



# MISHNAS CHAYIM

# משנת היום

## MISHNAH ON THE PARSHAH

### פרשת וישלח תש"ע 5770

## BEYOND THE PRECIPICE

### NOT QUITE THE CURE...

Rarely do we find such an intense expression of anguish due to an unresolved question as is recorded by R' Yair Bachrach in his classic volume, *Chavos Yair* (142). Before presenting the issue, though, some background is in order.

Many *halachos* govern the production and consumption of agricultural crops. For example, for the first three fruit-bearing years of a tree, the produce – known as *orlah* – is forbidden. Another area of agricultural law is the Sabbatical cycle; landowners may plant and harvest for six years but must let their fields lie fallow in the seventh. A general relinquishment of ownership occurs during *shevi'is* (the seventh year): there are no private fruits and so anyone may partake of whatever produce he finds.

The Mishnah in Ma'aser Sheni (5:1) deals with a scenario in which these institutions coincide:

שָׁל עֵרְלָה בְּחַרְסִית... אָמַר רַבּוֹן שְׁמַעוֹן בֶּן גַּמְלִיאֵל,  
בְּמָה דְבָרִים אֲמוּרִים, בְּשִׁבְעִית.

“Someone who owns land upon which *orlah* crops grow should mark the area with clay... Rabban Shimon ben Gamliel said: This *halachah* applies *only* during the Sabbatical year.”

A landowner may have the concern that passersby might help themselves to his crops, unaware of their *orlah* status. They might mistakenly think that the tree is in its ninth or tenth production year, when in reality the tree is much younger, and its fruits are forbidden. To prevent them from inadvertently eating forbidden fruits, the owner is instructed to make special markings, signaling the

*halachic* status of the crops to any prospective takers.

Rabban Shimon ben Gamliel adds an important caveat, however: the owner need only put out these markings in the Sabbatical year, when passersby may *legally* help themselves to his fruit. One who helps himself during the remaining six years would be committing an act of stealing; hence, the owner need not concern himself with clarifying the *orlah* status to the would-be takers.

In other words, one who justly takes the fruits of his own accord (in the seventh year) still runs the risk of eating *orlah*, and so the owner is obligated to provide the warning markers. In the other years, however, once the individual is ready to steal the fruit, then the owner need not make him aware that he is committing the double transgression of eating stolen *orlah* crops.

Why not? The Gemara in Bava Kamma (69a) offers a terse, surprising phrase in explanation: הֲלַעִיטָהוּ לְרַשָּׁע וְיָמוּת – (literally) Pour the stuff down the wicked man's throat, and let him receive a death sentence!

This line is what shocked the Chavos Yair. Obviously, Chazal, with their Divine Inspiration, knew exactly what they were saying. But as far as grasping the idea with our mortal and limited cranial capacity, this statement appears baffling. The notion of communal responsibility for our fellow Jews, to *prevent* them from sin and draw them closer to Torah, is well known and documented in the works of Chazal. Why here do they seem to take the surprising approach of being apparently unconcerned that this unscrupulous soul will sink even further?

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“Whoever can provide a cure for my ‘ailment’,” concludes the Chavos Yair, “is truly an expert doctor.”

While it is highly unlikely that we can uncover what eluded the Chavos Yair, it does appear that there is at least a hint of a precedent for this somewhat startling idea in this week’s *parshah*.

### TOO FAR GONE?

When Ya’akov and his family met up with his brother Eisav, someone was missing from the narrative: Ya’akov’s daughter, Dinah. Rashi (*Bereishis* 32:22) explains that Ya’akov wished to shield her from the prying eyes of his wicked brother. To protect her, he temporarily hid her in a trunk. In the continuation of his well-known comments, Rashi attributes the ensuing calamity of Dinah’s abduction by Shechem as a punishment for the Patriarch’s actions. He writes:

וּלְכַךְ נֶעְנַשׁ יַעֲקֹב שֶׁמָנְעָהּ מֵאֲחִיו, שֶׁמָּא תִּחְזִירֶנּוּ לְמוֹטָב.

According to the conventional understanding, this means: “Ya’akov was punished for withholding her from his brother, *as she may have returned Eisav to the proper path.*” In other words, Ya’akov was faulted for depriving his brother of marrying Dinah, for she may have had a positive effect on him, influencing him to repent.

R’ Chaim Rappaport, Av Beis Din of the prestigious community of Ostroh (*K’motzei Shalal Rav, parshas Vayishlach*), understands Rashi in a completely different light. He contends that a careful reading of Rashi reveals that the phrase *שֶׁמָּא תִּחְזִירֶנּוּ לְמוֹטָב* does not refer – as the conventional interpretation suggested – to the “complaint” lodged against Ya’akov for withholding Dinah (i.e., he should have let her marry Eisav, for then “she may have returned him to the proper path”). Rather, these words refer to Ya’akov’s own rationale in withholding his daughter, as this is precisely what Ya’akov feared: “She may have returned him to the proper path.”

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In other words, Ya’akov specifically did *not* want Eisav to do *teshuvah*! For whatever reason (a calculation only a Patriarch can make), Ya’akov determined that Eisav’s level of wickedness was so severe that he did not *deserve* to rectify his ways! He purposely withheld his daughter from Eisav *lest* she lead him to repentance.

Once again, the exalted calculations worthy of a Patriarch of Yisrael are well beyond our feeble grasp; but it appears that this episode just may be the scriptural basis for the wondrous statement made earlier by the Gemara in Bava Kamma. It seems that there is a precedent for the concept that baffled the *Chavos Yair*; there are times when a *rasha* forfeits the benefit of spiritual assistance from his brothers.

Hopefully, Eliyahu Hanavi will soon arrive, bringing with him the full explanation to this vexing issue.

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