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# HEMDAT YAMIM

## Parashat HaShavua

Ki Tavo, 16 Elul 5780

### Holy Ma'aser

Harav Yosef Carmel

The Torah speaks in our *parasha* about giving *ma'aser* (tithes) and declaring that the *mitzva* was fulfilled properly, especially the time by which the donations needed to be complete (Devarim 26:12-13). It mentions giving the *ma'aser* to the Levite, the convert, the orphan, and widow; one also is supposed to declare that the "*kodesh*" (sacred object) was removed from the house.

We will now survey the various donations from the produce, according to year, to understand what tithes we may be referring to. The *ma'aser* cycle spans seven years, except that during the final year, *Shemitta*, there are no donations. During all six years, *teruma* is given to the *kohen* and is sacred, and the "first *ma'aser*" goes to the Levite – it is not holy and can be eaten by anyone to whom a Levite gives permission. During years 1, 2, 4, & 5, there is a "second *ma'aser*" – it is not actually given but is eaten by the farmer's family inside the walls of Yerushalayim in a state of purity. During years 3 & 6, the second *ma'aser* is replaced by *ma'aser ani* – given to the needy (e.g., the aforementioned convert, orphan, and widow). The recipients can eat it anywhere and with anyone. Additionally, fruit that grows in a tree's first three years is *orla* and cannot be eaten. In the tree's fourth year, the fruit is called *neta r'vai* and it can be eaten only in Yerushalayim in a state of purity – like *ma'aser sheni*.

Returning to our *p'sukim*, it is puzzling that the Torah calls the *ma'aser* by the description *kodesh*, when *ma'aser* is, halachically, *chulin* (mundane). The *mishna* (*Ma'aser Sheni* 5:10) explains that "*kodesh*" refers to *ma'aser sheni* and *neta r'vai*, which have a special status and restrictions. Indeed, we find the word *kodesh* used explicitly in the Torah portion dealing with *neta r'vai* (*Vayikra* 19:24). The textual problem this identification raises in our *parasha* is that *neta r'vai* is not a tithe (it applies to all produce of that tree during that year). Also, *neta r'vai* and *ma'aser sheni* are not given to the people the *pasuk* lists.

The *tosefta* posits that *kodesh* in our *pasuk* refers to *challa*. Indeed, *challa* is *kodesh*; however, it is eaten only by *kohanim*, not those mentioned in the *pasuk*. Similar difficulties exist for Rabbeinu Bachyei, who claims the *pasuk* is talking about *teruma*, which is also given to *kohanim*.

After begging forgiveness of all of the above, we suggest the following possibility. One of the manifestations of *kedusha* in the world is *Eretz Yisrael* (see *mishna*, *Keilim* 1:6). For that reason, the sanctity of land-based *mitzvot* is tied to what grows here. *Am Yisrael* is also a sacred nation (see *Devarim* 7:6). *Ma'aser* is an "instrument" to create a just society, which unifies and connects various parts of the nation. It ensures a livelihood for educators (i.e., Levites), who dedicate their lives for society's spiritual welfare. *Ma'aser ani* is for the poor, to ensure those who have not succeeded in supporting themselves by themselves can also live in dignity. These goals are part of *avodat hakodesh* (serving goals of sanctity), which turn the Jewish people into a holy nation. It is on these grounds that the donations that go to the Levites and the needy can be called *kodesh*. May we succeed in having our efforts for unity and justice find expression in sanctity.

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# Ask the Rabbi

by Rav Daniel Mann

## Trapping and Releasing on Shabbat

**Question:** A couple of weeks ago, we saw a mouse in the house and put out a cage trap. A mouse was trapped last Shabbat. Because we felt bad for the mouse, we took it (on Shabbat) to an isolated area and let it out. Did we violate anything by trapping the mouse on Shabbat, or by letting it out (like some *melachot* that come in pairs, like tying and untying)? Was the cage *muktzeh* and, if yes, did *tza'ar ba'alei chayim* justify taking it out?

**Answer:** At first glance, whether you violated *tzad* (trapping) with your cage is the subject of a *machloket* between Beit Shammai and Beit Hillel (Shabbat 17b). The former says that one may not put out traps before Shabbat unless he can assume the prey will be caught before Shabbat. Beit Hillel, like whom we *pasken*, says a broad rule that one does not violate *melachot* on Shabbat when the apparatus he set up before Shabbat “works” on Shabbat. (It is not clear that Beit Shammai refers to placing a trap several days before Shabbat, as the chances the animal will be caught on Shabbat are small – see Meiri ad loc.). In certain cases, Beit Hillel prohibits Rabbinically setting up such a system, due to concern the situation will cause one to personally mistakenly violate Shabbat. For example, it is forbidden to keep partially cooked food on the flame on Shabbat unless one does something to mitigate the chance of mistake (Shabbat 36b). *Chazal* did not find grounds for such a *gezeira* here.

Indeed, some *melachot* come in pairs, but the list (Shabbat 73a) does not include a counterpart to *tzad*. Usually, undoing a *melacha* is forbidden when it is preparatory to redoing the main *melacha*. I sewed poorly, so I rip the stitches to redo them. The wall is weak, so I take it down to redo. There may also be cases where the “undoing” has special significance, like extinguishing a fire in order to use the ashes (see Rambam, Shabbat 12:2). The classic case of *tzad* is normally to trap something in order to kill it and use the carcass, and *Chazal* did not view letting an animal free as connected to the possibility of re-trapping or something significant and/or related to construction of the *Mishkan*.

Animals are *muktzeh* on Shabbat (Beitza 2a). Although you were happy the mouse found was contained in the cage (see Mishna Berura 309:27), it did not become a permanent *bassis l'davar ha'asur* because the mouse was not there when Shabbat started (Shulchan Aruch, Orach Chayim 310:7); there may be other reasons for this determination (see Shulchan Aruch, OC 309:4 and Mishna Berura 309:21).

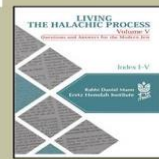
The cage not being a *bassis* is of limited value because when you carried it, the mouse was still there. In such cases, one may move the cage only under specific circumstances (see details in Shemirat Shabbat K'hilchata 20:47). We have to divide your case into two possibilities. If you would have let the mouse out even if you would not be allowed to take the cage outside, then moving it was for your sake, to remove the mouse from your house. If so, you could have moved indirectly, e.g., carrying by means of a permitted utensil (Shulchan Aruch, OC 311:8).

If you would not have let out the mouse in the house, moving indirectly is not enough, because you are moving it for the sake of the *muktzeh* item (ibid.) – getting it somewhere you could release it. Let us assume (I lack expertise to determine if keeping a mouse in a small cage is *tza'ar ba'alei chayim* (=tbc)) that there was *tbc*. Does it help? The *gemara* (Shabbat 128b) allows placing cushions under an animal to alleviate its pain, as *tbc* overcomes the Rabbinic prohibition of *mevatel kli meiheichano*. There is a *machloket* if *tbc* also waives *muktzeh* (Mishna Berura 305:70), and it is hard to give a broad ruling (see Shemirat Shabbat K'hilchata 27:54). Perhaps it might have helped to put something not *muktzeh* of more value on the cage (see Mishna Berura 310:37; Shulchan Aruch, OC 309:3) before moving it. There are serious complicating factors (beyond our scope - see Orchot Shabbat 19:288; Living the Halachic Process II, C-21), but in the face of *tbc*, it might be justified.

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# Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

## A Good Smell Makes Purgatory Unnecessary for Some

(based on Ein Ayah, Shabbat 12:48-49)

**Gemara:** [We continue with lessons learned from pairs of letters, in regard to entrance into *gehinom* (purgatory).] “*Mar zan shet*” – *Gehinom* said: “Master of the Universe, feed me from the seed of Seth (son of Adam).” “*El bam gan das*” – “To where shall I take them? To the garden of myrtle.”

**Ein Ayah:** Seth came to repair the world in place of Hevel, who was killed by Kayin. Therefore, the foundation of the world, which came from the offspring of Adam, came about in a way that the original foundation was destroyed and was embellished by the birth of a new offspring who would rebuild it. This is along the lines of the manner in which *gehinom* destroys and causes the cessation of souls in their original form. This power of destruction causes former forms to be changed, until a “new face” is created. This is what happened when Hevel died and a new form developed with Seth. The Torah testifies about him, in the words of Chava: “For Hashem has placed for me a new seed in place of Hevel, whom Kayin killed” (Bereishit 4:25). This approach of fixing after destruction is the desire of *gehinom*, and that is the character of its hunger [to consume all], to the point that it says, “Master of the Universe, feed me from the seed of Seth.”

Hashem’s answer about the demand that all of the sons of Seth should go to *gehinom* is that there is an alternative – send them to the garden of myrtles. This serves to do the necessary fixing in the souls of Israel, because the fundamental root of their holy form remains intact. They do not require to be “scrubbed” in a destructive manner through the fire of *gehinom*. It is true that there are times when they have weakness in their spiritual power, which is a sort of spiritual fainting due to the pressure of the connection between the material world and the pure spirit. However, the remedy is just to add a good, delicate fragrance. This returns the strength that is hidden in their midst with its pure character.

Thus, the Garden of Eden itself in its spiritual form, which provides a “pleasant fragrance,” which the soul enjoys, is itself the means by which the person’s shortcomings are made up for. That is why Hashem says to the officer of *gehinom* that he will take them to the garden of myrtle, instead of *gehinom*. The improvements made due to the fragrance will precede the time at which they will come before the light of the Divine Presence, which is the main goal of eternal life. The latter is, so to speak, the feast in which the souls “eat the fruit” of the Garden of Eden. It is the level of smelling that prepares the souls for the higher level, along the lines of “They will go from strength to strength” (Tehillim 84:8) and from rectification to rectification. All of this will be without needing to be purified by the destructive power of the fire of *gehinom*. But the alternative of doing it all in the Garden of Eden is what Hashem chose for Israel.



### Tzofnat Yeshayahu - Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

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# P'ninat Mishpat

## Money Given for Shemitta Observant Farms - Part III

(based on ruling 78063 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) gave 480,000 NIS, for which he needed to take a mortgage, to the defendant (=def), an unregistered partnership of neighboring farms, to enable them to work their fields during *Shemitta* according to the *otzar beit din* system (without a *heter mechira*). Def was supposed to return the money plus 40% of net profits, which were expected due to an agreement with an *otzar beit din* (=obd). The obd did not keep their deal, causing def to do a late harvest and produce less than expected. Def ended up losing for the season, despite receiving some compensation from their insurance. Def returned a small amount to pl and admitted to owing another 307,000 NIS; their representative had stated in a text message that they owe 338,600 NIS. Pl demands a return of all of the loan plus compensation for pl's mortgage payment and what he could have earned elsewhere with the money. Pl claims that since def acted negligently, pl and def's contract is null. They should not have allowed obd to lower the price, but should have harvested on time, forced the produce onto obd, cashed obd's guarantee check, and started working according to a *heter mechira*. Instead, def signed a compromise agreement with obd. The contract's provisions for a breached contract award pl significant compensation (*we omit details*). Def claims to have done the best possible under the circumstances, which include the actions of obd (which was not directly obligated to def but to their *yishuv*), and the impact of following the *halacha* on the growing process. The sides also differ if their agreement was of a loan or an investment.

**Ruling:** [We have found that pl was an investor, that def had mostly not been negligent in the investment's failure, but will pay 15,000 NIS as a compromise for not discussing with pl switching to *heter mechira* earlier. We now deal with some final points.]

While def's representative at one point admitted to owing more money, he claims that that calculation was a mistake. A claim of a mistaken admission is acceptable in a case where there is a *migo*, i.e., he could have gotten out of paying in a different way. Regarding an admission in a text message, which is no stronger than a written note, there are several ways to be exempt (see S'ma 126:41). There are also indications of mistake, as several calculations were presented, and it is not logical to take the highest one and say that it is the correct one.

Def's delay in paying what they admitted caused pl to have to pay extra interest on the mortgage. While this is indirect damage, def accepted upon themselves to pay even for moral obligations for which *beit din* does not usually obligate. Therefore, we will obligate according to an accountant's calculation of unnecessary interest payment. Regarding pl's lost profits, one pays usually only when the plaintiff could have used them for certain profits, which is rare nowadays. However, the money withheld was helpful to def in their [post-*Shemitta*] operations, and that should be shared with pl. To avoid further expense of hiring an expert, we estimate that value at 20,000 NIS.

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