



HEMDAT YAMIM

חֵמְדָּה יָמִימִים

Parashat Hashavua

Shoftim, Elul 4 5784

Harav Shaul Israeli zt"l
Founder and President

“He Shall Read from it all the Days of his Life”

Harav Shaul Yisraeli – from Siach Shaul p. 518-9

“He shall read from [the Torah] all the days of his life, so that he will learn to fear Hashem” (Devarim 17:19). There is no amount of time that we can say suffices to learn all the Torah that we should. The study that we need to pull out of ourselves cannot be given a set amount of time, small or large. We require concentration all the time, our entire lives – no less than that. Studying partially, sometimes, cannot bring us close to the goal. Learning to fear is a course of study for one’s whole life, not just for simple people but even for the greatest of people.

There are two types of fear, one is desirable and one is undesirable, and both are found in our *parasha*. The fear of G-d is desirable and needs to be studied, not for a matter of hours but for one’s whole life. The undesirable type is the man who is too afraid to take part in battle (ibid. 20:8). Just as we are to toil to acquire the first, we are to toil to remove the other. The two are also contradictory, and the stronger the positive one is, the weaker the negative one becomes.

“Who are you that you should be afraid of a mortal man?” (Yeshayahu 51:12). Negative fear does not appear only at the time of war, but in peacetime too. Most of our actions are motivated by our great desire to escape things that scare us. The *gemara* (Menachot 103b) says that the collapse of confidence at the time of “divine rebuke” refers to “one who has to rely on the baker.” We are always afraid. What will we eat tomorrow, the next day, and later in the future. This feeling is the doing of the Satan. A person wants to know he has shoes for seven years when he does not know he will be alive for more than seven days. This makes the Satan laugh at him.

We are afraid of that which is distant and that which is near, lest they put pressure on us and infringe on our lives. A baby can be born on the other side of the world, and we feel it can take something away from us in the distant future. It turns out that we toil so much for that which we do not need, but just to have as extras – nice clothes, fancy drapes, etc. All of that difficult work is just because of what others might say. This is a fear of a mortal person.

The Torah instructs us to not be intimidated by people, and this gives us the mindset of a free person. The Torah writes about a king that he should learn to fear Hashem. The *gemara* (Horayot 11a) describes a king as one who has no one “above” him other than Hashem. Bnei Yisrael are called “the sons of kings,” so this should apply to the nation as a whole. Whoever does not internalize fear of Hashem will be afraid of a falling leaf. Only the proper fear is what will give us a firm backbone. If we lower our posture before Hashem, we can stand straight before others.

“He who is afraid and has a weak heart” regarding going to battle refers to fear of his own sins (Sota 8:5). Someone who is disrespectful to his Maker and does not see Him as the Master will acquire for himself hundreds and thousands of human masters.

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Ask the Rabbi

by Rav Daniel Mann

When Should an *Onen* Recite *Havdala*?

Question: Our father died on Friday and was buried on Sunday. I was told to listen to *Havdala* from a non-*avel* on *Motzaei Shabbat*, and some others were told to make *Havdala* after the funeral. Which approach is correct?

Answer: An *onen* (a close relative of a deceased prior to burial) is exempt from performing positive *mitzvot* (Berachot 17b) and **should not** perform them (Tosafot ad loc., based on Yerushalmi, Berachot 3:1; Shulchan Aruch, Orach Chayim 71:1). An *onen* must not violate Torah-level or Rabbinic negative commandments. It is not obvious whether certain situations relate to positive or negative *mitzvot* (see Pitchei Teshuva, Yoreh Deah 341:4,6 regarding eating without *beracha* or *netillat yadayim*, doing *bedikat chametz*).

There are opinions that we do not prevent an *onen* who will not take part in the critical preparations for the burial from fulfilling *mitzvot* (see Shulchan Aruch *ibid.*). Many assume that in a place with a *chevra kaddisha*, the *onen* is not critically needed (see Panim Meiros II:150; Yalkut Yosef OC 71:16). Nevertheless, we instruct the standard *onen* not to do *mitzvot*.

Havdala accomplishes two things: 1. It expresses a proper perspective on the transition from Shabbat to weekdays; 2. It permits doing *melacha* after Shabbat (Shulchan Aruch, OC 299:1,10). #1 is a positive *mitzva*, from which an *onen* is exempt, but arguably removing the prohibition on *melacha* (#2) is a matter of the negative and should apply to an *onen*. Nevertheless, the Shulchan Aruch (YD 341:2) rules that an *onen* makes *Havdala* only after the burial. Da'at Torah (to YD 341:2) explains that we presume that the prohibition on *melacha* emerges from the requirement to make *Havdala* first. Therefore, if he is exempt from *Havdala*, the prohibition does not exist.

Some sources state that one does not make *Havdala* but that it remains prohibited to do *melacha* in matters not connected enough to the burial. For example, Chayim B'yad 125.81 says that the mourners do not do *kri'ah* on their garments until after the burial and *Havdala*. While we do not accept this opinion, several *poskim* (see Shemirat Shabbat K'hilchata 64:26) recommend the compromise of reciting "*Baruch hamavdil bein kodesh l'chol*," which always makes *melacha* permitted (see Shulchan Aruch and Rama, OC 299:10). This is best done without intention to thereby perform a "mini-*mitzva*" of *Havdala*, but just to remove, if necessary, the prohibition of *melacha*.

It is not clear that hearing *Havdala* counts for an *onen*. The Rosh (Berachot 3:2) reasons that since an *onen* is exempt from *Havdala*, hearing it as an *onen* cannot fulfill the *mitzva*, and he will need to do it after the funeral, when the obligation begins. Yet, the Beit David (Shut II:164) posits it would count. The Birkei Yosef (YD 341:19) explains that an *onen's* exemption may not **erase** the obligation, and this is strengthened by the opinions (see above) that perhaps he may perform the *mitzva*. When one heard from another and the question is whether to recite a potentially unnecessary *Havdala* (*l'vatula*) after the burial, we must consider the rule of *safek berachot l'hakel* and also the prominent opinions (see Rosh *ibid.*) that one who was exempt from *Havdala* on *Motzaei Shabbat* does not "pick up" an obligation thereafter. Therefore, the consensus of *poskim* (see Yalkut Yosef *ibid.*; Divrei Sofrim YD 341:49; Shemirat Shabbat K'hilchata 64:(130); Mei'olam Ad Olam 6:48) is that in your case, you would not make *Havdala* after the funeral.

However, these *poskim* discussed *b'di'eved* – if one already heard *Havdala* from another – with the intention of both that you fulfill the *mitzva*. According to the standard opinions (see Beit David, *ibid.*), an *onen* should not listen with intent to be *yotzei* **because** it fulfills the *mitzva* of *Havdala*. (It is a good question (see Shemirat Shabbat K'hilchata *ibid.*) why *poskim* do not recommend doing "early *Havdala*" (see Shulchan Aruch, OC 293:3).)

Therefore, we recommend waiting until after the funeral for *Havdala*. All of you brought merit to your father's *neshama* by handling the halachic challenges as best as you knew.

"Behind the Scenes" Zoom shiur

Eretz Hemdah is offering the readership to join in Rabbi Mann's weekly Zoom sessions, analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

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



Igrot HaRe'aya - Letters of Rav Kook

Maintaining a Friendship of the Spirit – #266 – part I

Date and Place: 11 Shevat 5670, Yafo

Recipient: Rav Pinchas Hakohen Lintop, the rabbi of a Chassidic community in Lithuania. He had learned *Kabbala* with Rav Kook when Rav Kook was in Boisk. The two were very deep and like-minded thinkers. We have previously seen a letter between them (#184), written a year earlier.

Body: I received your dear letters with great love. Indeed much time has passed over me, during which the agitating hand of practical burden has banished me from our “Garden of Eden,” from the orchard of thought and lively spiritual feeling, from the lofty light that shines on all who seek Hashem in a serious manner. Against my will, all of my speech and occupation has had to be on classical halachic matters and practical arrangements. It reached the point that I was unable to approach the root of my soul and deal with a quiet spirit with those living matters that are beloved to me, i.e., love of the lofty Hashem, which are the things we must deal with in our correspondence. That is why my response to you was delayed.

I saw in your letter to our joint friend, Mr. A.Z. Rabinowitz, that you had a thought that some sort of philosophical differences between us caused our reliable love for each other to wane, Heaven forbid. [When I saw this,] I said to myself that this is not the time to remain silent. Heaven forbid that I should leave my respected, close friend, about whom I am always interested, with such depressing thoughts on his mind. How many people are there with developed hearts, who can converse about the great matters (i.e., deep, kabbalistic ideas) with which we have dealt together from the time we got to know each other?! Although I am still incapable of going down into the deepest depths and up to the highest peaks on the paths we have traversed together on a regular basis, due to my myriad practical distractions, I will not delay anymore. We will see what my mind will raise and my pen will record during the short time I am able to divorce myself from the practical environment that surrounds me. This letter will end up being more of a reminder of our love and friendship than a philosophical study, although the latter is always the life of our spirit, to the extent that Hashem shares His secrets with those who fear Him.

Believe me, my beloved, concerning what you have hinted at in the last few letters, that something separates between us in the fundamentals of thought, I have not succeeded in understanding exactly what those points might be. I always see some distinctions between us regarding “the branches” (as opposed to the root), i.e., in the way we present things. However, since we have been exchanging letters, and since we spoke together about the thoughts of our spirits, I have been unable to find a basis for any fundamental point that separates us.

I presume that each of us has a different observation point on the special portion of “the field that Hashem has blessed.” The row of the “vineyard” that each of us is “cultivating” is unique, and perhaps each one is in a different situation than the other. Due to this, our respective spiritual motions receive a certain style that is different from the other. However, when we look into the matter well, we will find that we are working in one vineyard. How wonderful it would be if other “workers of the field” will come to our “flag”! They need not copy us, just take for themselves a special row in the midst of this desirable vineyard, whose wine makes Hashem and man happy. How happy we should be if the type of distinctions we have between us will be many, as they will produce a multitude of different colors – “like the appearance of the rainbow in the cloud on a rainy day, so is the appearance of the aura around the image of the honor of Hashem” (Yechezkel 1:28).

We continue next time.

We daven for a complete and speedy refuah for:

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Arye Yitzchak ben Geula Miriam
Tal Shaul ben Yaffa

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Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

Incomplete and Imperfect Renovation Job – part II

(based on ruling 83063 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) hired the plaintiff (=pl) to do renovations for a fee of 400,000 NIS. Most of the project was completed, and def paid pl 95% of the fee. Due to disagreements between the sides, pl did not complete the job. Pl is suing for the 23,400 NIS not paid and for additional payment he deems to deserve based on extra work. Def countersued for flaws in the work. In an interim ruling, *beit din* required def to allow pl to fix that which needed fixing. Pl agreed with that setup, whereas def was not willing for pl to do any more work, despite being warned that this could enable pl to get paid even for what he did not do. Def claims that he is justified in losing confidence in pl, who all but admitted that he is incapable of completing the job. [There are many detailed, technical elements, especially to the counterclaim, which we will not get into in this forum.]

Ruling: [We saw last time that there are grounds for obligating def to pay for the full job, with a partial reduction for what was not done.]

It is evident from the Rama (Choshen Mishpat 333:5) that when an employer fires a worker, we calculate payment to the worker in a manner beneficial to the worker **only** when the worker did not deserve to be fired. In this case, we do not have grounds to prevent pl from finishing the job. First, the employer has the burden of proof that the relatively high bar for the worker's dismissal has been reached. Second, def's complaints about pl's work are not of a severe or an unusual nature.

The contract states that if pl does not get the job done within a certain time limit, pl is to be fined. The work took much longer than expected, but delays on def's part were responsible. Pl argues that if def was to be compensated for delays, so should pl (he asks for 23,400 NIS). Def counters that such a penalty was not written on purpose and that pl was not hurt by the delays because contractors usually work on more than one job at a time and can transfer workers as needed. Pl was unable to demonstrate how he lost as a result. Additionally, if pl were going to charge for perceived losses due to the delay and they were not in writing, he should have warned about it.

Additional work: Pl claimed two areas of extra work not included in the contract. About one, def says that he does not understand what work he is talking about, and about the other, def claims that it became necessary because of a mistake that pl made. Pl did not prove his point, and certainly, since the contract states that additional charges have to be stipulated in writing (which did not happen), there are not grounds for levying additional payments from def other than for finishing the job.

We will conclude next week.

Comments or questions regarding articles can be sent to:

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