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PARSHA ENCOUNTERS

5 Av 5767 / July 20, 2007

Parshas Devarim ✍️ Rabbi Chaim Ehrman

True Mussar

The beginning of Parshas Devorim deals with Moshe Rabbeinu giving mussar to Bnei Yisroel. The Targum explicitly says, “he gave mussar to Bnei Yisroel”.

If we read the “mussar” that follows, we find a listing of places that Bnei Yisroel stayed in the desert. “In the desert, the Aravah, opposite the Yam Suf, between Paran, Tofel, Lavan, Chatzairos and Di-Zahav.” These are geographic locations.

We can ask, what kind of mussar is providing a list of places that Bnei Yisroel stayed in during the 40 years in the desert?

Rashi explains that each place Moshe mentioned represents sins that the Jewish people committed there. For example, “Di-Zahav” represents the sin of the golden calf.

We learn a tremendous lesson about the true method of giving mussar. Moshe didn’t scream at Bnei Yisroel and proclaim, “How on earth could you have bowed down to a golden calf 40 days after G-d commanded you not to bow down to other gods?” Instead, he merely said “Di-Zahav”, which refers to the outcome of excess gold that they had. The prophet Hoshea proclaims (2:10) “I have given them lots of silver [and gold] and they used it for idol worship.” Alluding to a sin committed is adequate to generate teshuva, so long as the one who committed the sin is aware of the mussar.

The gemorah says that a leader should not give mussar with “two hands” because the student will be lost forever. Elisha gave very harsh mussar to Gaychazi, his servant for accepting the gifts from Naaman, the general, that Elisha had previously refused. Elisha cursed Gaychasi with leprosy for the rest of his life, thus forfeiting his Olam Haba.

There is a true story of a Rebbe who was incensed that his students would bring cell phones into the classroom. He told his students that if anyone brought a cell phone into class, that boy will be thrown out for the rest of the year. Reuvain violated the rule and brought a cell phone into class with the ringer turned off. Shimon asked to borrow the phone and turned the ringer on. When the cell

phone rang during class, Shimon tossed the cell phone into Levi’s school bag.

The Rebbe became very angry and insisted that everyone empty the contents of their school bag. Because Levi’s school bag had the cell phone, he was expelled from the class.

The parents pleaded and begged with the teacher and principal to forgive Levi. This was not his cell phone as he did not even own a cell phone! An innocent student was being punished.

The principal and teacher refused to give in and poor Levi had to spend the rest of the school year in a lower class. This had negative repercussions on Levi’s progress in future years. If only the teacher would have used a less intimidating approach this unfortunate situation could have been avoided.

The mussar technique used by the teacher was the exact opposite of the way mussar was given in this week’s parsha. Mussar has to be given gently, indirectly, and the one who did the aveira has to know that he did it. This type of mussar will generate teshuva. We want to **avoid** the mussar of Elisha which generates tzora’as and other terrible conditions. May Hashem help us to give proper mussar when necessary to others.

Rabbi Ehrman is the rav of Bais Yitzchak and learns daily at the kollel.

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HALACHA ENCOUNTERS

Shiluach Hakain

Rabbi Moshe Rokach

With summer well underway, many of us find ourselves going on trips and vacations to escape the city for more natural surroundings. In addition to rest and relaxation, this can provide a unique opportunity to fulfill the rather rare *mitzvah* of *shiluach hakain*. Should the opportunity arise, there are certain *halachos* to bear in mind, which will be outlined below.

Obligation

The *Gemara* (*Chullin* 139b) states that there is no obligation to go searching for a nest to fulfill the *mitzvah* of *shiluach hakain*. Only after encountering a nest does one become obligated to fulfill the *mitzvah*. Nevertheless, the *Aruch Hashulchan* (Y.D. 292) does encourage making an effort to pursue opportunities for *shiluach hakain*. R' Chaim Vital (see *Orchos Yosher* pg. 86) also writes that the 248 positive *mitzvos* in the *Torah* correspond to 248 spiritual limbs of the body and one should attempt to fulfill as many as he possibly can, even those like *shiluach hakain* which are not mandatory to pursue, in order to bring completion to his *neschoma*.

Wanting the Eggs/Chicks

There is a major disagreement amongst Poskim if there is an obligation to send away the mother bird if one encounters a nest but has no interest in taking the eggs/chicks. The *Chavos Yair* (*Teshuvos* 67) rules that the *mitzvah* is in effect regardless of whether the eggs are desired. The *Chasam Sofer* (*Teshuvos* O.C. 100) and *Chazon Ish* (Y.D. 175) disagree and hold that there is no *mitzvah* to send away the mother if one has no intention of taking the eggs. R' Chaim Kanievsky *Shlit"a* follows the *psak* of his uncle the *Chazon Ish*, but adds a crucial point. Although there is no obligation of *shiluach hakain* if the eggs are not desired, one may decide to take the eggs solely for the purpose of creating a *mitzvah* even if he does not desire them for personal use. (Note: All quotes of R' Chaim Kanievsky *Shlit"a* are based on written *teshuvos* reprinted in *Sefer Shale'ach T'shalach*)

Taking an Egg/Chick

A related question is whether one must take an egg/chick after sending away the mother. According to the *Chacham Tzvi* (*Teshuvos* 83) one need not do this in order to fulfill the *mitzvah*. R' Yacov Yisrael Fisher *Shlit"a* (in a *haskama* to *Sefer Shale'ach T'shalach*) concurs and says this is the opinion of the majority of *Rishonim*. R' Kanievsky, however, quotes the *Chazon Ish* as saying that one cannot fulfill the *mitzvah* without taking an egg and says that this is the opinion of most *Rishonim*. He adds that chasing away the mother bird without taking an egg is a transgression of the prohibition of *tzar baalei chaim* since no *mitzvah* is being fulfilled and needless distress is being caused to the mother bird. R' Kanievsky also notes that one can simply make a *kinyan* (acquisition) on the egg and immediately return it to the nest.

Private Property

The *mitzvah* of *shiluach hakain* only applies when the eggs/chicks are *hefker* (ownerless). This could prevent the obligation of *shiluach hakain* from taking effect on a nest found in one's private property, since a *chatzeir mishtameres* (guarded property) automatically acquires for its owner any ownerless objects that are contained in it (in this context, R' Kanievsky defines "guarded property" as an area where one leaves his belongings without fear of them being stolen). To avoid this issue, *Poskim* advise that if one notices a nest being constructed in his property he should specifically have in mind, before the eggs are laid, that he does not want his property to acquire the eggs for him. If the nest was discovered only after the eggs were already laid, some *Poskim* nevertheless maintain that one can be *mafkir* (declare ownerless) the eggs and that the *mitzvah* can then be fulfilled. It is noteworthy that R' Kanievsky suggests

that, nowadays, most people are not interested in eating the eggs and consider the birds on their property to be a nuisance. It can be assumed that those who feel this way have no interest in acquiring the eggs and that the eggs therefore remain ownerless and fit for fulfilling the *mitzvah*.

Species

Only *kosher* birds are subject to the *mitzvah* of *shiluach hakain*. Some common *kosher* birds are pigeons, doves, ducks, geese, and sparrows. If one is in doubt whether a bird is *kosher*, he should still perform the *mitzvah* and need not be concerned for *tzar baalei chaim*.

Timing

The obligation of *shiluach hakain* is to send away the mother bird—not the father. Ornithological experts say that in some bird species the mother and father take turns sitting on the eggs during the course of the day. This can be an obstacle for someone who cannot distinguish between the male and female and wishes to fulfill *shiluach hakain*. In such a case, R' Scheinberg advises doing the *mitzvah* during the night, when experts say only the mother will sit on the eggs.

Brocho

Poskim disagree whether a *brocho* should be recited on performing *shiluach hakain*. Since it is unclear, no *brocho* should be made. R' Kanievsky does suggest reciting a *brocho* without Hashem's name (*Baruch ata Melech Ha'olom L'shalei'ach Hakain*). Reciting *Shehechyanu* is also questionable. R' Kanievsky and others say the practice is not to recite *Shehechyanu* either.

Shooing Her Away

There is a minority opinion that one must actually grab the mother bird by the wings and then send her away. The consensus of many Poskim, however, is that any method of causing her to fly away is sufficient (*e.g.*, banging with a stick, throwing a stone, making a loud noise). At times, the mother bird becomes scared when one approaches the nest and may fly away before there is an any opportunity to actually "send" her away. R' Kanievsky warns that one may forfeit the *mitzvah* in such a case because he had no intention of fulfilling the *mitzvah* by just approaching the nest. He therefore suggests that before approaching the nest one should have in mind that he intends to fulfill the *mitzvah* through whatever act will cause the mother to fly away.

Many People

If many people wish to fulfill the *mitzvah* with a single nest, the following procedure should be followed. If the nest contains many eggs, the first person can send away the mother and take one egg. After the mother has returned to the nest, the next person sends her away and takes another egg, and so on. If there are not enough eggs for everyone, some Poskim say that one can be *mafkir* the egg after he has acquired it and then return it to the nest for the next person to take (without being *mafkir*, the egg has an owner and is exempt from *shiluach hakain*). Optimally, declaring the egg *hefker* should be done in the presence of three others, but if necessary, it can be done even in front of one person.

Geulah

The *Zohar* indicates that the *mitzvah* of *shiluach hakain* is instrumental in bringing about the ultimate *geulah*. When a mother bird is pained by being chased away from its nest, the angel in charge of the birds intercedes on its behalf and asks Hashem to have pity on it. As a result, Hashem has pity on his "nest" (*Yerushalayim*) that was destroyed, and his "children" (*klal yisrael*) who were exiled and have no one to intercede on their behalf. May we be *zoche* that *tzom hachamishi ye'hiye l'vais yisrael l'sasson u'lesimcha u'lemodim tovim*.

Rabbi Rokach learns full-time at the kollel.