



# HEMDAT YAMIM

חֵמְדַּת יָמִיִּם

## Parashat Hashavua

Sukkot, Tishrei 19, 5785

Harav Shaul Israeli zt"l  
Founder and President

### When You Harvest

Harav Shaul Yisraeli – from Vesamechta Bechagecha p. 10

The Torah describes Sukkot as happening “when you harvest” (Devarim 16:13), and the *gemara* calls it “the holiday that comes at the time of harvest” (Rosh Hashana 13a).

We are to leave the “fortress,” the house where you tend to hole yourself up, specifically at the time of harvest. At the time of sowing, it is not possible to isolate oneself in one’s house because there is a need for help from other elements. You need sunlight and rain, and often there is a need for external help. However, once the time of reaping and of drying the grain is over and the grain is ready to be stored, a person can think he no longer needs partnerships. At that time, the commandment comes to “live in *sukkot*.” You are not a creature who is unconnected to his surroundings, for all the days of your life you depend on the good graces of others. Let the stars, and the people who walk down the streets, see into your private domain. You should remember that you live within a world and that you cannot isolate yourself with your own interests alone and sleep quietly alongside your pile of grain. The goodness you receive that allows you to live should be joined by the goodness you grant to others.

These are ideals that do not only exist until the time of harvest, but are specifically highlighted at the time of harvest. It is a “mutually beneficial agreement” [involving Hashem]. “If you come into My house, I will come into your house. If you make My people happy, I will make your people happy.”

What makes the joyousness of Simchat Torah special is that it does not involve the rejoicing of the individual but the joy [of the community and the nation]. It includes a plan of practical action. It is not just words at a time that they require no action, but they specifically bring joy because they relate to the following practical plan – “I was happy, and I made others happy” (*mishna*, Maaser Sheni 5:12). This is what the whole Torah is about. We do not know about compartmentalizing our lives. We do not believe in the saying: “Give Caesar that which belongs to Caesar.” For us, all philosophical ideas have value to the extent that they are applicable in a proper manner within practical life. It has to pass the test of practicality, and only then can we assess its value.

The *mitzva* of *hakhel*, when the king of Israel would read the Torah portions that deal with the behavior of the individual and the collective, is something that has to be read specifically by the king. It is the king and not the crown prince, and not the candidate for a leadership office, because the Torah is not a platform for elections. There are those who know how to talk beautifully but do not know how to fulfill what they set out to do. Rather the Torah parallels the plan of the cabinet which is set out to be applied and it sets out the relationship between the nation and the individual.

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**Eretz Hemdah**  
Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich  
2 Bruriya St. corner of Rav Chiya St.  
POB 8178 Jerusalem 91080  
Tel: 972-2-5371485 Fax: 972-2-5379626.  
amutah number 580120780

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# Ask the Rabbi

by Rav Daniel Mann

## How to Acquire Borrowed *Araba'a Minim*?

**Question:** I know that to share a set of *lulav* and *etrog* (=I&e), one has to give it to his friend as a *matana al m'nat l'hachzir* (= *mamlh*; a present on condition to return it to the original owner). However, I see people just handing it to another without speaking or doing anything special. Is that sufficient?

**Answer:** First, we note that the only question is on the first day of Sukkot (regarding the second day in *chutz la'aretz*, see Be'ur Halacha to 649:5), regarding which the Torah (Vayikra 23:40) says that one must own the I&e he uses (Sukka 41b). Afterward, it must only not be stolen (Shulchan Aruch, Orach Chayim 649:2).

For *mitzvot* such as I&e, *tzitzit*, and *kiddushin*, where one can fulfill the *mitzva* only if he owns the relevant object, the owner can facilitate his friend's *mitzva* if he gives it to him as a *mamlh*. Not only **can** this work, but if the owner effectively lends them for these purposes without discussing the halachic mechanism being employed, we generally assume the parties intend to apply the correct mechanism, i.e., *mamlh* (see Shulchan Aruch in: OC 658:5; OC 14:4; Even Haezer 28:19. Differences might exist between these areas of Halacha based on the natures of the need for ownership – see Taz, OC 14:5). Practically, lending and *mamlh* are almost identical. Halachically, though, the mechanism of lending keeps the basic ownership unchanged, and *mamlh* transfers ownership to the recipient, assuming he fulfilled the condition of returning the object **properly** (see Shulchan Aruch, OC 658:4). Language that ostensibly implies the use of a mechanism other than *mamlh*, could possibly prevent the recipient's ability to fulfill the *mitzva* (see *ibid.* 3). Giving a I&e with the understanding that the recipient needs to own them to fulfill the *mitzva*, without saying anything can be better. The matter is questionable if the people (especially the owner) lack the knowledge that ownership is needed, in which case someone should explain what is needed. Details/opinions on the impact of lack of knowledge are beyond our scope (see Magen Avraham 678:3; Halichot Shlomo, Moadim II, 11:7; Dirshu 658:12). But again, silence and general intention work for semi-knowledgeable people.

From discussion of intention and speech we move to actions (i.e., a *kinyan*), which are required to acquire something. Regarding a present of a I&e, there are two candidates for the *kinyan* used: 1) *Yad* (the object's presence in the recipient's hand); 2) *Hagbaha* (lifting the object).

Relying on *hagbaha* has problems. An acquirer must lift the object either three *tefachim* or one *tefach* (Shulchan Aruch, Choshen Mishpat 198:2), and the recipient of the I&e does not always initially lift them at all! On the other hand, some say it suffices that one took it in the air when the object's position is the requisite height above the floor or table (see opinions in Pitchei Choshen, Kinyanim 6:(18)). Also, one usually lifts the I&e while shaking them. On the other hand, it could be a problem that the recipient probably does not intend to acquire it at that time, and one could ask if the *beracha*, said before that time, was valid (see Mikraei Kodesh (Harari), Arba'at Haminim, p. 446 – we cannot go into further analysis). A problem with *yad* is that some say the whole object must be contained within the hand. On the other hand, many say that whatever is within the vertical line of the hand is acquired (see *ibid.*, p. 449).

Others raise the question whether one needs to do two separate actions: an act of acquisition and a separate act of taking the I&e in the hand. Chazon Ovadia (Sukkot p. 420-3) brings opinions in both directions, but accepts the majority that one act of taking the I&e suffices. If one also does *na'anuim*, there are additional actions for the *mitzva*.

The *minhag* is indeed to just pass the I&e from one to the other without statements or formal actions; the *minhag* should remain. Only when someone is unaware of the need to transfer/acquire the I&e does it pay to make a point of identifying a process of *kinyan* before making the *beracha*.

### “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](mailto: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

## Keeping *Shemitta* Partially – #272

**Date and Place:** 2 Adar I 5670 (1910), Yafo

**Recipient:** Rav Yitzchak Isaac Halevi, author of Dorot Harishonim and an important leader in Agudat Yisrael, who exchanged many letters with Rav Kook.

**Body:** The idea [you mentioned] of fulfilling the *mitzva* of *Shemitta* partially by not cultivating all of the possible land was raised and accepted in the past by the Chacham Bashi (Sephardic Chief Rabbi) Hagaon Harav Elyashar z"l of Yerushalayim. He did not employ your reasoning.

The way I look at it, if we do not cultivate a set percentage of fields, it will make the arrangement seem like a set system and give the impression that this is the proper way to fulfill the *mitzva* of *Shemitta*. Therefore, I expanded the degree of strictness, so that the following is the way we remind people that the *mitzva* of *Shemitta* is binding.

Even after the leniency based on the sale of the land, we permit working the fields only for that which is needed to keep the agricultural settlements viable. Every settlement has many plots, much more than a dunam per farmer, that are not needed for their survival. This includes gardens for beauty and certain produce that is not critical to the settlements' economy. Certainly, uncultivated land is not included in the sale. In regard to these areas, the *mitzva* is fulfilled and it at least enables the existence of the laws of *Shemitta* to not be forgotten. This forces people to ask expert rabbis questions about the details. Certainly, the rulings depend on how pressing the needs are, and this reinforces the feeling that we have to try our hardest to fulfill the *mitzva* as completely as possible and the realization that the leniency of the sale is due to the pressing circumstances. This is more felt in the way we are doing it in comparison to setting a fixed percentage of land that is not used.

[We will skip over a paragraph dealing cryptically with Tamudic sources on these matters.] As far as whether the *mitzva* is considered "uprooted," the matter depends on various opinions. If the [laws of *Shemitta* in our times] are Rabbinic, then part of the *mitzva* is fulfilled by the fact that we do not allow, according to our instructions, a Jew to do the work that is forbidden by Torah law when *Shemitta* is a Torah-level *mitzva*. Only if *Shemitta* is presently forbidden based on Rabbinic law, then if all the Rabbinic laws are in force, it is considered creatively uprooting the whole *mitzva*, and then we have to rely on the fact that it does not apply to all fields. We have already instituted not to allow planting new fruit trees, and since most posit that planting trees is Rabbinically prohibited, we have thereby maintained some Rabbinic laws.

May Hashem have mercy on His nation and His Land speedily and heal the broken hearts who are crushed by the horrible pain stemming from the depressing situation for the Holy Land and its inhabitants, who are pressured into pushing themselves through narrow areas (i.e., the difficult leniency). May He speedily bring salvation from Zion to His adorned nation, Israel, so that we can raise high the banner of our holy Torah with the fulfillment of all of its *mitzvot*. This includes the land-based *mitzvot* and especially the sanctity of the Shabbat of the Holy Land, which will make the hearts of all who love Hashem's Name happy and wait for His true salvation.

Regarding the *yeshiva* [in Yafo], the "root" I began with is starting to take hold. On Rosh Chodesh Adar I, there was a test, and I see blessing in the project.

Your great book, which I love with my soul, is considered among us one of the very important courses of study. Sometimes I lecture to them on some of the chapters from within the book and add my own philosophy on the matters. I hope that when things are more settled, we will have your book on hand, and there will be very serious study and inquiry on it. In order to get the institution running financially, we have decided to have a raffle. We hope it will be officially approved soon by the governmental authorities.

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

Nir Rephael ben Rachel Bracha  
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam  
Tal Shaul ben Yaffa

Neta bat Malka  
Meira bat Esther

Together with all *cholei* Yisrael

# P'ninat Mishpat

## What is Included in Costs of the Elevator?

(based on ruling 82159 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The administration of a *yishuv* (=pl) rented out a building to the defendant (=def), a company that builds medical buildings, so that it could make a *kupat cholim*. The sides have a dispute about the building of an elevator on the outside of the building. Originally, pl was to finance building the elevator and towards that purpose took a loan of 300,000 NIS. Later on, it was decided, and written in a contract, that def would assume the financing of the elevator, and they paid back pl for their expenses, and pl returned the loan. Pl is suing def for the interest and the fee for opening up a loan portfolio regarding the loan they took solely to finance the elevator, which comes to 12,552 NIS, which must be added to the principal, as was discussed orally (def denies the oral agreement). Pl claims that the fact that, in the new agreement, pl lowered the rent is specifically because def agreed to broadly accept expenses connected to the elevator. Def responded that the contract specifies what expenses need to be paid and the financing of the elevator is not mentioned.

**Ruling:** Par. 1b of the new contract says: "Def will return to pl the expenses of building the elevator shaft and also the expense of buying the elevator and its installation in the shaft." Since it does not mention financing of the loan, pl should not be able to demand compensation. Financing is a distinctly different expense from the ones mentioned. There is additional reason in this case because pl had available a possibility of funding without interest and did not take it. Since financing is a very individualistic expense, there is no reason to simply assume that def would be obligated in it.

If def had sent pl to take the loan, it could have been def's responsibility to pay its costs, but this was not claimed, let alone proved. Even if there were a doubt if the obligation included these costs, we resolve doubts by putting the burden of proof on the one who wants to extract money (i.e., pl).

At some point, def inquired about the interest that pl was paying, but there is documentation of his surprise at how much it was and his refusal, before signature on the agreement, to pay for it. *Beit din* understands that def was aware of interest payments but was only willing to pay for it if it had been a small amount of money. The implication of the documentation is that the reason for def's discount in rent is the fact that pl wanted to own the elevator after the period of rental, not due to any agreement of def to pay interest.

Finally, *beit din* rejects pl's claim that regarding property in Judea and Samaria, where governmental involvement in real estate commerce is weaker, agreements are more fluid and one should follow credible claims about oral agreements relatively more than the precise wording of a contract. *Beit din* is not aware of and does not accept such a geographical distinction. Furthermore, in this case, there is a very carefully written contract, and it makes no sense to claim that it is not to be taken seriously.

Therefore, *beit din* rejects pl's demand for compensation for financing.

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