

## *This week.....*

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This edition of Hemdat Yamim is dedicated to the memory of  
**R' Meir ben Yechezkel Shraga Brachfeld**

o.b.m

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## Who Should Sanctify Hashem's Name

The two long sections of Parashat Emor deal with the laws of the *kohanim* and those of the *moadim* (Jewish holidays). In between, there is a short section that mentions three *mitzvot*: not bringing a newborn animal as a *korban*; not slaughtering a mother and child animal in one day; and eating a *korban toda* on the day it was brought. Then the Torah gives general instructions not to defame His Name and to sanctify Hashem's Name, for He took us out of Egypt to be our G-d (Vayikra 22: 27-33).

Commentators disagree as to the audience this section is addressed to. The Ibn Ezra sees it as a continuation of instructions to the *kohanim*, arguing that the content applies primarily to them and that no statement addresses the matter to the whole nation. However, *Chazal* saw at least the last *p'sukim* as the source for the prohibition for all Jews not to desecrate Hashem and, to the contrary, to be willing to give their lives rather than publicly violate the Torah (see Rashi to 23:32; Sefer Hachinuch 296).

Let us explore other indications to the latter approach. The *kriat hatorah* on one of the days of Pesach and Sukkot consists of our *parasha's* discussion of the *moadim*. Yet, it starts with the *p'sukim* in question, after skipping the lengthy section addressed to the *kohanim*. In regard to content, not only the words "I will be sanctified in the midst of Bnei Yisrael" but also the idea that we should do so because Hashem took us out of Egypt seem addressed to the entire nation, not the *kohanim* specifically.

Finally, let's look at the introduction to the *p'sukim* to see if the Torah labels the recipient. The entire section that is clearly addressed to *kohanim* is broken up into pieces that start with lines like "Speak to Aharon and his sons" or "Speak to the *kohanim*." In contrast, the *p'sukim* in question begin with the standard opening of "*Vayedaber Hashem el Moshe leimor*." On one hand this seems like a strong indication that the addressee is no longer the *kohanim* but all of Bnei Yisrael, the Torah's standard audience. On the other hand, the Ibn Ezra says that from the fact that there is not an explicit reference to "Speak to the Sons of Israel" as the next section (*moadim*) has, we can infer that the audience has not changed from the *kohanim*.

When considering the ambiguous nature of the introductory statement, one can't help but consider that the ambiguity is intentional and turns the section into a bridge of sorts. The message is apparently as follows. Just as *kohanim* have special responsibilities and obligations because of the special status they hold within the nation, so too are there elements of all Jews' behavior that stem from the fact that, vis a vis the nations of the world, we are to be "a kingdom of priests and a holy nation." In this context, we must at times go beyond the normal rules and be willing to sacrifice our lives because our high status demands this of us.

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**Question:** I like to cook foods inside cooking bags in my fleishig crock pot. May I cook pareve food in water in the crock pot or perhaps even when fleishig food is cooking in the crock pot and still consider the food pareve?

**Answer:** The answer assumes that the cooking bag is reliable enough to prevent noticeable seepage of liquid into the bag (see Shulchan Aruch, Yoreh Deah 95:2, regarding an egg shell, which is too porous to be considered a separation). If one cannot ensure this situation, the discussion below is academic. We thus will treat the bag as a pot within a pot.

Let us start with the case where you simultaneously cook fleishig and pareve together, separated by the “walls” of the cooking bag. In this case, the bag turns into a fleishig utensil. (Had the bag contained milchig food, then first level taste of milchig and fleishig would have joined together in the walls of the pot to become the forbidden substance of *basar b'chalav* [see Shulchan Aruch, YD 92:5].) There is a most far-reaching *machloket* between Ashkenazi and Sephardi *p'sak* regarding pareve food cooked in a fleishig pot. The Shulchan Aruch (YD 95:2, accepted, as usual, by Sephardim) says that the pareve food remains pareve because the fleishig taste is twice removed from its source (*nat bar nat*), once by entering the pot and again when leaving it to enter the pareve food. However, there is a significant *machloket* among *Acharonim* if that leniency applies if the fleishig source is still entering the pot from the outside at the time the pareve food is cooking inside. Some consider it as a case where taste enters the other food directly (see opinions in Pitchei Teshuva 95:1; Yad Yehuda 95:1; Badei Hashulchan 95:7).

For Ashkenazim, the matter is quite straightforward. Even pareve food that has absorbed only *nat bar nat* fleishig taste may not be eaten together with milchig food (Rama, YD 95:3). Certainly then, one cannot eat the formally pareve food cooking on the other side of the bag with milchig, as it must be assumed to have absorbed fleishig taste from the food cooking in the crock pot. See below regarding some other *halachot* for *nat bar nat* food.

A more pertinent question is if only water or pareve food was cooking at the time in the crock pot. Here even the food in the crock pot is only *nat bar nat* of fleishig. Even though Ashkenazim are stringent regarding *nat bar nat*, there is reason to believe that they would not go as far as to forbid the food on the inside of the bag. After all, the Rama (YD 95:2) says that not only may one eat *nat bar nat* fleishig food that was already mixed into milk but one may put *nat bar nat* food into the opposite type utensil. (See commentaries regarding the problem of pouring hot food directly from a fleishig to a milchig utensil.) On the other hand, several *Acharonim* say that one should not to set up a *nat bar nat* situation on purpose. For example, according to one opinion, one may not cook in a fleishig pot food that he is planning to serve on a milchig utensil (Pri Megadim, MZ 95:5; see Badei Hashulchan 95:30; Rav M. Feinstein (Igrot Moshe, III, 10) says one may be lenient for even a small need). That being said, if the crock pot was not used in 24 hours for fleishig food, there is further reason to be lenient. Compared to the Pri Megadim's case, our's has an element of additional leniency but also of further stringency. On one hand, he is not putting the *nat bar nat* in a milchig utensil but in a pareve one. On the other hand, he is cooking the *nat bar nat* food at the same time with the pareve, which we saw may be more stringent.

Let us summarize by saying that one should not certainly not cook pareve food in a cooking bag along with fleishig food in the same crock pot, at the very least for Ashkenazim. Regarding cooking the pareve along with a pareve base in a fleishig pot, it is hard to forbid the practice, but one who wants to be careful might try to avoid doing so when possible if he plans to eat the pareve with milchig.

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## Bringing Benefit to a Talmid Chacham

(based on Ein Ayah, Berachot 1:151)

**Gemara:** “He passes by us regularly (*tamid*)” (Melachim II, 4:9). Rabbi Yossi, the son of Rabbi Chanina, said in the name of Rabbi Elazar, the son of Yaakov: Whoever hosts a *talmid chacham* (Torah scholar) in his home and brings him benefit from his property is considered by the Torah as one who sacrificed a *korban tamid* (a daily offering).

**Ein Ayah:** There are several types of comparisons between daily offerings and supporting Torah scholars. The daily offerings were the mainstay of the public service of Hashem by the Nation of Israel and, as such, came from the *terumat halishka* (literally, the taking up from “the office,” where public donations were kept). In a similar vein, one who supports a *talmid chacham* causes that the Jewish nation has light through the light of the Torah, and the salvation of the collective comes when the nation has members who are learned in the ways of Hashem. In that way, then, one who supports is like one who would bring daily offerings of his own (although this is not possible, since they must be public) and bring merit to the nation in the realm of service of Hashem.

Also, there is a type of service of Hashem that comes from time to time. However, the higher attribute in such service is that of consistency, serving Him every single day. That is what was special about the *korban tamid*, which was an ongoing service for the nation as a whole. This alerted them to the concept that one should always try to strive for the *shleimut* (completeness) of constant service of Hashem. There is a strong element of constant service when one supports a Torah scholar from his property. In the process, it turns out that when he is involved and toiling in his business activities, his work is still related to his service of Hashem. This is because a percentage of that which he earns goes to strengthen the hands of those who toil in Torah, who light up the world in the light of Hashem. In this way, the supporter fills his day with constant service of Hashem.

There is another point of comparison between daily offerings and bringing benefit to Torah scholars. The Rabbis have said (Ta’anit 26a) about the *korban tamid*: “How can one’s *korban* be offered without its owner being present?” To deal with that issue, a system of *ma’amadot* (whereby non-functionary representatives of the nation were present in Jerusalem) was developed so that, in effect, the nation, who “owned” the communal sacrifices, was present. Their proximity to the service and the involvement in activities of completeness had a major impact in elevating the spirit to a higher level and in allowing it to grasp pleasant things and all good attributes. The same is true of one who provides benefit to a *talmid chacham* from the former’s property. Not only does he help financially, but by being close to the Torah scholar by hosting him in his house (as the Shunamit and her husband did for Elisha), he is like one who sacrifices the *korban tamid*. Whenever one provides benefit for the Torah scholar, there is value to him, even if the two are at a great distance from each other. However, there is an added positive impact for those who are close at the time, helping the spirit on an ongoing basis by seeing the important sight of the *shleimut* of the lofty person, who is the chosen of Hashem.

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## Trees That Were Planted in a Public Area

(based on Halacha Psuka 57- a condensation of a *p'sak* of the Beit Din of Itamar)

**Case:** The plaintiff (=pl) planted an orchard near his house, allegedly with the permission of his *yishuv's* secretariat. Some time later, development began on the land for a new neighborhood. Workers have already covered some saplings and damaged a fence. *Pl* is demanding that work stop on what, according to his calculations, is his property, that he be compensated for the damage already done, and that the settlement (=def) transfer certain trees and install pipes, etc. in a new location. *Def* is unaware of any permission given to *pl* (the person who might have done so has died). They argue that development plans were open to the public and that the measuring system they are using is that of the Ministry of Housing, who also rejected a plan to move the new neighborhood to help *pl*. They are not responsible for *pl's* mistake, although they are willing to pay around half of his demands as a good will gesture.

**Ruling:** The governmental measuring is the binding one, and thus *pl* built on public property. When one builds on another's land who does not protest, he acquires a *chazaka* to certain rights (Shulchan Aruch, CM 153:2). This, though, does not apply in our case for the following reasons: The lack of public protest is inconsequential because people rely upon each other (ibid. 149:31). Also, there must be a potential short-term disruption to the owner's ability to use his property at the time of the *chazaka* for the silence to be *mechila*. In this case, the future need was not evident. Also, when one's continued use of the field will not only limit but eliminate the owner's use of the field, *chazaka* must take place over three years. In this case, the orchard will prevent the area's use for development, and there were not three years of *chazaka*.

When one plants his friend's field with permission, he is to be reimbursed according to the value of his work (ibid. 375:1). The Maharit says that this is only if there was explicit permission, not the owner's silence. The Knesset Hagedola says that lack of protest is like permission. In a case of questionable permission, the rule is that a public wins against an individual (Rama, CM 4:1) and in this case, then, *def* does not have to reimburse *pl*. However, *beit din* was convinced that *pl* acted with good intent and, therefore, expect *def* to make serious efforts to alleviate *pl's* loss based on the idea that the community is like an important and richer person, who should try to go beyond the letter of the law. Therefore, they should try to move the orchard to another location and equip it. One of the cases where one may uproot fruit trees is if they ruin another person's field or his ability to build (see Taz, YD 116:6). *Acharonim* dispute whether in such a case we demand of those whom it bothers to dig out the roots and replant. If it is feasible here, *def* should do so.

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Baba Metzia 8-12

## Writing a Shtar for the Borrower without the Presence of the Lender

This week in the Daf Yomi, the Gemara (12b) deals with the Mishna from the end of Baba Batra (167b) that states that "one may write a shtar (banknote) for the borrower without the presence of the lender." The fundamental principle behind this ruling is that it is possible to make one sided monetary actions, as long as it doesn't affect anyone else negatively. Therefore, it is possible to write a shtar stating that the borrower borrowed a certain amount of money from the lender, without the presence of the lender, and even without knowledge that the lender actually lent the money or is intending to. This can be done, since this doesn't affect the lender in a negative fashion, but rather, it is to his benefit, since the borrower is now obligated to pay him back.

The Gemara questions this ruling, since there still might be a negative outcome to writing the shtar without the presence of the lender, as it is possible that the shtar will be written in the month of Tishrei, but the loan will not take place until Nissan, and only then will the borrower give the lender the shtar. When a loan is given with a shtar, all real-estate owned by the borrower becomes liened to the lender. Thus, if the borrower sells his real-estate, the lender can collect his debt from the buyers who bought the real-estate. The result is that, in our case, if the borrower sold land between Tishrei and Nissan, in truth this land is not liened to the lender, since the loan only took place in Nissan, but he will be able to unjustly collect his debt from the buyer, since the shtar is dated to Tishrei.

There are two opinions in the Gemara as to how to resolve this problem. According to Rav Asi, the shtar can be written without the presence of the lender only if a kinyan was done, in which case the borrower immediately becomes in debt to the lender, independent of when the loan actually takes place and when the lender receives the shtar. According to Abayey, even without a kinyan, when the shtar is given over to the lender, it becomes effective retroactively from when it was written. Each solution creates a situation where the lands are liened from when the shtar was written, even though the loan took place at a later date. The difference is that, according to Abayey, this occurs with any kind of shtar, while according to Rav Asi, this is only true if a kinyan accompanied the shtar.

The Rishonim disagree as to how to rule in this dispute. The Rif (6a) and Rambam (Malveh Veloveh 23, 5) rule according to Rav Asi, while the Rosh (1, 49) rules according to Abayey. The Shulchan Aruch (39, 13) rules in accordance with the Rif and the Rambam, while the Shach (ibid, 39) writes that in a situation where the Rosh's opinion will be in favor of the one holding the money, we will not be able to obligate him to pay.

Another issue the Rishonim raise, which is also derived from this Mishna, is whether a person who agreed to lend money, and the borrower, on the basis of this agreement, wrote a shtar, is now obligated to lend the money.

According to the Ramban (quoted in Sefer Haterumot 48, 1, 1) since the borrower wrote a shtar and liened his real-estate to the lender, the lender is obligated to lend the amount he agreed upon. According to the Rashba (Responsa 1, 1054), the lender may go back on the agreement and the shtar does not obligate him. The Rashba brings this Mishna as proof, for if the writing of the shtar obligates one to lend, how can we write a shtar without the presence of the lender and obligate him to lend the money?

The R"l Migash (Baba Batra 167b) writes that, indeed, we can write without the presence of the lender only if the borrower admitted that he already received the loan. The Ramban (ibid) answers that the borrower will not be able to obligate the lender to lend, since we will require proof that the shtar was written with the lender's consent.

The Shulchan Aruch (39, 17) rules in accordance with the opinion of the Rashba, that the lender may go back on his agreement and not lend. The Poskim (Sma'a 46, and more) write that if the lender instructed the borrower to write the shtar, and the borrower had expenses in writing the shtar, the lender, who reneged on the agreement, must compensate him.

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