer* for the owner in the past, unless he brings evidence of an *oness*. This is difficult: if it is negligence to give it to the second *shomer*, he should be obligated no matter what, due to *tbpvsb*! One answer is that since the Rambam talked about an animal dying naturally, *tbpvsb* does not apply, especially since there was no real negligence, as even the first *shomer* is exempt when that happens (see Lechem Mishneh ad loc.). The K'tzot Hachoshen (291:12) explains that it is not a matter of negligence, but that even one who is sometimes a *shomer* for the owner does not have the rights to make an oath about what happened in regard to matters that he was not entrusted. In this case, the second *shomer* cannot make the oath regarding *g'neiva va'aveida*, which is beyond the realm of his *shemira*; thus, witnesses are necessary.

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Baba Metzia 99-105

## The Need for a Kinyan by Shomrim

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara (99a) states that just like when a person wants to buy an object, he must perform an act of kinyan in order to buy it, so too by shomrim (guardians), the shomer must perform a kinyan on the object he is receiving to guard. At first glance, this appears puzzling. When a person gives over an object for guarding it remains his, so what purpose does the kinyan the shomer does serve?

According to the Rosh (Baba Metzia 8, 15), the kinyan is not needed for the obligation of the shomer to guard. The shomer is obligated to guard from the moment the owner stops watching over the object and relies upon the shomer. The need for a kinyan is only by a renter or a borrower, in order that they will acquire the right to use the object for the duration of the rent or borrowing period. Until they perform a kinyan, the owner can renege and not rent or lend them the object. But once they perform a kinyan, the owner cannot demand the object until the end of the period for which the object was rented or borrowed.

However, the opinion of the Rambam (Sechirut 2, 8) is that the kinyan is needed for the obligation to guard as well. Until the shomer performs a kinyan he is not obligated to guard and he is not responsible if something happens to the object. The Shulchan Aruch (291, 5) quotes both the opinion of the Rambam and the Rosh.

The Ktzot Hachoshen (307, 1) claims that this argument reflects two different understandings of the obligation of shomrim. According to the Rosh, a shomer is a type of worker. The obligation of a worker begins when he starts working. Therefore, no kinyan is needed for a shomer, and immediately when he starts working, which is from the moment the owner relies upon him to guard, he is obligated to guard and is responsible if something happens to the object.

However, according to the Rambam, a shomer is not a type of worker. Rather, the object transfers into the possession of the shomer thus deeming him responsible for it. Therefore, according to the Rambam, a kinyan is required in order for one to become a shomer.

Summary:

There are two opinions amongst the Rishonim as to the need of a kinyan by shomrim. One only requires a kinyan by a renter and a borrower in order to attain the right to use the object. The second requires a kinyan for the obligation to guard as well.

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