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**Rabbi Zvi Sobolofsky**  
**Attaining Divine Mercy**

Within the awe-inspiring tefillah of Unesaneh Tokef, recited on Rosh Hashanah and Yom Kippur, we refer to the angels who cannot survive strict Divine justice. The implication is obvious: how much more so can't we, as human beings, with our frailties, expect to be inscribed in the Book of Life on these awesome days of Judgement. Nevertheless, we continue to daven and when Yom Kippur concludes, we are confident that Hashem has indeed judged us favorably. How can we expect to be victorious in judgment if even the angels cannot accomplish this?

Chazal teach us that Hashem judges the world in two ways: through the lens of strict judgment on the one hand or through the lens of mercy and compassion on the other hand. When He looks at us through the prism of strict justice, we have no hope of succeeding. However, when Hashem views us through the lens of mercy and compassion, we can daven and hope to receive a positive verdict. The challenge that faces us is how we can have Hashem judge us in this manner and not apply the rules of strict justice? Chazal instruct us that Hashem treats us as we treat others. If we act to our fellow man in a way that always invokes the rules of justice, then Hashem will act accordingly towards us. However, if we treat others with compassion, then Hashem will likewise judge us in a merciful and compassionate way.

This week's parsha incorporates into halacha specific ways to treat others that go above and beyond what otherwise strict justice would have dictated. The Torah instructs us what to do when we find a lost object. - we are not allowed to keep it or even ignore it and leave it. Rather, we are obligated to

return it to its original owner. According to the strict rules of justice, we should have applied the concept of "finders-keepers." Yet, the Torah insists that we approach a lost object through the eyes of compassion. Although technically the owner has lost the claim to his property, compassion to others requires of us to go beyond the absolute letter of the law.

There is a similar mitzvah later in the parsha concerning lending money. Theoretically there should be nothing wrong with taking interest on a loan. The lender is losing the opportunity to invest his own funds and it is understandable if he were to receive interest for this loss.

Nevertheless, the Torah strictly forbids any form of interest. This is because we are not to treat our fellow man with strict justice, rather, out of love and compassion, we must forego our otherwise legitimate right to collect interest. The Torah elaborates on the relationship between the lender and the borrower that further highlights the need for compassion. If the borrower cannot repay the loan and it is necessary to take a collateral, the laws that govern such action greatly limit one's otherwise legitimate rights. One is prohibited from taking a collateral that would impinge upon the borrower's livelihood. If an article of clothing is taken, it must be returned at a time that the borrower has to wear it. Even though the lender is legally entitled to receive his payment, all efforts are made to insist that the lender view the borrower through the prism of compassion and mercy. As the ultimate act of compassion concerning loans, the Torah teaches us in Parshas Re'ei that at the end of the shemittah year the entire loan is cancelled. Clearly this is not rooted in justice but rather in the loving kindness expected to be shown to one another.

The entire institution of matnos anyim - gifts to the poor - is predicated on the traits of kindness and compassion. At the end of the parsha the Torah instructs us concerning the special gifts that are given from our fields and vineyards. We must leave a corner of what we harvest and significant parts of our crops for the poor to take. These mitzvos and the mitzvah of tzedakah are expressions of our love for others above and beyond what actual justice would have required. Theoretically what we harvest should be ours completely to keep. Yet by sharing with others, we become compassionate and in turn, we merit the compassion of Hashem.

As we approach the Days of Judgement we realize, like the angels on high, that we cannot be victorious in a world dictated by Divine justice alone. We call out to Hashem to view us through the eyes of kindness, love, and compassion. Our most effective way of meriting this Divine love is by treating others in this way. By performing these monetary mitzvos designed to implant within us these character traits, may we all merit Divine kindness and all be blessed and inscribed and sealed in the Book of Life.

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from: Shabbat Shalom [shabbatshalom@ounetwork.org](mailto:shabbatshalom@ounetwork.org)  
subject: Shabbat Shalom from the OU  
[www.ou.org/torah/parsha/rabbi-sacks-on-parsha](http://www.ou.org/torah/parsha/rabbi-sacks-on-parsha)

**Social Capital & Fallen Donkeys (Ki Teitse 5778)**  
**Rabbi Jonathan Sacks**

Many years ago, Elaine and I were being driven to the Catskills, a long-time favourite summer getaway for Jews in New York, and our driver told us the following story: One Friday afternoon, he was making his way to join his family in the Catskills for Shabbat when he saw a man wearing a yarmulke, bending over his car at the side of the road. One of the tires was flat, and he was about to change the wheel.

Our driver told us that he pulled over to the roadside, went over to the man, helped him change the wheel, and wished him "Good Shabbos." The man thanked him, took his yarmulke off and put it in his pocket. Our driver must have given him a quizzical look, because the man turned and explained: "Oh, I'm not Jewish. It's just that I know that if I'm wearing one of these" - he gestured to the yarmulke - "someone Jewish will stop and come to help me." I mention this story because of its obvious relevance to the command in today's parsha: "Do not see your kinsman's donkey or his ox fallen on the

road and ignore it. Help him lift it up” (Deut. 22:4). On the face of it, this is one tiny detail in a parsha full of commands. But its real significance lies in telling us what a covenant society should look like. It is a place where people are good neighbours, and are willing to help even a stranger in distress. Its citizens care about the welfare of others. When they see someone in need of help, they don’t walk on by.

The sages debated the precise logic of the command. Some held that it is motivated by concern for the welfare of the animal involved, the ox or the donkey, and that accordingly tsa’ar ba’alei hayyim, prevention of suffering to animals, is a biblical command.[1] Others, notably the Rambam, held that it had to do with the welfare of the animal’s owner, who might be so distressed that he came to stay with the animal at a risk to his own safety[2] – the keyword here being “on the road.” The roadside in ancient times was a place of danger.

Equally the sages discussed the precise relationship between this command and the similar but different one in Exodus (23:5): “If you see your enemy’s donkey fallen under its load, do not pass by. Help him load it.” They said that, all other things being equal, if there is a choice between helping an enemy and helping a friend, helping an enemy takes precedence since it may “overcome the inclination”, that is, it may help end the animosity and turn an enemy into a friend.[3] This, the ethic of “help your enemy” is a principle that works, unlike the ethic of “love your enemy” which has never worked and has led to some truly tragic histories of hate.

In general, as the Rambam states, one should do for someone you find in distress what you would do for yourself in a similar situation. Better still, one should put aside all considerations of honour and go “beyond the limit of the law.” Even a prince, he says, should help the lowliest commoner, even if the circumstances do not accord with the dignity of his office or his personal standing.[4]

All of this is part of what sociologists nowadays call social capital: the wealth that has nothing to do with money and everything to do with the level of trust within a society – the knowledge that you are surrounded by people who have your welfare at heart, who will return your lost property (see the lines immediately prior to the fallen donkey: Deut. 22:1-3), who will raise the alarm if someone is breaking into your house or car, who will keep an eye on the safety of your children, and who generally contribute to a “good neighbourhood,” itself an essential component of a good society.

The man who has done more than anyone else to chart the fate of social capital in modern times is Harvard sociologist Robert Putnam. In a famous article, ‘Bowling Alone’ and subsequent book of the same title,[5] he drew attention to the sharp loss of social capital in modern times. It was symbolised by the fact that more people than ever were going ten-pin bowling, but fewer than ever were joining bowling teams: hence ‘bowling alone,’ which seemed to epitomise the individualism of contemporary society and its corollary: loneliness.

Ten years later, in an equally fascinating study, American Grace,[6] he argued that in fact social capital was alive and well in the United States, but in specific locations, namely religious communities: places of worship that still bring people together in shared belonging and mutual responsibility. His extensive research, carried out throughout the United States between 2004 and 2006, showed that frequent church- or synagogue-goers are more likely to give money to charity, regardless of whether the charity is religious or secular. They are also more likely to do voluntary work for a charity, give money to a homeless person, give excess change back to a shop assistant, donate blood, help a neighbour with housework, spend time with someone who is feeling depressed, allow another driver to cut in front of them, offer a seat to a stranger, or help someone find a job. Religious Americans are measurably more likely than their secular counterparts to give of their time and money to others, not only within but also beyond their own communities.

Regular attendance at a house of worship turns out to be the best predictor of altruism and empathy: better than education, age, income, gender or race.

Religion creates community, community creates altruism, and altruism turns us away from self and toward the common good. Putnam goes so far as to speculate that an atheist who went regularly to church (perhaps because of a spouse) would be more likely to volunteer in a soup kitchen than a believer who prays alone. There is something about the tenor of relationships within a religious community that makes it an ongoing tutorial in citizenship and good neighbourliness.

At the same time one has to make sure that ‘religiosity’ does not get in the way. One of the cruelest of all social science experiments was the “Good Samaritan” test organised, in the early 1970s, by two Princeton social psychologists, John Darley and Daniel Batson.[7] The well known parable tells the story of how a priest and a Levite failed to stop and help a traveler by the roadside who had been attacked and robbed, while a Samaritan did so. Wanting to get to the reality behind the story, the psychologists recruited students from Princeton Theological Seminary and told them they were to prepare a talk about being a minister. Half were given no more instructions than that. The other half were told to construct the talk around the Good Samaritan parable.

They were then told to go and deliver the talk in a nearby building where an audience was waiting. Some were told that they were late, others that if they left now they would be on time, and a third group that there was no need to hurry. Unbeknown to the students, the researchers had positioned, directly on the students’ route, an actor playing the part of a victim slumped in a doorway, moaning and coughing – replicating the situation in the Good Samaritan parable.

You can probably guess the rest: preparing a talk on the Good Samaritan had no influence whatever on whether the student actually stopped to help the victim. What made the difference was whether the student had been told he was late, or that there was no hurry. On several occasions, a student about to deliver a talk on the Good Samaritan, “literally stepped over the victim as he hurried on his way.”

The point is not that some fail to practice what they preach.[8] The researchers themselves simply concluded that the parable should not be taken to suggest that Samaritans are better human beings than priests or Levites, but rather, it all depends on time and conflicting duties. The rushed seminary students may well have wanted to stop and help, but were reluctant to keep a whole crowd waiting. They may have felt that their duty to the many overrode their duty to the one.

The Princeton experiment does, though, help us understand the precise phrasing of the command in our parsha: “Do not see ... and ignore.” Essentially it is telling us to slow down when you see someone in need. Whatever the time pressure, don’t walk on by.

Think of a moment when you needed help and a friend or stranger came to your assistance. Can you remember such occasions? Of course. They linger in the mind forever, and whenever you think of them, you feel a warm glow, as if to say, the world is not such a bad place after all. That is the life-changing idea: Never be in too much of a rush to stop and come to the aid of someone in need of help. Rarely if ever will you better invest your time. It may take a moment but its effect may last a lifetime. Or as William Wordsworth put it: “The best portion of a good man’s life: his little, nameless, unremembered acts of kindness and of love.”[9]

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fw from hamelaket@gmail.com

from: Destiny Foundation/Rabbi Berel Wein <info@jewishdestiny.com>

reply-to: info@jewishdestiny.com

subject: Weekly Parsha from Rabbi Berel Wein

**Weekly Parsha KI TETITZEI**

**Rabbi Wein’s Weekly Blog**

The Torah in this week’s reading speaks about wars against our enemies.

Unfortunately, over the long period of Jewish history and today as well there is no shortage of enemies arrayed against Israel and the Jewish people. The Torah does not enumerate who these enemies are, it just states generally that

there certainly will be enemies and constant struggles and challenges, a strange but unremitting enmity towards the Jewish people, the Jewish state and Judaism itself.

And, to complicate this matter even further, rabbinic literature has identified the major enemy to be overcome as the personal weakness of all the Jewish people generally and of individuals Jews in their own right. Part of the problem of all great military strategists has been to identify the true enemy, and to deal with the core of the problem and not only with the periphery. That is why espionage, spies, informants and military intelligence are so much a part of warfare from time immemorial.

It is therefore important to note this observation of the Rabbis that our main enemies may not be external foes and forces but rather internal weaknesses as lack of confidence in our true mission and ourselves. Throughout human history the symbol of the Trojan horse has dominated the imagination and planning of all armies and governments. Of course, overwhelming external force, that no amount of internal courage and selflessness could overcome, has conquered nations. But it is no less true that mighty empires have also collapsed because of internal weaknesses and unsustainable constraints.

Life is a constant struggle with ourselves, with our base instincts, with our selfishness and greed, our desires and lusts. It is a war that we fight with ourselves daily and it is a cruel war because it knows no compromise nor cease-fire. The example of the non-Jewish woman taken in war by the lust of the moment, described for us this week's Torah reading, is meant to be the paradigm for all our struggles to remain upright and human despite financial, physical and political temptations.

They Torah instructed us to survive these wars by always choosing life over death, right over wrong, holy values over temporary temptations. The problem is that many people do not realize that they are engaged in such a struggle and arrive at the battlefield unprepared and ill armed. Knowing next to nothing about their identity and character, Jews, ignorant of the lessons of Jewish history and the values that have been taught to us by previous generations, are unable to identify the enemy. They form a circular firing squad that is self-destructive to themselves and others.

Freedom becomes licentiousness and achievement is forced to give way to entitlement and never-ending dependency upon others. Any careful study of the words of the prophets of Israel during first Temple times will notice that they reviewed all the external enemies that they then faced, and in the end eventually conquered Israel as being manifestations of the internal enemy that was destroying Jewish spirituality and sense of godly mission and purpose. This is a lesson that our generation should certainly also take to heart.

Shabbat shalom  
Rabbi Berel Wein

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from: Rabbi Chanan Morrison <chanan@ravkooktorah.org>

to: rav-kook-list@googlegroups.com

subject: [Rav Kook Torah]

**Ki Teitzei: Drafting Yeshiva Students**

**Rabbi She'ar Yashuv Cohen**

**Rav Kook Torah**

“When you wage war against your enemies...” (Deut. 21:10)

Rabbi She'ar Yashuv Cohen, Chief Rabbi of Haifa and son of the Rav HaNazir, told the story of his part in defending Jerusalem during the 1948 War of Independence:

During the winter of 5708 (1947-1948), I was one of the younger students at the Mercaz HaRav yeshiva. I was also a member of the Haganah, the pre-state Jewish defense organization. This was during the period of Arab rioting and attacks that erupted following the United Nations' vote on the 29th of November, 1947, to establish a Jewish state.

In those days, there was much discussion in Mercaz HaRav whether the yeshiva students should enlist to fight and defend. Both my father, the Rav HaNazir, and Rav Tzvi Yehudah were of the opinion that everyone is

obligated to go out and fight. This was a milhemet mitzvah, a compulsory war in which all are expected to participate.

However, those close to the head of the yeshiva, Rabbi Yaakov Moshe Charlap, argued that yeshiva students should continue their Torah studies in the yeshiva, and the merit of their Torah learning would bring victory in battle. They would quote the verse in Isaiah 62:6, “On your walls, Jerusalem, I have posted watchmen,” explaining that these watchmen protecting the city are in fact scholars, diligent in their Torah study.

At that time, the situation in the Jewish Quarter in Jerusalem's Old City was desperate. I came up with the idea of organizing a group of yeshiva students to establish a “Fighting-Defense Yeshiva” in the Jewish Quarter. The yeshiva's daily schedule would be comprised of eight hours for defense and guard duty, eight hours for Torah study, and eight hours for rest and sleep. The proposal was brought before the Haganah command and was approved. But those close to Rabbi Charlap were vehemently opposed to the idea. The controversy within Mercaz HaRav disturbed me deeply and caused me great anguish.

One day, as I exited the yeshiva, I saw huge notices posted at the entrance to the yeshiva. It was a broadside quoting Rav Abraham Isaac Kook, of blessed memory, that yeshiva students should not be drafted into the army. When I read the notices, I was in shock. Was I acting against the teachings of our master, Rav Kook?

Agitated and upset, I made my way down the road toward Jerusalem's Zion Square. There I saw a figure walking toward me, slightly limping. As he came closer, I saw that it was Rav Tzvi Yehudah. I felt very close to Rav Tzvi Yehudah; he was like an uncle to me.

When he saw my shocked face, Rav Tzvi Yehudah became concerned. “What happened, She'ar Yashuv? Why do you look like that? Don't be afraid. Tell me!”

Under the pressure of his questioning, I told him about my efforts to organize a “fighting yeshiva” in the Jewish Quarter, and my distress when I saw the posters which indicated that we were acting against his father's guidance.

When he heard my words, Rav Tzvi Yehudah was horrified. He grabbed me by my shoulders and roared, “This is a complete forgery! A distortion and utter falsehood!” He was so upset, his shouts echoed down the street.

After calming down, he explained that the notices had quoted a letter his father had written in London during the First World War. The letter dealt with drafting yeshiva students who had escaped from Russia to England. Rav Kook felt that these students should be exempt from the draft, just as the British exempted other clergy students.

But here - Rav Tzvi Yehudah motioned emphatically with his hands - here we are fighting for our hold on the Land of Israel and the holy city of Jerusalem. This is undoubtedly a milhemet mitzvah; whereas in England, the demand was that the yeshiva students fight for a foreign army.

The rabbi's words reassured me. I asked if he would be willing to write them down so that they could be publicized. He agreed. The rabbi publicized a broadside in which he objected to the use of his father's letter to Rabbi Hertz, Chief Rabbi of England, during World War I.

I also asked Rav Tzvi Yehudah to publish his views on the matter in a more detailed and reasoned format. He replied that there is no point in composing an article when the city is under siege and the printing presses are closed down. However, I was able to obtain a special permit from the Defense Board, so that a pamphlet containing five articles was published soon after. In his article, Rav Tzvi Yehudah explained that joining the army at that time was important for three reasons:

- To save lives (pikuah nefesh);
- To fulfill the mitzvah of conquering and settling the Land of Israel (mitzvat yishuv ha'aretz);
- Due to the great public kiddush Hashem, sanctification of God's Name, when the nation of Israel is redeemed from danger.

The Arab Legion attacking the Jewish Quarter of Jerusalem, May 1948.

“God’s redeemed will return”

Even though I was the one who had initiated the pamphlet’s publication, I did not receive a copy when it was printed. Due to special circumstances, several months passed before I received a copy.

I was one of the volunteers who succeeded in finding a way to slip inside the walls of the Old City. I joined the fighters there, and I was seriously wounded in battle.

When the Old City fell to the Arab Legion on May 27th, 1948, I was taken prisoner. The Jordanian commander was shocked to discover that only 26 of the surrendering Jewish soldiers survived the battles without serious injury. Embarrassed to return victorious to Jordan with such a small group of prisoners, he decided to also take wounded soldiers.

After seven months as a prisoner in Jordan, we were returned to Israel in a prisoner exchange deal. I was taken to Zichron Ya’akov to recuperate, and Rav Tzvi Yehudah came to visit me the first morning after my arrival. The morning of Rav Tzvi Yehudah’s visit, as I was removing my tefillin after morning prayers, I peered out the window and saw Rav Tzvi Yehudah slowly making his way up the mountain. Afterward, I found out that he had taken the very first bus from Jerusalem, and had traveled early in the morning all the way to Zichron Ya’akov in order to greet me.

I ran toward him, and he hugged and kissed me. He cried over me like a child. The truth is that my situation was so grave that my family and friends had nearly given up all hope. Until then, such a thing had never happened - returning alive from captivity in an Arab country. But the Jordanian King Abdullah had wanted to show the world that he was an enlightened monarch who respected international law....

After recovering from his outburst of emotion, Rav Tzvi Yehudah put his hand in his coat pocket and brought out a small pamphlet containing his article about defending the country. Inside was a personal inscription: “For my dear beloved friend - the initiator, advisor, and solicitor [of this tract]. This pamphlet is set aside, from the day it was printed, until ‘God’s redeemed will return in peace, and joyfully come to Zion.’”

Decades later, I still have that treasured pamphlet carefully stored in my possession.

(Stories from the Land of Israel. Adapted from Mashmia Yeshuah, pp. 270-272)

See also: Ki Tetze: Remembering Miriam's Punishment

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from: Mordechai Tzion toratravaviner@yahoo.com

to: ravaviner@yahogroups.com

http://www.ravaviner.com/

Yeshivat Ateret Yerushalayim

From the teachings of the Rosh Yeshiva

Ha-Rav Shlomo Aviner Shlit"א

**Rav Shlomo Aviner Shlit"א**

Q&A on Alzheimer's

Q: Which is preferable for a person with Alzheimer's – to be home with limited resources or in a medical facility rich in resources?

A: At home. He feels better there, and it slows down the progression of the illness.

Q: When there is no choice, can a child help a parent in the bathroom or shower even though it is immodest?

A: Yes (See Pesachim 51a. Aruch Ha-Shulchan, Even Ha-Ezer 23:8. Shut Shema Avraham #70).

Q: Sometimes the behavior of a parent suffering from Alzheimer's goes beyond the limit. Am I still obligated in honoring one's parent?

A: Yes, to the best of your ability (See Rambam and Raavad, Hilchot Maamrim 6:10).

Q: Is a person suffering from Alzheimer's obligated in Mitzvot?

A: To the best of his ability, and where he is mentally aware (See Shut Igrot Moshe, Even Ha-Ezer 1:120).

Q: I don't have the strength to care for a person suffering from dementia.

A: One needs great self-sacrifice to care for a loved one.

Q: Is there any advice for a person suffering from Alzheimer's who forgets to perform Mitzvot and violates transgressions?

A: Writing in a notepad. And for Shabbat – pre-made sticky notes.

Q: Is it permissible to violate Shabbat for a medical procedure which will extend his life?

A: Yes. It is considered a life-threatening situation. See Shulchan Aruch, Orach Chaim 328:5 (Shut Igrot Moshe, Orach Chaim 3:91. See Shut Tzitz Eliezer 8:15 #7. Shut Bigdei Shesh 1:42 #4).

Q: Is it permissible to violate Shabbat for a medical procedure which will help him remain mentally stable for a longer period of time?

A: Yes (Shut Tzitz Eliezer ibid. #9, 1. Shut Bigdei Shesh ibid. #5).

Q: Should one pray for his recovery? After all, there is no medical cure.

A: Certainly. 1. In order that the illness does not worsen. 2. There is constant research and perhaps a cure can be discovered. 3. That he should feel good, as much as possible.

Q: If the person is suffering greatly, is it permissible to pray for his death?

A: Yes (Ketubot 104a). However, it is on condition that it is for his benefit and not to ease the burden on the family (Shut Tzitz Eliezer Volume 5, Ramat Rachel #5. Volume 7 #49).

Q: In general, how should one relate to a person suffering from Alzheimer's?

A: With love and respect.

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fw from hamelaket@gmail.com

from: Rabbi Yirmiyohu Kaganoff <ymkaganoff@gmail.com>

to: kaganoff-a@googlegroups.com

*Mitzvas maakeh is mentioned in this week's parsha.*

**Blessings and Guardrails**

**By Rabbi Yirmiyohu Kaganoff**

Question #1: Who makes the brocha?

“If someone performs a mitzvah as my agent, can I still recite a brocha on the mitzvah?”

Question #2: Am I doing the mitzvah?

“Do I fulfill the mitzvah of building a maakeh if I hire a non-Jew to do it for me?”

Question #3: When do I bless?

“If I am performing a mitzvah that will take a long time to fulfill, when do I recite the brocha?”

Introduction:

Reb Gavriel\*, a talmid chacham whom I know, is having his house remodeled, including adapting a roof area for use, which will require the assembly of a maakeh, a fence, wall or railing high enough and strong enough to prevent someone from falling (see Devorim 22:8). He asked me the following: “I will now have the first opportunity of my life to fulfill the mitzvah min hatorah of building a maakeh. My question is: The construction workers are not Jewish. Can I recite a brocha on performing this mitzvah, when gentiles are doing the work? And, if I recite a brocha, when do I recite it, since this construction will take several weeks?”

Let me explain Gavriel’s excellent questions. Prior to performing a mitzvas aseh, a positive mitzvah, we recite a brocha thanking Hashem for the opportunity to fulfill His commandments. These brochos are what we call birchos hamitzvah. They begin with the words Boruch Ata Hashem Elokeinu Melech ha’olam asher kideshanu bemitzvosav vetzivanu and conclude with the words appropriate to the specific mitzvah. According to the majority of halachic authorities, one recites a brocha on constructing a maakeh, since by constructing this maakeh one fulfills a positive mitzvah of the Torah (Sedei Chemed, Volume 5, page 250, provides analysis of this point). The rishonim cite several slightly variant texts detailing how one concludes the brocha recited for fulfilling this mitzvah. (See commentaries She’eilas Shalom and Ha’eimek Hasheilah to She’iltos, Eikev #145, who discuss what is the proper text of the brocha.) I believe that the accepted Ashkenazic practice is to complete the brocha with the words: Al mitzvas maakeh.

In Reb Gavriel's case, there are three questions:

1. Can I recite a brocha when I am not performing the mitzvah myself?
2. Do I fulfill a mitzvah when it is performed by hirees who are not Jewish?
3. At what point in the construction should I recite the brocha?

Who recites the brocha?

Reuven asks Shimon to search his (Reuven's) house for chometz. Can Reuven recite the brocha of al bedikas chometz on Shimon's search? (We should note that, in general, someone obligated to perform a mitzvah should do the mitzvah himself, rather than assign it to someone else, a principle called mitzvah bo yoseir mibeshelicho, it is a bigger mitzvah to perform a mitzvah yourself than via proxy [Kiddushin 41a].)

On the one hand, Reuven is fulfilling the mitzvah, not Shimon. On the other hand, Shimon is the one who is actually performing the mitzvah.

The Magen Avraham states that the agent doing the act of the mitzvah can recite the brocha (432:6), but he also implies that should Reuven want to recite the brocha, he may do so, even if he himself did not participate at all in the act of performing the mitzvah (432:5). They should not both recite the brocha – for one of them, this would constitute a brocha levatalah, a brocha recited in vain.

Shelichus

The Torah teaches a principle that a person can perform a mitzvah, create a transaction, or discharge a legal requirement by having an agent act on his behalf, a concept called shelichus. Because of this rule, a husband can appoint someone to write a get on his behalf, or deliver a get to his wife. Similarly, I can appoint someone to separate challah from dough that I have prepared, or appoint someone to be my agent to carry out a transaction, such as having a rav sell my chometz.

Ein shelichus lenachri

Although I can appoint a proxy to separate terumos or challah for me or to carry out a transaction on my behalf, that agent must be Jewish. The Torah did not extend the concept of agency to non-Jews, either to allow a gentile to function as surrogate for someone else or to have a gentile appoint a surrogate on his own behalf. A result of this halachah is that a Jew cannot appoint a gentile to separate challah. Thus, a Jewish-owned bakery that has non-Jewish employees mixing dough must make provisions to have a Jew take challah. If a gentile did the act of separating challah, no mitzvah was performed.

According to this reason, it would seem that if Reb Gavriel has non-Jewish workers building his maakeh, the mitzvah was not fulfilled. He is not doing the construction himself, and the people he hired are ineligible to be his agents. It is true that there is no longer any danger of having an unfenced roof, and, therefore, one is not in violation of allowing a safety hazard to exist, lo sasim damim beveisecha (Devorim 22:8). Yet, it would seem that the positive mitzvah to build a railing was technically not observed, since it was constructed in a way that no one fulfilled the mitzvah.

Enter the Machaneh Efrayim

An early halachic authority, the Machaneh Efrayim (Hilchos Sheluchim #11 and Hilchos Kinyan Meshichah #15), however, rules differently, contending that, under certain circumstances, Reb Gavriel has fulfilled the mitzvah and can recite a brocha upon the maakeh's construction. The Machaneh Efrayim, a classic early acharon, was authored by Rav Efrayim Navon, who was born in Istanbul in 1677. He lived in Eretz Yisroel from 1700 until 1723, but eventually settled back in Istanbul where he served as a dayan on the Beis Din of the Mishneh Lamelech, Rav Yehudah Rosanes. When the Mishneh Lamelech passed on, the Machaneh Efrayim was appointed his successor as the rav of Istanbul, a position he held until his passing in 1735.

The Machaneh Efrayim presents two different reasons why he feels the mitzvah was observed, notwithstanding the halachic issues that we raised above.

Yad po'el keyad baal habayis

1. The Gemara teaches a principle; yad po'el keyad baal habayis, literally, the "hand" of the worker is treated as the hand of the employer (Bava Metzvia

10a). If I hire someone to perform general work – regardless of what he is assigned to do -- and he finds an unowned object in the course of his work, the employer becomes the owner of the object. How did the employer gain ownership of the item, when it was the employee who found it and picked it up? The Gemara explains that since the employer hired the worker to do whatever needs to be done during the period of his service, the employer owns even the worker's ability to take possession of items, which is called a yad, a hand, in halachic jargon.

The Machaneh Efrayim extends the principle of yad po'el keyad baal habayis to Reb Gavriel's situation. When I hire someone to be my general worker, it is considered that I built the railing myself. I have therefore fulfilled the mitzvah and may recite the brocha. This principle does not apply when I hire a worker for a specific job (see Aruch Hashulchan, Choshen Mishpat 427:3). There are other ramifications of this principle of the Machaneh Efrayim.

Although there is an obligation to separate terumos and maasros from produce growing in a Jew's field in Eretz Yisroel or in the lands nearby, one is not required to separate them until the harvesting process is complete. At the time of the Mishnah/Gemara, this entailed leveling off the pile of grain or other produce, after all had been harvested. The Machaneh Efrayim contends that, even if this leveling was performed by a gentile employee or hiree, the owner becomes obligated to separate terumos and maasros. Despite the fact that a non-Jew cannot function as a proxy, the processing he performs as an employee obligates the owner to separate maasros.

Construction is different

2. The Machaneh Efrayim presents a second line of reasoning why someone who hired a gentile to build a railing has fulfilled the mitzvah. The rule that a gentile cannot be my agent is only when something requires agency to be effective, such as the separation of challah, the delivery of a get, or creating a transaction. In each of these cases, a change of status or ownership is effected by someone's intent. Without intent on the part of the person creating the change or transaction, nothing has happened – the dough that was separated did not become challah, the woman did not become divorced, the chometz was not sold. In these instances, since the Torah did not create a concept of shelichus for gentiles; if I appointed someone non-Jewish to separate challah or to carry out agency, nothing has transpired.

However, contends the Machaneh Efrayim, when a physical act is being done, such as the construction of a railing, we are not dealing with a legal effect, but an on-the-ground, physical result. This is not a function of the laws of shelichus, but a practical matter. Since the railing now exists, I have fulfilled the mitzvah and can recite the brocha, regardless who actually constructed it.

Railing about the railing

Notwithstanding that the Machaneh Efrayim concludes that Reb Gavriel could recite a brocha when his gentile workers build the maakeh, many later authorities dispute either or both of his reasons (Shaar Hamelech, Terumos 1:11; Shu't Shivas Tziyon #53; Nesivos Hamishpat, Chapter 188; Minchas Chinuch, Mitzvah #546; Shu't Sha'ul Umeishiv, Volume 1, part 2 #110; Ulam Hamishpat, Chapter 188; Shu't Birchas Retzei #75; Sedei Chemed, Volume 5, pages 249-250). Regarding his first approach, that, because of the concept of yad po'el keyad baal habayis, it is considered that the employer built the railing himself, there are two different reasons to refute his position. Firstly, there is no evidence that the halachic concept yad po'el keyad baal habayis applies to non-Jewish employees. All the places in which the Gemara applies this rule involve Jewish workers, and there are valid reasons why one should not be able to compare the two.

Furthermore, even if yad po'el keyad baal habayis applies to gentile workers, there is a big jump in logic to apply this principle to the construction of a railing. If, in the course of his day's work, an employee acquires something on behalf of the employer's business, one could argue that the employer made the transaction, since he owns the employee's yad. However, how does the act of the gentile employee, such as constructing a railing, become the act of the Jewish employer, in such a way that he did the act of the

mitzvah himself and can therefore recite a brocha? A mitzvah must be performed by someone who can be commanded to fulfill this mitzvah. The action performed by the gentile does not become the act of the employer because of yad po'el keyad baal habayis.

To demonstrate the difficulty with the Machaneh Efrayim's approach, some authorities contend that, according to the Machaneh Efrayim, if a Jew instructed his gentile employee to plow using a donkey and an ox, the Jew will be liable for malkus, lashes, for violating the Torah violation of having them work together, since his gentile employee's action is considered as if he did it himself (Shu't Shivas Tziyon #53). Although it is prohibited to hire a gentile to do this, it is highly surprising to assume that the Jew should be liable for malkus in such a situation.

Is this chometz she'avar alav hapesach?

The Machaneh Efrayim's principle created a problem for a community in a very different case. The local branch of a Jewish-owned business was managed completely by gentiles. The question was whether the chometz that the non-Jewish employees of the local branch purchased on behalf of the business before Pesach becomes prohibited because of chometz she'avar alav hapesach, chometz that was owned by a Jew in the course of the holiday. The questioner, Rav Yaakov Mendel Friedman, the rav of Nadvorna, wanted to permit the chometz on the basis that, since there is no agency of non-Jews, the chometz is halachically considered to have been owned by gentiles over Pesach. However, he noted that, according to the Machaneh Efrayim, since the gentiles are the employees of the Jewish owners, the chometz is deemed to have been owned by Jews over Pesach, and it is therefore prohibited. He sent the question to Rav Tzvi Hirsch Orenstein, a respected nineteenth century posek in Lithuania and Poland. (During his lifetime, he served successively as rav in Brisk, Reisha and Lvov.) Rav Orenstein ruled that accepted halachah does not follow the opinion of the Machaneh Efrayim (Shu't Birkas Retzei #75).

Other railings

The second reason presented by the Machaneh Efrayim why someone could recite a brocha upon the assembly of a railing built by a non-Jew was that the owner fulfills the mitzvah of building a maakeh, no matter how the railing actually became constructed. Notwithstanding the Machaneh Efrayim's contentions, others dispute his conclusion that this is considered that the Jew performed the mitzvah.

It appears that most authorities reject the position of the Machaneh Efrayim and contend that one should not recite a brocha, if a gentile built the railing. Those who reject the Machaneh Efrayim's approach would require that a Jew participate in the construction of the railing, in order to be able to recite the brocha. However, one major authority rules that Reb Gavriel should recite a brocha on the assembly of the railing, regardless of whether it was assembled by Jews or by gentiles, and even if he did not participate at all (Aruch Hashulchan, Choshen Mishpat 427:3).

When do I recite a brocha?

At this point, let us examine the third of our opening questions:

"If I am performing a mitzvah that will take a long time to fulfill, when do I recite the brocha?" This exact question can be asked regarding the assembly of a railing, and we noted before that Reb Gavriel, indeed, asked it.

Allow me to provide some background. In general, one recites a brocha immediately prior to beginning the performance of a mitzvah or immediately prior to eating a food. The Gemara (Pesachim 119b) calls this oveir la'asiyan. According to this, one should assume that one would recite the brocha on the railing immediately before one performs the mitzvah.

However, the question, here, is that the mitzvah takes a long time to perform. It can also happen that someone may encounter a difficulty in the middle of the job that makes it impossible for him to complete the mitzvah. Because of these concerns, when should one recite the brocha for performing the mitzvah?

This question is raised by the Chasam Sofer (Shu't Chasam Sofer, Orach Chayim 52), who concludes that one should recite the brocha immediately

prior to completing the maakeh. In his opinion, since the railing does not provide adequate protection until it is complete, the act of the mitzvah is the last hammer blow that makes it into an effective railing.

However, a much earlier authority than the Chasam Sofer holds differently. The Baal Ha'itur (Hilchos Tzitzis, Shaar 3, Cheilek 2, page 152) rules that one recites the brocha at the beginning of the assembly of the railing, even though its manufacture takes time. He compares this to the brocha of al bi'ur chometz, which we recite at the beginning of the search, knowing that it may involve interruptions and considerable time until the mitzvah is completed, which is when one has finished burning the chometz.

A third approach

I found yet a third approach to when one should recite the brocha on assembling a railing, because of an interesting reasoning. Some late authorities suggest that if the owner is unable to construct the railing himself, he should wait to recite the brocha until the railing is in place, out of concern that the employee may not complete the job, and the brocha that he recited for the mitzvah would be in vain (see Sedei Chemed).

In conclusion

What should Reb Gavriel do? I found some late authorities who suggest that he should try to assist the workers at a critical time in the manufacture of the railing, in which case, he could recite the brocha, because he took an active part in its assembly (Sedei Chemed, quoting Nediv Leiv). According to the Chasam Sofer, he should help out at the last stage of the construction of the railing, which is when the mitzvah is being properly fulfilled. According to the Baal Ha'itur, he should help out at the beginning of the construction of the railing, so as to recite the brocha before the mitzvah is begun.

Just as we must make sure that we build a guardrail in a way that it will properly prevent physical injury, so must we also examine the laws governing how and when we thank Hashem for the opportunity to observe his mitzvos. And just as we hire a professional to ascertain that our guardrail does its job well, so should we strive to recite our brochos and prayers with careful attention to detail, performing them in the way Hashem wants.

\* I was asked this exact question. The name was changed to protect the individual's privacy.

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fw from hamelaket@gmail.com

from: Ohr Somayach <ohr@ohr.edu>

to: weekly@ohr.edu

subject: Torah Weekly

**Ohr Somayach :: Torah Weekly :: Parshat Ki Tetzei**

**For the week ending 25 August 2018 / 14 Elul 5778**

**Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com**

**Insights**

***I Know It's Only Rock 'n' Roll***

***"When you go out to war against your enemies...and you will capture its captivity." (21:10)***

Educational psychologists recognize the wisdom of our Sages in Pirkei Avot: Elisha ben Avuya says, "One who learns as a child is like ink on new paper, and one who learns when he is old is like ink written on paper which has been erased."

However hard one tries to erase the writing of one's youth, there will always be a residual grayness on the paper of the mind.

How I wish my bekiut (breadth of knowledge) in Torah was as clear as my recall of the lyrics of "Bridge Over Troubled Water"!

A young fellow had started learning at a ba'al teshuva Yeshiva and came to Rav Shlomo Wolbe zt"l with a question: "Rebbe, I was once a national violin virtuoso. Is it permissible for me to continue playing?"

"No", said Rav Wolbe. "It is not permissible. It's obligatory. I give you a beracha (blessing) that one day, playing the violin will no longer fulfill your highest spiritual aspirations. Only Tosefot will be able to do that. Until that moment you are obliged to continue playing the violin."

The yetzer hara (negative inclination) is a spring — if we bear down on it too hard we will find it springs back at us with twice the force.

All spiritual growth is incremental. “Grasping at Angels” leads to a peremptory and painful fall.

“When you go out to war against your enemies...and you will capture its captivity.”

Rashi says: The Torah is speaking here only in response to the yetzer hara.”

The yetzer hara is a person's greatest enemy. The only way to 'capture' its 'captivity' — to re-'capture' for ourselves our independence from its domination — is with stealth and patience, as Rashi goes on to describe. Similarly, it says in last week's Torah portion: “When you go out to the battle against your enemy, and you see horse and chariot, a people more numerous than you, you shall not fear them, for the L-rd your G-d is with you...”

(13:7)

Seven verses after this exhortation the Torah says: “Who is the man who is fearful and fainthearted? Let him go and return to his house, and let him not melt the heart of his fellows, like his heart.”

Didn't the Torah just tell him not to fear because G-d is with him? Where is his faith? Where is his bitachon? Where is his stiff upper lip?

The Torah mandates the ideal, but it also understands human nature.

Although as a younger person I had a successful career in the music business, I never played in a band. And so it was that I put up signs around Ohr Somayach for “The Ohrchestra – Ohr Somayach's own electric band.”

The lishma (altruistic) side of the band was to give those students who needed an outlet for their musical talents a forum. The flip side was that I wanted to pick up an axe (guitar) and bang out some old chords that were banging around in the brain.

I seriously doubt that the Rosh Yeshiva, Rav Nota Schiller, will be booking Carnegie Hall in the near future for “The Ohrchestra,” but it certainly allows some young (and not-so-young) aspiring talmidei chachamim to let down more than their peyot.

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<http://www.ou.org/>

from: Shabbat Shalom <shabbatshalom@ounetwork.org>

***OU Torah***

***Rabbi Dr. Tzvi Hersh Weinreb***

***“And the Winner Is...”***

It was the first time that I announced a contest from the pulpit. It felt like a risky thing to do, and probably was. But it worked, and I tried it several times over the ensuing years.

It was on the occasion of this week's Torah portion, Parshat Ki Tetze, but it was many, many years ago. What prompted me to launch the contest with confidence was a discussion I had one Friday morning with a group of teenagers. They were frustrated by the fact that they could find little relevance in many of the biblical passages that we were studying. So many of these passages seemed to be speaking of events and circumstances that were unrelated to those prevalent in the lives of these teens.

Instead of offering my own ideas about this issue, I told them that I would challenge the entire congregation to find relevance in some of the passages of that week's parsha, which happened to have been Ki Tetze. They felt excited to be in on what they viewed as a conspiracy, the planning of a sermon in which the rabbi would turn the table on the members of the congregation and require a response from them.

I stood up that Saturday morning and began by quoting the following verse: “If you see your fellow's donkey or ox fallen on the road, do not ignore it; you must help him raise it.” (Deuteronomy 22:4) Rashi, following the explanation of the Talmud, understands this to mean that if the donkey's pack falls off his back you must help your friend replace it there. This is the mitzvah known as te'inah, or uploading.

I challenged the audience with the following question: “Of what possible relevance is placing a fallen burden back on a donkey to us in our daily

lives? When is the last time you met a donkey or an ox on the road, with or without a sack on the ground beside it?”

I then asked the audience to take out their Chumashim, their Bibles, and turned back to a passage we had studied together during the previous winter in the Torah portion of Mishpatim. There we read, “When you see the donkey of your enemy lying under its burden and would otherwise refrain from helping him, you must nevertheless help him.” (Exodus 23:5)

Rashi, again following the Talmud, sees this as the mitzvah of perikah, of helping to unload the donkey of its burden, and helping even one's enemy in the process. “Now I understand,” I argued to the audience, “that the lesson of helping one's enemy may be a relevant, if unpopular, one. But unloading a donkey? When was the last time anyone here did that?”

Then I announced the contest. “I am not going to provide my own suggestions to answer these questions,” I said. “Rather, we are going to have a contest in which each of you can write your own answers to these questions.”

I had done some preliminary work before Shabbat and enlisted two well-respected members of the synagogue to serve along with me on a panel of judges to evaluate the submissions and to decide upon the top three responses.

I must confess to having been delighted by the number and quality of the answers that were handed in. It was by no means a simple task to decide upon the three most creative ideas.

As the second runner up; that is, the third of the top three, my two judicial cohorts and I chose the answer submitted by our shul's resident yeshiva bachur, a young student who found the answers to most of his questions in the Talmud. He reminded us of the passage in Tractate Bava Metzia which imagined a situation in which a person would have to choose between the mitzvot of uploading and unloading, between te'inah and perikah.

The Talmud describes the dilemma of the person who encounters not one, but two, donkeys. One donkey has its fallen cargo on the ground next to it; the other is bent under its burden. You have time for only one donkey.

Which one do you attend to?

The Talmud answers that your priority is to unload the overburdened donkey. The Jewish value of tza'ar ba'alei chayim, sensitivity to the suffering of animals, trumps the mitzvah of te'inah. “Surely teaching about the need to avoid cruelty to animals is a relevant lesson,” argued the budding Talmudic scholar.

The runner up, number two in the contest, was our local psychologist. “Every day,” he asserted, “I help to unload peoples' burdens. I try to listen to them and to somehow lighten the weight that they feel. That's perikah. And then there are those whom one must encourage to ‘upload’ the packs on their backs and to ‘keep on truckin,’ to get back on the road, and to get on with their lives. That's te'inah.”

Our panel of judges was in for a surprise when it came to the contestant who won the grand prize. Of all the many members of the synagogue, it was the aging cantor who was clearly the winner. We all knew that his voice was far from what it once was and that he had trouble reaching the high notes as well as the lowest notes on the musical scale. But we kept him on, and indeed cherished him, for his genuine piety and sincere humanity.

“Whenever I stand in front of the congregation,” he said, “and anticipate the difficulty I am about to have in reaching the high notes, I appreciate those of you who sing and chant along with me and help me achieve those high notes. You uplift me. When you do that, you fulfill the mitzvah of te'inah. And as I falter in trying to descend the musical ladder to those lower notes, and you, the congregation, come to my aid with your voices, you help lower my burden, and you perform the mitzvah of perikah.

We are told that there are seventy facets to the Torah. We had about seventy contributions to our contest that Shabbat. I have shared only the top three with you, dear reader, and challenge you to come up with others on your own.

fw from hamelaket@gmail.com  
from: Rabbi Ephraim Z. Buchwald <ezbuchwald@njop.org>  
subject: Weekly Torah Message From Rabbi Ephraim Z. Buchwald  
*njop.org*

**Rabbi Buchwald's Weekly Torah Message**

**"The Impact of Performing Mitzvot"**

**Rabbi Ephraim Z. Buchwald**

**Kee Teitzei 5778-2018**

This week's parasha, parashat Kee Teitzei, has more mitzvot than any other parasha in the Torah, featuring a total of 74 mitzvot, 47 negative and 27 positive.

In her always astute and penetrating analysis of the Torah portions, Nehama Leibowitz, remarks that since Kee Teitzei contains the most mitzvot, it is entirely appropriate to focus on the overall aim and purpose of the Divine commandments, the mitzvot.

The beautiful mitzvah of, שלוחה חַיִּים, Shilu'ach Ha'kain, of sending away the mother bird before taking the chicks or the eggs from the nest, that is contained in parashat Kee Teitzei, is a primary example of a most meaningful mitzvah.

The Midrash, Deuteronomy Rabbah 6:3, regards the role of mitzvot, as serving as "good angels." The good angels accompany those who perform mitzvot, gracing their daily acts and consecrating their earthly deeds.

Mitzvot elevate even a person's most mundane daily actions, such as tilling the soil, earning a livelihood, acquiring clothing, grooming one's hair and building one's house.

The Midrash concludes by saying, "G-d said: Even if you are not engaged in any particular work, but are merely journeying on the road, the precepts [mitzvot] accompany you. From where do we learn this? For it is said: 'If a bird's nest chance to be before you in the way,' etc." That is why Scripture, in Proverbs 1:9, refers to the performance of mitzvot as לְיוֹתָן חֹן הֵם לְרֵאשִׁיטָה, that mitzvot are a crown of glory, a beautiful adornment, a decoration of honor for those who perform them.

Professor Leibowitz points to another approach to understanding the aim of the mitzvot that is found in the Midrash on parashat Shelach. The Torah in Numbers 15:38, declares לְרֵאשִׁיטָה צִיצִית, that "they make for themselves tzitzit," fringes on the corners of their garments.

The Midrash states that the Torah and the commandments were given to serve as an inheritance to Israel in the hereafter. Every earthly action and deed is somehow associated with a Torah commandment. An Israelite who goes out to plow, sow, knead dough, who sees a bird's nest, plants a tree, buries a dead person, builds a house, or wraps himself in a cloak, will invariably encounter a mitzvah that directly pertains to that action.

The Midrash Rabbah in Numbers 17:77 compares it to a case of a person who falls into the water. The captain throws out a rope and shouts to the drowning person, "Take hold of the rope, do not let go, otherwise you'll lose your life." So, says the Midrash, G-d says to Israel, "Cleave to the commandments. Adhere to them, for they are your life."

The first Midrash sees mitzvot as serving as ornaments, adding grace and beauty to a person's life, as he or she walks through the garden of the Holy One blessed be He, in pursuit of his or her own personal advancement. The second Midrash sees the performance of mitzvot as far more crucial than an ornament. Mitzvot are an essential ingredient of life, saving those who are drowning in the stormy seas of their own selfish passions and pursuits.

Professor Leibowitz cites two mitzvot in the parasha to demonstrate the powerful impact of mitzvot. The first, is the mitzvah of Shilu'ach Ha'kain, of sending away the mother bird, as an example of extraordinary compassion, the compassion shown to a mother bird when taking her chicks. Much more however, does this mitzvah serve as an example of the compassion that human beings are expected to show their fellow human beings, far beyond what might be normally expected.

A second example is the return of lost property. This mitzvah is first mentioned in Exodus 23:4, כִּי תִפְגַּע שׂוֹר אֶיִבֶּךָ אוֹ חֲמֹרֶיךָ תִפְּעוּ, הֲשִׁבֵם תִּשְׁבְּרֵם לּוֹ, When

you encounter your enemy's ox or his ass going astray, you shall surely bring it back to him. The mitzvah of returning lost property is repeated again in Deuteronomy 22:1, לֹא תִרְאֶה אֶת שׂוֹר אֶיִבֶּךָ אוֹ אֶת שֵׁי נִדְחִים, וְהִתְעַלְמִתָּ מֵהֶם, הֲשִׁבֵם לָאֵיִבֶּךָ, You shall not see thy brother's ox or his sheep go astray and hide yourself from them; you shall, in any case, bring them again to your brother.

Ramban points out that there's a subtle, but critical, difference between the two verses. The verses in Exodus uses the expression טוֹעָה, to'ch, lost, whereas the verse in Deuteronomy uses the expression נִדְחִים, Nidachim, if they were pushed away, implying that they had wandered far afield, requiring much time and effort to recover them.

Nevertheless, no matter how great the effort, the Torah insists on the obligation to restore the lost property to its rightful owner.

The expression in Deuteronomy 22:1, הֲשִׁבֵם תִּשְׁבְּרֵם, You shall surely return them, is interpreted in the Talmud to teach that even if the finder brought the lost animal back, and it ran away again, even four or five times, the finder is obligated to bring it back again, and again, until it is restored to its owner.

Rashi says that the phrase, "You shall surely restore them," teaches that the finder must make certain that there is something to restore to the original owner. While waiting in the finder's home for the rightful owner to claim his lost property, the lost animal must not be allowed to eat the equivalent of its entire value. Therefore, the finder should rather sell the animal, after a short while, so that there will still be value left to return to the proper owner.

The story is told in the Midrash Rabbah Deuteronomy 3:5, that on one occasion several men came to the city where Rabbi Pinchas ben Yair lived, and deposited with him two measures of barley. Unfortunately, they forgot about their deposit and went away.

Concerned about restoring the value of the barley to the original owners, Rabbi Pinchas ben Yair proceeded to sow the barley every year, harvested the crops and stored them. After seven years, when the original owners returned to claim their lost measures of barley, Rabbi Pinchas ben Yair called them, and instructed them to take several granaries full of grain, that was harvested from their original two measures of barley.

These exceptional stories vividly demonstrate that the mitzvot can surely be a diadem, a crown, on the human head. Mitzvot help Jews behave in a manner that goes way beyond the call of duty.

As extraordinary as that seems, tradition seems to say that these actions should not be considered extraordinary. Rather, they are to be the Jewish way of life, and without them, we will surely drown.

*May you be blessed.*

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fw from hamelaket@gmail.com  
from: Rabbi Yissocher Frand <ryfrand@torah.org>  
reply-to: ryfrand@torah.org,  
to: ravfrand@torah.org  
subject: Rabbi Frand on Parsha

**Rav Yissocher Frand – Parshas Ki Seitzei**

**The Torah Addresses The Evil Inclination Here**

Parshas Ki Seitzei begins with the laws of the Yefas Toar [beautiful captive woman] in time of battle, one of the most difficult parshas in the Torah to understand: "When you will go out to war against your enemies and Hashem your G-d will deliver him into your hand, and you will capture its [people as], captives; and you will see among its captivity a woman who is beautiful of form, and you will desire her, you will take her to yourself for a wife."

[Devorim 21:10-11]. Because the woman is a goy, the Torah instructs that she be brought into the Jewish soldier's house, made unappealing (by cutting off her hair, etc.). He must then wait a month, and if after that he still wants her... "you may come to her and live with her, and she shall be a wife to you." [Devorim 21:14]

Rashi here comments (based on Kidushin 21b) "the Torah is speaking here only against the Yetzer HaRah [evil drives within a person], for if the Holy One, Blessed is He would not make her permissible, he would marry her in a

forbidden manner.” Under normal circumstances, the Torah would never permit such a thing. It would say “Listen here, get control of yourself, and walk away from this forbidden woman.” However, the Torah made an exception here. War is different. It weakens a person’s power of resistance to his animalistic instincts. At any rate, this is Rashi’s approach – the Torah here has made a concession to the Yetzer HaRah.

The Shalo”h HaKodosh has a very interesting take on this Rashi and on this whole concept of “the Torah speaks against the Yetzer HaRah.” We must remember, the people who went to war in Biblical times were not your average recruits that show up at the local recruiting station who think “Hey, I have nothing better to do with my time; I may as well learn how to shoot!” At least some of the people in today’s armies are not from the upper echelon of society. However, the Jewish wars of Biblical times were carried out by wholly righteous individuals. (People who were afraid of dying in battle for even “minor sins” they may have committed were exempted from going to battle.) We had an army of Tzadikim, and yet somehow even people of this caliber were vulnerable to falling into this moral trap.

The Shalo”h explains the idea based on the statement of the wise Shlomo HaMelech [King Solomon]: “Stolen waters are sweet.” [Mishlei 9:17] This means that forbidden fruit is tastier than fruit which is permitted. Water may quench my thirst and on a hot day it is delicious but water has no taste. And yet Shlomo HaMelech says stolen waters are sweet! A thing that has no taste – if it is off-limits – can be sweet.

Consider the case of a person on a carb free diet. He goes somewhere and they are serving baked potatoes. Not French fries – but rather simple baked potatoes with no butter and no margarine. However, if he is on a “no carb” diet and he sees a baked potato – there is no greater temptation in the world than that baked potato. Why? It is because it is forbidden to him. Once something is forbidden, the principle of “stolen waters are sweet” kicks in. Similarly, a fellow goes to war. War is terrible. A person loses his humanity in war. He sees a beautiful captive woman – and he craves for her. The Torah says, “Take her home.” We are giving you a pass on this. Take her home. Just let her sit there for a month, replace her seductive clothing with simple drab garments, shave off her hair, let her nails grow long. Once the Torah says she is permitted, the result will be that the craving will subside. The soldier will not want her any more. She becomes like a baked potato for someone not on a carb free diet. Who wants a baked potato? Give me French fries! Give me potato kugel! A baked potato? Ug! This is the approach of the Shalo”h: The Torah allows the Yefas Toar in order to remove her allure of ‘stolen waters are sweet’ and to hopefully bring the Jewish soldier to a point where he can let her leave his house and go back home to where she came from.

With this approach, we can understand a famous Gemara [Chullin 109b]: Yalta says to Rav Nachman (her husband), “Let’s see, for everything the Torah has forbidden, it has permitted a corresponding item.” For example, blood is (normally) prohibited, but liver is permitted even though “it is entirely blood.” The chelev [certain fats] of domesticated animals (beheimos) are forbidden, but chelev chaya [the corresponding fat of non-domesticated animals, such as deer] are permitted. The Gemara goes through a series of items which are forbidden and for which a person might have a curiosity to experience. His desire to consume that which is forbidden intensifies the curiosity – so the Torah permits a similar tasting item, to relieve the curiosity and thus remove the yetzer hara for the forbidden item.

Yalta then tells her husband, “I wish I could taste the flavor of meat cooked with milk (basar b’chalav),” which is of course forbidden. In effect she told her husband, “I want a cheese burger. All my life I have been waiting for a chance to taste cheese burgers.” Rav Nachman told her that the Torah permits the udder of a milk producing animal which is saturated with milk and has the taste of basar b’chalav.

What is the point of this Gemara? The point is this principle of the Shalo”h HaKodosh. If you know something is permitted, you have an escape hatch from the clutches of the Yetzer HaRah. This removes the cravings. The item

no longer becomes “stolen waters.” An item being “off limits” creates the tayvah [lust] for it. When the Torah permits the item — albeit in restricted circumstances — it takes away the tayvah. It is the same in the case of Yefas Toar. It does not mean the soldier will eventually marry this woman; but the Torah allows him to do so because it “speaks to his Yetzer HaRah.” Once the Yefas Toar ceases to become “forbidden waters,” hopefully the “sweetness” of contemplation of the forbidden act will dissipate.

### ***Beginnings Are Critical At Every Stage of Life***

If you need to speak at a Sheva Brochos this coming week or you need to speak at a Bar Mitzvah or you are going back to teach in front of a class and need a nice thought to share with your audience – this is the “vort” you are looking for.

As we just mentioned, the parsha begins with the laws of Yefas Toar and then mentions “If a man has two wives – one he loves and one he hates...” he is not allowed to switch the first-born status (for inheritance purposes) from his true first born, the son of the “hated wife” to the younger brother, the first-born son of the “beloved wife.” The true first born is the one who must receive the “double portion” of inheritance.

Following this, the third set of laws in Parshas Ki Seitzei is that of the Ben Sorer U’Moreh [the Wayward and Rebellious son]. Already at a very young age (right after Bar Mitzvah), he begins acting in a way that will lead to a life of corruption and aggression. The Torah decrees that it is preferable to put him to death “when he is still innocent” (of the future crimes he is destined to commit) rather than execute him later when he will already be deserving of the death penalty. This is a difficult parsha which we have talked about in the past. We are not going to try to explain it right now.

Rashi says the sequence of these three sets of laws – the beautiful captive woman, the beloved and hated wives, and the wayward and rebellious son – teach a homiletic lesson: If someone marries the Yefas Toar because he became infatuated with her, he will eventually have two wives (his original wife and the one he found in the battlefield). Eventually, he will come to hate the second wife. Furthermore, once he has such a wife (that he should not have taken in the first place) he will have a child from her and the child will be a trouble maker. He will become a Ben Sorer U’Moreh.

The Shem M’Shmuel [Rabbi Shmuel Bornsztain (1855-1926), the second Sochatchover Rebbe, and son of the Avnei Nezer] makes a very interesting observation. Why does the Torah put the halacha that the first born gets a double portion here? Even if the Torah wants to tell us that one who marries a Yefas Toar will eventually hate her, why should the Torah insert the unrelated rule that a Bechor gets pi-shnayim [a double portion of inheritance] here? There is an entire section in the Torah at the end of Sefer Bamidbar describing all the laws of inheritance. The law that a first born gets a double portion should be placed there. It seems incongruous to mention it here between the laws of Yefas Toar and that of Ben Sorer U’Moreh. It does not relate to the flow of the narrative.

The Shem M’Shmuel writes that the Torah is trying to tell us a very important lesson – beginnings are very very important. Beginnings set the tone. He asks – why is it that the first-born gets double? Being a first born, after all, is merely an accident of birth. What did he do? Why should he get double the portion of his father’s estate over and above the rest of his brothers? The Shem M’Shmuel answers that it is because the Bechor casts an influence over the entire family. The children that come after the first-born are influenced by him. Therefore, the Bechor gets double because he set the tone for the entire family.

For example, the Rosh Yeshiva [Rav Yaakov Yitzchok Ruderman (1900-1987)], zt”l, married a woman named Feiga Kramer. Her father, Rav Sheftel Kramer, had five daughters. One of them was Rebbetzin Ruderman, one was Rebbetzin Neuberger, one was Rebbitzin Heiman, one was Rebbitzin Skaist, and one was Mrs. Lewin. There were five daughters, no sons. But the Bechora, the first-born was Rebbetzin Ruderman. Family legend has it that her father told her – you need to marry a Talmid Chochoh, because the type of person you marry will set the standard for your other sisters as well.

Admittedly she married a very big Talmid Chochom and all the other sisters – perhaps they did not marry Talmidei Chachomim of the Rosh Yeshiva's caliber, but they were all very distinguished individuals, all Talmidei Chachomim.

How did that happen? The oldest sister set the standard. She set the bar, which the other sisters measured against. She did it because she was the first born. Firstborns have this effect.

Thus, the Shem MiShmuel points out that the Torah is trying to tell us over here that the bechor gets pi shnayim because beginnings have an effect on all that comes later.

The Gemara in Sanhedrin says that the entire period of time when it is possible for a boy to become a Ben Sorer U'Moreh's is only three months. (That – among other reasons — is why it is so hard to meet the conditions under which such a punishment could ever be carried out.) The whole chapter addresses a 13-year-old child for only the first 3 months after his Bar Mitzvah. Yet, the Torah is already concerned that the child is acting out, he is stealing, he shows gluttonous behavior, etc. Why is this so serious? It is because when a child is that age – Bar Mitzvah – how he acts in that beginning stage of his life as a mature adult sets the pattern and has a tremendous influence on what the rest of his life will be like as well. That is why it is very important that the tone be set in this “Bar Mitzvah year.” Like any structure, the foundation is critical. Any building is only as strong as its yesod [foundation]. The first months after Bar Mitzvah are critically important.

And – m'yinan l'inyan b'oso inyan – the first year of marriage is very important as well because how a family begins, how it starts out and where it starts out and how it is built can have an effect for years and years to come. That is why the Torah provides a draft deferment to a newlywed and sends him home to his wife, free of communal duties, during the first year of his marriage – to gladden the heart of his wife. The first year is the foundation of the marriage.

The sefarim say “All beginnings are difficult” (Kol Hascholos Kashos). Simply, this means that it is hard to start a new project. But on a deeper level, it means beginnings are “kashos” because it is essential that they be executed correctly. You need to do it right at the beginning of any endeavor. How things are done initially sets the tone for all that follows.

Therefore, if someone is a Rebbi in a Yeshiva and needs to give an opening shmuzeh, it is very valuable to stress the uniqueness of Chodesh Elul. Chodesh Elul is important for a number of reasons, not least of which is that it sets the foundation for the whole year. That is why Rosh Hashannah and Aseres Yemei Teshuvah are such critical periods. It is the beginning. Beginnings have a lasting effect on that which comes after them.

For this reason, the Torah writes the parsha of Bechor and right after that the parsha of Ben Sorer U'Moreh. The Torah is telegraphing to us the importance of the beginnings at every stage of life.

Transcribed by David Twersky; Jerusalem DavidATwersky@gmail.com

Technical Assistance by Dovid Hoffman; Baltimore, MD

dhoffman@torah.org

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fw from hamelaket@gmail.com

from: Torah in Action /Shema Yisrael <parsha@torahinaction.com>

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**Shema Yisrael Torah Network**

**Peninim on the Torah - Parshas Ki Seitzei**

פרשת כי תצא תשע"ח

כי יהיה לאיש בן סורר ומורה איננו שומע בקול אביו ובקול אמו

**If a man will have a wayward and rebellious son, who does not hearken to the voice of his father and the voice of his mother. (21:18)**

Concerning the incident of the *ben sorer u'moreh*, the wayward son, and its accompanying laws causes one to pause and ask: Why? This could never happen. Why take up precious space to write about a wayward son that

(according to the demanding laws that accompany it) has characteristics which are not likely to develop. *D'rosh u'sekabel s'char*, “Learn and you will receive reward”: Probably the greatest reward will be derived from learning it properly – with a focus on one's parenting. This way, he will not have to address such a child personally. Having said this, we turn to one of the more well-known questions that abound concerning the *ben sorer*. Why is he *nidon al shem sofo*, “judged according to his egregious end”? Whatever happened to the rule of *ba'asher hu sham*, “as he is there”? Hagar was sent away, together with her son Yishmael, so that he would not influence or harm Yitzchak Avinu. While in the wilderness, Yishmael cried out in pain. Hashem listened. Why? Were he to die now, he would not become the progenitor of his descendants who would be destined to persecute *Klal Yisrael*. Just imagine if we would not have had to contend with *bnai Yishmael* throughout the last millennia. Hashem said, *Baasher hu sham*, “As he is there now.” Today, Yishmael is not a problem. Tomorrow is a different issue. We do not punish today for tomorrow. What distinguished Yishmael from the *ben sorer*?

The simplest answer, which is echoed by many commentators, is that Yishmael had done no wrong. His descendants were a different story. The *ben sorer*, however, has already perpetrated acts of spiritual abandon that foreshadow the future. He is evil today. “What might happen tomorrow?” should be rephrased to – “What will happen tomorrow?”

*Targum Yonasan ben Uziel* writes that Hashem did not judge Yishmael for his ignominious future treatment of the Jews due to the *z'chus*, merit, of Avraham Avinu. Hashem had promised him that he (Avraham) would be the progenitor of a great (in size) nation. Avraham saved Yishmael. Furthermore, *Targum Yonasan* writes that the *ben sorer* was the product of a union between a Jewish soldier and *yefas toar*, gentile captive, who captivated him with her physical appearance. Such a marriage will not produce a child that will repent his evil ways. The cards are stacked against the *ben sorer*.

*Horav Yitzchak Ezrachi, Shlita*, observes that the *ben sorer's* parents declare, *B'neinu zeh eino shomea b'koleinu*, “This son does not listen to us. Someone who does not listen is incapable of changing his ways. We can talk to him until we turn blue. It will be a waste of time, because he does not listen”. He is either incapable of listening or has no desire to do so. The words of inspiration fall on deaf ears. He will never come back. Yishmael had done nothing wrong – and, even if he had proved himself worthy of his ignoble future lineage, who is to say that Yishmael himself had a hearing deficiency?

Perhaps we might add another distinction between Yishmael and the *ben sorer*. Yishmael cried out. He was in pain, so he cried. He was not emotionless. When he hurt he cried out for help: “Please!” The *ben sorer* took no initiative to ask for help. For whatever reason, he did not seem to care. One who does not reach out is not interested. Words of inspiration have to light somewhere. If one does not show emotion, it suggests that he has no heart.

Why does the *ben sorer* not hear? Hearing is one thing; and applying what one has heard to himself is quite another. In order for the words that one hears to be internalized in his psyche, he must hear with his heart. Ears are nothing more than a medium through which sound passes in transition to the heart. If one's heart has turned to stone, if it has lost all sense of emotion, then the sounds picked up by the ears have nowhere to go. The result is the *ben sorer*, who does not listen to the voice of his parents.

כי יקרא קן צפור לפניך בדרך בכל עץ או על הארץ אפרחים או ביצים והאם רבצת על האפרחים או על הביצים לא תקח האם על הבנים

**If a bird's nest happens to be before you on your way, on a tree or on the ground – young birds or eggs – and the mother is roosting on the young birds or the eggs, you shall not take the mother with the young. (22:6)**

The laws of *shiluach hakein*, sending away an ownerless bird which is roosting on her young, is a *mitzvah* for which a number of humanistic “rationales” are suggested. Obviously, these explanations are primarily for

us, human beings, with our mortal minds, so that we have an understanding of a *mitzvah* which seems to be simple to perform and carries with it the awesome reward of longevity. Like everything else in the Torah, there is also a homiletic and esoteric side to it, which often sheds a completely new perspective on the *mitzvah*.

*Horav Levi Yitzchak m'Berditchev, zl*, explains the *mitzvah* of *shiluach hakein* from an esoteric perspective. The inspiration, *hisrorerus*, that motivates the individual to seek and attain spiritual awakening emanates from two sources (so to speak): The first is *Isarusa d'l'eila*, from Above; Hashem sends a feeling of inspiration to a person who has done nothing to elicit this inspiration. He is "turned on" by Heaven. The second is *isarusa d'letata*, an inspiration which comes from below; he is inspired on his own by something, by a choice that he makes. Hashem then supplements his inspiration as it is written in *Sefer Daniel* (2:21) that Hashem – *Yaheiv chochmasa l'chakimin*, "He gives wisdom to the wise." (Why the wise? Because they know what to do with this wisdom.) When a person achieves wisdom on his own, he thereby elicits additional wisdom from Above.

Obviously, Hashem derives greater pleasure from he who is personally aroused from below. He achieved it on his own; thus, he is deserving of Hashem's recognition and help to achieve even greater spiritual heights. At times, Hashem sends inspiration to a person, who, like an infant, lacks the wisdom to seek it himself. He does, of course, prefer that a person be self-inspired, his inspiration originating from below, such that it be earned and deserved. David *Hamelech* says in *Sefer Tehillim* (108:3), *A'irah shachar*, "I will awaken the dawn." Dawn is the symbol of wisdom and enlightenment. It is far better, says the *Berditchever*, to precede the dawn, to discover wisdom within the darkness, thus stimulating the dawn, rather than to be awakened from a dark slumber by the dawn.

This is the spiritual message of the *pasuk* concerning *shiluach hakein*. "If you encounter a *kan tzippor*, bird's nest" – this refers to a spiritual awakening, *tzippor* being a cognate of the *Aramaic tzafra*, which means dawn; if you suddenly sense an inspiration that comes upon you "along the way" – a reference to the path of righteousness, the road towards spiritual ascendancy; "or on a tree" – referring to the tree of life, and the mother is roosting over the fledglings; referring to the *Shechinah*, Who is sending down the inspiration from Above, because the fledglings are incapable of acquiring wisdom on their own. "Send away the mother and take the young for yourself" – this means take this inspiration from Above as a sign that you lack the wisdom to seek inspiration on your own; thus, you should make the effort to pursue inspiration through your own means.

While there is no question that allowing Hashem to take the lead and inspire from Above is a lofty *madreigah*, spiritual plateau, it pales in contrast to the individual that inspires himself to come closer to Hashem.

One of the more eminent Jewish members of the Communist party was Professor Burchis. Like so many others, he thought that sicophanting to *reshaim*, wicked, evil people, would get them ahead, he fell into disfavor with dictator Stalin, and he was sent to a Siberian prison camp. Although a prisoner, he was recognized by the prison authorities and guards as a "distinguished" inmate. As such, he was accorded favors, like a lighter work load, and he was permitted food packages from his family in Moscow. During Burchis' internment, an Orthodox Jew with a long, white beard was brought to the camp. Apparently, his religious activities were considered seditious by the Communist regime.

One day, Burchis approached the religious Jew and gave him a jar of prune butter, which was like gold to a prisoner. The Jew refused to accept it, claiming that it was too valuable a gift to accept without some form of payment – and he had nothing. Burchis replied, "This is not a gift. It is payment."

"Payment for what?" asked the Jew.

"Do you know my name?" Burchis asked. "It is Burchis, which is a contraction of the words *Baruch Hashem*. I am a descendent of the holy *Rav Levi Yitzchak Berditchever*. Sadly, over the generations, my part of the family

assimilated, chasing after the wild promises proffered by the new, exciting movements that took the world by storm. I once believed that Communism was the cure for all of the world's ills. Now, I see it a malignant growth that metastasizes and eats up your very life. I am an old man who must atone for his sins. You must help me 'return' home. The prune butter is my payment for imposing on you."

"I will be honored to help you – and I require no payment. It is a privilege to help a fellow Jew. How can I help you?" the religious Jew asked.

"I am ignorant," Burchis began. "I cannot *daven*. I would like to pray in the original text, but I barely know *Aleph Bais*. I cannot read. Please teach me a short *tefillah*, prayer, so that in the darkness of my solitude, I can reach out to Hashem in accordance with the traditions of my forebearers. I have no merits of my own, but if I can in some way connect to the merits of my ancestors... To do this, I must be able to speak in their language, to say what they would have said. Please teach me."

For the next few days, the religious Jew with the long, flowing white beard and the professor sat together attempting to learn the *Shema* – which is the staple of every Jew. Unfortunately, the professor had difficulty forming the words coherently. They were both becoming frustrated. Finally, the religious Jew asked Burchis, "Do you speak *Yiddish*?" "Yes," he replied. "Then I will teach you a *tefillah*, prayer, in *Yiddish*. It is simple, but it touches upon the bare essentials. Say, '*Ribono Shel Olam*, in the merit of *Levi Yitzchak ben Sorah Sasha* (the *Berditchiver*), please forgive my sins, and bring the Jewish People out of exile and into Your holy Presence.'" The professor repeated the prayer a number of times until he had it down flawlessly. Then the professor embraced and kissed his "*rebbe*."

A few days later, Professor Burchis passed away peacefully in his sleep. His *teshuvah* was *isarusa d'letata*. He inspired himself to return home when he realized how far he had wandered – and what a waste it had been. His last days on this world earned him a place among the sincere *baalei teshuvah* who have returned home. The light is always on, and the door is always open. You do not even have to knock. Just come in and make yourself comfortable. After all – it is your home.

יהיה אם לא תמצא הן בעיניו... וכתב לה ספר כריתות... ושלחה מביתו

**And it will be that she will not find favor in his eyes... and he wrote her a bill of divorce... and sent her from his house. (24:1)**

At the end of *Meseches Gittin*, the *Talmud* states: "One who divorces his first wife – even the *Mizbayach*, Altar, sheds tears over this." Why do *Chazal* underscore the *Mizbayach* as the object that weeps? Why not the Heavens, the oceans, the trees – indeed, everything in the world? Why specifically the Altar? *Horav Avraham Benuchovski, zl*, explains this based upon the meaning of Hashem's declaration (prior to the creation of Chavah): *Lo tov hayos ha'adam levado. E'eseh lo eizar k'negdo*, "It is not *tov*, good, that man is alone. I will make for him an *eizar*, helpmate, opposite him" (*Bereishis* 2:18) "for him." The commentators, each in his own way, have offered meaningful explanations for this seminal *pasuk*, which defines the *raison d'etre* for marriage, and, hence, the foundation and principles upon which a good marriage should stand.

The simple explanation is based upon need. If a man would be alone, who would address his needs? Obviously, such an explanation will not garner much spousal support. A wife is a partner/companion for life – not a servant.

The *Kli Yakar* maintains that the Torah is teaching us a powerful lesson concerning the meaning of *tov*, good. A person who is alone – to whom is he good? Even if he senses himself to be a good, caring person, this is wonderful, but if he is alone, how will this goodness and caring manifest itself? Therefore, Hashem created an *eizar k'negdo*, a helpmate standing opposite him, to determine exactly for whom he cares. Where is his goodness directed: toward his spouse; or toward himself?

The *Rosh Yeshivah* cites the *Rambam* (*Hilchos Ishus* 15:19), who is very definitive in spelling out (what the *Rosh Yeshivah* derives as) seven *klalim*, principles of marriage. *Rambam* writes: "Our sages have instructed us that a man should honor his wife more than himself and love her equal to himself

(apparently there is little question concerning how much a person loves himself). He should spend money for her food; he should not allow fear to reign in his house; he should speak pleasantly to her; and he should not be a depressed or angry (bitter) person. If he sticks to this, he should have a good marriage. [This, of course, does not negate the wife's role in maintaining marital harmony. A shrew can have a deleterious effect on a marriage – regardless how good, patient and loving the husband may be.]

In sum: *Rambam* enumerates seven principles: 1) *Kavod*, honor, must supersede even that what he wants, expects and demands for himself. 2) *Regesh*, sensitivity, feeling of love for his spouse, at least equal to that of himself. 3) Spend money; do not be picayune with regard to your wife. 4) Do not sow fear in the home; a wife should not fear her husband. 5) Speak softly and pleasantly. 6) Do not be depressed and bitter. 7) Do not be an angry person.

The *Rosh Yeshivah* observes that each and every one of these principles is a rule which applies to relationships between two people. A person who lives alone, a hermit, or someone on an island has nothing to worry about, because he has no one whom he might offend, no one to honor, no one to whom to be sensitive. There is only one object in this world that gives and gives and never takes anything in return. The *Mizbayach*. Heaven produces rain from moisture which seed the clouds; the earth produces its crops once it receives rain. A tree produces fruit once it is irrigated. The *Mizbayach* served as the place where the offerings were brought. It gives, but does not receive anything for itself. The blood that is sprayed, and the incense that is burnt on it is not for it, but rather, for the purpose of the *korbanos*, offerings.

When the *Mizbayach* “hears” that a Jew divorced his first wife, the *Mizbayach* is saddened and becomes morose to the point of expressing emotion. Why? The *Mizbayach* declares, “Had he (the husband) looked at me, it never would have come to a *get*, divorce.” The *Mizbayach* cries because, unlike anything else, it knows the feeling of being alone, of giving and giving and not receiving anything in return. One who divorces obviously has reached such a low point in his marital relationship that it is better not to have *tov*, to be alone. That is a reason for crying.

זכור את אשר עשה לך עמלק

### Remember what Amalek did to you. (25:17)

What did Amalek really do to us? They came after us three times: in Refidim; the Maapilim, after the spies; following the death of Aharon *HaKohen*. There were casualties, and every Jewish soul whose life is cut short is worth all of our enemy – and more. Nonetheless, we have been persecuted and hounded, murdered like animals led to the slaughter; from the Egyptians who persecuted us for 210 years, who slaughtered our babies, to Titus, Nevuchadnetzer, Crusades, Inquisition, hundreds of pogroms, Chemelniki, and finally the cataclysmic Holocaust, which destroyed one third of our nation – yet we are not enjoined to remember for posterity what they did to us. Amalek, however, we must remember – never forget what he did. What is it about Amalek that earns him the ignominious title of archenemy of the Jewish People – enemy of Hashem?

*Horav Elchanan Sorotzkin, zl*, posits that Amalek's actions against our People are not to be viewed as some historical occurrence. When we are told to remember Amalek, it is not for us to think about Amalek of the past, but rather, Amalek of the present. The war against Amalek continues to rage to this very day. This is why we should not forget, because, when we forget, we fall prey to him. We are enjoined to take no prisoners in this war. Amalek is evil incarnate, an evil that is infectious, an evil that will eat away at us until it destroys us. By remembering what he did, we acknowledge his evil; thus, we are on the lookout in order to be prepared for an attack.

In other words, Amalek is not simply a nation. He represents a concept, an enemy that can conceal himself behind various facades. He could even be someone whom we know, whom we would never suspect would act in an evil manner towards us. That is Amalek. He is always preparing for war against us. Amalek does not have any other enemies – only Jews. Why? Because we are Hashem's chosen People. We are His agents in this world.

Actually, Amalek wants to battle Hashem, but since he cannot, he takes out his animus on us – Hashem's children.

How do we see this from his actions? What did he do that indicated his unparalleled evil, his unmitigated hatred for Hashem's People? I think the answer lies in his approach to war. Every nation that goes into battle wants to win. It certainly does not want to lose. Amalek, however, does not care. He just wants to hurt us. He is neither affected by loss, nor does he expect to destroy our People. He simply wants to weaken us, to destroy our pride, our power, our dignity. He is not interested in land, nor does he need to rack up large numbers of casualties. He knows that he will not emerge victorious, but he also knows that we will be weakened by his assault. That makes it all worthwhile. This is the definition of evil incarnate. Not someone who is out to win, to destroy, but someone who battles out of hatred, who just wants to inflict pain and weaken the enemy. By destroying Jewish resolve and undermining our faith in Hashem, he impugns our national esteem.

Amalek's hatred of Judaism is irrational – or so it seems. There is a reason, but I am sure that Amalek realizes that he has been chosen to be the whip of anti-Semitism, the representative of *Eisav sonei l'Yaakov*; Eisav hates Yaakov. Eisav requires no excuse, no license to hate Yaakov. Surrendering to Eisav will not make him decrease his animus. It will certainly lower his opinion of us and diminish our own self-esteem. The only way Yaakov/Jews can battle Eisav – and triumph – is by maintaining their Jewish pride, which can only be derived by adhering to Torah and *mitzvos*. All of the conferences and interfaith forums will only belittle us in their eyes and fuel the fires of hatred which they harbor anyway.

A very telling anecdote underscores this idea. It was 1940, during World War II Berlin. Jews were not the most favorite people. Whenever a Jew was compelled to walk outside, he knew that his life was in mortal danger. An elderly Jew needed to go out. Soon he was surrounded by a group of Nazi ruffians. “All right, Jew boy,” they said, “who started the war?”

The Jew was frightened. He knew quite well that the wrong answer would send him to the hospital – or worse. He was, however, not a fool. “The Jews,” he screamed, “and the motorcyclists.”

The ruffians could not understand his reply. “Why the motorcyclists?” they asked. “Why the Jews?” he countered.

Amalek's hatred is irrational, nonsensical and unwarranted. Perhaps, deep down in his messed-up psyche, he realized that he was the product of the union between Timna, a pagan who was not accepted for conversion by the Patriarchs, and Elifaz, the son of Eisav. Furthermore, Elifaz did not marry her, she was his concubine. Apparently, growing up with such ignominious lineage can damage a person's ability to be rational.

לזכור נשמת

רב אליהו מתתיהו בן יעקב יהושע'ל -

*A dear friend whose contribution to Peninim's success will always be remembered. Hebrew Academy of Cleveland, ©All rights reserved prepared and edited by Rabbi L. Scheinbaum*

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fw from hamelaket@gmail.com

From Jeffrey Gross <jgross@torah.org>

reply-To neustadt@torah.org, genesis@torah.org

To weekly-halacha@torah.org

Subject Weekly Halacha

by Rabbi Doniel Neustadt ([dneustadt@cordetroit.com](mailto:dneustadt@cordetroit.com))

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**Weekly Halacha**

**Parshas Ki Seitzei - The Mitzvah Of Shiluach Ha-Kan**

**Rabbi Doniel Neustadt**

The mitzvah of shiluach ha-kan, commanded in this week's parashah, is a mitzvah which is quite difficult to understand: If one happens upon a nest where a mother bird is roosting on her young birds or eggs, he should not take the eggs or young birds while the mother is roosting on them. Instead, he should send the mother away and then take the young birds or eggs for

himself. While the Torah says that fulfillment of this mitzvah is “good for you and will prolong your days,” the Torah does not explain the rationale behind it, and indeed, Chazal(1) tell us that it is a *gezeiras ha-kasuv*, a Torah decree that we do not understand.

The Rishonim, however, offer a number of possible explanations as to why the Torah would command us to perform *shiluach ha-kan*. Among them:

\* Rambam(2) explains that *shiluach ha-kan* shows G-d’s mercy on His creations, similar to the prohibition against slaughtering a mother animal and her offspring on the same day, as animals instinctively love their young and suffer when they see them slaughtered or taken away.

\* Ramban,(3) who rejects Rambam’s explanation, writes that the concern is not for the animal’s feelings, but rather to inculcate compassion in people; to accustom people to act mercifully to each other.

\* R’ Bechayei(4) writes that this mitzvah symbolizes the concept that people should avoid doing anything that will destroy a species, for to slaughter mother and children on the same day is akin to mass extermination.

\* The Zohar(5) explains that this mitzvah is meant to awaken and intensify Hashem’s mercy on His creations. The pain which the mother bird suffers when she is sent away and forced to abandon her young “awakens the forces of mercy in the world” and releases an outpouring of mercy from the heavens above which alleviates all kinds of human suffering.

While the explanations cited above give us some insight into the rationale for *shiluach ha-kan*, we are still left with many unanswered questions: If someone happens upon a nest but has no interest in the young birds or eggs, should he still send away the mother and take the eggs? Should one search for such a nest so that he may fulfill this mitzvah? What if the nest is in a tree in one’s back yard? These and other issues will be discussed below.

QUESTION: How does one fulfill the mitzvah of *shiluach ha-kan* – sending the mother bird away from her nest – correctly?

DISCUSSION: When one observes a mother bird roosting on one or more eggs [or young birds], one fulfills the mitzvah by performing the following two actions:

1. Sending away the mother bird. The Rishonim debate whether or not the mother bird must be lifted by its wings and then cast away, an act which is extremely difficult to perform, or if it is sufficient to scare her away by banging on the nesting area with a stick, throwing a stone in her direction or raising one’s voice, etc. The basic halachah(6) and the prevalent custom(7) follow the lenient view that it is sufficient to send away the mother bird by scaring her away.(8)

2. Taking the eggs or the young birds. While a minority view holds that taking the eggs or baby birds is not mandatory,(9) most poskim rule that one does not fulfill the mitzvah if the eggs or baby birds were not taken. (10) After taking the eggs or baby birds and establishing halachic ownership of them, one is not required to keep them; they may be returned to the nest or thrown away.(11)

QUESTION: Is the mitzvah of *shiluach ha-kan* obligatory or optional? In other words, if one observes a mother bird roosting on a nest but has no need for the eggs [or young birds] – is he still obligated to cast away the mother bird and take the eggs in order to fulfill the mitzvah?

DISCUSSION: A minority view holds that even one who has no need for the eggs [or young birds] is obligated to send the mother bird away and establish [at least temporary] halachic ownership of them.(12) According to this view, the mitzvah of *shiluach ha-kan* is an obligation similar to the mitzvah of *hashovas aveidah*, returning a lost item to its owner.(13) But most poskim reject this approach and rule that one is obligated to send away the mother only if he wishes to keep the eggs or baby birds.(14) Still, while we rule that one is not obligated to send the mother bird away if he has no interest in the eggs or young birds, many poskim recommend that one do so nevertheless.(15) In addition to fulfilling a mitzvah for which the Torah promises the reward of longevity, there are many other additional benefits and rewards that Chazal associate with the proper fulfillment of the mitzvah. Being blessed with children,(16) finding the proper *shidduch*,(17) being

blessed with the means to buy or build a new house,(18) and hastening the arrival of *Moshiach*(19) are among some of the rewards that are promised to those who fulfill this mitzvah properly.

QUESTION: Does one recite a blessing when performing the mitzvah of *shiluach ha-kan*? Does one recite the blessing of *shehecheyanu*?

DISCUSSION: Although there are several opinions on this issue,(20) the majority view(21) and the prevalent custom(22) is not to recite any blessings when performing this mitzvah. One who wishes to do so, may recite a *berachah* without invoking Hashem’s name(23) using the following text: *Baruch ata melech ha-olam asher kideshanu bemitzvosav le-shaleiach ha-kan*.(24)

QUESTION: Does the mitzvah of *shiluach ha-kan* apply to all roosting mother birds?

DISCUSSION: No. A number of conditions must be met before this mitzvah can be fulfilled:

\* The mother bird must be of a kosher species, e.g., a sparrow, dove, or a pigeon.(25)

\* The mitzvah applies only at the time that the mother bird is actually roosting on the eggs or the young birds. The mitzvah does not apply to a mother bird who is hovering over or feeding the young birds, but is not roosting on them.(26)

\* While the father of the eggs or young birds also roosts on the nest, usually during daytime hours only, the mitzvah of *shiluach ha-kan* applies to a mother bird exclusively.

\* One does not fulfill the mitzvah if the eggs broke before the mother bird was cast away.(27) If the eggs broke during the performance of the mitzvah, it is questionable if one fulfilled the mitzvah.(28)

\* On Shabbos [and Yom Tov], *shiluach ha-kan* is not performed.(29)

QUESTION: Does the mitzvah of *shiluach ha-kan* apply to birds that one owns?

DISCUSSION: No, it does not. Birds that are raised domestically, like chicken or turkey, are exempt from *shiluach ha-kan*, as the mitzvah applies only to birds that do not have an owner who cares about them.(30)

Contemporary poskim debate whether or not one fulfills the mitzvah with a nest which is on one’s private property. Some poskim rule that the mitzvah cannot be performed since one’s private property “acquires” (*kinyan chatzer*) the nest on his behalf and it is no longer ownerless.(31) Others, however, hold that since the owner has no interest in owning the nest or eggs, his private property does not automatically “acquire” the nest on his behalf and the mitzvah can still be fulfilled.(32)

QUESTION: Based on the above information, how is the mitzvah of *shiluach ha-kan* actually performed?

DISCUSSION: The preferred time to perform this mitzvah is when the eggs are 1-2 days old, or when the young birds are 8-9 days old. But the mitzvah can be performed anytime there are eggs or young birds in the nest as long as the mother is still roosting on them.(33)

In order to be sure that the mother is the one roosting over the nest and not the father, *shiluach ha-kan* should take place between sunset and sunrise, since it is the mother who roosts on the nest in the evening and night hours.

After ascertaining that the mother bird is of a kosher species and that the nest does not belong to anyone else, one should quietly(34) approach the nesting area(35) and gently(36) chase the mother bird away from the nest by using one of the methods described earlier. If the mother bird comes back repeatedly before the eggs are taken, she must be repeatedly shooed away. Once the mother is gone, a wooden spoon should be used to carefully lift the eggs out of the nest, making sure not to break them. One should then lift up the spoon approximately 10-12 inches, in order to halachically “acquire” the eggs. [If the nest contains young birds, one should use his hands to gently lift them out.(37)] He then may return the eggs to the nest. The mitzvah has been completed.

FOOTNOTES: 1 *Berachos* 33b. 2 *Moreh Nevuchim* 3:48. 3 See also *Rashbam, Ibn Ezra* and *Chezkuni* for a similar approach. 4 A similar explanation is offered by the *Chinuch* (545) and *Ralbag*. 5 Quoted by R’ Bechayei and by *Chavos Yair* 67. See explanation in *Beur ha- Gra* to

Mishlei 30:17 and in Imrei Noam, Berachos 33b. 6 Chazon Ish Y.D. 175:2. 7 Many contemporary poskim, among them the Satmar Rav, Harav Y.Y. Kanievsky, Harav Y.Y. Weiss, Harav S.Z. Auerbach, Harav E.M. Shach and Harav S. Vosner were all seen performing shiluch ha-kan by banging on the nest with a stick until the mother bird flew away. See also Teshuvos v'Hanhagos 1:329. 8 If, however, no action was taken to cast the mother away but she flew off on her own, the mitzvah is not fulfilled. 9 Chacham Tzvi 83. 10 Beis Lechem Yehudah, Y.D. 292; Chasam Sofer O.C. 100; Aruch ha-Shulchan Y.D. 292:4; Chafetz Chayim (Sefer ha-Mitzvos, 74) Chazon Ish Y.D. 175:2. 11 Harav Y.S. Elyashiv and Harav C. Kanievsky, quoted in Shaleiach Teshalach, pg. 48. 12 Chavos Yayir 67 and Mishnas Chachamim, quoted by Pischei Teshuvah Y.D. 292:1; Aruch ha-Shulchan Y.D. 292:1-2. 13 In other words, just as one may not ignore a lost object that he happens to see but rather is obligated to return it to its owner, so, too, one who happens to see a mother bird roosting on its eggs or young birds is obligated to send it away and take ownership of her offspring. 14 Chasam Sofer O.C. 100; Avnei Nezer O.C. 481; Meromei Sadeh, Chulin 139b; Chazon Ish Y.D. 175:2. 15 See Birkei Yosef Y.D. 292:6 and Aruch ha-Shulchan 1. 16 Medrash Rabbah and Tanchuma, Ki Seitzei, 6:6. 17 Yalkut Shimoni, Devarim, 925. 18 Medrash Rabbah and Tanchuma, Ki Seitzei, 6:6. See Klei Yakar, ibid. 19 Yalkut Shimoni, Devarim, 930. 20 See Pe'as ha-Shulchan (Eretz Yisrael 3-20) and Aruch ha-Shulchan Y.D. 292:10 who rule that a berachah is recited. See also Pischei Teshuvah Y.D. 292:2 that some recite shehecheyanu as well. 21 See Pischei Teshuvah Y.D. 292:2 and Binyan Tziyon 14. 22 As recorded by all of the contemporary poskim mentioned earlier in note 2. 23 Beis Lechem Yehudah, Y.D. 292 and Maharam Shick 289-291. 24 Harav C. Kanievsky, quoted in Shaleiach Teshalach, pgs. 32-34. Aruch ha-Shulchan, however, quotes the text of the berachah as al shiluch ha-kan, while Maharam Shick writes al mitzvas shiluch ha-kan. 25 Y.D. 292:1. 26 Y.D. 292:11. 27 R' Bechayei, Ki Seitzei 22:7. 28 See Shaleiach Teshalach, pg. 54, for the various views on this subject. 29 Chasam Sofer O.C. 100. 30 Y.D. 292:2. 31 Harav S.Z. Auerbach (Minchas Shelomo 2:97-26); Harav Y.S. Elyashiv, quoted in Shaleiach Teshalach, pg. 61. [In the atypical case, where the mother bird did not leave the nest for even one moment from the time she laid the eggs, then all views agree that shiluch ha-kan could be performed with a nest which is found on one's private property; Y.D. 292:2.] 32 Igros Moshe Y.D. 4:45; Harav N. Karelitz, and Harav C. Kanievsky, quoted in Shaleiach Teshalach, pg. 61. 33 Chazon Yechezkel, Tosefta Chulin, pg. 38; Harav Y.S. Elyashiv and Harav C. Kanievsky, quoted in Shaleiach Teshalach, pg. 56. See Kan Tzipor, pgs. 313-315 for an elaboration. 34 So that the mother bird does not fly off before you have a chance to send her away. 35 Some recite a special l'shem yichud before performing the mitzvah; see text in Kan Tzipor, pg. 138. 36 Otherwise the mother bird may panic and break the eggs or take them away with her. 37 If the young birds fit snugly into one's hands, there is no need to lift them up 10-12 inches, since, halachically speaking, one's "hand" acquires the young birds for him; Beur Halachah 366:9, s.v. zurich. Weekly-Halacha, Text Copyright © 2005 by Rabbi Neustadt, Dr. Jeffrey Gross and Torah.org. Weekly sponsorships are available—please send email to the moderator, Dr. Jeffrey Gross jgross@torah.org. Rabbi Neustadt is Rav of Young Israel in Cleveland Heights. He may be reached at 216-321-4635 or at jsgross@core.com. Weekly Halacha © 2018 by Torah.org.

fw from hamelaket@gmail.com  
 from: Ohr Torah Stone <ohrtorahstone@otsny.org>  
 reply-to: yishai@ots.org.il  
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**Parshat Ki Tetze (Deuteronomy 21:10–25:19)**  
**Rabbi Shlomo Riskin**

Efrat, Israel – “When you go forth to battle against your enemies, and God your Lord delivers them into your hands, and you...see among the captives a woman of beauty, and you desire her, you may take her to be your wife. When you bring her home, she must shave her head, and let her fingernails grow, mourning for her father and mother. Only then may you be intimate with her and possess her, making her your wife.” (Deuteronomy 21:10–13)

Indeed, if we’ve ever thought of Judaism as a straight-laced religion that doesn’t concern itself with sexual blandishments, or alternately was lenient about inter-marriage in Biblical times, here is something to jolt our imagination. And Rashi meaningfully comments: “The Torah speaks only in consideration of a person’s evil inclination. For if God would not have permitted her to him as a wife, he would nevertheless marry her although she would be [biblically] forbidden to him.”

But what is the Torah really saying in “consideration of the evil inclination?” Are our Scriptures allowing us to momentarily give in to our desire, in order to prevent a major transgression of intermarriage or is the Torah actually teaching us how to overcome our evil desires entirely?

The answer to this question lies in a difference of interpretation on this issue by two giants of biblical exegesis. Maimonides, on the one hand, rules that a soldier has the right to have sexual relations with “the beautiful gentile captive woman” one time before the month-long period of waiting and mourning begins – but only once. Then after he has satisfied his initial lust, he takes her home, and must go through the steps the Torah commands, in order to dissuade him and her from an eventual marriage. Only if he still feels the same way about her when he sees her in his home environment, and only if she is willing to leave her previous lifestyle and convert to Judaism, are they permitted to be married (Mishneh Torah, Laws of Kings 8:1–6). And perhaps

Maimonides feels that in order to give the “experiment” a chance to be successful, it is necessary to remove the “sweetness” of the “forbidden fruit” by permitting the one act of intimacy before the process of alienation or conversion can properly begin.

Nahmanides, in contrast and in accordance with the Jerusalem Talmud, rules that the woman is not permitted to the soldier even once before first taking her home; he must take the month-long preparatory steps, and if he and she then still wish to be together she may convert and become his wife.

I believe that Maimonides is taking the more pragmatic approach: give in a little bit so that you not lose the entire battle. Try to allow him to get her out of his system with one sexual act. Hopefully it will work, especially after a month of reality in accustomed surrounding.

In general, Hasidut was critical of self-styled ascetics who tortured themselves in order to bring their bodies into line. One of the important followers of the founding father of Hasidut, Rabbi Yisrael Baal Shem Tov (Master of the Good Name, eighteenth century) was a leading rabbinical scholar, Rabbi Yaakov Yosef of Polnoye, who had previously been given to fasts and mortifications. Rabbi Yaakov Yosef was initially an aggressive opponent of the Baal Shem Tov and the following story is told how he became one of his most faithful disciples. One day the Baal Shem Tov whispered to him, “When horses get wild, a stupid rider tightens the reins, but that only gets the horse more upset and difficult to manage. A clever rider loosens the reins, and in that way brings the horses into his control.” Rabbi Yaakov Yosef understood, stopped his fasts, and became a Hasid.

Nahmanides, who may agree that the yetzer hara is very powerful, might argue that the result is the opposite: give the enemy a finger and he will ultimately take your hand. Therefore he understands the verses in the Torah as giving advice on how to conquer the evil instinct completely. Hold out the promise of sexual conquest, but only after following a complex procedure which he believes will generally lead either to the complete splitting up or to her willing and even joyous acceptance of Judaism; they would then be able to get married in accordance with “the laws of Moses and of Israel.” This difference of opinion is further confirmed by a talmudic adage which advises that if a person is smitten with the yetzer hara he should go to a place where no one knows him, dress in black, wrap himself up, and do what “his heart desires” (Moed Katan 17a).

Maimonides, taking these words at their obvious meaning, would say this advice is comparable to the law allowing the soldier one act of intimacy with a forbidden woman. If one’s evil inclination is so overpowering that he cannot control it, let him locate himself in a strange city, incognito, and do what he has to do: in this manner he can “get it out of his system” and soon return to his former life without the shame of the entire world being privy to his indiscretion. There is no need to ruin your life because of one incident of weakness.

R. Hananel (ad loc.) gives the passage another interpretation, more in keeping with Nahmanides. By the time the individual changes his clothes, takes the journey to a city where he’s unknown, and finds a new place to live, he’ll be so exhausted and ashamed at what he sees in the mirror that if he does “what his heart desires” it could very well be returning home. Halakha, or Jewish law, takes the would-be sinner by the hand, and step-by-step teaches him to desire what Torah would say is right to desire. Shabbat Shalom