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ON KI SEITZEI - 5765**

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From Efraim Goldstein <efraimg@aol.com>

**Weekly Internet Parsha Sheet
Parshat Ki Teitzeh 5765**

Mazal Tov to the Neil & Marcie as well as all of all the extended Stein family on Shaul Mordechai's & Michal upcoming wedding.

Jerusalem Post Sept 16 2005

ABANDONED EMPTY SYNAGOGUES Rabbi Berel Wein

The current discussion and division of judicial and governmental opinion regarding the abandoned synagogues of Gush Katif is a painful reminder of the fate of other synagogue buildings the world over. It should be obvious to all, that for synagogue buildings to serve their intended purpose, there must be living Jews present in them to use the facility. Otherwise the synagogue building remains just that - a building but not a living institution. Nevertheless, the halacha invests the building with a certain holiness, simply by the fact that it once served as a synagogue, even when it is no longer used by Jews. It is this halachic view that serves as an important part of the wrangling over the fate of the Gush Katif synagogues. I do not wish to enter into this halachic discussion in this article. I wish rather to point out the fate of abandoned Jewish synagogue buildings throughout our long exile. Examples of this can be found strewn around our own Land of Israel as well. Jericho and Joseph's tomb near Shechem come to mind immediately. And the most painful reminder of our forced abandonment of our holiest places is naturally the Temple Mount in Jerusalem itself. From the time of Ezra onward the holiness of the Temple Mount is in place. It is unnecessary for me to point out that in spite of this the Temple Mount has for centuries housed non-Jewish houses of worship. It is therefore at one and the same time, the symbol of our hopeful future and a reminder of our very painful past.

In Toledo, Spain, there is an ancient synagogue building dating back to the twelfth century. The building has served as a mosque and mostly as a church over its millennial life. Today it is a non-denominational historical building - a national museum type of building. There are great buildings in Spain that still retain the grand Hebrew writing on their walls and on the ceilings that once identified the building as Jewish houses of prayer. These are also museums today but for long periods of time were churches. All over Eastern Europe, in the aftermath of the Holocaust, there are buildings that once were

BS"D synagogues or yeshivot that today are warehouses, laundries and schools. No Jews, no synagogue seems to be the logical conclusion. Many cities and towns in Europe, ironically especially in Germany, which are now completely bereft of any Jewish population, have nevertheless rebuilt the synagogue buildings that once stood in their communities and care for them meticulously. Even though many of the synagogues of Germany were destroyed on Kristallnacht and thereafter, and even in communities where there is no current Jewish population, synagogue buildings still exist. They serve as a stark reminder, a silent sentry to the events of the twentieth century.

In the Western world, not directly affected by the Holocaust during World War II, there are nevertheless a plethora of abandoned synagogues. This situation came about when demographic, social and economic changes emptied certain neighborhoods of their Jewish population. The synagogue buildings were left behind, either boarded up or sold to others to serve as their houses of worship. The old Lawndale area of Chicago where I grew up had over forty synagogues and most of them were housed in imposing, even magnificent buildings. I drove through that neighborhood a few years ago, haunted by nostalgia and memories. The neighborhood has deteriorated badly, becoming a den of drug lords and tough gangs. The synagogue buildings, including the beloved synagogue building in which I grew up and where my father served as rabbi for so many years, are mainly burned out boarded up shells while a few of them still serve as churches. The golden American exile also lists synagogue buildings as casualties of constant Jewish societal change and restlessness - the hallmarks of the Exile according to the Talmud. In Detroit, the Jewish neighborhood "changed" so often that one of its largest congregations' successive synagogue buildings kept on being sold to the same church as both groups moved on to more upscale neighborhoods. The church, only half-jokingly, finally asked for representation on the synagogue's building committee when the new synagogue edifice was going to be planned. Wherever Jews lived, synagogue buildings were constructed. But because of the realities of the Exile, sooner or later, all were abandoned by the Jews, either voluntarily or forcibly. It is just that we did not think that such a fate could await synagogues in modern-day Israel. Gush Katif has proven us wrong in our naïve belief.

Weekly Parsha KI TEITZEH Rabbi Berel Wein

The Torah discusses the problems of war in this week's parsha. On the surface, it seems to be a continuation of the halachic rules of war already mentioned in the previous parsha of Shoftim. However, many of the commentators have transferred the scene of battle from warring with external physical enemies to a struggle with one's own self and one's base desires and inappropriate behavior. Going to war against "your enemy" is thus really going to war against one's own self. "We have met the enemy and they are us!" Therefore, in this light, the examples that the Torah gives us in this week's parsha are most relevant and telling regarding a war with one's own weaknesses and baseness. The Torah tells us of sexual desires that force a soldier to make a bad choice in marriage. Overwhelmed with physical desire, he brings a stranger, a person who is probably completely incompatible into his home and life. The rabbis warn that his lust for her will turn eventually into shame and even hatred. The basis for their family life will never be on firm ground and there is scant hope that their relationship will be loving, successful and respectful. The war against illicit sexual desire is an unending one.

The Torah then deals with monetary matters, especially as they pertain to a family situation. Money is a great cause of family rifts and quarrels. The rabbis cautioned that in one's lifetime one should not play favorites with children over monetary matters. And at one's death all wealth is to pass to heirs according to the Torah's rules of inheritance. Money is a great test in life. The rabbis stated that most people do not always pass this test successfully. One must constantly war with one's self regarding money and the means of gaining it and distributing it. Realizing that this is a war that

must constantly be fought can aid in successfully pursuing this struggle and triumphing over our own inner enemy.

Finally, the Torah deals with the upbringing of children. One needs no license to become a parent. Usually we learn on the job itself and sometimes this is insufficient to meet the true needs of the child. One should avoid attempting to relive one's own life through one's child. The temptation to do so is very strong. Perhaps that is what the rabbis meant when they described the ben sorer u'moreh – the incorrigibly rebellious and sociopathic child - who appears in this week's parsha as "speaking in the exact voice as his father and mother." A child must be allowed to speak in his or her own voice. The tendency to dominate our children is innate within parents. Overcoming that harmful behavior pattern requires a mighty struggle. Thus we see that the war with our own selves that we embark upon is multi-faceted, wide-ranging, and difficult but of supreme necessity and importance. Like all wars, we cannot fail, but must win.

Shabat shalom.

TORAH WEEKLY — Parshat Ki Tetzei

For the week ending 17 September 2005 / 13 Elul 5765

from Ohr Somayach | www.ohr.edu

by Rabbi Yaakov Asher Sinclair

OVERVIEW

The Torah describes the only permissible way a woman captured in battle may be married. If a man marries two wives, and the less-favored wife bears a firstborn son, this son's right to inherit a double portion is protected against the father's desire to favor the child of the favored wife. The penalty for a rebellious son, who will inevitably degenerate into a monstrous criminal, is stoning. A body must not be left on the gallows overnight, because it had housed a holy soul. Lost property must be returned. Men are forbidden from wearing women's clothing and vice versa. A mother bird may not be taken together with her eggs. A fence must be built around the roof of a house. It is forbidden to plant a mixture of seeds, to plow with an ox and a donkey together, or to combine wool and linen in a garment. A four-cornered garment must have twisted threads - tzitzit - on its corners. Laws regarding illicit relationships are detailed. When Israel goes to war, the camp must be governed by rules of spiritual purity. An escaped slave must not be returned to his master.

Taking interest for lending to a Jew is forbidden. Bnei Yisrael are not to make vows. A worker may eat of the fruit he is harvesting. Divorce and marriage are legislated. For the first year of marriage, a husband is exempt from the army and stays home to make rejoice with his wife. Tools of labor may not be impounded, as this prevents the debtor from earning a living. The penalty for kidnapping for profit is death. Removal of the signs of the disease tzara'at is forbidden. Even for an overdue loan, the creditor must return the collateral daily if the debtor needs it. Workers' pay must not be delayed. The guilty may not be subjugated by punishing an innocent relative. Because of their vulnerability, converts and orphans have special rights of protection. The poor are to have a portion of the harvest. A court may impose lashes. An ox must not be muzzled while threshing. It is a mitzvah for a man to marry his brother's widow if the deceased left no offspring. Weights and measures must be accurate and used honestly. The parsha concludes with the mitzvah to erase the name of Amalek, for, in spite of knowing about the Exodus, they ambushed the Jewish People.

INSIGHTS

One Message With One Voice

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

Three of the essential ingredients in raising happy well-integrated children are "The Three 'F's" - Firm, Fair and Friendly.

Firm : Children need to know where they stand. They like nothing more than clearly defined limits. A parent who makes a demand and then backs down gives a child a sense of insecurity, for the child never knows exactly where

the boundary is. Children push the limits precisely because they wish to know that there are limits. When we are firm, we give our children a defined world in which they can establish their relationship to the world at large rather than a vast expanse of frighteningly unknown possibilities. Of course, as parents we should therefore limit our demands to those things over which we are prepared not to back down. We must choose our battlefields wisely.

Fair : A child has a sense of what's fair and what's not. True, children are somewhat biased in their view of what fair consists of, but they are the first to recognize uneven-handed treatment. As parents, we must be unstinting in guarding against any kind of favoritism, either to siblings or to our own agendas.

Friendly : The correct proportion of positive interaction to negative interaction should be 80/20. In other words, every interaction that requires disciplinary words or action should be balanced by four times as many positive and loving experiences. In addition, however exasperating children can be, it's always more effective to oblige them in a friendly manner. When they need correction, it should be done in a friendly tone of voice. Shouting certainly makes one feel better, but it's nearly always counterproductive in the long run. It shows weakness and insecurity.

Apart from 'The Three F's', there's a fourth ingredient that is equally as important.

Consistency.

Consistency is necessary not just in the behavior of each parent, but between the parents themselves. We learn this message from this week's Torah portion:

"If a man will have a wayward and rebellious son, who does not listen to the voice of his father and the voice of his mother..."

A child is only considered to be in the halachic category of 'wayward and rebellious' if he "...does not listen to the voice of his father and his mother." Among other things we learn from this verse is that both the father and the mother must have similar voices. The deeper meaning of both the parents having similar voices is that they must both speak 'with one voice', that they should not contradict one another in what is expected both of themselves and the child. The message that is broadcast in the home must be consistent, for without this keystone in child rearing, the child cannot be considered at fault.

Sources: based on Rabbi Noach Orlowek

Written and compiled by Rabbi Yaakov Asher Sinclair

Peninim on the Torah by Rabbi A. Leib Scheinbaum

PARSHAS KI SEITZEI

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

Upon reading the story of the wayward and rebellious son, one begins to wonder. How did this happen? How did such an ingrate boy grow up in a home that was replete with yiraas Shomayim, fear of Heaven, and observance of Torah and mitzvos? Education is the key to growth, and certainly this boy has received an education, both at home and at school. Where did he go wrong? The Ohr HaChaim Hakadosh feels that this miscreancy occurred neither in a vacuum nor overnight. Indeed, at a young age, his parents did not bother to emphasize the importance of listening to Hashem and observing His dictates. The Ohr HaChaim interprets this exegesis into the pasuk. The phrase, the boy "who does not listen to the voice of his father and the voice of his mother" is a reference to listening to the voice of our Father in Heaven, Hashem. Otherwise, it would have said, "who does not listen to his voice." We all know that it is the father's voice. Apparently, there is another Father's voice that he is ignoring: Hashem's.

"His father and his mother" is a metaphor for Hashem and Knesses Yisrael. If parents do not teach their children to listen to Hashem, they risk losing their own ability to discipline them. Children must be raised with respect for the Almighty and respect for Klal Yisrael. They should be imbued with a sense of pride, a sense of mission, and a love for their heritage. One who does not

listen to his spiritual Father and Mother will eventually also lose respect for his biological parents.

While this is not necessarily a forum for a thesis on education, this writer cannot resist the opportunity to cite some advice and guidance from our Torah leaders of the past. Many people think that education is a form of discipline in which the rod is the symbol of reinforcement and encouragement. The Seforim Ha'Kedoshim do not agree with this method. They promote an educational approach based upon love and encouragement. There is a dynamics to teaching and learning that reaches into the deepest needs of each individual child. The primary educators in an individual's life are his parents. They must underscore the overriding importance of adherence to Torah and mitzvos. In order to be effective and enduring, this lesson should be rendered with love and respect. Yes, parents should demonstrate respect for their children. This respect will, in turn, be reciprocated.

Children should not listen to their parents out of fear, but out of respect. A sense of shame should envelop them when they do something wrong. They should realize that they have let their parents down. This is the result of a loving, caring, respectful relationship. Yosef Ha'Tzadik held back from committing a sin with Potiphar's wife when he saw an image of his father. He realized who he was and who his father was. He realized the hurt and humiliation he would generate with his sinful behavior.

While it is true that, at times, a child must be reprimanded and even punished, it should be carried out with love - not anger. This love should be palpable. The child should sense that his parent is acting out of love and necessity. The Chafetz Chaim's son related that his father never gave his children reason to fear him. His rebuke was always couched in love and expressed in a pleasant, calm and dulcet tone. He never raised his voice. He added that, while he and his siblings were careful to carry out the mitzvah of honoring one's parents, they never had reason or opportunity to fulfill the mitzvah of fearing one's parents. Their father was a friend, a big brother - not someone to fear.

Horav Shmuel Halevi Vosner, Shlita, posits that it is important for a parent to rebuke his child and to even point to the rod that hangs from the wall - but rarely to use it. Above all, a child must be taught who he is, what his potential is, and what is expected of him.

The Klausenberger Rebbe, zl, was a Torah giant who survived the Holocaust, rebuilt his life after the war and was a source of fatherly love and inspiration to thousands both during and after the war. Shortly after the war, he searched everywhere for survivors, in the hope that he could imbue them with a desire to return to a Torah way of life. Many followed him, some out of conviction, others out of love for the Rebbe. One young man who had lost everything -- including his wife, his children, and his extended family -- just went along. He did not know why. After all, in what could he believe, now that everything he had ever had had been destroyed? His life was empty, his emotions a vacuum. Nonetheless, he was there.

One day as he was walking through the DP camp, he saw the Rebbe, surrounded by a number of followers, walking towards him. The young man moved to the side to let the Rebbe pass, but the Rebbe stopped and motioned his followers to continue. The man realized that the Rebbe wanted to speak to him - and he was not interested in speaking to anybody. He did not want anyone to proselytize to him. Look what all the belief he had brought him. Nothing! He was alone in the world with nothing. He turned away from the Rebbe. The Rebbe called to him, and he had no recourse but to respond.

"Rebbe, I am sorry, but I have no interest in speaking right now," he said.

"My dear son, I know you do not wish to talk to anyone, and I will respect your wish. After all, I cannot blame you. After all that you have endured, your emotions are understandable. I just want to tell you one thing: Be yourself. Always remember who you are."

This is how the Rebbe succeeded in bringing back hundreds of lost Jews. He rekindled the spark of Yiddishkeit, the flickering ember of holiness that lay dormant within the recesses of their hearts. Eventually, over time, these Jews returned to their faith and conviction, becoming observant and raising beautiful families, committed to Torah and mitzvos. His success was due to his love for every Jew. He did not judge; he did not reproach. He simply

reminded them from whom they had descended and to what they could still return. He reminded them who they were.

In summation, the way we are mechanech, educate, our children will impact them for life. By teaching them to respect the Almighty, we will benefit in having them respect us. Horav Shlomo Karliner, zl, was wont to say that in the manner that one acts with his own children he is "teaching," Kaviyachol, Hashem how He should also relate to His sons. If we show compassion, love, patience, kindness and forgiveness, so will He. Our actions have that kind of an effect. He interpreted this idea into the pasuk, V'chol banayich limudei Hashem, "And all your children will be students of Hashem" (Yeshayah 54:13). The way one acts with his children is a lesson Kaviyachol to Hashem, that He should also likewise treat His children.

Horav Asher zl, m'Stolin would entreat Hashem saying, "Hashem, we put up with so much from our children. Please do the same for us." As we approach the Yemai Ha'Din, may Hashem listen to our tefillos in the same way that a father listens to his son.

You shall surely send away the mother and take the young for yourself. (22:7)

Arichas yamim, longevity, is the commonly cited reward for two mitzvos: Shiluach hakein, sending away the mother bird; and Kibbud Av V'Eim, honoring father and mother. The Midrash goes one step further, saying that the mitzvah of sending away the mother bird is the easiest mitzvah, while honoring one's parents is the "hardest of the hard." What are Chazal teaching us?

Horav Zev Weinberger, Shlita, gives a novel explanation. He cites the Ramban who explains that the reason one sends the mother bird away is to teach us to have compassion. The Ramban emphasizes that the mitzvah is not necessarily simply to demonstrate that Hashem has mercy on animals, but, rather, to teach us to be compassionate. One who is compassionate towards animals will certainly have mercy on humans. Compassion is a natural character trait for a human being. Indeed, one who is not compassionate is not acting in a human manner. This is why this is considered an easy mitzvah to fulfill.

Honoring parents has its source in the middah, character trait, of hakoras hatov, gratitude. Regrettably, this mitzvah goes against the grain of human nature. Expressing gratitude is not easy. Showing appreciation means that we owe somebody something. This is not easy for many people. The human ego likes to think it is beholden to no one. Hakoras hatov teaches us the opposite. Honoring one's parents is a difficult mitzvah to perform, since it is not a natural human character trait.

You shall not reject an Egyptian, for you were a sojourner in his land. ((23:8)

Incredible! The Egyptians spurned us, made us into slaves, killed our children, spiritually defiled us and did just about everything an enemy can do, yet the Torah instructs us not to reject them. Rashi explains that despite their implacable hatred towards us, and regardless of all the terrible things they did to us, we owe them a debt of gratitude, since they were our hosts at a time of pressing need. When our grandfather Yaakov Avinu descended to Egypt to escape the famine that ravaged Canaan, and to be reunited with his long lost son, Yosef, Pharaoh gave him and his family a home in Egypt. They were given food and shelter and were treated with respect. Pharaoh was generous and gave them the land of Goshen to live in seclusion, so that they would not assimilate with the Egyptians. It was here that they grew from a family of seventy souls into a nation of millions.

The generous hospitality in Egypt continued until Yosef's last surviving sibling, Levi, passed away about ninety years after Yaakov's arrival. For ninety years we had it "good" in Egypt. Therefore, we are to accept male Egyptian converts after three generations. The reason is that it takes three generations for the Egyptian moral character to be expunged from his descendants.

In his commentary on the Torah, anthologized by Rabbi Sholom Smith, Horav Avrohom Pam, zl derives an important lesson from this pasuk. Miyut ha'tov einu batel b'ribui hara, "a small measure of good is not compromised by

a large measure of evil." Egypt stands as the paradigm of evil, oppression, and cruelty, the forerunner of nations who have attempted to destroy us. Yet, we still owe them a debt of gratitude, and that debt is not to be ignored, despite all the evil they represent. We cannot forget that they once treated us benevolently. Thus, we are obligated to reciprocate.

This concept must remain a cornerstone in our interpersonal relationships. If one has benefited from someone, regardless of the fact that presently the benefactor causes us discomfort or pain, we must maintain our sense of hakoras hatov, gratitude. How often are decades of kindness washed away by a perceived wrongdoing or a thoughtless remark? How many family relationships have been destroyed due to foolishness or insensitivity on the part of one individual? Is this a reason to throw away all of the positive moments that have existed, all of the kindnesses that have been rendered, all of the experiences, both positive and negative, that have been shared?

This idea has its parallel in our relationship with Hashem. We certainly do not want Him to discount our mitzvos and maasim tovim, good deeds, due to an occasional indiscretion or a momentary lapse. Why should our standards change when it involves our interpersonal relationships?

Rav Pam adds that those who maintain a high degree of hakoras hatov, appreciation and gratitude, to those who benefit them are invariably happy people. One who is grateful for what he receives realizes how many good and caring friends he really has. One who cannot overlook an unintentional snub, a thoughtless remark, or a foolish indiscretion, is a perpetually unhappy person. He feels that everyone is his enemy and everyone is constantly conspiring against him. This sense of insecurity catalyzes his downfall and eventual rejection from society.

As we approach Hashem during the upcoming days of judgment, it would serve us well to reinforce ourselves and our relationships, so that we do not become victims of our own insecurities.

For Hashem, your G-d, walks in the midst of your camp...so your camp shall be holy, so that He will not see a shameful thing among you. (23:15)

It is related that during the first Kenessiah Gedolah, which took place in Vienna in 1923, the assemblage included most of the gedolei Torah, prominent Torah leaders, of that generation. The Chafetz Chaim, zl, also attended and served as the unofficial head of the assembly. Prior to the Kenessiah, the Chafetz Chaim asked Agudath Israel's rabbinic leadership to meet with him in his hotel room. He said the following: "Rabbosai, my friends, there are gathered here rabbanim from all lands to seek counsel and initiate programs for the physical and spiritual improvement of our brethren. We must acknowledge and never forget the pasuk in Devarim 23:15 in which the Torah clearly states that Hashem walks in our midst to save and sustain us only as long as He does not note any moral deficiencies among us. If, however, there is ervas davar, moral degeneration, within our midst, we are driving Hashem away." The Chafetz Chaim continued, "What good are meetings and conventions with their broad declarations if we are deficient in the area of tznius, moral modesty? Hashem will leave our midst, and we will be the cause! If we will make tznius a priority, we will maintain Hashem's Presence among us and guarantee our success in all areas."

At that Kenessiah, the men had assembled on the main floor of a large auditorium. The women's section was in an area of the second floor, above the men. There was, however, no partition between them. In other words, those standing on the first floor, albeit separated from the women, were still able to see them from afar. This troubled the Gerrer Chassidim who refused to allow their Rebbe to enter the auditorium unless curtains were put up to separate the women from the men.

There were those who contended that since there was a separation in place and the women were on a higher plateau than the men, it was sufficient, so that a curtain was an unnecessary inconvenience. Understandably, each of the two sides was quite adamant in its position. Yet, calm and intelligence reigned, and the decision was made to abide by the sage advice that the saintly Chafetz Chaim would render. The Chafetz Chaim listened to the arguments and said, "Halachically, the separation is fine. Since there are those who seek

to be stringent in a matter regarding moral purity, however, we should make every effort to acquiesce to their demands. After all, this is what determines Hashem's Presence in our midst. Why would we want to drive Him away? In fact, we should certainly implement every hiddur, meticulous adherence to halachah, that we are able. We need Hashem's help, and this will catalyze it!"

This story was related by the founder and Rosh Hayeshivah of Mir in America, Horav Avraham Kalmanowitz, zl. His son, Horav Shraga Moshe, zl, supplemented the story saying, "The Chafetz Chaim taught us a novel idea. Until now, a person might postulate that Hashem is either in our midst, or He is not. The Chafetz Chaim taught us that there are distinct levels to Hashem's relationship with us. When one increases his level of hiddur of the mitzvah of v'lo yeraeh, "so that He will not see," he will increase Hashem's closeness to us accordingly. If, on the other hand, he diminishes his level of adherence in areas of moral purity, he is distancing Hashem from us.

That he happened upon you on the way, and he struck those of you who were hindmost, all the weaklings at your rear, when you were faint and exhausted, and he did not fear G-d. (25:18)

Amalek was not the only nation that contended with Klal Yisrael. Other nations also confronted us. Nowhere, however, do we find such harsh words against a nation as we find against Amalek. Hashem declares that He wages war with Amalek throughout the generations (Shemos 17:16). What is the reason for this unprecedented condemnation?

The Brisker Rav, zl, explains that the answer lies in the words, "And he did not fear G-d." He stood out among the enemies of the Jewish People due to his lack of yiraas Shomayim, fear of Heaven. What does this mean? How did he manifest this lack of fear? Chazal teach us in the Talmud Bava Kamma 79b that the Torah is more stringent concerning a ganav, thief, than a gazlan, robber. The reason is that the robber steals by day, demonstrating a lack of fear, both for people and for Hashem. He does what he wants without a care in the world. The thief, however, is different. He steals under the cover of darkness, afraid to attract people. He is calculating and devious; he is meticulous in laying out his plans and following them to the letter. Nonetheless, with all his carefully laid-out plans and his fear of being caught, he blatantly exhibits his disdain for Hashem, for Whom he seems to have no fear. He screams out to the world: "I am afraid of people, but not of G-d!"

This personifies Amalek. The other nations also attacked Klal Yisrael, but they did so at will, when they were in the mood. It was not planned. It was an act of convenience. The Jews were there, so why not attack them? Not so Amalek. He waited for a time when the Jews would be tired. He attacked the weaklings who were at the end of the camp. He planned his attack down to every detail, ignoring nothing but Hashem. He showed that he did not care about Hashem. His fear was of the Jews, not of their G-d. He spurned Hashem. Therefore, Hashem will not rest until Amalek's name is blotted out.

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Rabbi Yaakov Neuburger

Address the Culture, Not Just the Criminal

We are probably quite familiar with "kri-kesiv" anomalies, where Hashem determined that we should read the Torah text differently from the way He asked us to record in writing. Nevertheless I am sure that we are all puzzled by the frequent and consistent "na'ar-na'aroh" swap that has such high profile in much of the parsha. Obviously, the "na'aroh", the woman, is the victim throughout the parshios that discuss vulgar and violent acts of decadence and their consequences and punishments. Yet by repeatedly removing the "heh" from the word "naaroh", the written text continuously records the "na'ar", the man, as the victim of the very crimes that he has perpetrated.

Perhaps the Torah is indicating to us that sometimes the criminal and the victim are not as indistinguishable as they seem to be. Though there is no

room in the Torah to acquit the “na’ar” the criminal, we still would do well to recognize that he too is often reacting to an atmosphere and is the victim of a culture that he did not create. As we defend the “na’aroh” and seek her welfare and that of her peers, we must as well, address the “na’ar” whose necessary responsibility for his actions often obscures that their roots are well nurtured by the promiscuity that surrounds them.

Decadent behavior, from publicly alleging the infidelity of one’s new wife to physically violating another, thrives on a culture that has none if few standards of acceptable dress, entertainment or language and practices little restraint in gratification. In our time this has become an uncomfortable and unpopular truth. Yet the Torah by allowing the identities of the criminal and victim to converge, begs us, without for a moment letting the criminal off the hook, to honestly address the culture in which we find ourselves hoping that will surely lead to a nobler environment.

h a a r e t z

Parashat Ki Tetzeh / The contagion of good deeds

By Haim Sabato

Many commandments (mitzvot) are enumerated in this week’s Torah portion. They are presented as if they formed a chain, although there seems to be no real connection between them.

I wish to focus here not on the commandments themselves, but rather on the chain. Commenting on this portion, Rashi writes that the juxtaposition of the passages containing the commandments is intended to teach us that one commandment leads to another, and that one sin leads to another: "We read in the Bible: 'When thou buildest a new house' [Deuteronomy 22:8] and the meaning of that phrase is that if you perform the commandment of sending forth the mother bird from the nest before taking the eggs (shiluakh haken), you will one day build for yourself a new house, which will require you to perform another commandment - the construction of a railing around the roof to prevent anyone from falling to the earth below.

One commandment leads to another, and you will proceed from the construction of your new house and the railing on the roof to the possession of a vineyard and a field, and to the acquisition of fine clothes ... That is the reason for the juxtaposition of these passages."

The source of this explanation can be found in midrashic literature, specifically in Devarim Rabbah (section 6): "Ben Azai says: The performance of one commandment leads to another and one sin leads to another.

How, you may ask? It is written in the Bible, 'When thou goest forth to war against thine enemies, and the Lord thy God hath delivered them into thine hands, and thou hast taken them captive' [Deuteronomy 21:10]. Then we read, 'And seest among the captives a beautiful woman, and hast a desire unto her, that thou wouldest have her to thy wife' [Deut. 21:11].

God in effect is saying to us, 'Although I have permitted you to take this captive woman as your wife, I have also instructed you: "And she shall shave her head, and pare her nails"' [Deut. 21:12]. The reason for this instruction is that, by doing thus, she will no longer appear attractive in your eyes and then you will probably banish her from your home.

However, should you fail to do so, what will befall you, according to the Bible? We read: 'If a man have a stubborn and rebellious son' [Deut. 21:18], and then ... 'And if a man have committed a sin worthy of death' [Deut. 21:22]. In other words, one sin leads to another. But how do we know that the performance of one commandment leads to the performance of yet another?

The Bible begins here with, 'If a bird's nest chance to be before thee in the way in any tree, or on the ground' [Deut. 22:6], and then ... 'When thou buildest a new house.' After that, 'Thou shalt not sow thy vineyard with different kinds of seeds' [Deut. 22:9], and then 'Thou shalt not plow with an ox and an ass together' [Deut. 22:10], followed by 'Thou shalt make thee fringes upon the four quarters of thy vesture, wherewith thou coverest thyself' [Deut. 22:12]. In other words, one commandment leads to another."

Ben Azai explains this (Mishna Avot 4:2): "You must eagerly seize the opportunity to perform even the most minor commandment and you must diligently avoid sin, because one commandment leads to another, and one sin leads to another.

The reward you receive for one commandment is another commandment, and the punishment you receive for a sin is another sin." We read in the midrashic literature (Solomon Buber, Midrash Tanhuma, Leviticus, Chapter 10): "We should never feel contrition for a sin that was committed unintentionally; however, we should regret the fact that an opening has been made for the possibility of the deliberate commission of other sins in the future. Similarly, we should never rejoice over a commandment that we had not planned in advance and which we were able to perform; however, we should rejoice over the possibility of performing in the future many commandments that we had not planned in advance."

Power of sin

Rabbi A. Bar Shaul writes ("Min habe'er," commentary on Parashat Ki Tetzeh): "The unintentional commission of a sin can turn into a bad habit and presents the danger of our falling into an abyss. Once we have tasted one sin, that taste will not disappear from our tongue so quickly and we can easily fall into the trap of repeating this very sin and of even committing new ones. The nature of a bad habit is very powerful to resist, whereas the effect of a good habit is very pleasant."

However, the issue here goes beyond the idea of a bad habit and touches on something much deeper something that teaches us the power of a commandment that has been performed as opposed to the power of a sin. In his "Mei marom" (in the section entitled "Uri veyishi"), Rabbi Jacob Moses Harlap observes: "We must carefully consider the root of all sins, that is, what is the chief factor that is the source of every evil ... We have learned that "one sin leads to another." The phrase not only refers to the essentially base nature of all sin ... it

also teaches us the fundamental principle that we cannot commit a sin unless we have previously committed a sin that has led us to this second sin. But how was the first sin committed? The first sin was committed when we were negligent about a commandment ... especially, the commandment of Torah study, which is the most important of all."

Divine light illuminates the entire world and our souls are pure. When we commit a sin, even a minor one, a curtain descends and becomes a barrier between ourselves and our heavenly Father, as we read in Isaiah (59:2): "But your iniquities have separated between you and your God."

This curtain, which the commission of a sin creates, divides us from our Creator.

As a result, our pure, pristine vision becomes impaired and we are in mortal danger of moral deterioration through the commission of further sins, each of which will be graver than the previous one. Rabbi Abraham Isaac Hacoen Kook writes ("Orot hateshuva," 4:5): "I can see how sins become barriers blocking out the pure light ... that shines in all its brilliance on every soul, while these sins darken and dim the soul."

On the other hand, when we perform a commandment, our heart is opened up to the performance of yet greater commandments, and that is the meaning of the phrase, "The reward you receive for one commandment is another commandment." In other words, when we perform a commandment, we will automatically be led to perform yet another. Thus, if we eagerly seize the opportunity of performing a commandment, even one that appears to be minor that commandment will imbue us with purity and will lead us to perform yet another.

Moral deterioration is a gradual process. It starts with a foolish or mistaken act that appeared initially to be of little importance. We may even have forgotten about it completely; nonetheless, it dims the brightness a little and leads us down the slope to moral deterioration. If, on the other hand, we perform a good deed, even one of a very simple nature, the purity of the soul that the performance of this deed produces will gradually lead us to ever higher levels of moral conduct.

**YatedUSA - Halacha Talk
by Rabbi Yirmiyohu Kaganoff
The Lost Swimming Tube
ACT I**

Recently, Mr. Levine asked me the following shaylah:

“My daughter bought a swimming tube in a kiosk on the Ashdod beach. [Note: This is one of the popular separate swimming beaches in Eretz Yisroel.] Afterwards, she found a name and phone number written on a corner of the tube. We presume that what probably happened is that the original owner lost the tube and the kiosk owner found it and decided to sell it. Must my daughter return it to the owner? If she must, can she charge the tube owner what it cost us to buy the tube?”

To properly explain the halacha, we must first understand whether the mitzvah of hashavas aveidah, returning lost objects, applies in this case. Second, if the mitzvah does apply, may the finder insist that the original owner compensate him for his expenses? Although a swimming tube is not a very expensive item, a Jew must be careful that he does not hold even insignificant amounts that are not legitimately his.

WHEN DOES THE MITZVAH OF HASHAVAS AVEIDAH APPLY?

Mr. Levine and I sat down to research his shaylah. I began by asking him the following: “If someone found property that a hurricane swept away, does the finder have a responsibility to locate the original owner?”

This shaylah’s relevance is as recent as a few weeks ago, and as ancient as the Gemara. Indeed the Gemara asks the following question: “If the tide swept away someone’s property, does the person who found the lost property have a mitzvah to return it?”

Mr. Levine knew the Gemara, and responded accordingly. “I know that the Gemara says that one does not have to return the lost property in this case (Gemara Bava Metzia 24a).”

“Why?” I asked him.

“Because when the owner sees his items being swept out to sea, he immediately gives up hope of ever getting the item back.”

Thus, we have introduced the concept of yiush, which figures prominently in the halachos of lost objects. Yiush is the state of mind of an owner who has despaired that he will recover his lost object (Rashi, Bava Metzia 21b s.v. dimiya’esh). When the owner is me’ya’eish, despairing about ever retrieving his lost item, he is no longer considered its owner (see Rashi, Bava Metzia 21b s.v. maos). The lost item has now become ownerless and someone who finds it after this point may keep it (Gemara Bava Metzia 24a). However, someone who found the item before yiush may not keep the item even if the owner was subsequently me’ya’eish.

ACT II

HOW DO I KNOW IF THE OWNER WAS ME’YA’EISH?

The truth is that unless one actually heard the owner say, “Oy vey, I guess I have lost money,” one never knows for certain that the owner was me’ya’eish. However, in most instances we can surmise whether the owner was me’ya’eish or not.

Here is a case mentioned by the Gemara:

“If someone found something on a street or in a large marketplace or any other place where there are many people, he may keep it because he can assume that the owner gave up hope of getting it back (Gemara Bava Metzia 24a).” As we explained, since the owner reached a stage of yiush, the item is now ownerless (Rashi, Bava Metzia 21a) and the finder may keep it. This is true even though the owner could prove that the item was once his. Since it was lost in a place where many people traverse, we may assume that the owner despaired of ever retrieving the lost object.

IS THIS TRUE EVEN IF THE OWNER CAN PROVE HIS OWNERSHIP?

In the situation quoted above, the finder may keep the item even if the object has a siman, an identifying mark that proves that the lost object was once his property. The reason is that although a siman may help an owner demonstrate that this item was once his, it does not prove whether he was me’ya’eish or not. However, if based on the circumstances we may assume that the owner was me’ya’eish, we know the lost item was now ownerless.

Nevertheless, although the finder is not required to return the lost object, it is an exemplary act (lifnim mishuras hadin, beyond the requirements of the law) for him to return it anyway (Shulchan Aruch, Choshen Mishpat 259:5). If the original owner was a wealthy person, and the finder is a poor person, then the poskim stipulate that he does not need to perform the exemplary act and he may keep it (Rama, Choshen Mishpat 259:5).

WHAT IF THE ITEM WAS LOST IN A FRUM NEIGHBORHOOD?

The Gemara debates whether the halacha that something found in a marketplace can be kept by the finder applies even when it was lost in a marketplace where most of the inhabitants observe the laws of returning lost objects. Should we assume that the owner hopes that the person finding it will attempt to locate the owner? Or do we assume that the owner feels that in a busy place someone not concerned to return lost items will probably find it and therefore the owner is me’ya’eish and the item is already ownerless?

The halacha is that if I find a lost object that has an identifying mark in an area that is mostly observant Jews, that I am responsible to try to locate the owner. I must assume that the owner nourishes hope that someone concerned about the halacha found the item and will attempt to return it. Therefore, he is not me’ya’eish (Shulchan Aruch, Choshen Mishpat 259:3).

WHAT IF THE ITEM HAS NO SIMAN?

A siman is an identifying fact about a lost item that the owner can use to demonstrate that it is his. Usually if an item has no siman, then the owner gives up hope that he will ever see the item again. This makes the property ownerless and someone who finds it after this point may keep it.

WHAT IF THE OWNER DOES NOT YET KNOW HE LOST IT?

The Gemara quotes a famous dispute concerning a case where the owner does not yet know that he lost an item, but as soon as he would find out he would give up hope to ever retrieve it (Bava Metzia 21a). (This is probably the best-known dispute between Abaya and Rava anywhere in the Gemara.) The Gemara concludes that yiush is not valid until the owner finds out about it (Bava Metzia 22b). Therefore, one can keep a found item that has no siman only when it can be assumed that the owner already knows that he lost it.

Here are two cases that elucidate this halacha:

Yiush that is not yet known—

On a nice day, you find an umbrella in a taxi. Although the owner will certainly despair from retrieving it as soon as he realizes it is lost, you cannot assume that he already knows that he lost it. Therefore, the owner was not yet me’ya’eish and you may not keep it.

Yiush that is already known—

Walking through the Beis Medrash one day, you spot a hundred-dollar bill lying on the floor. Currency has no siman, and therefore people are me’ya’eish from ever retrieving money as soon as they realize they lost it. But can you assume that the previous owner has already discovered his loss and been me’ya’eish? The Gemara says that one may assume that he is already aware of his loss, since people tend to check their pockets to reassure themselves that their money is still in place. Therefore, by the time you found the lost money, you may assume that the previous owner is already aware of his loss and was me’ya’eish.

RAV YOSEF CHAYIM AND THE NAPOLEON

There is an interesting historical story that resulted from the halacha taught by this Gemara. Rav Yosef Chayim Sonnenfeld, Rav of the old yishuv of Yerushalayim, refused his entire life to accept payment for teaching Torah or for any position; consequently he often lived in dire poverty. One day he came home to discover that his wife had been weeping because she had absolutely nothing to feed their children.

Rav Yosef Chayim told her that he will go out to earn some money to support them. Upon reaching the street, he bent over and discovered a gold napoleon coin, worth at the time, enough to keep the family fed for several months!

(I am not suggesting that we have Rav Yosef Chayim’s level of bitachon. I am simply pointing out that he assumed that the napoleon was his to keep and that he had no requirement to attempt to locate its previous owner.)

We can now return to Miss Levine’s swimming tube. We can now decide whether we should assume that the original owner was me’ya’eish. If the tube looks like it was swept away by the waves, then we may assume that the owner was me’ya’eish (Bava Metzia 24a). However, if it was lost on the beach, then we should assume that the owner was not me’ya’eish since it has a siman and he lost it in a place where most of the people were observant Jews who will fulfill the mitzvah of returning a lost object (Shulchan Aruch, Choshen Mishpat 259:3). Based on the circumstances of our case, we should assume that the owner was not me’ya’eish from ever getting back the tube and there is a requirement to return it.

ACT III

WHAT ABOUT REIMBURSEMENT?

We can now proceed to the second part of the shaylah. May the Levines ask the original owner to reimburse them for the money paid when they bought the tube from the kiosk?

By the way, the kiosk is definitely required to reimburse the money since they sold an item that they did not own. This is true whether or not they knew that the item had a siman. Even if the kiosk owner did not notice the name and phone number on the tube, since we have concluded that we should assume that the original owner was not me’ya’eish, the kiosk sold an item that they did not own. Such a sale is invalid, and the seller is required to return the money to the buyer.

Thus, either the original owner or the finder has the right to ask the owner of the kiosk to return the money. Our question is whether the Levines can ask the original owner to return the money they spent on the tube and leave it for the owner to deal with the kiosk if he chooses to.

At first glance, one would assume that the Levines are not entitled to receive payment from the owner. After all, the tube still belongs to the original owner, so by what right can I insist on compensation for an item that was not mine to begin with?

However, there are two different halachic reasons to explain why it is possible that Mr. Levine has a right to compensation. I am going to present these reasons by presenting the actual *dinei Torah* in which these *shaylos* presented themselves.

ACT IV

A DIN TORAH IN THE ELEVENTH CENTURY!

A powerful gentile forced a Jew out of his house, and then sold the house to a different Jew who was unaware that it had been stolen. The original owner filed a claim (in *Beis Din* of course) against the buyer to reclaim the house. After all, the house is still his property; he did not lose his ownership through the theft.

Rabbeinu Gershon, probably the greatest *gadol* of the entire period of the *Rishonim*, ruled that the buyer retains the house until the original owner pays him the money he spent to purchase the house.

On the other hand, Rashi ruled that the first owner is entitled to receive his house back without paying (*Tosafos*, *Bava Kamma* 58a).

Here we have two of *Klal Yisroel's* greatest teachers disputing and maintaining diametrically opposed positions. On what halachic issue is this dispute dependent?

Rashi contends that the house belongs to the original owner, and the buyer has no financial claim for the money he spent. The owner has every right to regain possession of his house and the buyer has no right to prevent him.

(The buyer could of course summon the gentile who stole the property to a *din Torah* to compensate him for selling his stolen property, but apparently he chose not to. I think we can all understand why he did not proceed with this approach.)

On the other hand, Rabbeinu Gershon held that since the original owner received his house back only because of the buyer, he must pay him for the benefit he received. Therefore, the buyer may insist that he receive the money he paid for the house before he relinquishes it (*Rosh*, *Bava Kamma* 6:7; *Tosafos*, *Bava Metzia* 31b s.v. *im*).

There is an additional reason why he can collect the money before returning the tube which is based on a *takanas chachomim*, a rabbinic ruling to ensure a properly functioning marketplace. This is based on the following case:

ACT V

A BURGLARY IN TOWN!

The entire town is in a state of shock- Reuven's house has been burglarized by his own guests!!

Reuven had invited guests to stay overnight in his house, thus fulfilling the tremendous mitzvah of *hachnasas orchim*. In the morning the guests are gone, and so are some of Reuven's valuable *seforim* and other goods. One of Reuven's neighbors reports seeing them wander off in the middle of the night with huge bags on their shoulders!

Who could have done this? Surely, the thief will be caught and brought to justice and Reuven will receive back his stolen items. Reuven himself has been keeping a cheery face- apparently he is confident that his property will reappear. Since he has often shown off his *seforim* to visitors, he is confident that he can prove that he owns these *seforim* whenever they will reappear.

The next day, Reuven pays a visit to a *seforim* collector he knows on the other side of town. Sure enough, he sees on his shelf some of his stolen *seforim*. The *seforim* collector reports that he purchased the *seforim* from someone who looked very reputable, "the type of person you would gladly invite over to your house." The *seforim* collector is willing to return the *seforim* to Reuven, but would like to be compensated for the money he spent purchasing them. Is he entitled to compensation?

The *Mishnah* (*Bava Kamma* 114b) rules that the collector is entitled to compensation. Although Reuven should be entitled to get his own *seforim* back without paying for them, Chazal instituted a *takanah* that he must pay first in order to protect the marketplace. This guarantees that someone can purchase on the open market without concern that he will lose his money because the item is stolen (*Rashi* to *Bava Kamma* 115a s.v. *dirav Chisda*). According to the *takanah*, he is entitled to get his money back even if he purchased stolen property without knowing it. (It is strictly forbidden to purchase stolen merchandise [*Choshen Mishpat* 356:1].)

Thus, according to this *takanah*, Mr. Levine is entitled to ask the owner for compensation when he returns the tube. If the owner does not want to pay him for the tube, he is not required to return the tube (*Shulchan Aruch*, *Choshen Mishpat* 356:2-3).

MIDAS CHASIDUS

Mr. Levine then asked me, "Is it *midas chasidus* (an exemplary action) not to ask the owner for payment?"

It would seem to me that according to either reason, it is certainly *midas chasidus* to forgo asking for payment. According to Rabbeinu Gershon's reasoning, I am entitled to ask him to pay me for my costs- but it is certainly exemplary not to. Furthermore, if returning a lost object after the owner was *me'ya'eish* is considered *lifnim mishuras hadin*, beyond the requirements of the law, as I mentioned above, then not insisting on payment when returning an item I am required to should certainly be considered an exemplary deed. Thus, the conclusive ruling is that Mr. Levine is entitled to ask for compensation from the owner of the tube, but it is exemplary not to.

Thus, we see that although returning lost items is a beautiful and important mitzvah, sometimes the details of the halacha are fairly complicated – even over an item as inexpensive as a swimming tube.

YatedUSA - Halacha Discussion

by Rabbi Doniel Neustadt

The Mitzvah of Shiluach Hakan

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 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:

- Rambam² 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' Bechaye⁴ 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 halachah⁶ and the prevalent custom⁷ 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 Moshiach¹⁹ 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 view²¹ and the prevalent custom²² is not to recite any blessings when performing this mitzvah. One who wishes to do so, may recite a berachah without invoking Hashem's name²³ using the following text: Baruch ata melech ha-olam asher kideshanu bemitzvosav v'tzivanu 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 quietly³⁴ approach the nesting area³⁵ and gently³⁶ 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.

1 Berachos 33b.

2 Moreh Nevuchim 3:48.

3 See also Rashbam, Ibn Ezra and Chezuni for a similar approach.

4 A similar explanation is offered by the Chinuch (545) and Raibag.

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. Wosner 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 shiluach ha-kan, while Maharam Shick writes al mitzvas shiluach 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 shiluach 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.

by Rabbi Josh Flug

Shinui Makom: The Mobility of a Beracha

The Gemara, Pesachim 101b, states that if one recites a beracha on an item and then changes locations, he must recite a new beracha if he wishes to continue eating that item. This concept is known as shinui makom (change of location). The Gemara applies this concept to an instance where the individual wishes to eat in a new location as well as to an instance where the individual returns to his original location. This article will discuss the parameters of the concept of shinui makom, the exceptions to the rule, as well as practical applications.

The Mechanism and Scope of Shinui Makom

The Rishonim dispute the nature of the mechanism of shinui makom. Rambam, Hilchot Berachot 4:3, is of the opinion that a change of location serves as an objective cessation of the meal. Anything eaten subsequent to the shinui makom has no relevance to the food eaten prior to the shinui makom. Therefore, if one changes locations and wishes to continue eating, he must first recite a beracha acharona on the original food, and then recite a new beracha rishona on the food that he wishes to eat. However, Tosafot, Pesachim 101b, s.v. K'shehen, are of the opinion that shinui makom is not considered a cessation of the meal. Rather, it is considered a hesech hada'at, an interruption of thought. While the food item that the individual plans to eat is considered part of the original meal, the hesech hada'at nullifies the original beracha rishona. Therefore, one is only required to recite a new beracha rishona. The beracha acharona that is recited upon conclusion of the meal covers the items that were eaten both before and after the change of location. Shulchan Aruch, Orach Chaim 178:1, rules in accordance with the opinion of Rambam. Rama Orach Chaim 178:2, rules in accordance with the opinion of Tosafot.

The Gemara, *ibid*, states that shinui makom only applies if one moves m'bayit l'bayit (from house to house). However, if one moves m'makom l'makom (from place to place) it is not considered a shinui makom. Rashi, *ad loc.*, s.v. M'Makom, states that m'makom l'makom includes moving from the main floor to the attic. It is implicit from Rashi's interpretation that m'bayit l'bayit means that one moves from one building to the next. In contrast, Tosafot, *ad loc.*, s.v. Ela, assume that m'makom l'makom is limited to moving from one corner of the room to another. M'bayit l'bayit includes moving from one room to the next. Shulchan Aruch, *ibid*, rules in accordance with the opinion of Tosafot that if one moves from one room to the next it is considered a shinui makom.

Nevertheless, Rama, *ad loc.*, offers a compromise to the dispute between Rashi and Tosafot. There is a concept regarding Kiddush on Shabbat that is defined by location. The Gemara, Pesachim 101a, states that Kiddush must be followed by a meal in the same location (*ain kiddush ela b'makom seudah*).

Tosafot, Pesachim 100b, s.v. Yedei Kiddush, note that although two different rooms in one building are considered two different locations, if one recites Kiddush with intent to move to a different room, one can consider both rooms as one location provided that both rooms are in the same building. Rama applies this leniency to shinui makom and states that if one recites a beracha with intent to move to a different location in the same building, it is not considered a shinui makom.

Mishna Berurah, Biur Halacha 178:2, s.v. B'Bayit, notes that although Shulchan Aruch, as well as Rama, rule that moving from one room to the next constitutes a shinui makom (when there was no prior intent to relocate to that room), there are many Rishonim who rule in accordance with Rashi that moving from one room to another room does not constitute a shinui makom.

Furthermore, common practice is to move from room to room without reciting a new beracha. Mishna Berurah concludes that ideally one should not move from room to room unless he had intent to relocate at the time of the recitation of the beracha. However, since common practice is to be lenient on this matter, if one does move to another room, one should not recite a new beracha when he continues eating. Moreover, if one can see the original location from the new location, one may certainly move to that location.

Exceptions to the Rule

The Gemara, Pesachim 101b, mentions two possible exceptions to the principle of shinui makom. First, the Gemara quotes a Beraita that if one is eating with another person and then relocates while leaving the other person behind, this does not constitute a shinui makom. Ran, Pesachim 20b, s.v. VTa'ama, explains that by leaving an individual behind, when one returns, he returns to his original meal. Second, Rav Chisdah is of the opinion that if one eats a food item that requires him to recite the beracha acharona in the same place that he ate, shinui makom is not applied. Rav Sheshet disagrees and maintains that shinui makom is applied. Apparently Rav Chisdah is of the opinion that just as a "social obligation" to return to the meal does not produce a shinui makom, so too a halachic obligation to return does not produce a shinui makom. Rav Sheshet is of the opinion that only a social obligation can prevent a shinui makom. Shulchan Aruch, Orach Chaim 178:2, rules in accordance with the opinion of Rav Sheshet. Rama, *ad loc.*, rules in accordance with the opinion of Rav Chisdah. [See Shulchan Aruch, Orach Chaim 178:5, and Mishna Berurah 178:44, regarding which food items this applies to. All opinions agree that it applies to a meal where bread is eaten.]

Although both exceptions to the rule are based on the same logic, they operate under different parameters. Rama, *ibid*, rules that if one employs the "halachic obligation" leniency to change locations, he may eat in the new location without reciting a new beracha. Magen Avraham 178:7, notes that this ruling is limited to the "halachic obligation" leniency. This is because when one eats in the new location, he recites the beracha acharona in that location (see Shulchan Aruch, Orach Chaim 178:4). Therefore, the food that he eats is a continuation of the original meal. However, if one is relying on the "social obligation" leniency, one who chooses to eat before returning to those he left behind is considered to have started a new meal that has no relevance to the original meal that he ate. He would then be required to recite a new beracha.

Eating While Traveling

Hagahot Semak 151:8, writes that travelers may eat while traveling and are not required to recite a new beracha at every location. This ruling is codified by Shulchan Aruch, Orach Chaim 178:4. Magen Avraham 178:11, explains that since there is no established meal from the outset, the change of location causes no significant interruption of the meal. Ostensibly, this leniency should be limited to a situation where the original beracha is recited in an unestablished location (i.e. an open area). This is evident from the ruling of Shulchan Aruch, Orach Chaim 178:3, that one who is in a garden may recite one beracha on all of the fruits in that garden. If he wishes to eat the fruits in another garden, he must recite a new beracha. Apparently, since the garden is enclosed, one cannot apply the leniency of the traveler.

R. Moshe Feinstein, Igrot Moshe, Orach Chaim 2:57, notes that there are situations where a traveler may start eating in his house without having to recite a new beracha on the road. First, if there is nothing compelling the traveler to remain in the house, he is considered to have already started his trip. In such an instance, he is not required to recite a new beracha upon exiting the house. If however, there is something compelling him to remain in the house (i.e., he is not ready to leave), he must recite a new beracha upon exiting the house. This is because when he starts eating he is considered established in the house.

Second, Chayei Adam 59:10, rules that if one is eating while walking, each bite of food is considered its own entity and upon relocating, a new beracha must be recited. This ruling is cited by Mishna Berurah 178:39. R. Feinstein notes that Chayei Adam's ruling only applies if one waits more than a few seconds in between bites. If one does not stop eating between bites, there is no shinui makom. Therefore, R. Feinstein rules that if one is sucking on candy or chewing gum in the house, and wishes to exit the house, one is not required to recite a new beracha upon exiting the house, even in a situation where one was compelled to remain in the house when he recited the beracha.

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From: Kol Torah [<mailto:koltorah@koltorah.org>]
Sent: September 09, 2005
Subject: Kol Torah Parshat Shoftim

Appealing a Halachic Decision by Rabbi Chaim Jachter

This week, we will discuss the question of when we are entitled to appeal a Halachic decision that a Rav has rendered. In this essay we will discuss the parameters of when Halacha permits a second Rav to reverse the decision rendered by the first Rav. In this context, we will also discuss the institution of the Rabbinical Court of Appeals that functions in Israel under the auspices of the State of Israel's Chief Rabbinate. For further discussions of this fascinating institution, see Rav J. David Bleich in *Contemporary Halachic Problems IV: 17-45* and Professor Eliav Schochetman in *Seider Hadin pp.443-470*.

Gemara

The Gemara (Niddah 20b) relates a very interesting story that involved Yalta, an interesting Talmudic figure who was the wife of Rav Nachman. Yalta brought Dam (blood) to Rabba bar bar Chana for a Halachic determination as to whether it rendered her a Niddah. (See Tosafot ad. loc. s.v. Kol, Rash to Nega'im 2:5, Shach Yoreh De'ah 187:5, and Teshuvot Yabia Omer 6:Y.D. 18 for a discussion of why she did not consult her eminent husband for a Halachic decision.) Rabba bar bar Chana ruled that it did render her a Niddah. Yalta, however, was dissatisfied with this decision and appealed the ruling to Rav Yitzchak the son of Rav Yehudah. Rav Yitzchak in turn ruled that she was not a Niddah.

The Gemara is troubled by Rav Yitzchak's ruling in light of the principle that once a Rav has ruled, it is forbidden for another Rav to reverse the decision of his colleague. The Gemara therefore explains that Rav Yitzchak at first told Yalta that she was a Niddah. Yalta, however, explained to Rav Yitzchak that Rabba bar bar Chana had routinely ruled that the shade of Dam that she had shown him did not render her a Niddah. It seems, argued Yalta, that in this instance Rabba bar bar Chana's eyesight was impaired and he was unable to render an accurate decision. Rav Yitzchak accepted this argument as valid and ruled that Yalta was not a Niddah. Thus Yalta's situation differed from the typical situation where a Rav may not reverse a colleague's decision.

The Rishonim offer various theories why in general Halacha imposes limits on the second Rav. Rashi (Niddah 20b s.v. Mei'lkara) indicates that the rule stems from concern for the dignity of the first Rav who was consulted. The Ran (Avodah Zara 1b-2a in the pages of the Rif, s.v. HaNish'al) explains that reversal makes it "appear as if there are two Torahs." The Raavad (cited by the Ran) asserts that when one presents an issue to a Rav, he binds himself to the jurisdiction of that Rav. It is equivalent to creating a prohibition by imposing a Neder (vow) upon himself. This Talmudic concept is referred to as "Shavya Anafshei Chaticha De'Issura."

Tosafot – Niddah 20b and Avodah Zara 7a

Tosafot (Niddah 20b s.v. Agamrei) are troubled by Yalta's apparent violation of the Gemara's (Avodah Zara 7a) rule that if one posed a question to a Rav and he issued a strict ruling he may not appeal the decision to another Rav. Tosafot explain:

The prohibition devolves on the Rav and not on the individual posing the question. The questioner may ask as much as he wishes – as a result the second Rav will investigate the matter more thoroughly and sometimes as a result it will be discovered that the first Rav had erred.

Tosafot in Avoda Zara (7a s.v. HaNishal) takes a more restrictive approach to this issue. They answer the question by explaining that the prohibition applies only when the questioner does not disclose to the second Rav that he previously presented the question to another Rav who issued a strict ruling. They also state that the second Rav is forbidden to reverse the first Rav's decision unless the former succeeds in convincing the latter that he erred. Tosafot in Niddah, in contrast, appear to permit the second Rav to reverse the first Rav's decision even in the absence of the latter's consent.

Rama and Acharonim

The Rama (Y.D. 242:31 following the Ran; also see Tosafot to Chullin 44b s.v. Heichi) offers a compromise between the two approaches of Tosafot. The Rama rules that the second Rav may overrule the first Rav if the latter made a blatant error. This refers to a case where the first Rav erred in "Devar Mishna" - accepted halachic practice (see Sanhedrin 33a, Rosh Sanhedrin 4:6, and Shulchan Aruch Choshen Mishpat 25:2). The Rama adds that if the second Rav believes that the original Rav made an error in judgment (what the Gemara calls "Ta'ut BeShikul HaDa'at"), the former should attempt to convince the latter to retract his ruling. If the first Rav refuses to retract, the second Rav may not reverse the decision of the first Rav.

The Shach (Y.D. 242:53) cites differing opinions among the Rishonim as to whether the second Rav is authorized to reverse the decision of the first if he is of greater stature than the first Rav. The Shach appears to accept as normative the view that he is indeed authorized to do so even in a matter of Shikul HaDa'at. The Aruch Hashulchan (Y.D. 242:62) is inclined to rule in accordance with the Shach. He argues that the reasoning of a more eminent Rav is more compelling. Indeed, superior reasoning ability is often the basis to regard a particular Rav as greater than his colleagues. On the other hand, Rav Ovadia Yosef (Tahorat Habayit 1:323) rules in accordance with the Rishonim who forbid even a great Rav to reverse the Halachic decisions of a Rav of a lesser stature, unless the first Rav erred in a Devar Mishna. Needless to say, it is often exceedingly difficult to decide who is the Rav of greater stature.

The Aruch Hashulchan, notes, though that no restrictions apply if the first individual who rendered a decision was a Torah scholar but not qualified to render Halachic decisions (Lo Higiah LeHora'ah). The Halachic decisions of such an individual are considered null and void. Obviously, each Torah scholar and Rav must be honest with himself and not issue rulings when it is not appropriate for him to do so (Makir Et Mekomo; see Avot 6:6). It is also difficult at times to determine if someone is regarded as Lo Higiah LeHora'ah.

The Aruch Hashulchan (Y.D.242:62) rules that if the original Rav was the Mara De'Atra (Rav of the area or synagogue) then under no circumstances may his decisions be reversed. It is very important to show proper respect for the authority of a community's Mara De'Atra. Indeed, Rav Hershel Schachter has stated that one should not observe a Chumrah (stringency) in Jewish law that the Rav of a Shul does not observe. Rav Schachter gave the example of standing for Keriat HaTorah, which is not required by the Halacha (see Shulchan Aruch Orach Chaim 146:4). The concept of Mara De'Atra appears in Shabbat 19b, Eiruvin 94a, Pesachim 30a, and Chullin 53b.

Rav Ovadia Yosef writes (Tahorat Habayit 1:331) that if a Rav rendered a Halachic decision for a Sephardic Jew in accordance with Ashkenazic authorities but conflicting with traditionally accepted

Sephardic authorities such as Rav Yosef Karo, the decision may be overturned because Rav Yosef Karo is viewed as the Mara De'Atra of Sephardic Jews.

For further discussion of the parameters of the issue of when a Halachic decision may be reversed, see Encyclopedia Talmudit 8:507-510.

The Israeli Rabbinical Court of Appeals

The concept of a court of appeals is widely accepted in the Western world as a basic element of a fair judicial system. Indeed, beginning in 1921 the Israeli Chief Rabbinate's system of rabbinical courts has included a Supreme Rabbinical Court of Appeals (apparently upon the insistence of the British Mandatory Authority). Rav Avraham Yitzchak HaKohen Kook and Rav Ben Zion Uzziel (Teshuvot Mishpitei Uzziel C.M. 1), the chief rabbis of Eretz Yisrael, endorsed the establishment of this institution. Rav Uzziel sees this as an example of incorporating positive ideas from Nochrin into the Torah system (Yafyuto Shel Yefet BeOhalei Shem; see Megilla 9b). However, many in the Chareidi community object to this institution and see it as an inappropriate emulation of foreign systems of law (see, for example, Teshuvot VeHanhagot 1:796, where Rav Moshe Shternbuch writes, "the great rabbis of Israel vigorously protested the establishment of the Rabbinic Court of Appeals as nothing but an imitation of foreign legal systems").

Many great Poskim have sat on this special Beit Din, including Rav Yitzchak Herzog, Rav Eliezer Waldenburg, Rav Ovadia Yosef, Rav Yosef Shalom Eliashiv, and Rav Zalman Nechemia Goldberg. It has functioned with great success for decades and continues to function with great success. Eminent Rabbanim such as Rav Shlomo Dichovsky and Rav Avraham Sherman currently are members of this Beit Din.

However, one may scour the entire Talmud, Rishonim, and Acharonim without finding any explicit mention of a Beit Din of appeals (although the Seforno understands Shemot 18:21 as presenting a system of appeals). Nonetheless, the Gemara (Sanhedrin 33a) does provide grounds for when a judicial decision may be reversed and records cases (Ketubot 50b and Sanhedrin 33a) where decisions were reversed. Thus, we see that Beit Din decisions may be reversed, but there appears to be no traditional formal system for doing so.

The Gemara (Bava Batra 138b) states that "Beit Din Batar Beit Din Lo Daiyki," one Beit Din does not challenge the ruling of another Beit Din. Both the Sma (C.M. 19:2) and the Shach (C.M. 19:3) rule based on this Gemara that a Beit Din is not authorized to rehear a case that another Beit Din has already judged. Nonetheless, rabbinical courts of appeals functioned in a number of Jewish communities before the Twentieth Century (see Rav Bleich's article, ad. loc. 21-24).

Rav Ovadia Yosef (Teshuvot Yabia Omer 2: C.M. 2) justifies the institution of the Supreme Rabbinical Court of Appeals. First, he notes that the Gemara states that a rabbinic court does not review the decisions of another rabbinic court. Rav Ovadia understands this to mean that their practice was not to do so, but not that it is forbidden to do so. Second, the Shach and Sma prohibit only rehearing a case from the beginning. However, Rav Ovadia writes, it is entirely permissible for another Beit Din to review the reasons given by the Beit Din for its decision and see if the original Beit Din erred in its decision.

Rav Ovadia offers a third reason, that since it has become accepted practice to maintain a Supreme Rabbinic Court of Appeals, it is understood that the Dayanim in the lower Batei Din issue their decisions as binding only if they are not reversed by the Appeals Beit Din. In addition, since the institution of the Appeals Beit Din appears in the Rules of Conduct (Takanot Hadiyun) for the State of Israel Rabbinic Courts, the litigants have accepted in advance that the

Appeals Beit Din may legitimately reverse the decision of the lower Beit Din (see Piskei Dinim Rabbaniyim 10:180). Indeed, we saw earlier that the Aruch Hashulchan is inclined to rule that a Rav of greater stature may overturn the rulings of a Rav of lesser stature.

The Takkanot Hadiyyun of 5753 (section 135) allow for the Appeals Beit Din to reverse the decision of the lower Beit Din if there is 1) Halachic error, 2) obvious error in judgment or establishment of the facts, or 3) procedural mistakes that have an effect on the results of the litigation. Rav Ovadia Yosef observes that the Supreme Rabbinic Court of Appeals have worked quite well "and many times it is found that the lower Beit Din has erred." He adds that the Appeals Beit Din "performs a great Mitzvah to insure proper justice." Indeed, Rav Soloveitchik has stated that history can sometimes resolve a Hashkafic or Halachic dilemma (Nefesh HaRav p. 88). Accordingly, the question of the propriety of the Appeals Beit Din might be resolved by the fact that it has worked so well for many decades.

Conclusion

The Halacha provides for the reversal of decisions rendered by Halachic authorities in certain cases in both ritual and monetary matters. However, the Halacha has not in the past instituted a formal system for making such appeals. It is possible that the Halacha has allowed each community to establish its own mechanisms for appealing Halachic rulings. The institution of a Supreme Rabbinical Court of Appeals has worked well in Israel for many decades, and theoretically this model could be emulated by Jewish communities elsewhere as well. On the other hand, rabbinical courts in North America lack the institutional structure of the State of Israel's Rabbinical Courts, and thus establishing a Rabbinic Court of Appeals outside of Israel is probably not feasible.

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