



HEMDAT YAMIM חֶמְדַּת יָמִים

Parashat Hashavua Haazinu, Tishrei 12, 5786

Harav Shaul Israeli zt"l
Founder and President

The Symbolism of *Mashiv Haruach U'morid Hageshem* Harav Yosef Carmel

The Swords of Iron War began on the day we began saying "*Mashiv Haruach U'morid Hageshem*," praising Hashem for bringing rain, which was a day after the special *minhagim* with *aravot*. Let us look at the special days that fall in Tishrei, with an optimistic outlook that can guide us into the future.

Chazal call Rosh Hashana the "Day of Judgment," as we say in our prayers, "Today He will place in judgment all of the creations of the worlds." Nevertheless, it is a happy, optimistic day, especially because of our strong belief in the covenant between Hashem and the Jewish People. During the millennia in exile as a persecuted, vulnerable minority, *Am Yisrael* did not lose hope and re-coronated the Creator and King of the World year after year.

On the tenth day of Hashem sitting on His throne of judgment, on a day of fasting and separation from worldly matters, *Am Yisrael* commemorates the day on which Hashem said "I forgave." Five days later, we hold four species and leave the protection of a permanent house to live in a *sukka*. On the eighth day, we proclaim that Hashem causes the wind to blow and the rain to fall. *Sukkot* is strongly connected to agricultural life, as the Torah calls it "The festival of the harvest" (Shemot 34:22).

Let us explore an additional look at the holidays. On Rosh Hashana we confirm the Kingdom of the Creator of existence from nothing; this 'coronation' expresses strong optimism. Since Hashem created the world *ex nihilo*, He is the "Place of the World," and the world does not contain Him. Hashem is external to the world, although it exists only through Him. Therefore, the rules of nature, including that only the strong survive, do not hold sway on "His flock, who coronate Him." The eternal nation's survival is ensured, even if it is the symbol of weakness among nations, especially during the long exile, in which it lost any semblance of nationhood. By rejoicing on Rosh Hashana while in exile, the nation demonstrated that spirit is more important than material.

On Yom Kippur, we go further – we posit that the material world is the fake world, as the real world is the spiritual one. We manage fine without eating and physical pleasures. The decisions made based on this belief last until the next Yom Kippur. The next step, Sukkot, is to show that security is not dependent on a sturdy structure. The condition is that our four species must be held together, including the *arava*, which is brought to the *Mikdash* on the seventh day, and proclaims the significance of *arvut* – standing up for each other.

Finally, we are ready for *mashiv haruach* (which in Hebrew means not only wind, but also spirit). Spirituality, the valuing of charity and justice, are what give our nation its might, not its material acquisitions. This provides a partial look at a full Jewish life.

In our still relatively new State of Israel in *Eretz Yisrael*, even the mundane becomes sacred. It is not enough for the individual to embrace spirituality. Rather, the nation must, while involved in agriculture and production, also be concerned about the weak in society. The court system must protect all, and everyone must look out for the needs of the other. In short, along with *mashiv haruach*, we have *morid hageshem* (*geshem* meaning not only rain but also the material world) – spirituality turns the material world into a tool to implement Hashem's value system.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



Eretz Hemdah
Dedicated: Harav Yosef Carmel, Harav Moshe Ehrenreich
2 Bruria St. corner of Bay Chicago St.
POB 8179 Jerusalem 91080
Tel: 972-2-5371485 Fax: 972-2-9379626
amutah number 580120786
www.eretzhemdah.org info@eretzhemdah.org

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Ask the Rabbi

by Rav Daniel Mann

Having a Non-Jew Build a Sukka and Assemble Arba'a Minim

Question: My neighbor has muscle atrophy and can no longer put up his *sukka* or assemble his *arba'a minim*. I offered him to do them for him, but he does not like receiving favors and prefers teaching his non-Jewish worker to do them for him. May a non-Jew do these things? Should I take "no" as an answer?

Answer: Regarding *sukka*, it seems to be an explicit *gemara* (Sukka 8b; see Shulchan Aruch, Orach Chayim 635:1) that a non-Jew can make a kosher *sukka* as long as he did so to provide shade. The Rama (OC 649:1) confirms that the same is true for tying up the *hadasim* and *aravot* with the *lulav*. However, it is somewhat more complicated. The Magen Avraham (649:3) infers from the Rama's wording that such a *sukka* or *lulav* is only kosher after the fact, but that, *l'chatchila*, a non-Jew should not do it.

The Magen Avraham traces stringency to the *halacha* for *tefillin* and *tzitzit*. The *gemara* (Gittin 45b) derives from the proximity of "you shall tie" and "you shall write" (Devarim 6, regarding *tefillin* and *mezuza*, respectively) that only those who are connected to the *mitzva* of *tefillin* can write sacred scrolls. Tosafot (ad loc.) cites Rabbeinu Tam as using this source to disallow a woman tying on *tzitzit* or assembling *arba'a minim* because they are exempt from these *mitzvot*. The Magen Avraham accepts Rabbeinu Tam, but only partially. Rabbeinu Tam seems to disqualify people even *b'dieved*, whereas the Magen Avraham, working within the Rama, who fundamentally accepts non-Jews for *sukka* and *lulav*, recommends avoiding them *l'chatchila*.

Tosafot, for their part, reject Rabbeinu Tam's extension of the disqualification to women, as even non-Jews are disqualified even for *tzitzit* only due to a *pasuk*, as well as his extension to other *mitzvot*, based on the *gemara* that allows a *sukka* made by a non-Jew. Almost all *poskim* (see Be'ur Halacha to 14:1; Chochmat Shlomo (Kluger) ad loc.) fundamentally reject Rabbeinu Tam/Magen Avraham. However, due to the weight of these great authorities, many *poskim* recommend avoiding using a non-Jew for *sukka/arba'a minim* (ibid.; Mishna Berura 649:14).

If the disqualification from writing holy texts does not extend to other *mitzvot*, then why does the Rama (14:1; the Shulchan Aruch ad loc. is lenient) cite two opinions regarding women's ability to tie *tzitzit* and prefer avoiding it? *Acharonim* distinguish between the *mitzvot*. The Be'ur Halacha (to 14:1) mentions those who disqualify women from *tzitzit* based on a *pasuk*. The Chatam Sofer (Shut, Yoreh Deah 271) distinguishes that the fact the Torah describes tying *tzitzit* as its own positive *mitzva* explains requiring someone to whom the *mitzva* of *tzitzit* is incumbent. In contrast, building a *sukka* is just a *hechsher* (preparation for a) *mitzva*, and thus anyone can do it. Chochmat Shlomo's (ibid.) distinction is that *tzitzit* must be tied on *lishma* (for the purpose of the *mitzva*), but since *sukka* does not require it (just that it be done for shade), it does not need to be done by one who is obligated in the *mitzva*.

The indications regarding *lulav* are similar to those for *sukka* (see Rama OC 649:1 and Mishna Berura 649:14), with two notable differences. On one hand, there is no *gemara* saying *arba'a minim* assembled by a non-Jew is kosher. On the other hand, the whole need for the binding together of the *lulav*, *hadasim*, and *aravot* is of a low or possibly technical level (see Sukka 33a; Shulchan Aruch, OC 651:1; development of this point is beyond our scope).

Now for our recommendations. If your neighbor would ask us, we might tell him that since the only part of the *sukka* that there is a question about is the *s'chach*, he could have his worker build the frame and walls and let you happily put up the *s'chach* (or even just lift it up – see Shulchan Aruch, OC 626:2). Similarly, he could let you assemble the *arba'a minim* without needing to teach you. However, since it **sounds** (it **may** be worth checking better) like he does not want you to do it and the case for *chumra* is quite tenuous and only *l'chatchila*, we recommend to leave things as they are.

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

With Sason, Not for Sason

Based on V'samachta B'chagecha, p. 17-18

At *Simchat Beit Hashoeva*, the festive Sukkot celebration, the people would say: "Fortunate is one who did not sin, and one who sinned, shall repent and be forgiven" (Sukka 53a). It is clear that this [embrace of people with different religious pasts] engenders a demonstration of unity between those who are loyal to the Torah of Moshe and Israel. The drawing of water, along with the practical obligation to pour libations of water on Sukkot, contained a significant symbolic element of repentance. This is based on the idea that is found in the *pasuk*, "Pour out your heart like water ..." (Eicha 2:19).

Another poignant *pasuk* on water is, "You shall draw water with joy (*b'sason*) from the wellsprings of salvation" (Yeshayahu 12:3). A unique characteristic of a wellspring is that the water flows away from its source and is replenished. At times, the wellspring has a weak flow, and it can appear that it is drying up, but then soon thereafter a new flow appears and the spring is restored to its former state.

They would also say at the *Simchat Beit Hashoeva*: "Our fathers who were in this place (the *Beit Hamikdash*) had their backs to the Holies and their faces eastward, and they would bow down eastward toward the sun, but our eyes are toward Hashem." Rabbi Yehuda claimed that they would repeat the matter and say: "We are to Hashem, and our eyes are to Hashem" (Mishna, Sukka 5:4).

Along these lines, the "wellsprings of Israel" never dried up. Against all calculations, matters develop in a different direction. Many times, the wise men of the nations of the world "stood with their watches in their hands" to see the end of *Am Yisrael*, but it was they who disappeared. Many times, cynics within our nation stood up to see when the Torah of Israel would cease to be preserved, and they were proven wrong. At different times, we have seen those who see everything that has to do with Israel and its Torah as antiquated. They bow down to the sun in the east, representing that they see the "rising sun" among the nations, whereas they see the holy in Israel as something to turn one's back on. This is not just incidental distancing of oneself, but purposely turning the head away. Nevertheless, that period was over [by the time of this declaration], and a new generation arose. The new generation had people who acted appropriately from the time of their youth, and others, as described in the *gemara*, who began acting properly later on, so that their older ages had to bring atonement for the sins of their youth. But one way or the other, both types came to the *Beit Hamikdash* to celebrate.

The explanation is that the Jewish spirit is not satiated by the vanities that the gentile world has to offer. At the end of the historical process, they became tired with the wild partying, which does not have any real content. Rather, it only incites people to acts of sin and causes the foundations of Jewish society to crumble.

The *gemara* (Sukka 48b) tells of a heretic whose name was Sason, and he exclaimed based on the aforementioned *pasuk* of "You shall draw water with joy (*b'sason*) from the wellsprings of salvation" that in the World to Come they would draw water for Sason. They responded to him that the *pasuk* did not say "*I'sason*" (for Sason) but *b'sason* (with joy). The message behind this story is that for us, *sason* is but a means of encouraging proper action. As such, it is usually hidden from the eye. The life of a Jew involves hard work and never ceasing tension. When the time for *sason* comes, it is "with *sason*," as a means towards an end – to sum up what happened in the past and to use it to strengthen our resolve toward the future.

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

Itamar Chaim ben Tzipora

Nir Rephael ben Rachel Bracha

Arye Yitzchak ben Geula Miriam

Tal Shaul ben Yaffa

Ori Leah bat Chaya Temima

Neta bat Malka

Meira bat Esther

Together with all *cholei Yisrael*

P'ninat Mishpat

Smoking Rights in a Rental? – part II

(based on ruling 85076 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) rented an apartment (=apt) from the plaintiff (=pl) for 2,400 NIS a month, without special stipulations. The downstairs neighbor (=dn), a former marijuana user, who also rents from pl, complained about def's smoking cannabis, as the smell penetrated into his apartment. Pl warned def that unless she stopped smoking at apt, she would have to leave. Def relented but left apt after 5 months. Pl demands that def pay an additional three months rental, as stipulated in the contract for leaving early. Def argues that since she needs cannabis for a medical need, it is unreasonable to forbid her to use it at apt, and pl's conviction to remove her if she continued, ended their contract. The two also disagreed whether to count the three months from when def informed pl when she planned to leave, and when each of these stages occurred. Both sides wanted only one hearing and were unresponsive to beit din's attempts to verify their claims. Def admitted she had neither a certificate to allow using cannabis nor medical records of conditions that necessitated it.

Ruling: [We saw last time that in cases in which many points are left in doubt, all the more so when the sides show little interest in corroborating claims, it is proper to build a ruling based on compromise that incorporates the various doubts. The first doubts we discussed were whether def had health needs that warranted smoking cannabis and whether pl had promised dn that he would not rent out the apartment to a cannabis smoker.]

Did pl end the agreement (including an additional three months' rent for early departure) when he demanded of def that she could not remain if she continued smoking? If pl had the right to compel def not to smoke in apt, then he was not ending the agreement but enforcing it according to his rights. However, if def had the right to smoke cannabis under the circumstances, coercing her to stop is a fundamental breach of the contract, which gives the renter the right to live normally in apt, including treatment for serious medical needs. Because def provided no corroboration of her claim, the doubt on the matter is not one that favors her.

If pl breached the contract, did def give up her resulting right to end the agreement by continuing to live in apt? When a sales agreement is voidable due to a flawed sales item, the buyer loses his right to void it if he continues to use it after uncovering its flaw (Shulchan Aruch, Choshen Mishpat 232:3). However, this rule does not apply to breach of contract. One could discuss what would happen if pl had rescinded his threat, but since pl never rescinded it, def can decide to leave based on the situation when she left. Furthermore, even when one agrees to a problematic situation, if it involves significant physical pain, he may rescind his agreement (see Ketubot 70b). It is questionable (one of the matters that were not clarified) whether def can also claim that it was unfeasible for her to leave apt right away.

Based on the various indications discussed, beit din, based on majority, awarded pl 45% of the rent for the relevant time. [Next time we will see discussion of when to begin and end the up-to-three-month period.]

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