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Shaarei Ezra

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Parshat Mishpatim
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CONQUERING ERETZ YISRAEL: MITZVAH, HALACHA AND THE THREE OATHS
 WRITTEN BY **RABBI SHAY TAHAN**

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Our parasha, *Mishpatim*, is perhaps the first to clearly indicate that *Am Yisrael* should proceed to conquer and settle the Land of Israel. The *pasuk* states (23; 20-31):

"Behold, I send an angel before you to protect you on the way and to bring you to the place that I have made ready. ...Little by little shall I drive them [the enemy] away from you until you become fruitful and make the land your heritage. I shall set your border from the sea of Reeds to the sea of Philistines, and from the Wilderness until the River, for I shall deliver the inhabitants of the Land into the your hands and you shall drive them away from before you"

The Torah reiterates the commandment of settling the land in various places, emphasizing its significance as a divine directive.

The *Ramban* (Nachmanides) and the *Megillat Esther* commentary on the *Rambam's Sefer HaMitzvot* have differing views on whether there is a Torah obligation to conquer the Land of Israel in all generations.

Ramban's Opinion

The *Ramban*, in his *Hasagot* (glosses) on the *Rambam's Sefer HaMitzvot*, criticizes the *Ramban* for not including *yishuv Eretz Yisrael* (settling the Land of Israel) as one of the 613 mitzvot. The *Ramban* argues that there is a positive Torah commandment to conquer and settle the land, (derived from Bamidbar 33:53): "*V'horashtem et ha'aretz v'yishavtem bah*" ("You shall take possession of the land and dwell in it").

He maintains that this mitzvah applies in all times, even in exile, and is not limited to the time of Yehoshua or the era of the kings. According to the *Ramban*, failing to conquer and settle Eretz Yisrael is a neglect of a Torah obligation.

Megillat Esther's Opinion

The *Megillat Esther*, a commentary on the *Rambam's Sefer HaMitzvot*, rejects the *Ramban's* claim that conquest of the land is a Torah obligation in all genera-

tions. He argues that the mitzvah of conquering Eretz Yisrael was only applicable during the conquest under Yehoshua and King David, but later became dependent on the presence of Jewish sovereignty in the land. Since exile was decreed upon the Jewish people, the obligation to conquer the land is no longer binding.

He supports the *Rambam's* omission of this mitzvah, explaining that after the destruction of the Temple and the exile, the obligation to conquer the land is no longer relevant as an active commandment. However, settling the land remains a value but not a binding obligation.

One of the claims of the *Megillat Esther* that there is no mitzvah today to conquer the Land of Israel involves what is famously known as the *Three Oaths*. The *Gemara* (*Ketubot* 111a) states that *Am Yisrael* was sworn:

1. Not to ascend to Eretz Yisrael *b'choma* (as a mass movement or by force).

2. Not to rebel against the nations. That the nations should not oppress Israel excessively. The *Megillat Esther* argues that since these oaths prohibit forced conquest before the arrival of *Mashiach*, the *Ramban's* assertion that there is a mitzvah to conquer the land in all generations cannot be correct. It seems that most *poskim* did not agree with the *Megillat Esther* regarding his understanding of the *Three Oaths*. They explain for various reasons why the oaths do not apply.

- a. Rav Shlomo Kluger explained that since the nations did not keep their side of the deal, and by violating their oath not to oppress *Am Yisrael* excessively, the entire agreement is nullified.

- b. The *Avnei Nezer* wrote that if the nations permitted the creation of the Jewish state, it was not be a violation of the oath, which only prohibits conquering the land against the nations' will. And indeed, the



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creation of Israel was through a vote in the United Nations.

c. Rav Chaim Vital, the student of the Arizal, wrote that the oaths expire after one thousand years, and thus the creation of Israel occurred well past that time.

Besides these answers and many more, some explain that the *Gemara* mentioning the oaths is not a halachic ruling but rather *aggadah*. There are also many different and contradictory opinions on this topic.

For example, the *Zohar (Naso)* writes that Hashem said He will not enter *Yerushalayim shel Ma'alah*—meaning the spiritual Jerusalem—until *Am Yisrael* enters *Yerushalayim shel Matah*, the earthly Jerusalem. This, along with many other statements of *Chazal*, seems to indicate that *Am Yisrael* must take the first step in conquering and settling the land before Hashem fulfills His role.

Many oppose the creation of the State of Israel because they oppose Zionism. Without getting into the long debate over whether the state's creation was justified, we can focus on the present reality. Today, there are hardly any hardcore Zionists; most people simply want to live their lives and go about their day safely. Soldiers who go to fight a war do not have any Zionist idealism; all they aim to do is ensure their right to live against those who want to harm them.

Moreover, anyone who studies Jewish history can see that although Israel constantly faces nowadays terrorism and Arab threats, this is nothing compared to the ongoing pogroms that Jewish communities endured on a yearly basis throughout our long exile. Some believe the myth that Middle Eastern Jewry lived in harmony in Arab countries, but this is far from the truth. Just as European Jews suffered constant pogroms, so too did Sephardic Jews (read in length in the book *Hazon U'Pigyon*).

Some claim that Arabs started terrorizing Jews because the land is

occupied, but they are ignorant of basic historical theology. Long before the establishment of the Jewish state, the Zionist movement, and even the Balfour Declaration, Muhammad already massacred many Jewish towns while enslaving their Jewish wives and daughters. Since then, Jews have been regularly killed and harassed by Muslims who followed their leader footsteps.

The State of Israel may not be a perfect, but it is far better than what the Jewish people faced throughout history—without even mentioning the Holocaust.

Another point that is undebatable is the rise of Torah learning in Israel, which is overwhelmingly greater than anywhere else in the world. Torah is flourishing there, with the number of rabbinical students and scholars at levels never seen in history. This *bracha* cannot be ignored or dismissed. Thus, if one sees things they don't like in the Jewish state, they should either try to help fix them or, if they can't, they should close their eyes and ignore them.

Summary of the Dispute

- **Ramban:** There is an eternal mitzvah to conquer and settle Eretz Yisrael, applicable even in exile.
- **Megillat Esther:** The obligation of conquest was only in specific historical periods and does not apply after exile.

The *halacha* seems to side with the *Ramban*, and even those who take the other approach may still agree for many reasons that today, the *halacha* allows for Jewish sovereignty.

This dispute has significant implications for discussions on aliyah, Jewish sovereignty, and the role of the modern State of Israel in fulfilling Torah obligations.

Those who want to learn more about this topic and the lengthy discussion can refer to what I wrote in my sefer *Shaf Veyativ*.

DEAD OR ALIVE; NO BUGS LEFT BEHIND!

Tu BiShvat is long behind us, yet many households still have an abundance of dried fruits like figs and dates, which are often infested with bugs. It is important to summarize the halachic guidelines on when one is obligated to check these products and when one would be exempt.

In *hilchot tola'im* (laws of insect infestation), there are three key classifications that determine whether one is obligated to check for bugs:

Muchzak b'tolaim (Established Infestation) – If a certain food is known to be regularly infested, one must always check it before eating, as the presence of insects is assumed. This obligation is *deoraita*, as the Torah explicitly forbids consuming bugs. If the likelihood of infestation in a product is more than 50%, then there is a Torah obligation to check and ensure the fruit is completely clean before eating.

Miut HaMatzui (Significant Minority) – According to many opinions if at least 10% of a given food is typically infested, it requires checking, as there is a reasonable likelihood that bugs are present. This is a rabbinical obligation, as according to the Torah,



we follow majority probabilities. Such food items must be cleaned thoroughly to ensure they are completely bug-free. Some halachic authorities argue that 10% is too high, maintaining that even if the probability of infestation is only 2% or even 1%, the food should still be checked.

Less than Miut HaMatzui (Insignificant Minority) – If the infestation rate is lower than the above percentage, there is no obligation to check, as the chance of finding insects is minimal. However, if one notices an insect, of course it must be removed.

Still, the *Chochmat Adam* states that although there is no obligation to check, it is advisable to take a quick look at the fruit before eating. If a hole or black spot is observed, it may be a sign of infestation. This practice helps prevent consuming bugs even in cases where checking is not required. However, one does not need to inspect beyond this, as the likelihood of infestation is very small.

In categories 1 and 2, a person must check for bugs even if

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they are hidden or camouflaged. This can be difficult, as small insects may blend into a pile of green leaves, but there is a strict requirement to clean the pile thoroughly, ensuring that no bugs remain.

Many people mistakenly believe that a dead bug is permitted, but the truth is that it makes no difference whether the bug is dead or alive—it is still prohibited.

Another common mistake is assuming that frozen fruits can be eaten without checking—for example, frozen strawberries. In reality, freezing can make the situation worse. While fresh strawberries can be cleaned properly using the correct technique, once they are frozen, removing the bugs becomes much more difficult.

One must learn when to check for bugs by holding a leaf up to sunlight or a regular light bulb and when it is necessary to use a thrip cloth. The study of these techniques is beyond the scope of this article, but those who wish to learn visually can visit my page

on TorahAnytime or my website, rabbishaytahan.com, where you will find visual classes on almost all types of food. Simply use the search bar to find the specific vegetable, leaf, or fruit you need guidance on.

Summary:

This is a summary of the categories and basic halachot that help determine when one must inspect dried fruits and other foods for infestation. However, these halachot are highly detailed and require extensive study to fully understand the proper methods of checking and cleaning. Factors such as the type of food, its source, storage conditions, and the likelihood of infestation all play a role in determining the obligation to check. Therefore, one should consult reliable halachic authorities and detailed guidelines to ensure proper adherence to these laws.

THE ANGEL'S DOUBLE-EDGED SWORD: PROTECTION AND OBLIGATION

In Parshat *Mishpatim*, the Torah mentions that Hashem sends an angel to protect the nation as they journey to the Land of Israel. The pasuk (Exodus 23:20) states: "*Behold, I send an angel before you to guard you on the way and to bring you to the place that I have prepared.*"

This divine protection is essential as the Israelites travel through a hostile and dangerous wilderness. The angel's role is to guide and defend the people, ensuring their safe passage to the land that Hashem has promised them.

However, the next pasuk (Exodus 23:21) states: "*Beware of him and listen to his voice; do not rebel against him, for he will not pardon your transgression, for My name is in him.*" This indicates that the angel is not merely a messenger but rather embodies Hashem's will, demanding that the people act righteously and follow His commandments.

These two *psukim* seem to be in conflict. The first pasuk presents the angel as a protector against external threats, while the next pasuk suggests that this very angel could harm *Bnei Yisrael* if they fail to heed his voice—implying that they, too, need protection from him.

The answer to this is obvious. When Hashem gives us a gift—especially one as precious as this angle—it comes not only with benefits but also with obligations: the duty to respect and obey it. The angel can and will protect the nation, but only if they show it the proper respect.

This idea is repeated in various places. For example, the *Gemara (Sotah 21)* states that one who keeps *mitzvot* is protected. We see this concept that, on one hand, we are obligated to observe the *mitzvot*, and on the other hand, those very *mitzvot* provide us with protection.

Another example is *Shabbat*, which protects those who guard it. As the well-known song says: "*Ki Eshmera Shabbat, Kel Yishmereni*"—"When I keep *Shabbat*, Hashem protects me."

The *Tur* (Orach Chaim 267) explained that on Friday night, we do not conclude *Hashkivenu* with the phrase "*Shomer et Amo Yisrael La'ad*" ("Who guards His people Israel forever"). This is based on the Midrash, which states that on *Shabbat*, there is no need to pray for protection because *Shabbat* itself serves as a guardian.

The *Shibolei HaLeket* (Siman 65) further elaborates that on Friday night, there is no need to request protection as we do on weekdays. He brings a parable: A king, having mistakenly strayed far from his soldiers, found himself in a foreign land. Fearing for his life, he carried his weapons with him at

all times, remaining alert to any potential threat. However, once he returned to his own city and stood among his officers and guards, he put down his personal weapons, relying on his loyal soldiers to protect him.

Similarly, during the weekdays, *Bnei Yisrael* live in a state of concern, as they are occupied with their daily struggles and unable to fully dedicate themselves to Torah and *mitzvot*. Because they lack the spiritual merit to shield them, they must pray for protection, saying "*U'shmor tzeitenu u'vo'einu l'chayim tovim u'shalom*" ("Guard our going and coming for a good life and peace"), and concluding "*Shomer et Amo Yisrael La'ad*", as prayer serves as their spiritual weapon.

However, when *Shabbat* arrives, the Jewish people are focused on honoring and delighting in the holy day. The great merit of *Shabbat* itself protects those who sanctify it, eliminating the need for additional prayers for protection. This is why we say, "*V'shamru Bnei Yisrael et HaShabbat*", emphasizing that by guarding *Shabbat*, *Shabbat*, in turn, guards them.

Rabbi Zamir Cohen of *Hidabroot* shares an amazing incident from the Simchat Torah massacre. The terrorists had planned to infiltrate 22 different kibbutzim and villages. Although most of these communities were secured with large, heavy gates, the attackers managed to enter by waiting for a resident's car to approach. When a resident drove up and used a remote control to open the gate, they ambushed him, shot him, and used the open gate to gain access.

However, when they reached two kibbutzim—Kibbutz Sa'ad and Kibbutz Alumim—where the residents observe *Shabbat*, they were unable to get in. Since no one was driving on *Shabbat*, there were no cars approaching to trigger the gate's remote system. Security footage shows the terrorists circling the area, waiting for someone to arrive, but no one came. Eventually, they gave up and left, sparing the lives of those who were simply going about their day, keeping the holy day.

Another fascinating story is about a woman who had just begun observing *Shabbat*. As *Simchat Torah* approached, her husband asked her to join him at a party where many young men and women were later tragically slaughtered. She refused, explaining that she had started keeping *Shabbat*. After going back and forth in an argument, her husband was unable to convince her to go. In the end, they stayed home—ultimately sparing their lives.



שלא לנסוע מיד במוצאי שבת

הונו מילי באיסור שיוכל לתקנו, אולם בבישול שלא יתוקן האיסור לא אסרו, ולפי זה גם הגעת האוטובוס לא יתוקן אם ימתין עוד זמן מה, ואדרבה הנהג ממשיך לדרכו באוטובוס, וכהאי גוונא לא גזרו ומותר לו לנסוע.

אף שראוי להחמיר שלא לנסוע מיד במוצאי שבת על אוטובוס שיצא בשבת מהתחנה, אכן מי שדחוק וממהר להגיע למקום יעדו מיד אחר צאת השבת, רשאי לעלות על אוטובוס זה.

ויש מתירים (ילקוט יוסף סימן שיח סעיף עו) מטעם שהבערת המנוע שנעשתה בשבת כבר אינה קיימת בעולם ונחשבת כגרם- הנאה המותרת, וסיים ששאל את אביו- הגר"ע יוסף זצ"ל, והסכים שיש להקל. וכך כתב בשמירת שבת כהלכתה (ח"ב פרק נט ס"ט): "אוטובוס שיוצא מתחנתו לפני צאת השבת, ומגיע לאסוף את הנוסעים מיד עם צאת השבת לכתחילה לא יסע בו, ורק בשעת הדחק יש מי שמתיר לנסוע בו".



כן העלה בשו"ת משנה הלכות (ח"ז סימן נ) מכיון שישנם כמה צדדים להקל: שמא הנהג יצא מתחנת האוטובוסים אחר צאת השבת ואז ליכא איסורא כלל, ואף אם יצא אחר שקיעת החמה בזמן בין השמשות, יש לסמוך על דעת הגאונים שלאחר שקיעת החמה הוא כבר לילה ומותר לצאת לכתחילה, והרי הב"י (סימן תנו) כתב שאף אם ישנה רק דיעה אחת לקולא אין לאסור משום מעשה שבת.

וישוב ראיתי שהגר"ע יוסף (חזון עובדיה שבת ח"ו עמוד ג) כתב להתיר להמתין לאוטובוס מיד במוצאי שבת כשהולך לדבר מצוה.

והגרש"ז אורבעך (מאור השבת ח"א מכתב ט אות ה) כתב שאף אם הדבר מותר, יש בזה ביזוי לשבת כששומר תורה נוסע בו מיד בצאת שבת.

טעם נוסף להתיר, הוא על פי דברי הערך ש"י בפסק השולחן ערוך (סימן שיח ה"א) שישאל המבשל בשבת במזיד אסור לו לעולם, ולאחרים מותר למוצאי שבת מיד. ובעכו"ם שעשה יש להמתין אחר השבת שיעור בכדי שיעשה, משום שקל בעיניו איסור אמירה לעובד כוכבים ויבוא לעשות כן פעם אחרת כדי שיהיה מוכן לו במוצאי שבת מיד (משנ"ב סק"ה). אכן הערך שי כתב שהטעם שאסור בתוך הזמן הוא דאנן סהדי דניחא ליה בהכי וזכין לו לאדם שלא בפניו, ונעשה שלוחו במידי דניחא לו, לכן אם צריך לחכות, כבר אין לו הנאה מאותו הזמן ולא ניחא ליה,

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