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המדת ימים

PARASHAT HASHAVUA

Shelach, 16 Sivan 5774

Maran HaRav Shaul Yisraeli Z.T.L.

Harav Yosef Carmel

This coming week will mark the 19th anniversary of the death of our mentor and teacher, Harav Shaul Yisraeli. We will therefore dedicate our thoughts on the *parasha* to remembering his characteristics and history.

Rav Yisraeli made *aliya* in 5694 ('34). In those days, some liked to quote the Rebbe of Munkatch, who "*darshened*" a famous *pasuk* from our *parasha* in the following way. "... and you shall not stray after your heart (Herzl, based on *hertz* = heart in Yiddish) and after your eyes (Kook, based on *kook* = look in Yiddish)" (Bamidbar 15:39). While that Rebbe warned against Zionism and the danger he perceived from our master, Rav Avraham Yitzchak Hakohen Kook, Rav Yisraeli had the *z'chut* to be a student of Rav Kook. The opponents of Zionism also claimed, in regard to our *parasha*, that the Zionists were like the *ma'apilim*, those who tried to go to the Land prematurely, before Hashem agreed to such a step (see *ibid.* 14:41-42). Rav Yisraeli understood that the greater danger was not the role model of the *ma'apilim* but that of the *meraglim*, the spies who incited the people to refuse to go to the Land. We believe the correct approach was that of the Gaon of Vilna, the approach that called for Jews all over to flock to *Eretz Yisrael* during the Jewish century of the 5600s, which ended in 1939, when indeed the gates to the Land from Europe were almost completely sealed.

Rav Yisraeli, who began his life in Israel as a *talmid* of Rav Kook, completed his period in *yeshiva* and went to make a desolate land blossom, both agriculturally and spiritually, as the rabbi of K'far Haro'eh, the first religious agricultural *moshav*, named after Rav Kook. From that seat, he "spread his halachic net" over the world of Israeli agriculture. He taught how the land could be worked efficiently in the 20th century while observing the land-linked *mitzvot* and those of Shabbat. His rulings dealt with broad issues with a great understanding of the intricacies of agriculture and of halacha. He helped fulfill the prophecy, "You, oh mountains of Israel, shall give your branches and bear your fruit for My nation, Israel, for they have drawn close" (Yechezkel 36:8).

When the State was established, Rav Yisraeli worked on enabling the state to be established as a Jewish State. He published many scholarly articles, proposing how to implement halacha in regard to different public institutions, from questions of politics, to ethics, to security. In 5725 he was invited to serve on the High Rabbinical Court in Jerusalem, at which time he became a major proponent of having "Mishpat Ivri" (the halachic rules of jurisprudence) take its proper place in the judicial system of the country.

When Rav Ehrenreich and I approached Rav Yisraeli with the idea to found Eretz Hemdah, he immediately foresaw the great need and opportunity in training a new generation of *dayanim* who could shoulder the responsibility of improving the Rabbinical Courts. He awaited the moment we could establish a network of *batei din* which could solve monetary disputes of all types in a modern economy.

Every year on his *yahrtzeit*, we hold a day of *shiurim* in his memory on some of the many Torah topics that were so close to his heart. We end with a prayer that we will soon witness an ever-increasing fulfillment of Yeshaya's prophecy (1:26-27): "I will return your judges as in the beginning and your advisors as of old; then you will be called the city of justice, the trustworthy town. Zion will be redeemed with justice and its returnees with charity."

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by Rav Daniel Mann

Children Waiting Between Meat and Milk

Question: I have children of various ages, and it is often difficult to have them wait six hours between meat and milk. Milk is an important part of their diet/lifestyle (including before bed), and eating disorders concern me.

Answer: There is near consensus on the basic principles and only small differences regarding their application to common cases.

Waiting six hours between meat and milk is a double-level stringency. The *gemara* (Chulin 105a) talks of waiting to the next meal to eat milk after meat. It implies that it is the proper way to be extra careful to avoid eating milk and meat together, and failure to do so may not be equivalent to eating a Rabbinically forbidden food. There is a *machloket* among the Rishonim if it is sufficient to finish the meat meal and take steps to ensure there is no meat in his mouth or whether one has to wait the normal time that exists between meals (see Beit Yosef and Darchei Moshe, Yoreh Deah 89). Sephardic authorities ruled the need for six (or so) hours, while significant Ashkenazic opinions required just to finish the meal or wait no more than an hour (see Rama, YD 89:1). While the prevalent practice of observant Ashkenazim is now to wait six hours, this may be more of a stringency than a clear ruling (see Chelkat Yaakov, YD 16).

The consensus of *poskim* is that under the age of three, when a child is too young to be significantly educated in religious matters, they do not need to wait at all between eating meat and milk products (they should not be fed them at the same time at any age). Although we generally accept the opinion that forbids “feeding” a young child Rabbinically forbidden food (Shulchan Aruch, Orach Chayim 343:1), waiting between these two types of kosher foods is not included (see one of the explanations in Teshuvot V’hanhagot I:435).

After age three, children start becoming capable of following halachic restrictions, but their ability to keep some of them remains a factor. There is a concept, arising in several contexts (see Rama, OC 325:17), that the physical needs of a healthy child are halachically equivalent to the needs of a sick (non-life-threatened) person. For this reason, the *halachot* of even partial fasting on Yom Kippur begin only at age nine (Shulchan Aruch, OC 616:2). While waiting to eat milk products is not the same as fasting, a full-fledged requirement to wait six hours can compromise a young child’s well-being, especially those whose eating patterns are inflexible. Regarding the sick, very prominent opinions allow eating milk an hour after meat, after cleaning the mouth by eating and drinking (Chochmat Adam, 40:13; see Pitchei Teshuva, YD 89:3), including Sephardic *poskim* (see above; see Yalkut Yosef, YD III, p. 395 in the name of Zivchei Tzedek). Thus most *poskim* are equally lenient for children, at least under the age of nine (Chelkat Yaakov, *ibid.*; see Shema B’ni 54). Many take the pragmatic, graduated approach that the number of hours increases over time (*ibid.*, in the name of Rav M. Feinstein; Teshuvot V’hanhagot, *ibid.*). Yalkut Yosef (*ibid.*), while legitimizing leniency even for Sephardim, limits it to eating nutritious food at meals, not to indulging in *milchig* treats.

The Chelkat Yaakov posits that keeping six hours is a *minhag* and as such should not apply to children under bar mitzva, but he stops short of practical leniency to children over nine. Yalkut Yosef contemplates leniency until one year before bar/bat mitzva.

A parent should use common sense and fine parenting skills in applying the general guidelines provided. The laws of *chinuch* (lit., education) have a formal element and a pragmatic one of how to best raise a specific child under specific circumstances. Maturity and demeanor are among the changing variables. In the face of potential eating disorders, some which can become grave, it is possible to be very lenient, and it is good for a family to have a wise rabbi they are in touch with. This forum does not enable giving advice regarding identifying real health concerns, including eating disorders.



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Ein Ayah

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

The Individual's Spiritual Sacrifice on Behalf of the Community

(condensed from Ein Ayah, Bikurim 40)

Gemara: In the beginning, everyone who was capable of reciting [the verses of *mikra bikurim*] would recite himself, and he who did not know how to do it would be prompted. Some people refrained from bringing [the *bikurim*]. They instituted that they would prompt those who did not know and those who did know.

Ein Ayah: The main idea of strengthening the community through the joining together of the powers of the individuals, which finds full expression by means of *bikurim*, includes all elements of unity. It goes as far as withholding honor and the expression of the high standing of the individuals who have earned these distinctions and not allow them to act independently according to their standards. People on a high level will lovingly agree to sacrifice their freedom of action upon realizing that it brings on bad results for the community.

There are matters that are done according to the Torah in a set manner. The fact that there is a set formula negates people's ability to express their spiritual feelings based on their personal level and outlook. Whenever it does not hurt the community, it is good for each capable individual to go about his spiritual life in a manner that fits his characteristics. However since the lack of a set formula causes the general populace to lose its spirit [when unable to perform a spiritual task well], a set manner is formed. Once the formula is set, even those who do better without it are required to perform their religious obligations in the set way.

Prayer is a good example of this phenomenon. Those who have a particularly sensitive and wise nature are more fully inspired by praying according to the manner they choose, based on their insights and their feelings, as was done before there was a set text. When it becomes necessary to arrive at a set text for the welfare of the community, an individual certainly must not separate himself from the community. Even if he feels that being limited to a set formula steals his spiritual breadth, he should realize that our work on behalf of the community includes many sacrifices, including spiritual ones, which are the greatest sacrifices a spiritual person can make.

This lesson is revealed nicely in the context of *bikurim*. [The text of *mikra bikurim* was set by the Torah itself, but reciting it spontaneously is still more inspiring than having to repeat it after one who prompts him.] Until those who did not know how to recite it started to refrain from bringing their *bikurim*, it was proper to allow more independence in reciting the passages. It was certainly meaningful for those who could recite it themselves to freely express their emotions of love of Hashem with their own speech. However when the public need arose, to alleviate the problems of those who were unwilling to come, those who did not need help yet agreed to have it recited for them were happy that their agreement to curb their emotions provided an important service for the community.

The phenomenon addressed by the Rabbis' decision served as a model for many things that were standardized, despite the fact that the wise would have preferred for them to have remained up to the individual, thereby allowing them to broaden their experience. This sacrifice is the greatest form of benevolence and an attribute of sanctity which leaders make upon realizing the benefit to the unity of the nation. They see what the future holds and value peace within the entire nation. "Seek the peace of Jerusalem; may all who love You have tranquility ... On behalf of my brothers and friends, I will speak of peace in your midst. On behalf of the House of Hashem, our G-d, I will beseech goodness for you" (Tehillim 122:6-9).

[With this, we have finished Ein Ayah on Seder Zeraim and the second volume of the set.]



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Testimony Not in the Presence of a Litigant

(based on Shut Maharit, Choshen Mishpat 32)

[A *beit din* heard witnesses' testimony that someone had a *chazaka* on property (effective control for an extended time) when the original owner, who wants his property restored to him, was not present. While the general rule is that witnesses may not be accepted in the absence of a litigant, the party who brought them claimed that sources indicate that one may accept witnesses when they are allowing one to just hold on to property already in his possession.]

The ostensible sources that allow accepting witnesses on behalf of a defendant without the plaintiff all refer to cases that are not equivalent to ours. The Ran (Ketubot 57a of Rif's pages) refers to a widow who sold property in order to support herself as she deserves, and there is just a question whether she did so in a responsible way. Regarding the Ran's case, there are special leniencies regarding the payment of a *ketuba* to a widow.

Even if we extend the leniency to other cases where one is only trying to hold on to that which is in his possession, it should not apply to one who has a *chazaka* on someone else's land. This is because one continues to live in the property that was owned by another and needs to remove the other's established ownership. Even regarding a classic defendant, such as a borrower with a document against him, how can we contemplate accepting witnesses not in the presence of the apparent lender to uproot the latter's likely rights?

The only case where it makes sense to make an allowance for the borrower is when they are about to extract money from him and the lender is not available to be present at the testimony, as the witnesses can help prevent the extracting of payment. While we do not extract payment from young orphans, they cannot extract money from the widow when she has witnesses. If no one is challenging her, she may not bring the witnesses when the orphans are not able to represent themselves; if they are initiating litigation and are not able to be represented in *beit din*, then she can bring witnesses in any case.

We find another case where it is permitted to accept witnesses (Tur, Choshen Mishpat 160 in the name of Rabbeinu Yona) – once again, witnesses who saw one living in a certain property and performing *chazaka*. However, that is yet another case where the litigants are not available and if we wait, the witnesses will no longer be valid. That is similar to the case in the *gemara* (Bava Kama 112b) of hearing witnesses who are in danger of dying or about to move abroad. Without the factor of inability to wait, we see that this type of testimony would be invalid. Even after the testimony was accepted, it cannot be validated after the fact. This is especially true because the *dayanim* made a mistake on a clear matter, which invalidates the processes they undertook. Although there are opinions that the testimony is valid after the fact, one cannot gain rights to that which was once another's property based on such testimony.



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