

Halachic Discussions

מאמרי הלכה

Volume 1 Issue 1

כסלו תשפ"א
December 2020



RABBINICAL ALLIANCE OF AMERICA

איגוד הרבנים ד'אמריקא

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Dina D'Malchuta Dina – The Law of The Land

by Rabbi Yaakov Klass

Question: I've been told that we are to follow all the directives of the government in the current pandemic, even though these very directives seem to be contrary to our religious lifestyle. The argument I've heard from some is Dina D'Malchuta. Is this so?

Zelig Aronson

Answer: Our sages (R. Chanina Sgan Hakohanim, Avot 3:2) tell us: "One is to pray for the welfare of the government, for if not for fear of it each man might swallow his fellow." What the sages refer to is the fear of a society that descends into lawlessness.

Now in truth, what we are seeing in our time is just that mass acts of lawlessness; subsequent to the death of one individual, who openly challenged the police in a confrontation, that will surely go down in history as the root of one of the largest national [and even international] insurrections.

There have even been calls in some localities to defund their police departments, and sadly some jurisdictions have actually followed suit doing just that.

We would be foolhardy to side with those who flaunt their attacks on those entrusted by society to protect us. Indeed, Dina D'Malchuta Dina – the law of the Land is the law, the ruling of the Amora Shmuel (Gitin 10b) directs that one must be very scrupulous to follow all the laws set in place by the governing authorities for the entire populous under their jurisdiction. This, therefore, is the directive of our sages to the Jewish people for all times, irrespective of national borders.

However, that law is limited to civil, monetary matters such as currency and imposition of taxes and obviously criminal matters as well.

The Shach (Choshen Mishpat, siman 73:sk39) "That we say Dina D'Malchuta Dina – the law of the Land is the law, this applies in matters that benefit the king [here he is not referring to our modern day democracies] or that are for the benefit of the state in instances where there is no clear Halacha found by us, but it does not mean that we will rule according to the law of the land where it contradicts the laws of the Torah [both written and oral as set down by the Shulchan Aruch]... and the law of the land only applies in matters of commercial transactions [this includes taxes, customs and duties, levies etc] and... but as for any other matters [of religious practice restrictions] that affect the Jewish people the law of the land does not apply, for if such not be the case then we will bear witness to the nullification of the Torah and Mitzvot.

As to matters that benefit the king, Rashbam (*Bava Batra* 54b, sv "Mi amar Shmuel hochi") states: [in terms that we can relate to in our modern day democracies] the reason that Shmuel's ruling *Dina D'Malchuta Dina* stands is because the people have accepted

upon themselves the usual laws and judgments that a king imposes. The law of the land is the law precisely because the people have accepted it. Obviously in the face of an autocratic leader or regime that usurps the rights of the populace, we will not be bound by the rule of *Dina D'Malchuta Dina*.

However, according to Ran (*Nedarim* 28a, “*B’moches ha’omed me’eilav*”) This law that *Dina D'Malchuta Dina* applies only to gentile kings because they own the land, (see also Rosh, *Nedarim*, chap 3:11 for the same conclusion.) however a Jewish king – of the land of Israel, where every Jew is a partner in the land the law does not apply.

Rashba (*Novella, Nedarim* 28a, *sv* “*B’moches*”) though saying much the same goes even further as he states, ‘that not only does the law of *Dina D'Malchuta Dina* not apply to a king of the land of Israel but also the king is no different than any other person under his reign as all are partners in the land.’

These Rishonim – early authorities, from their own words tell a different story for us today, who live in democracies, where the government does not own the land – all those areas not owned by individuals are the property of the citizenry as well, such as the streets of our cities, as well as the public infrastructure, where the government manages all of these public spaces and infrastructure on behalf of its residents, thus the overarching law of *Dina D'Malchuta* has only limited application.

In *Sefer Otzar Dinim U'Minhagim* (Rabbi Yehuda Dovid Eisenstein, p.84) the author notes that our sages say *Halacha k'Shmuel b'Dini* – Halacha follows Shmuel in Din – which clearly indicates that *Dina D'Malchuta* only applies insofar as monetary matters [but not matters of *Issur v'Hetter* – decisions regarding Torah prohibitions, which follow *Rav*]. He notes as well that where the king changes the rules [laws] that were age old or where he imposes different rules for some localities, there too *Dina D'Malchuta* will not apply.

I must add. Are we not seeing just that, with our government officials arbitrarily deciding on various color restricted zones, where positivity numbers are somewhat lower than numbers in other areas where no restrictions have been placed [this was factually reported on these pages a few short weeks ago].

Rabbi Eisenstein also adds: “Also simple understanding demands that it be impossible to allow that a gentile king [for us today translate as civil authorities] may nullify the laws of the Jewish religion. Laws for which Jews were ready to die for and indeed suffered torture and endured death in the face of forced conversions over the course of our long difficult history.

Citing *Rivash* (*Responsum* 171) he adds that the civil authorities have no right to place a Rabbi as a government religious functionary over the community, who will issue Halachic directives, if the majority of the community objects. And such an individual, who accepts such a position contrary to the community’s desire, is guilty of causing

distress to the community, consequently in the future he will be held [by Heaven] to account for his action.

It is important to note that even in light of Dina D'Malchuta Dina, as a first option a Jew making a claim against another Jew is duty bound to first make his claim in Beit Din – the Jewish ecclesiastical court. In fact in most instances, where the parties to the dispute have agreed to the Beit Din arbitration, the Beit Din rulings are recognized and even supported by state courts,

Interesting to note is that the framers of the United States constitution were not only religious G-d fearing men but they wanted the newly sovereign nation to provide religious freedom for all. In that vein they enshrined that right in the very first amendment to the constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. Or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.”

So admired is America’s constitution and the freedoms enshrined therein that they have not only benefited our citizens but have served as a model for many of the true democracies that have arisen with the dissolution of the vast far flung European colonial empires (England, France and Spain) throughout the world.

Now as to the inviolability of the laws and amendments set forth in the constitution, the individual American states must follow those laws specifically found therein, leaving to them the right to enact laws specific to their state only such as do not contradict those laws. Thus for example a resident of one state might pay a lower state excise tax at the gas pump than one from another state, or perhaps pay none at all [as in New Jersey until last year].

Now, it is obvious that according to our sages and the later authorities and especially where we have a constitutionally enshrined right, the government; whether it be federal, state or local has no right to restrict our religious practices. Notwithstanding it is up to us to practice safe health procedures in the course of our Synagogue attendance and to take care in every facet of our daily lives as well.

As I write these words there is even greater need to place our full faith in our Heavenly Father, from whom we seek Divine guidance as we pray to Him for the welfare of the government of these United States of America.

Finally, we pray to G-d that he deliver the entirety of humanity from this very difficult pandemic. May it be His will that we merit the arrival of Moshiach, speedily in our days.

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The First to Repent

by Rabbi Yaakov Klass

Question: We find that both Adam and Cain repented their sins, yet our sages extol Reuben the son of Jacob, who lived many generations later, as being the first to repent. Why is that so?
Moshe Jakobowitz
(Via E-mail)

Answer: Indeed, Adam and Cain did repent way before Reuben, however, the degrees of their repentance were on a lesser level than Reuben's was.

The Torah tells us in *Parashat Vayishlach* (Genesis 35:22) that "... Reuben sinned with Bilhah his father's concubine..." The Gemara (*Sotah* 7b) discusses the greatness of Reuben in that he admitted his guilt, which the Gemara (*Shabbos* 55b) explains, was not that he actually sinned with Bilhah. Rather, it was that after Rachel's death, he moved his father's bed to his own mother Leah's tent out of respect for her, in spite of the fact that Jacob, of his own, had already moved his bed to Bilhah's tent.

Reuben admitted his guilt, in the matter, openly, for which the Gemara gives him great credit. He did so in order to spare his brothers from being unjustly suspected of complicity by their father.

The Midrash (*Bereishit Rabbah* 84:19) comments on the verse in *Parashat Vayeshev* (Genesis 37:29), "*Vayashav Reuven el habor vehinei ein Yosef babor vayikra et begadav* – And Reuben returned to the pit and Joseph was not in the pit and he [Reuben] then rent his garments." The Midrash asks, "Where was Reuben [i.e. what was Reuben doing] that he left his brothers to their own devices and now he suddenly returned? Their answer is that he was occupied with his sackcloth and his fast.

Etz Yosef U'matnot Kehuna (*ad. loc.*) explains that the fast and sackcloth was in repentance for the sin of interfering in the matter of his father's bed.

The Midrash relates that The Holy One Blessed Is He proclaimed: "Prior to you [Reuben] a man never sinned before me and then repented, indeed, you were the first to repent.

The difficulty with this Midrash is that from the above quoted Gemara in *Sotah*, it appears that Reuben took his cue, in this regard, from Judah in the matter of Tamar (*Parashat Vayeshev*, *infra* ch. 38). Upon realizing that Tamar would suffer certain death otherwise, Judah publicly admitted his own disgrace.

Yefei To'ar and Maharzav (*ad. loc.*) explain that Judah's repentance was merely his admission. Reuben, on the other hand, labored intensely at his penance to the point that it became a preoccupation. Thus Reuben's was a *teshuva* unlike any other before him.

As relates to Cain, he repented only when confronted by Hashem (Genesis 4:9-15). Cain simply declared, “*Gadol avoni mi’neso* – my sin is too great to bear.” Thus, he, too, like Judah, repented merely by means of admitting his sin.

The Midrash (*Bereishit Rabbah* 22:25) notes that Cain compared his sin to his father’s and concluded that his own sin was far greater than his father’s sin. This represented repentance on his part, for he understood not only that *shefichat damim*, the spilling of blood, was wrong, but that it was a very grievous offense.

Hashem’s response to that admission of guilt was (*ibid.* 4:15), “*Vayomer lo Hashem, lachen kol horeg Cain shiv’ atayim yukam* – And Hashem said to him, therefore, whoever slays Cain will be punished after seven generations have passed (lit. ‘Will have sevenfold vengeance taken upon him,’ as Nachmanides explains).” According to Rashi and *Siftei Chachamim*, the first clause of the verse is a threat to whoever kills Cain, but without a specific indication as to what the punishment would be. The last part of the verse, “...will be punished after seven generations have passed,” reverts to what is in store for Cain himself, whose punishment would be enacted only after seven generations have passed.

The Midrash (*ibid.* 22: 26) quotes three sages who explain the peculiar wording of the statement, “Hashem said to [Cain], Therefore, whoever kills Cain ...” R. Yehuda said that Hashem’s statement was addressed to all the domesticated and wild animals as well as the birds who had come to avenge Abel’s blood. R. Levi said that the original serpent [who had brought death to the world] also came to avenge Abel’s blood, thus the word “therefore.” R. Nechemia notes that the judgment reserved for Cain is different from that reserved for all other murderers. Though it is true that Cain had killed, he had not had from whom to learn. Henceforth, however, whoever slays Cain shall be killed. This Midrash indicates that Cain was forgiven.

The Midrash (*ibid.* 22:28) then relates that when Cain met with his father, the latter inquired of his son, “And what has been your judgment?” Cain replied, “I have repented and I have been released [absolved of my sin].” Adam then proclaimed, “So great is the power of repentance!”

He then composed the psalm “*Mizmor shir l’yom Ha’Shabbat*” (Psalm 92). Although this psalm is praise to the Sabbath day, the word “*Ha’Shabbat*” is also an allusion to the concept of *teshuva* – repentance [all the same letters transposed, for exegetical purposes the vov is sometimes left out].

Midrash Tanchuma (*Bereishit* 9) explains differently: Just as an *ot* – a sign was placed by G-d on Cain’s forehead, Adam saw that the Sabbath which serves as an *ot* – a sign for the Children of Israel (Exodus 31:16-17), would serve, as well, as a sign of protection, both for him and Cain.

Additionally we might offer the following explanation from the Gemara (*Berachot* 57b) where we see that the Sabbath is compared to *Olam Habah* – the world to come. In Adam’s case it represented a return, though temporary, to the Garden of Eden, from

which he was banished. His understanding and appreciation of these matters to the degree that he offered praise to G-d, shows that, surely, he too repented for his sin.

May it be His will that we merit to reap the rewards of the earlier generations, as we emulate their repentance, with the arrival of Moshiach, the king the son of King David, who lead us to a time when all of humanity will truly recognize the greatness of G-d, speedily in our days.

Rabbi Yaakov Klass is chairman of the Presidium of the Rabbinical Alliance of America; rav of Congregation K'hal Bnei Matisyahu in Flatbush, Brooklyn; and Torah Editor of The Jewish Press. He can be contacted at yklass@jewishpress.com and Rabbi@igud.us.

The Proper Mention of Rain in the *Amidah*

by Rabbi Yaakov Klass

Question: Recently the cantor in my synagogue created a stir when he did not recite the proper phrase for rain as designated for the Reader's repetition of the *Amidah*. Our rabbi did not require the cantor to repeat the *Amidah* with the correct phrase. Many congregants felt the rabbi had erred in his immediate decision and they murmured their discontent. What is the proper procedure regarding the mention of rain in the *Amidah*? How can we, in a tactful way, prevent such a lapse again?

A Concerned Congregant

Answer: Our initial reaction is to point out that having accepted the authority of a rabbi whose responsibility is to deal with such matters and who, in many cases, must render *halachic* decisions on the spur of the moment, the congregants should not question his decision. Isn't the rabbi a scholar who spends much of his time learning Torah and who has spent years in preparation for his current responsibility to lead the congregation? If he is made aware of the discontent, he would surely respond with a discourse or a *shiur* to clarify the matter.

Your question is quite timely. You mention the proper phraseology for rain, and we are, indeed, approaching the date specified [in the Diaspora] for substituting *Ve'ten beracha* (in *Mevarech HaShanim*) with "*Ve'ten tal u'matar li'veracha*". The date this year is Motza'ei Shabbos, Parashat Vayishlach, December 5th, at Ma'ariv. This phrase, which we add to "*Mevarech HaShanim*," the ninth blessing in the *Shemoneh Esreh*, is a clear request for seasonal precipitation. The designated phrase you refer to must be "*Mashiv haruach u'morid hagashem*," which is not a request but rather a statement of descriptive praise regarding *Hashem's* greatness (*gevura*) that is included in the second blessing of the *Amidah*.

We assume that one of two situations applies to your congregation. Either the entire congregation follows *Nusach Sefarad* [the arrangement of prayers according to the Sephardic custom] or that while the congregation follows *Nusach Ashkenaz* [the Ashkenazic custom], your chazzan personally follows *Nusach Sefarad*. The two arrangements differ regarding the mention of rain in the *Amidah*.

With this in mind, let us turn to Rabbi Yosef Caro (*Shulchan Aruch, Orach Chayyim* 114), who discusses the proper time for the mention of rain in the second blessing of the *Amidah*. We start reciting it in the Mussaf prayer of Shemini Atzeret [at the end of Sukkot] because that is when the rainy season, which he calls *yemot ha'geshamim*, begins. He points out that if one happened to say "*Mashiv haruach*" [lit. "He makes the wind blow"] during the summer – *yemot hachama*, or if he fails to recite that phrase in the winter season, he does *not* have to repeat the *Amidah*. Even if he has not yet concluded that blessing and could easily repeat the *Amidah*, he is not required to repeat it

(*Ba'er Heitev*). Likewise, if he mentioned “*tal*” – dew during the winter, or failed to do so during the summer, a repetition of the *Amidah* is not warranted.

Rema (ibid.) adds that *Bnei Ashkenaz* [descendants of Jews who originally settled in Germany] are not accustomed to recite the phrase “*Morid ha'tal*” either in the summer or in the winter. In fact, during the summer they connect “... *Ata rav le'hoshia*” to “*Mechalkel chayyim...*” without any insert regarding *tal*. Indeed, among the Jewish communities in Germany (today – their descendants) there are some people, who – in order to be certain that they say the uninterrupted “... *Ata rav le'hoshia. Mechalkel chayyim...*” at the seasonal change – repeat the phrase 90 times, which is the equivalent of 30 days of reciting the *Amidah* three times a day. This interesting custom is based on Rabbi Caro's observation (*Orach Chayyim* 114:8) that a *chazaka*, namely, a presumption of regularity, sets in after thirty days of performing a specific act.

However, if one said “*Morid ha'gashem*” (“He makes the rain fall”) in the summer [when we do not need rain] instead of “*Morid ha'tal*”, he has to go back to the beginning of that blessing. In the event he has already concluded the *beracha*, a repetition of the entire *Amidah* is required, regardless of whether he resides in an area where rain is needed even in the summer.

The *Ba'er Heitev* explains that when the Mechaber [Rabbi Yosef Caro] mentions *tal* he refers to *Nusach Sefarad*, which includes the mention of *tal* in the summer. The *Bach*, in his explanation on the *Tur*, notes that even if he mentioned both rain – *gashem* and dew – *tal* in the summer – which obviously refers to *Nusach Sefarad* – he is required to repeat the *Amidah* in order to follow the correct phraseology of the season.

The Mechaber continues: “If he did not say ‘*Morid ha'gashem*’ in the winter, we instruct him to repeat the *Amidah*. However, if he did mention “*tal*” (which is also a kind of precipitation), he does not have to repeat the *Amidah*.”

According to the *Mishna Berura*, the rationale behind the above is that the mention of *Morid ha'tal* in the blessing of “*Mechayyeh Ha'Meitim*” is not a request as is the blessing of “*Mevarech HaShanim*” (see *Shulchan Aruch, Orach Chayyim* 117) but rather a praise, and accordingly, “*Morid ha'tal*” is considered sufficient praise.

In your case, what probably transpired was that yours is a synagogue that follows the custom to say “*Morid ha'tal*” as part of the second blessing in the summer or that your chazzan personally follows such a *nusach*. Thus, when he erred and said “*Morid ha'tal*” instead of the phrase about rain in the second blessing, your rabbi saw fit not to compel him to repeat the entire blessing [or the entire *Amidah*, if he had already concluded the blessing].

However, should a similar mistake occur in “*Mevarech HaShanim*”, resulting in the omission of “*Ve'ten tal u'matar li'veracha*” (which we again note that we start to recite this year Motz'aei Shabbos – the evening of Saturday, December 5th) in the ninth

blessing of the *Amidah*, your rabbi would surely insist that the chazzan repeat the *Amidah* because that phrase is a request, and a proper request was not made.

The Mechaber, in his discussion regarding the ninth blessing of the *Amidah*, *Mevarech HaShanim*, states as follows (*Orach Chayyim* 117): “The recitation of *Birkat HaShanim* in the rainy season (*yemot ha’geshamim*) must include [the request] *Veten tal u’matar li’veracha* (lit. “May You give us dew and rain for a blessing,” meaning in a manner that is a blessing). In the Diaspora we start our petition for rain in the Maariv prayer of the 60th day of *Tekufat Tishrei* (so called because the month of Tishrei marks the beginning of the autumnal season. This year, as well as in most years, it corresponds to December 5th. Thus we start reciting it on December 4th at Maariv).

“In Israel [where there is a greater need for water] we start reciting our petition [for rain] on the 7th of Marcheshvan, and continue to recite it until the Mincha prayer of the day before Passover.” [The Festival *Amidah* which we recite at the Maariv and Shacharit prayers of the following day, the first day of Passover, consists of seven blessings only – and thus does not include *Birkat HaShanim*. That is why our last possible petition for rain takes place at Mincha on the eve of Passover. In case one erred and recited the Eighteen Blessings (the weekday *Shemoneh Esreh*) instead of the Festival *Amidah* at Maariv or Shacharit – consult the *Mishna Berura ad loc.*, *Biur Halacha*.]

The Mechaber notes further: “Individuals [residing in places] that are in need of rain in the summer do not ask for it in *Birkat HaShanim* but rather at *Shome’a tefilla* [lit. “He who hears our prayers,” which is the general petition for divine assistance in which we may include a plethora of requests].

“This rule applies even to [residents of] a large city, such as Nineveh, or a whole country, such as Spain or Germany. Nevertheless, we consider this as the petition of an individual and it is included only in *Shome’a tefilla*. If an entire country needed rain in the summer, and an individual there erred and included the petition for rain in *Birkat HaShanim*, he may [*Rema ad loc.* adds: if he so chooses] repeat the *Amidah* as a *tefillat nedava*, a voluntary prayer, without asking [for rain] in *Birkat HaShanim*.” [Here *Rema* notes that such an individual would not be required to repeat the *Amidah*.]

Thus *Rema* is reconciling the view stated by Rabbi Yosef Caro in the *Shulchan Aruch* with the one expressed on that topic in the *Beit Yosef*, his commentary on the *Tur*, where he quotes the views of *Mahari Abuhav*, Ramban, Rambam and the *Ran* in relation to the statement of the *Rosh* that is quoted by the *Tur*. The *Rosh* would allow individuals to say *Veten tal u’matar* in the blessing of *Mevarech HaShanim* if an entire country needed rain. The above authorities would most probably agree with the *Rosh* in principle but not in practice, for the *Rosh*’s ruling was never widely accepted in spite of the fact that his reasoning is correct.

The rule of not officially requesting rain out of the proper season is considered steadfast. The case we just mentioned, where the Mechaber would allow a request out-

of-season in *Shome'a tefilla*, is the subject of a discussion by the *Taz* (*ad. loc.*), who explains that it is permitted for a congregation [to include the request in *Shome'a tefilla*] only in the silent *Amidah*, but that the *chazzan* never says it aloud in his repetition – even as part of *Shome'a tefilla*. The *Taz* also quotes his father-in-law, the *Bach*, who informs us: “We (even an entire congregation) should never ask for rain in an untimely manner even if it were included in *Shome'a tefilla*; rather, we should seek divine intervention by fasting and the recitation of *Selichot*.” The *Bach* further states: “I have heard that in the midst of a drought two great rabbis instituted the recitation of *Veten tal u'matar* as part of *Shome'a tefilla*, and both died that very year. This was seen as a result of having ‘forced the Hand of Heaven’.”

Based on the Mishna and the Gemara (*Berachot* 29a), Rabbi Yosef Caro rules as follows: “If he asked for rain (*matar*) in the summer season, we obligate him to repeat [the *Amidah*]; and if he did not [request rain] in the winter season, we [also] obligate him to repeat the *Amidah*, even if he asked for dew (*tal*). However, if he asked for rain but did not include the petition for dew, he does not have to repeat [the *Amidah*].”

As we noted earlier, a *petition* for rain is different from the *mention* of rain as a praise attribute of G-d in the blessing of *Mechayyeh Hameitim*. If one said “*tal*” instead of “*geshem*” as part of that blessing, one does not have to repeat the *Amidah*. However, regarding *Mevarech HaShanim*, which is a specific petition, your rabbi would have insisted that the *chazzan* repeat the blessing if an incorrect seasonal request was recited.

This view is shared by most halachic authorities with the exception of the *Mordecai*, who suggests the possibility that if one asked for dew only (*tal* – in *Mevarech HaShanim*) during the rainy winter season, that would be considered sufficient. He bases this statement on the concept presented in the Jerusalem Talmud (*Ta'anit* 1:1): “R. Ze'irah said in the name of R. Chanina, If [an individual] specifically mentioned dew during the rainy season, we do not make him repeat [the *Amidah*].” The Gemara (*ibid.*) adds: “If he said ‘*geshem*’ in the summer season, we do obligate him to repeat (because he did not utter the word ‘*tal*’ – see *Korban Ha'Edah ad. loc. s.v. Umishani hahu delo idcar ...*). The Gemara asks: “Did we not learn (in the Babylonian Talmud, *Ta'anit* 3a) that our Sages did not require to mention ‘dew’ or ‘winds’ (*Mashiv haruach*)?” The answer offered is: “We cannot equate one who curses (requesting rain in the summer regardless of need is considered a curse) with one who simply has not prayed (i.e., has not asked for the appropriate precipitation for the season) but who does not curse; that is, he mentioned *tal* (dew) and [thus] we do not obligate him to repeat the *Amidah*.” The Gemara (in the Jerusalem Talmud *ad loc.*) then asks: “But did we not learn (*B.T. Berachot* 29a) that if one did not petition for [rain] in *Birkat HaShanim* or make mention of the Divine attribute of providing rain in the blessing of *Techiyat Hameitim*, we do obligate him to repeat [in either case]?” The Gemara offers its explanation: “This is only if he did not mention [or petition for] either dew or rain.” The implication is that if he mentioned or asked for dew that would be sufficient.

The *Mordecai* explains that there are those who say “*Veten tal li'veracha*” even in the summer, and this establishes for them a *chazaka*, a presumption of regularity.

Subsequently, should such a person not include rain in their request in the winter, he will not have to repeat the *Amidah*.

However, we see from the preponderance of other views, all based on the Babylonian Talmud, that if one did not specifically ask for “rain” in the winter season, a petition for “dew” at that time will not be sufficient to satisfy our Sages’ textual enactment, and one would have to repeat the *Amidah*.

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The Mixed-Up Blessing on Chanukah Lights

by Rabbi Gil Student

I. Reasons to Deviate

Rav Yosef Karo (16th cen., Israel; *Shulchan Aruch (Orach Chaim 676:1)* says that the first blessing on Chanukah lights is: “*le-hadlik ner Chanukah*, to kindle Chanukah light.” Many have noted how puzzling this is because the Gemara (*Shabbos 23a*) says that the blessing is “*le-hadlik ner shel Chanukah*, to kindle the light of Chanukah.” This is similar to the blessing we recite on Shabbos and Yom Tov candles, “*le-hadlik ner shel...*” Why does the *Shulchan Aruch* deviate from the blessing text in the Talmud and most commentaries? Despite this important question, this version of the blessing has lasted and is used by most Sephardim and many Ashkenazim, including the Vilna Gaon (18th cen., Lithuania; *Ma’aseh Rav*, par. 239) and *Aruch Ha-Shulchan* (19th cen., Lithuania; *Orach Chaim 676:1*).

Commentaries offer two explanations for the *Shulchan Aruch*’s blessing text. We will attempt to add another two.

1. Rav Yosef Te’omim (18th cen., Germany; *Peri Megadim, Mishbetzos Zahav 676:intro*) quotes Rav Yeshayahu Horowitz (17th cen., Germany; *Shelah, Maseches Tamid*) who explains that Shabbos candles are for personal use and also for Shabbos, as opposed to Chanukah candles which we may not use for our own benefit and are only for publicizing the Chanukah miracle.

While Rav Horowitz is actually addressing a slightly different blessing text, which we will discuss below, his explanation works well within the *Shulchan Aruch*’s text, as well. With Shabbos, there is a candle we are using for personal benefit. We recite a blessing on that candle and use it also to honor Shabbos. Therefore, we recite a blessing on a candle that has its own purpose and we use it for Shabbos. It is a candle, for Shabbos. In contrast, with Chanukah there is no candle if not for the holiday. The candle has no independent use. Therefore, it is not a light for Chanukah but a Chanukah light.

2. Rav Chaim Yosef David Azulai (Chida, 18th cen., Israel), in his *Birkei Yosef (Orach Chaim 677:1)*, explains similarly to Rav Horowitz. In his *Machazik Berachah (Orach Chaim 676:1)*, Chida offers a different explanation. He notes that Shabbos and Yom Tov have many *mitzvah* actions — a meal, *kiddush*, wearing especially nice clothing, etc. Candles are only one of many Shabbos *mitzvos* and therefore the blessing refers to the lights of Shabbos, the one of many *mitzvos*. In contrast, Chanukah has no *mitzvah* action beyond candles. This is the only *mitzvah* of the holiday and therefore it is called Chanukah lights, inherently identified with the holiday.

To put it differently, according to the first explanation, there is no light without Chanukah. According to the second explanation, there is no Chanukah without light.

3. We can offer another proof, even if not really an explanation, for the *Shulchan Aruch's* blessing text. Throughout the few pages of Shabbos in which it discusses Chanukah, the Gemara repeatedly refers to Chanukah light (*ner Chanukah*). For example: "The Chanukah light, it is a mitzva to place it at the entrance to one's house on the outside" (*Shabbos* 21b). Throughout the Gemara, there is only one place where the text refers to the light of Chanukah: "A light of Chanukah that you placed above twenty cubits is invalid" (*ibid.*, 22a) but *Dikdukei Soferim* (ad loc.) says that manuscripts have the text with "Chanukah light." This all indicates that the proper term is "*ner Chanukah*, Chanukah light." Although, as mentioned above, the blessing as described in the Gemara says "*ner shel Chanukah*, light of Chanukah."

II. Is Chanukah a Holiday?

4. We said above that explanation 2 effectively means that there is no Chanukah without a light. However, that refers to the mitzvah acts of the day, that the only mitzvah is lighting candles. However, we can push that even further and say that there is literally no Chanukah without Chanukah lights.

Halachic authorities debate whether you can recite the blessing of "*Shehechyanu*" on Chanukah and Purim if you do not have lights or a *megillah*, respectively. Rav Avraham Gombiner (17th cen., Poland; *Magen Avraham* 692:1) says that someone who does not hear *megillah* on Purim should not recite "*Shehechyanu*" on the Purim meal, sending gifts or giving charity since those are common activities. We do them all the time, including Shabbos and Yom Tov. Rav Ya'akov Emden (18th cen., Germany; *Mor U-Ketzi'ah* 692:1) objects. Even without those *mitzvos*, you should recite "*Shehechyanu*" on the day, just like we do for Yom Kippur. Chida (*Birkei Yosef, Orach Chaim* 692:1) similarly quotes two opinions on the subject, some in favor of reciting "*Shehechyanu*" on the day and some against. Rav Yisrael Meir Kagan (20th cen., Poland; *Mishnah Berurah, Bi'ur Halachah* 692:1 s.v. *ve-shehechyanu*) quotes Rav Menachem Meiri who says that you can recite "*Shehechyanu*" on the day of Chanukah itself if you do not have Chanukah lights and will not see any.

Rav Avigdor Nebenzahl (contemp., Israel; *Yerushalayim Be-Mo'adeha*, Chanukah, p. 28) explains this debate as referring to the essential nature of Chanukah and Purim as rabbinically ordained holidays. According to those who advocate reciting "*Shehechyanu*" on the days, the Sages instituted holidays with inherent sanctity, elevating time itself. According to those who do not allow reciting "*Shehechyanu*" on the days, the Sages only obligate people. We are required to do what the Sages instruct us. Therefore, they may obligate us to do specific acts (read the *megillah*, kindle Chanukah lights, etc.) and refrain from specific acts (fasting and eulogizing) on specific days. The Sages can obligate people, the *gavra*, but cannot instill holiness in days, the *cheftza*.

Rav Nebenzahl connects this to the view of Rav Ya'akov Lorberbaum (19th cen., Poland; *Nesivos Ha-Mishpat* 234:3) that someone who accidentally eats food that is rabbinically forbidden does not need any atonement. Rabbinic prohibitions fall on the individual, not the object. Therefore, if you accidentally violate a rabbinic prohibition,

your act lacks sinfulness because the act is inherently neutral and the intent to sin is lacking in an accidental violation. (See also Rav Yosef Engel, *Asvun De-Oraisa*, no. 6.) According to this logic, since Chanukah and Purim are rabbinic holidays, they lack inherent holiness and contain only obligations and restrictions. Therefore, you cannot say “*Shehechyanu*” on the days themselves but rather only on *mitzvos* of the days. According to Rav Nebenzahl’s approach, we can say even more strongly that without the lights, there is no Chanukah. The Sages obligated us on this mitzvah and forbade us with certain restrictions, but the day itself is not holy because the Sages lack the authority to instill holiness in a day. (The issue of the second day of Yom Tov falls within the mitzvah of sanctifying the new month, which is a separate topic.)

III. The Lost Blessing

However, the prevalent Ashkenazic practice is to recite the blessing “*le-hadlik ner shel Chanukah*, to kindle the light of Chanukah.” As Rav Te’omim says (*ibid.*), this is what people customarily say. And with good reason. Rav Avraham Bing (19th cen., Germany; *Zichron Avraham* 676) argues strongly in favor of this text. The Gemara (*Shabbos* 23a) clearly states that this is the text of the blessing. Who are we to deviate from that? The *Shulchan Aruch* must have been imprecise because we have on the highest authority, the Talmud, that the blessing is “*le-hadlik ner shel Chanukah*, to kindle the light of Chanukah.” All the explanations and speculations in the world can’t push away that fact.

However, there is another version of the blessing, “*le-hadlik ner she-la-Chanukah*.” The words “*shel*” and “*Chanukah*” are merged into one. This is how the Rambam (*Mishneh Torah, Hilchos Chanukah* 3:4) has it (in the Frankel edition) and how Rav Shlomo Luria (Maharshal, 16th cen., Poland; *Responsa*, no. 85) says to recite the blessing. It is explaining this text that Rav Yeshayahu Horowitz (*Shelah*, quoted above) says that this refers to the sole purpose of the Chanukah light to publicize the miracle. This seems to be the old Ashkenazic version of the blessing. Dr. Seligmann Baer (19th cen., Germany; *Siddur Avodas Yisrael*) has it this way, vocalized as “*she-la-Chanukah*,” which he explains means “*asher le-Chanukah*, that is (solely) for Chanukah.”

Similarly, *Mishnah Berurah* (676:1) quotes Maharshal who says to pronounce it as one word but then *Mishnah Berurah* adds that people are not careful about this. In other words, really we should pronounce it that way but for one reason or another, that isn’t the custom. Both Ashkenazim and Sephardim say the blessing in a way that singles out Chanukah light as being dedicated solely for Chanukah.

As *Mishnah Berurah* says, many Ashkenazim aren’t careful about the pronunciation and it does not really matter. Similarly, *Aruch Ha-Shulchan* (676:1) says that it doesn’t really matter how you say it (although he personally says “*ner Chanukah*”). Either “*le-hadlik ner Chanukah*,” “*le-hadlik ner she-la-Chanukah*” or “*le-hadlik ner shel Chanukah*.” Any of these three are valid.

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Giving Away a Mitzvah

by Rabbi Gil Student

I. Paying for a Mitzvah

We spend money on *mitzvos*. Some *mitzvos* are free, some are not, and some come with hidden costs. But whether paying yeshivah tuition or buying an *esrog*, we gladly spend the money G-d gave us to fulfill our religious obligations. What about giving up some of your *mitzvah* so someone else can fulfill his *mitzvah*? An obscure law about the Chanukah *menorah* offers a surprising answer.

Are you obligated to buy someone an *esrog* if he will not buy it for himself? If he cannot afford it, then this falls under *tzedakah*. Setting that aside, what if someone has the necessary money to pay for a *mitzvah* but lacks the opportunity to do it. For example, if he becomes busy with work and lacks the time necessary to buy an *esrog*. Are we obligated to buy one for him?

All Jews are responsible for each other hence “*Kol Yisrael areivim zeh la-zeh*” (*Sanhedrin* 27b). All Jews are responsible to ensure that we act properly and therefore are punished collectively when others sin. Fulfilling this obligation takes great tact and sensitivity, which everyone thinks they have, sometimes incorrectly. What seems to encourage some people to fulfill their religious obligations might turn others off, leading them to neglect their obligations even more. However, if we can spend a few dollars to enable someone to fulfill a *mitzvah*, that seems like an easy win.

Rav Avigdor Nebenzahl (*Yerushalayim Be-Mo'adeha, Chanukah*, p. 43) quotes Rav Shlomo Zalman Auerbach as saying that you are not obligated to pay for someone else's *mitzvah*. You can choose to pay for it, but that is optional, above the required behavior. In terms of obligation, you do not have to pay for someone else's *esrog*. If so, it would seem that the same should apply to Chanukah lights.

II. The Special Mitzvah of Chanukah Lights

In terms of priority, the Gemara (*Shabbos* 23b) declares that someone with limited funds should choose Shabbos candles over Chanukah candles. Shabbos candles light the family meal and bring peace to the home. However, the Gemara continues, someone who cannot afford both wine for *kiddush* and candles for Chanukah should choose the latter. Chanukah lights publicize the great miracle, and that *mitzvah* takes priority over *kiddush*.

The core *mitzvah* of Chanukah lights is one light per home each night of Chanukah. However, the *mehadrin min ha-mehadrin* (extra special way) to fulfill the *mitzvah* is to light additional candles each day (and, for Ashkenazim, for everyone in the home to do so; *Shulchan Aruch, Orach Chaim* 671:2).

Magen Avraham (671:1) says that if you have just enough oil for your own lights and your friend cannot afford any, you should light only one in your home (the core *mitzvah*) and give to your friend so he can fulfill the *mitzvah* also. In other words, you are obligated to give up some of your *mitzvah* to enable someone else to fulfill a *mitzvah*. Doesn't this conflict with what we said above that you do not have to pay for someone else's *mitzvah*? If you don't have to buy your friend an *esrog*, why do you have to pay for his Chanukah candles?

III. Giving Away a Hidur Mitzvah

In prior centuries, *esrogim* were rare and expensive. It was common for a community to have one *esrog* that everyone shared. Sometimes, a town could not even acquire a single *esrog* and the residents could not fulfill the *mitzvah* that year. Magen Avraham (656:2) says that if you have your own *esrog* and a nearby town has none, you should send your *esrog* to that town and use your local community's *esrog*. In other words, you should give up your *hidur* (extra) *mitzvah* of owning an *esrog* so that others can fulfill the core *mitzvah*. However, Rav Nebenzahl (*ibid.*, p. 42n) suggests that this case is different from Chanukah lights because you are enabling an entire community to fulfill the *mitzvah*, not just an individual. A communal *mitzvah* carries greater weight than an individual *mitzvah* (*Berachos* 47b).

Rav Nebenzahl (*ibid.*, p. 43) argues that giving your extra Chanukah lights really does not constitute paying for someone else's *mitzvah*. You bought this oil or these candles for the *mitzvah* of Chanukah lights. Whether you use them yourself or give them to someone else, you are spending the same amount of money on Chanukah lights. However, while you do not have to surrender your money to enable someone to do a *mitzvah*, you do have to surrender your *hidur mitzvah*. Your responsibility for your fellow Jew's religious obligations makes his *mitzvah* your obligation. Therefore, this *arvus* (responsibility) requires you to forfeit your *hidur* for his *mitzvah*.

In a somewhat similar case, Rav Nebenzahl was asked about Purim that falls out on Friday. If you accept Shabbos a bit early and then someone comes to you and asks for your help because he has not yet heard *megillah*, what do you do? Rav Nebenzahl (*Yerushalayim Be-Mo'adeha, Purim*, p. 442) says that are you obligated to undo the acceptance of Shabbos through *hataras nedarim* and then read the *megillah* to him. Your obligation of *arvus*, your responsibility for your fellow Jew's *mitzvos*, overrides the inconvenience of reversing your Shabbos acceptance and requires you to read the *megillah* so he can fulfill the Purim *mitzvah*.

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Last Names in Jewish Law

by Rabbi Gil Student

I. What's In a Surname?

Last names serve to identify an individual with greater specificity. There may be many men named Yosef ben Ya'akov in the marketplace but Yosef ben Ya'akov Schwartz is much less common. Should we use last names in Jewish ritual and particularly in Jewish legal documents like a *kesubah* and *get*?

Initially, last names were utilized largely by nobility. Often, the last names changed each generation but over time they became more constant. We know that "Ibn Shlomo" means the son of Shlomo and probably originated with someone whose father was named Shlomo. But at some point, a family decided to continue the last name into future generations. For example, The Ri Migash's full name is Rav Yosef ben Meir Ibn Migash (12th cen., Spain). Apparently his family was called "Ibn Migash" after an ancestor and the last name continued even with someone whose father was named Meir. Similar examples continue throughout the ages.¹

As administrative states grew, particularly in the 18th and 19th centuries, governments began requiring that all people adopt last names to enable record keeping. Should this change be reflected in *halachah*, as well? The long history of last names creates a history of halachic discussion, the development of which ultimately impacts contemporary practice.

II. All the Names

The Mishnah and Gemara (*Gittin* 34b) discuss Rabban Gamliel's first century enactment to include all names in a *get*. Sometimes a person is called by his middle name in his hometown and by his first name in his adult home, or by different nicknames by different people. To avoid confusion, Rabban Gamliel enacted that you write a person's primary name in the locale where the *get* is given and add other names that are used. Secular names add another layer of complexity. Over time, this developed into versions of roughly: "Reuven who is called Ronald and any other name or nickname he has, the son of Shimon who is called Samuel and is nicknamed Sammy and any other name or nickname he has." Now that last names are standard, should we also include them?

The Gemara (*Gittin* 36a) says that the Sages enacted for the betterment of the world (*tikkun ha-olam*) that witnesses specify their name. This enables people to find the witnesses and validate the *get* if any questions arise. The *Tur* (*Even Ha-Ezer* 130) says

¹ We see other famous father-son pairs with the same "Ibn" last name, such as the Ibn Tibbon translators (12th-13th cens., Provence) and Rav Ya'akov Ibn Chaviv (16th cen., Greece; editor of Ein Ya'akov) and his son Rav Levi Ibn Chaviv (the Ralbach or Maharlnach, 16th cen., Israel). Other famous rabbis with last names include Rav Chasdai Crescas, Rav Yosef Albo, Rav Yitzchak ben Sheishes (Rivash) Prefet, Rav Moshe Isserles (Rema), Rav Shmuel Eidels (Maharsha, last name based on his mother-in-law), and so on.

that this means witnesses should specify their and their father's names. Should witnesses also include their last names, so people can locate them?

What if two people have the same name and the same father's name, and no distinguishable nickname? There are two easy ways to differentiate the people. Either go up another generation and add a grandfather's name or include a last name. The former requires investigation to clarify the grandfather's exact name and any possible nicknames. Adding a last name is easier, if it is allowed.

III. Maharil's Disciples

In the 15th century, we find a number of publications called *Seder Ha-Get* which detail the process of Jewish divorce. Perhaps the most important was written by Rav Ya'akov Margolis, a student of Rav Ya'akov Moellin (Maharil, 15th cen., Germany). Rav Margolis' *Seder Ha-Get* is frequently quoted by Rav Moshe Isserles (Rema, 16th cen., Poland) in his glosses to *Shulchan Aruch*. Other important similar publications include that of another student of Maharil, Rav Ya'akov Weil (15th cen., Germany; *Responsa Mahari Weil*, no. 190), and that of Rav Yehudah Mintz (16th cen., Italy; appended to *Responsa Mahari Mintz*).

Rav Yehudah Mintz (*Seder Ha-Get*, par. 45) says that he saw *gittin* arranged by Maharil that do not list different nicknames beyond what the man is normally called. Those documents do not include a last name either. However, Rav Mintz adds, if the town has two men with the same name and you do not want to include a grandfather's name then you can include a nickname (*chinuch* or *chanichah*) of the last name. He adds that Mahari Weil agrees, although he must have a tradition to that because I do not see it in Mahari Weil's *Seder Ha-Get*.

In contrast, Rav Ya'akov Margolis (*Seder Ha-Get*, par. 99) quotes Rav Menachem Bacharach (16th cen., Germany) as saying that you should refrain from mentioning a last name in a *get*. Instead, in a case of ambiguous names you should go up a generation to the grandfather's name. Significantly, Rema rules like this in his gloss to *Shulchan Aruch* (*Even Ha-Ezer* 129:16). Rema's student, Rav Binyamin Slonik (*Masas Binyamin*, Comments to *Even Ha-Ezer* 120:3), quotes both opinions. We seem to have a debate over whether you may include last names in a *get*, on each side of the debate is one of Maharil's students, Rav Ya'akov Margolis and Mahari Weil, and with Rema saying that the custom follows the strict view of Rav Margolis. The question is why not include the last name in a *get* and whether this applies to other legal documents, as well.

III. Identifying the Problem

Rema (*Darkei Moshe*, *Even Ha-Ezer* 129:19) says that the problem is that a *kinuy* nickname refers to an individual while a *chanichah* nickname refers to a family. If you call someone with just the last name (Shmuel ben Ya'akov Goldman) it might seem like the last name is part of the individual's name or his father's name. If you call it a *kinuy*, then you imply that it is his own nickname and not the family's. Rav Mordechai Yaffe

(17th cen., Poland; *Levush, Even Ha-Ezer* 129:17) adds that using a family name does not identify the individual but rather the entire family. Therefore, it is an invalid *kinuy*.

Rav Chizkiyah Medini (19th cen., Israel; *Sedei Chemed, Asifas Dinim, Ma'areches Get*, ch. 7 nos. 12-14) quotes a debate whether using a last name invalidates a *get* completely. Some argue that the ambiguity caused by a family name renders the entire document invalid. Others allow it after the fact.

However, Rav Elazar Fleckles (19th cen., Austria; *Teshuvah Me-Ahavah* 1:52 par. 7) describes a divorce he oversaw in 1805. The divorcing husband had the same name as someone else in town, including father and grandfather (Yosef ben Shimon ben Ya'akov). Rather than going up to a fourth generation, Rav Fleckles, together with the Prague *beis din*, decided to use the man's last name in the *get*.²

Rav Shalom Mordechai Schwadron (Maharsham, 19th cen., Ukraine; *Responsa Maharsham*, vol. 1 no. 83) dealt with someone who was almost exclusively called by his last name. Maharsham concludes that the *get* should include his first name and say that he is called (*de-miskeri*) by his last name. He quotes Rema's objection but counters that times have changed and now everyone calls people by their last names alone (e.g. Mr. Schwartz).

IV. Solving the Problem

Rav Moshe Feinstein (*Iggeros Moshe, Even Ha-Ezer*, vol. 1 no. 178) suggests that using language that explicitly identifies a last name as belonging to the family resolves all problems. For example, if you write Chaim ben Ya'akov *be-chinuch* Goldman you are identifying Goldman as a family name. Even better is the term *le-mishpachas* which explicitly says that the term is a family name. Rav Feinstein says that this would be appropriate even for a *get* according to all opinions. However, we should not do it for a *get* because of the severity of a mistake and the difficulty in correctly spelling last names. For any other document, we would be allowed to use a last name and doing so would be an enhanced of the document.³

Rav Joseph B. Soloveitchik used last names in *kesubos* (see Rav Aharon Ziegler, *Halachic Positions of Rabbi Joseph B. Soloveitchik*, vol. 5, p. 66), as do many of his students. Rav Hanan Balk told me the following story that Rav Manfred Fulda told him. Rav Fulda was once officiating at a wedding and Rav Moshe Feinstein entered the room. Rav Fulda asked Rav Feinstein to officiate but Rav Feinstein declined and instructed Rav Fulda to proceed with filling in the *kesubah*. Rav Fulda asked Rav Feinstein how to spell the last names and Rav Feinstein quickly interrupted him and asked what he was doing. Rav Fulda looked at him with utter dismay and replied that he was following what Rav Moshe said to do in *Iggeros Moshe* and using last names! Rav

² See also Rav Moshe Sofer, *Responsa Chasam Sofer, Even Ha-Ezer*, vol. 2 no. 32.

³ See also *Iggeros Moshe, Orach Chaim*, vol. 4 no. 40 par. 20. For many of the sources in this article, I was assisted by R. Shlomo Zalman Braun and R. Chaim Elazar Braun, *She'arim Metzuyanim Ba-Halachah, Bava Metzi'a* 18b s.v. *chaishinan* #2.

Moshe responded: “It is true that I ruled that way, but my view has not been accepted and the minhag is not to use last names.” I am told that Rav David Feinstein also did not use last names in *kesubos*.

Interestingly, Rav Mordechai Willig⁴ (starting at 12:07) does not use last names due to complicated circumstances such as an adopted child and a woman marrying a second time — which last name should be used? A highly emotional celebration such as a wedding is not the best time to raise these issues.

It seems that times have changed and the ruling from 500 years ago does not necessarily still apply. Even if it does, we have found a solution to the problem it poses. But despite that, many are hesitant to change a common practice both due to conservatism and to additional complications that arise in modern settings. Some are open to change in less important documents but all agree that we cannot risk changing the practice of name conventions in *gittin*.

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⁴ “Kesubos Shiur 14-Additional Laws of Kesubah 1,” September 11, 2014, starting at 12:07
<https://www.yutorah.org/lectures/lecture.cfm/817740/>

Are Stories Any Good?

by Rabbi Gil Student

I. Learning From Stories

Judaism thrives on stories that inspire and educate. The Talmud and Midrash contain many such stories, some about legal cases and others about interactions filled with important messages. The Talmud explicitly discusses how to use stories properly, which can inform how we consume information in other areas of our lives.

For example, *Rosh Hashanah* (29b) tells the story of how after the destruction of the Temple, Rosh Hashanah fell out on Shabbos. R. Yochanan ben Zakkai wanted to blow shofar, since he was in a city with a *beis din*. Bnei Beseirah, leading Torah scholars of the generation, wanted to discuss whether they should decree against it even in a city with a *beis din*. R. Yochanan ben Zakkai said that they will blow shofar first, then discuss. After they blew, Bnei Beseirah was ready to discuss and R. Yochanan ben Zakkai said that it's too late. These stories of actual events, laden with lessons and implications, sometimes even humorous or provocative, permeate the Talmud.

II. The Problem With Stories

A man once inherited property from his father and a young man came and said he is a brother who lives far away and has come to claim his portion of the inheritance (*Bava Metzi'a* 39b). After establishing that he is a legitimate heir, the younger brother asked for a portion of the improvements to the land he inherited. He wanted half of the value of the trees that the older brother planted after the father died. Rav Chisda ruled in the younger brother's favor.

When R. Ami heard about this, he exclaimed how wrong it is. This got back to Rav Chisda, who dismissed R. Ami's proof because the younger brother was a minor at the time of the father's death. When R. Ami learned of this, he retracted his comments because he had not heard the full details of the case and, indeed, Rav Chisda ruled properly.

R. Ami's experience should be familiar to us all. Too often, we hear a story only in broad outlines and yet the details make all the difference. In our minds, we fill in those details, often without realizing it. When we do so, we easily reach an incorrect conclusion.

III. Missing Data

For this reason, many Sages warn against drawing conclusions from stories. The Gemara (*Bava Basra* (130b) says that we do not derive a *halachah* from a teaching or a story unless the speaker or protagonist says explicitly that the message is intended for practice. Rashbam (ad loc., s.v. *ve-lo, ad*) explains that if you see your teacher doing something, do not establish *halachah* like that because you might not understand the nuances of the

situation. You have to confirm the ruling with your teacher to ensure you fully understand his thinking. Similarly, Tosafos (*Horayos* 2a s.v. *hacha*) say that a student may not have looked at the action with sufficient care and understanding. He might have overlooked an important aspect.

Rav Yitzchak ben Sheishes Prefet (Rivash, 14th cen., Algeria; *Responsa Rivash*, no. 301) was asked about how much to deduct from a widow's *kesubah* and answered just for the clothing she is wearing (based on *Kesubos* 54a). When told that Rav Nissim (Ran), his teacher, had deducted the cost of holiday clothing, Rivash responded that you cannot bring a proof from a story. There might have been other conditions involved or some sort of compromise due to competing claims. Without full knowledge, a story can be misleading.

This is an important message to keep in mind, particularly when hearing salacious stories reported in the media and online. What are the reporters missing? What key condition was overlooked which could turn a damaging story into a reasonable occurrence that could happen to anybody? It is difficult to know the truth when we hear only partial information, sometimes twisted to look as bad as possible.

On the other hand, what does this attitude do to the Talmudic method? So many lessons are taught through stories. If we cannot learn from them because we might be missing crucial details, why are we told so often to learn from stories? I think the answer lies in a radical story about R. Yehudah Ha-Nasi.

IV. Saving Stories

The Gemara (*Chullin* 7a) tells of how R. Meir's brother-in-law, R. Yehoshua ben Zeiruz testified that R. Meir ate a vegetable leaf in the city of Beis She'an without removing from the vegetable the required portions of *ma'aser* and *terumah*. Based on this, R. Yehudah Ha-Nasi declared that Beis She'an is outside the borders of biblical Israel and therefore produce grown there is not subject to *terumos* and *ma'asros*. This was a big step, for which R. Yehudah Ha-Nasi suffered heavy criticism.

R. Yirmiyah, whose penetrating — some would say pestering (at one point, he was expelled from the study hall — *Bava Basra* 23b) — questions fill the Talmud, challenges R. Yehudah Ha-Nasi's ruling. Maybe R. Meir holds that *terumah* and *ma'aser* on this vegetable apply only to a bundle and not a single leaf. Maybe R. Meir forgot to remove *terumah* and *ma'aser*. Maybe he took *terumah* and *ma'aser* from distant vegetables. While we might be able to answer each question, R. Zeira finally shuts R. Yirmiyah down with the statement: "See how great the man is who is testifying!"

Putting this in different terms, R. Yirmiyah raises the question that we have been discussing. Stories cannot serve as a source of normative practice because there might be crucial details missing from the story. R. Yirmiyah pushed his point by suggesting different details that might change the conclusion. R. Zeira answers that a story is as good as its source. He does not focus on R. Yehoshua ben Zeiruz's telling the story as

testimony but his personal status. A story can be used to draw practical conclusions when the person who is its source, and presumably those within its chain of transmission, are mature scholars who understand the relevant factors.

V. Impact On Behavior

Rav Naftali Tzvi Yehuda Berlin (Netziv, 19th cen., Russia; *Meromei Sadeh, Chullin 7a*) states this clearly. Even though we do not normally draw practical conclusions from a story, we accept a Torah scholar's teaching of practical *halachah* even when he deduces his ruling from a story.

Rav Menachem Mendel Krochmal (17th cen., Czech; *Responsa Tzemach Tzedek, no 75*) responded to stories about Torah-observant people drinking beer made with non-kosher wine sediment. Rav Krochmal rails against reliance on such stories. People often testify about activity that is blatantly against *halachah* and cannot be trusted because they do not understand the laws or the circumstances. They compare cases, assuming equivalence based on ignorance. It is like saying that someone cooked on Yom Tov so clearly you can cook on Shabbos. It is easy for someone unfamiliar with the nuances of Jewish law to be unaware that cooking is specifically permitted on Yom Tov, in contrast to Shabbos. Therefore, unless a Torah scholar transmits a story, you cannot rely on it for practical conclusions.

Rav Krochmal quotes Rav Moshe Mintz (Maharam Mintz, 15th cen., Germany; *Responsa, no. 79*) who was told that Maharil considers as binding a document in which the author says that his signature should serve as a hundred witnesses. Maharam Mintz dismisses such stories as unreliable. People misunderstand, misapply and misrepresent. Maharam Mintz even says that he would not trust a Torah scholar who told him that, although a parenthetical note adds that a truly learned scholar should be believed. (Although see *Responsa Maharil Ha-Chadashos, no. 133*).

Skepticism is an important trait when reading news and hearing stories. However, you go too far in your skepticism when you take it to mean that nothing is reliable. There is truth and there are reliable transmitters of that truth.

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