



HEMDAT YAMIM

חֵמְדָּה יָמִימִים

Parashat Hashavua

Bechukotai, Iyar 24 5784

Harav Shaul Israeli zt"l
Founder and President

Why Not Put the Best Foot Forward?

Rav Daniel Mann

There is a perplexing paradox around the sanctification of the animals of *ma'aser beheima* (tithing of animals – see Vayikra 27:32-33). Let us begin with an overview of the relevant *halachot* (see Rambam, Bechorot, ch. 6).

One takes the *kosher* animals that are born during the course of the year and passes them through a narrow area so that they go one at-a-time. The tenth animal to go by is hit by a rod and becomes holy. If it is fit to serve as a *korban*, it is brought to the *Beit Hamikdash*, slaughtered, has its blood sprinkled, and certain of its parts are burnt on the *mizbeach* (altar). The flock owner has rights to eat the rest of the meat in Yerushalayim. If the *ma'aser* animal is blemished, it may not be brought as a *korban*, and it is eligible to be eaten anywhere. These *halachot* resemble those of the *bechor* (firstborn). Both types of animal sanctity involve an owner who does not choose the animal to bring as a *korban*, which is dictated by the circumstances. The main difference is who eats most of the meat – *bechor* by a *kohen*, *ma'aser* by the owner or whomever he allows (Zevachim 5:8).

Logic and sources (including Vayikra 22:18-25; Rashi, Bereishit 4:3) indicate that it is proper to bring choice, or at least normal objects, as a sacrifice. Here, not only is that not required, but it is forbidden to try to arrange that the tenth animal to go through will be a nice one, or even a valid one (see Vayikra 27:33; Bechorot 57a)! This is different from a blemished *bechor*, as there is no **possibility** of choosing a *bechor*, and different from an animal that was already chosen for a *korban*, which afterwards cannot be switched (see Vayikra 27:10). In this case, what is wrong with arranging that a proper animal be the tenth?

Perhaps we can draw inspiration from the reason for *ma'aser beheima*. The Sefer Hachinuch (#360) explains it as the parallel of *ma'aser sheni* (the latter, for vegetation), meaning the following. Hashem wanted the Jewish landowner to have things pushing him to spend time, himself or someone close to him, in the sanctity of Yerushalayim. Therefore, he gave us the *mitzvot* of *ma'aser beheima* and *ma'aser sheni* - things that can only be eaten there. This is different from *bechor*, where something intrinsic about a *bechor* causes the need for it to be brought (see Shemot 13:15).

Perhaps this is the lesson. It is a blessing to have occasion to spend extra time immersed in the sanctity and religious intensity of Yerushalayim, and it should not be reserved only for those who engage in agriculture, but also those involved in raising livestock. On the other hand, it is far from a given that Hashem will arrange this privilege for everyone. Hashem determines each person's life trajectory. Some people's *ma'aser* animal will be blemished, and they will not have it to eat in Yerushalayim. One should not try to fight such an eventuality by making sure the tenth is fit for a *korban*. He should see what "cards Hashem deals" him. Yet, he still has the possibility to embrace sanctity. It is just that he may need to take a different path than one whose *ma'aser beheima* helps facilitate his spiritual immersion.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Kiddush a Second Time for a Guest

Question: We go to an early Shabbat *minyan*, and when we come home, make *Kiddush* with cake. A few hours later, we have the main Shabbat meal. When we have a guest who has not heard *Kiddush* yet and is not used to making her own *Kiddush*, should I make *Kiddush* a second time, or must she make her own *Kiddush*?

Answer: You imply that you do not usually make *Kiddush* another time before your main meal. That common *minhag* is fine, as the Shulchan Aruch (Orach Chayim 273:5; see Mishna Berura ad loc. 24) accepts the opinion to count this snack as “*Kiddush* in the place of a meal.” On the other hand, some people are careful to make daytime *Kiddush* again. One reason is to want an unquestionably valid *Kiddush*, i.e., one followed by a bread meal (see Ma’aseh Rav 122). Another is that we want the main meal to be elevated by wine (Teshuvot V’hanhagot I:264). (Igrot Moshe (OC IV:63) has another reason regarding after a *shul Kiddush*, in that the *Kiddush* was not in the same place as the main meal.) The many with your practice should not be concerned about an unwarranted, repeat daytime *Kiddush*, as we only recite *Borei Pri Hagafen*. This after all is needed when drinking wine before or even during the Shabbat meal (which is part of *oneg Shabbat* – see Rambam, Shabbat 29:10) as the *berachot acharonot* after your first “*Kiddush*” ended the wine drinking (see Living the Halachic Process, III, C-8). Therefore, Halacha has nothing against another *Kiddush*, as your guest may prefer.

But does your *Kiddush* work for her if you already fulfilled that *mitzva*? The *gemara* (Rosh Hashana 29a) posits that one who has recited and finished with a *beracha* can make the *beracha* to be *motzi* someone else, except for *berachot* on foods. Rashi (ad loc.) explains that the ability to be *motzi* others is based on *arvut* (responsibility for a fellow Jew’s religious observance), which only applies to cases where the other is obligated, and he is not obligated to eat. The *gemara* continues that one can make the *beracha* on the wine of *Kiddush* on another’s behalf because that is an obligation.

However, whether this applies to daytime *Kiddush* may depend on its nature. The Ran (Pesachim 22a of the Rif’s pages) says that the day *Kiddush* is a truncated, less prominent redoing of the night *Kiddush*. Rabbeinu David finds this difficult, considering that Shabbat is not mentioned (the *p’sukim* people recite are a post-Talmudic *minhag*); rather, the wine is used to elevate the meal. R. David introduces *nafka minot* between approaches, including that the *gemara*’s permission for one who has made *Kiddush* to be *motzi* a friend is only at night. During the day, the *beracha* is just to allow him to drink the wine, so the *beracha* is not a direct, classic *mitzva*.

This only a slight problem for you. First, regarding all of R. David’s *nafka minot* (including whether one needs wine at *seuda shlishit*), we rule against him (see Yabia Omer, IX, OC 3). Furthermore, since he treats the *beracha* on the wine as a regular food *beracha*, assuming you will drink some wine after making *Kiddush*, your *beracha* will be justified and work for your guest (see Shulchan Aruch, OC 213:1; Dirshu 273:26). There are actually another two possible reasons you should drink from the *Kiddush* wine. The Shulchan Aruch (OC 273:4) says that one should not make *Kiddush* for someone without taking part in it for himself unless the person he is doing it for is not capable of doing it himself. While this is a *chumra* that not all agree with, it is difficult to ignore it when there is an option (Mishna Berura ad loc. 20). Also, there is a minority opinion (cited and preferred *l’chatchila* by the Shulchan Aruch, OC 271:14) that the required amount of wine to drink after *Kiddush* (*m’lo lugmav*) should always be drunk by the person making *Kiddush*. This also is a *chumra*, but one that is hard to ignore (see Be’ur Halacha ad loc.).

In summary, the woman making her own *Kiddush* or you doing *Kiddush* again and drinking are definitely fine. It is somewhat questionable for you to make *Kiddush* without taking part in the *Kiddush* (i.e., drinking the wine).

“Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in Rabbi Mann’s weekly Zoom sessions, analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.



Igrot HaRe'aya - Letters of Rav Kook

Trying to Arrange Purchase of Land in *Eretz Yisrael* – #222

Date and Place: 2 Elul 5669 (1909), Rechovot

Recipient: The Association for the Purchase of Land in *Eretz Yisrael*, Bialystok

Body: I received your respected letter from this past 15 Menachem Av, written by the secretary of your temporary council. It is my honor to answer your important questions, based on the information that I was able to receive.

Indeed, there is a large swath of land for sale on the eastern side of the Jordan Valley (i.e., in what is today Jordan). The land is approximately five hours away (presumably, by donkey) from Jericho; Jericho is, of course, on the western side of the Jordan. Since I am now staying in the *Moshava* of Rechovot, soon after I received your letter, I called for one of our brethren who has been living in Jericho for several years, and is a big expert on this whole matter. I am answering based on his word, according to the order of your questions.

1. The present price for the land is 5 francs per dunam (1000 sq. meters, approximately, a quarter of an acre). This is a very cheap price according to the situation in real estate of *Eretz Yisrael* these days. It is worthwhile to be very diligent about this matter, with Hashem's help, so that others (i.e., non-Jews) should not beat us to it, as has sadly happened several times in the past concerning worthwhile potential purchases.

2. The main plot of land is 200,000 dunams. However, it is owned by two different Ottoman owners, each having 100,000 dunams, so that it is possible to buy one of the sections. In the surroundings of this large plot, there are also smaller plots of land, which may be available, but it is not worthwhile to start with the smaller ones now.

3. The number of families who can live on this land is approximately 700, with approximately 300 dunams for each one. According to the characteristics of the fertile land of the other side of the Jordan, this amount of land should suffice [to make a living off the land].

4. The land is excellent, flat land. It is fit for sowing and planting trees. It does not have any rocky terrain. Just on the edges of the plot there are mountains of stone. One can excavate stones from them for building, when Hashem, in His great kindness, shall help us get to that point.

5. It is only about three hours travel from the Damascus railroad. It is 10-12 hours from Jerusalem. Close to the land's periphery there are big Arab cities, with big populations; the neighbors are quiet people.

6. The owners are two Ottoman men, one of Arab nationality and one French, and their rights in the land are officially recognized. When the matter draws closer to fruition, we can have a lawyer who is an expert in Ottoman law clarify everything.

7. The land has abundant water, with springs and streams. It is also very easy to dig wells to underground streams.

It would be wonderful to be brave and diligent and try to attain this pleasant plot as part of the homeland of the Jewish People. In our great iniquity, there has been significant laxness concerning the major opportunities to redeem land, at this time, when Hashem's voice powerfully calls to us through the occurrences, to move to *Eretz Yisrael* and settle the Desired Land. Since all sorts of people are turning to it, the prices rise, and non-Jews settle and buy land. Hurry, beloved brothers, to whom Hashem granted the spark of His light and the love of His Land. Try to bring your good thoughts from the potential to the actual. May this be a good start, and may many learn from you to cling to the Land, with Hashem's help, in a successful manner and with His blessing.

You should know that this plot, for political reasons of the recent past, is exempt from major taxation; one only has to pay the government a small fee.

I found all of this proper to inform you, distinguished people. When your representative or your written message will come, when it is closer to full action, we will start to act; may Hashem give success to our path.

We daven for a complete and speedy *refuah* for:

Nir Rephael ben Rachel Bracha
 Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
 Yerachmiel ben Zlotta Rivka
 Tal Shaul ben Yaffa

Neta bat Malka
 Meira bat Esther

Together with all *cholei* Yisrael

P'ninat Mishpat

Repercussions of a Sale that Turned Out Not Happening – part III

(based on ruling 83045 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: In 2013, the plaintiff (=pl) sold a “residential unit” to the defendant (=def), who planned to rent it out, for 380,000 NIS; def paid only 38,000 NIS. Pl allowed def to do major renovations in the unit before further payment was made. Def discontinued payment, and the sides went to secular court to determine blame for the sale stalling. In 2016, the court ruled that def was in breach of contract and had him vacate the unit. In the meantime, def had control over the property for around 35 months. During almost all of this time, def received rent from renters (the court had assumed, as of 3 months before it was returned to pl, that it was 60,000 NIS). The sides agreed that *beit din* should accept the court's findings as the binding basis of the adjudication in *beit din*. Pl demands to receive the rent def took; neither side knows exactly how much def received. The two sides also disagree about damages to the unit during this period, with pl claiming he paid a contractor 30,000 NIS to fix them. Pl also wants def to pay for expenses of the sale, which became moot – lawyer's and realtor's fees and *mas shevach* (tax on real estate appreciation). Def claims to have spent 67,000 NIS on renovations, which made the unit fit for rental, and he demands to be reimbursed. Def wants to invoke a statute of limitations on many of pl's claims.

Ruling: We end off with pl's claim of unneeded expenses and def's claim of statute of limitation.

Expenses: The source to obligate one who causes another to lay out expenses that turn out to be unnecessary is the following Rama (Choshen Mishpat 14:5, based on the Maharam Me'rutenberg). If one told his co-litigant to travel to a court for litigation and the former did not appear, he has to pay the latter's expenses. The Maharam explains that the one who breaks his promise to come implies agreement to cover the consequences. If so, arguably, if he did not imply self-obligation, he would be exempt. However, the Netivot Hamishpat (200:13) reasons that the obligation is based on the rules of semi-direct damages. The Shut Harama (12) posits therefore that if the person who caused the damage was not at fault, he is not obligated.

In our case, while def did not premeditatedly renege on the deal, he cannot claim that it was beyond his control. Therefore, he is obligated to pay for the cost of the lawyer and the realtor. Regarding the sales tax, pl submitted proof that he paid the tax and claims that the authorities refused to return it despite the fact that the sale was nullified. Our understanding of the law is that the authorities must return the tax payment, and pl can appeal. Therefore, we will not obligate def for tax that was paid unless an appeal's court rejects pl's request of reimbursement.

Statute of limitations: This concept is against the *halacha* (see Ketubot 104a). It developed over the centuries out of interests that, according to the *poskim*, do not fit into the authority of *dina d'malchuta*, nor do the courts treat it as a regular right (e.g., the relevant litigant must claim it at the first opportunity). Only when a longstanding lack of claim is a likely sign of a falsely contrived claim should *beit din* prevent its advancement (Shulchan Aruch, CM 98:2).

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