



HEMDAT YAMIM

המדת ימים

Parashat Hashavua

Vayeitzei, Kislev 7, 5785

Harav Shaul Israeli zt"l
Founder and President

Reddish! Is that Good? – Part II

Harav Yosef Carmel

We saw last week that the fact that David was described both as reddish and having nice eyes (Shmuel I, 16:12) hints at David not being comparable to Eisav's spilling of blood, as David did it as part of wars that followed Halacha, which turns them into *mitzvot*.

This brings us to the question why Hashem did not let David build the *Beit Hamikdash* (rather, his son Shlomo did) despite his fervent desire to do so. Ostensibly, *p'sukim* in Divrei Haymim (I, 22:7-8) give the answer: "David said to Shlomo: My son, it was in my heart to build a house for the name of Hashem, my G-d. [But] Hashem said to me: You spilled a lot of blood, and you waged great wars; you shall not build a house for My Name, for you have spilled much blood to the ground before Me."

A *midrash* (Pesikta Rabbati 2) gives reason to believe that the *pasuk* is not to be taken literally. The *midrash* relates that David was concerned that the fact that he did not have permission to build the Temple bode poorly for the divine view of his bloodshed, but Hashem reassured him that the blood he spilled was equivalent to the blood of proper sacrifices. If the blood was compared to a sacrifice, then it could not have been the reason for his disqualification! Simple logic also begs to distinguish between the murder of innocents (which Eisav was guilty of) and between the spilling of the blood of the enemies of Bnei Yisrael, who came to destroy in a fight against the people and Hashem. Can it be that those who were not brave enough to fight are fit to build the *Beit Hamikdash* and one willing to put his life on the line is not?!

Before completing an answer to these questions, we point out that a *pasuk* (Shmuel I, 25:28) explains that the reason Hashem agreed to a Temple that was attributed to David was the fact that he "fights the wars of Hashem." Therefore, it makes sense that the problematic blood mentioned in Divrei Hayamim was the blood of other wars, i.e., the civil wars of two periods. One period was after the death of Shaul, when the nation was split between those who were loyal to David and between the followers of Shaul's son Ish Boshet and his general Avner. The second war within the nation was between the devotees of David and the rebels who followed his son Avshalom.

This approach will help explain the ostensible redundancy in the *pasuk* in Divrei Hayamim – it refers both in the beginning and the end of the *pasuk* to the great amount of blood that David spilled. What does the second refer to that the first does not? Rather, the first part of the *pasuk* is the reason that David was appropriate to build the Temple (he fought Hashem's wars against the enemies), and the second mention of blood was the reason that he nevertheless could not build it (because of the killing within the nation).

The soldiers of the IDF have clean hands in their heroic efforts in fighting our enemies. We must be careful to not quarrel with our fellows in the nation, not to speak of civil war, Heaven forbid.

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Ask the Rabbi

by Rav Daniel Mann

Wrong Beracha on Tefillin Shel Yad

Question: I (an Ashkenazi) accidentally said the *beracha* of *Al Mitzvat Tefillin* (=AMT) on my *tefillin shel yad* and realized right before putting on the *shel rosh*. What should I have done in regard to *berachot* – repeat it for the *shel rosh*? Say *L'haniach Tefillin* (=LT) on the *shel rosh*? Something else?

Answer: The *gemara* (Menachot 36a) lists *LT* as the *beracha* for the *shel yad* and *AMT* for *shel rosh*, but one way of learning the *gemara* is that one makes two *berachot* only if he speaks between putting on the two (see Rashi ad loc.; Shulchan Aruch, Orach Chayim 25:5). For Ashkenazim, when one speaks, he needs to repeat *LT* along with *AMT* for the *shel rosh* (Rama ad loc.).

There is much discussion on related perplexing matters, including the following. Why, for Sephardim, is there one *beracha* for two *mitzvot* (*shel yad* and *shel rosh* – see Rambam's *Sefer Hamitzvot*, *Aseh* 12-13)? A major approach (see Mahari Halevi in *Taz*, OC 25:6) is that while there are two *mitzvot*, they are very similar and also intrinsically designed to be connected. Why, for Ashkenazim, can there be (if one speaks) two *berachot* for the *shel rosh*? There are different positions as to why there are two different *berachot* for the *shel yad*. *Tosafot* (Berachot 60b) says that *LT* is formulated as a *beracha* for the beginning of the process of putting on *tefillin* and *AMT* is for the end of the process. Mahari Halevi (*ibid.*; see earlier sources in *Rosh*, *Tefillin* 15) explains how each *tefillin* require both *berachot*, with each adding a different element (see also *Aruch Hashulchan*, OC 25:10), but they were instituted in a way that normally *LT* “extends forward” and *AMT* “stretches backward.”

After this small glimpse at the fundamental analysis of the *berachot*, we approach sources on our case – when one recited *AMT* on the *shel yad*. Most *poskim* (see *Machazik Beracha* 25:7) assume that *AMT* works *b'di'aved* for Sephardim as the single *beracha*. Certainly, according to the Mahari Halevi (but likely even for others), *AMT* takes effect if said while putting on the *shel yad* as well. Despite this, if one catches the mistake before fastening the *shel yad*, it is best to recite *LT* before fastening it so that *beracha* is said at its right time (*Michtam L'David*, OC 12). Rav Shabtai Ventura (cited *ibid.* 11) assumes that when one thought he was making his first *beracha* on the *shel yad*, it does not work for the *shel rosh*, which makes it necessary to make both *berachot* on the *shel rosh* – *LT* because it was not done yet and *AMT* because he lacked intent for the *shel rosh*. *Michtam L'David* argues forcefully because we assume that both *berachot* relate and work for both *tefillin*. Therefore, he says that in our case one only recites *LT* on the *shel rosh*. The *Michtam L'David* is accepted by the *Sha'arei Teshuva* (25:5), *Chida* (*Machazik Beracha* *ibid.*), and the *Malbim* (*Artzot Hachayim* 25:5).

The *Michtam L'David* includes a *chiddush*. We have already seen why not to repeat *AMT*, namely, because it already took effect and counts for the *shel rosh* as well. One could have said, then, that there is no need to say *LT* for the *shel rosh*, as the *shel rosh* already has a *beracha* so why recite an additional, less than fully appropriate, *beracha*? However, the *Michtam L'David* is supported by the *halachot* that one who spoke between the *shel yad* and *shel rosh* repeats *LT* (*Rama*, OC 25:9) and that one who has only *tefillin shel rosh* makes both *berachot* (*ibid.* 26:2). (One might be able to deflect these proofs, but that is beyond our present scope.)

In the final analysis, you should have followed the prevalent opinions among the *Acharonim* and said only *LT* when putting on the *shel rosh*. (Presumably, in deference to those like Rashi who say there is only one *beracha* on the two *tefillin*, one should say *baruch shem k'vod malchuto ...* after putting on the *shel rosh* with *LT* – see *Rama*, OC 25:5.)

“Behind the Scenes” Zoom shiur

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



Igrot HaRe'aya - Letters of Rav Kook

Possibilities of Creating Religious *Moshavot* – #284 – part I

Date and Place: 1 Adar II, 5670 (1910), Yafo

Recipient and Background: Rabbi Dr. Meir Lerner, Rabbi of Altuna (Germany), who for years had interest in the settlement of *Eretz Yisrael*.

Body: I received your holy letter on 13 Adar I, and I was very happy about the holy inspiration to settle the Holy Land in the light of the spirit of Hashem which extends to His nation and lot, with complete belief and fear of Hashem in truth and completeness. I will answer your questions in order, in brief because of time pressures.

1. Which colonies (agricultural settlements = *moshavot*) act fully according to Halacha – You should know that this matter cannot be decided with a general answer. In every *moshava*, there are many people who fear Hashem and act in a completely religious manner, who are careful and exacting in their performance of *mitzvot* and set aside time for Torah study. In the opposite direction, there are also those who are destructive and throw off the yoke of Torah and *mitzvot*. While even those who are ostensibly bereft of virtue possess many positive attributes (see Sanhedrin 37a), this is not relevant to our goal of founding a “precious corner” that will be totally holy and dedicated to Hashem and reliable to Torah and *mitzvot* without aberrations and exceptions.

Certainly, if we will look for a *moshava* that does not have any “impurities mixed in,” it is not possible to find, just as in the Diaspora you will not find one city that is 100% righteous. However, if we will lean in the direction of kindness, and we will thus be satisfied with the presence of a nice amount of people who fear Hashem and have regard for His Name, this you will find in all of the *moshavot*, thank G-d. Obviously, in the largest *moshavot*, such as Petach Tikva, the matter of religion finding expression in Torah and *mitzvot* is more recognizable. There you can find *batei kneset* and adjoining rooms full with people during the times of prayer – Shacharit, Arvit, and Mincha – in a manner that gratifies the heart of everyone who fears Hashem and is exuberant about worship of Him. It is similar in smaller *moshavot* in a relative manner.

Regarding the need to expand the *moshavot*, in almost every one, the situation is that the more the Jewish inhabitation expands, the more the *moshava* will grow, as will its importance and security. There are indeed sections of land that are available to be bought in the vicinity of almost all of the *moshavot*, especially around Petach Tikva, Rechovot, and Ekron, and likewise in areas of the Galilee.

At this time, there is an organization that includes many very religious people, who want to buy a large tract of land in the outskirts of Rafah, which is on the Egyptian border and is presently under British control, on our side of Wadi El Arish. It would be a good idea to join up with this group. The first meeting of the group’s founders already took place in my house, and the decision that all of the affairs of the settlement, when it will come into being, will be according to the holy Torah, is recorded. This includes matters of education, land-based *mitzvot*, and all public matters. It was also decided that *mitzva* observance in all public matters falls into the category of “the guidelines of the greater community,” which the appointed committees for the operation of the *moshavot* are in charge of enforcing, that nothing in the Torah and its *mitzvot* will be desecrated. Also, all the members of the settlement will have to take part in financing all matters of religion that cost money without the possibility of avoiding these responsibilities. The founders accepted the responsibility to ensure that everyone who will join the organization will be required to accept these conditions, and that no one will be accepted until they will have been notified of these rules and accepted to follow them.

Next time we will continue with the response to other inquiries.

*We daven for a complete and speedy **refuah** for:*

Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Itamar Chaim ben Tzipora
Arye Yitzchak ben Geula Miriam
Tal Shaul ben Yaffa

Neta bat Malka
Meira bat Esther

*Together with all **cholei Yisrael***

P'ninat Mishpat

How Much Was Agreed to Pay for Renovations?

(based on ruling 84054 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) hired the plaintiff (=pl) to build a bathroom in his apartment. Pl inspected the location, received the plans, and wrote a price estimate of 24,000 NIS for the job. Def gave a 2,000 NIS down payment before the work started so pl could start buying materials, and pl started and completed the job. Def paid 18,500 NIS, which is the amount he felt he could afford, and this was the price he received from an Arab contractor. Pl demands that def complete his payment responsibility according to the written agreement, whereas def claims that he never felt bound to that price and that pl had agreed to reduce the fee as requested, soon after work began. Pl denies such a conversation.

Ruling: There are two parts to creating a binding agreement – *gemirut da'at* (a firm decision) and an act of *kinyan*. Regarding *gemirut da'at*, we see that def not only received the price estimate but commented on matters relating to it, including asking about payment in installments and asking whether he would receive receipts for his payments. In electronic messaging and voice messages, never did it come up that def did not accept the amount that had been asked. Therefore, we must conclude that pl had decided to accept the fee of 24,000 NIS.

Regarding the act of *kinyan*, which makes the agreement permanent, there were actually multiple ones that were done. For one, the money paid effects a *kinyan kesef* (money). Secondly, the beginning of work is also a *kinyan*, specifically in the realm of workers (see Ramban, Bava Metzia 76b). Therefore, whatever conditions were in place at that time became binding. It is not necessary to sign on a contract or even have one if it is clear what the agreement is, and a price estimate which was never openly put in question is proof thereof. It is less clear if traveling to the place of the work is a valid *kinyan* regarding work that is paid by the job (*kablanut*) (see doubt on the matter in Pitchei Choshen, Sechirut 7:(9)), but we have seen that there are other *kinyanim* that clearly apply here.

One might think that since there is disagreement whether pl agreed to a reduction, that we would say that the one who wants to receive more money must prove that he deserves it. However, this is not so here on a few grounds. In general, we say that a doubt that arose after a *kinyan* was made does not undo that which occurred through the *kinyan* (see Bava Batra 29b). Along these lines, if there is a status quo of obligation (*chezkat chiyuv*), we say that we will go through with the assumption of obligation until proven otherwise (see Taz to Choshen Mishpat 190:13). Finally, the claim that the other party was *mochel* (relinquished rights) is a particularly difficult claim to accept (Rama, CM 70:1). Whereas the claim that one paid the obligation can be a strong one, that is because obligations are made to be paid (see Rav Nachum Persovitz to Bava Batra 5b). In contrast, obligations are not made to be relinquished by the one who deserves to take advantage of them.

Therefore, def must pay the full amount due based on the price estimate.

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