

Teruma 5777

Purim FAQ's

Your most pressing Purim questions, answered

By Rabbi Moshe Pinchasi^[1]

Q: Is one obligated to give *Mahatzit HaShekel* on behalf of his wife and children?

A: The *Rama*^[2] writes that males over twenty-years old should give *Mahatzit HaShekel*. The *Kaf HaHayim*^[3] and others write that this is also the Sephardic *Minhag*. Some^[4] are of the opinion that even males over thirteen should give *Mahatzit HaShekel*, while others^[5] even cite a *Minhag* to give for one's children, including unborn babies. Regarding women, there is a debate among the *Poskim*^[6].

L'Halacha, Hacham Ovadia Yosef זצ"ל and the *Ohr L'Tzitzion*^[7] rule that one should give for anyone over twenty, including women, and that it is advisable to give for children over thirteen as well. The prevalent custom is to give for all children, including unborn babies.

Q: Are women obligated to hear *Parashat Zachor*?

A: Some *Poskim* maintain that women must also hear *Parashat Zachor* as the *Mitzva* of *Zechirat Amalek* is not considered to be time-bound^[8], and because the victory over *Amalek* pertained to women as well. However, the *Hinuch* reasons that because women are exempt from fighting in battle^[9], and the main purpose of reading *Zachor* is to wage war against *Amalek*, therefore women are exempt from *Parashat Zachor*. Some even consider this *Mitzva* to be time-bound because it can only be fulfilled during the day^[10]. To satisfy all opinions, the *Poskim* suggest^[11] that women should make an effort to hear *Parashat Zachor* in the synagogue. If that is not possible, they should at least read it from a *Humash* at home. It is also permissible to hold a special *Zachor* reading just for women (without a *Beracha*), as is the custom in *Eretz Yisrael*^[12].

Q: Can one fulfill the *Mitzvah* of *Mishloah Manot* by sending uncooked food?

A: While the *Magen Avraham*^[13] and others^[14] write that one must send fully-prepared foods, explaining that the word "*Mana*" means a ready-to-eat portion^[15], Hacham Ovadia Yosef^[16] follows the *Poskim*^[17] who maintain that one can fulfill the *Mitzvah* even if the food still needs to be cooked.

Q: Should one only send *Mishloah Manot* through an emissary?

A: Some *Poskim* derive from the *Megilla*'s expression: "*Mishloah*" *Manot* – which means to send, that it is preferable not to deliver the *Mishloah Manot* yourself but rather send it through an emissary^[18]. Some even maintain that this is the *only* way to fulfill the *Mitzva*^[19]. However, the custom is to rely on the *Poskim* that allow one to deliver the *Mishloah Manot* themselves^[20].

Sources:

[1] From our upcoming Adar 5777 edition of the SHJ, and from previous years

[2] או"ח סי' תרצד ס"א [3] כה"ח (שם ס"ק יט) ועוד [4] תיוריט (שקלים פ"א מ"ד, ד"ה כל כהן) [5] לבוש (סי' תרפו ס"ב) אי"ר (שם סק"ד) [6] לדעת תיוריט (שם) והמג"א (שם סק"ג) בשם הפוסקים חייבות, אך המג"א (שם) בשם הגהות מנהגים, ובכה"ח (שם ס"ק כז) כתבו שפטורות [7] חזו"ע (עמ' קד), אול"צ (ח"ד פ"ב ס"א) ועוד [8] הגר"נ אדלר בשו"ת בנין ציון החדשות (ס"ח), שו"ת מהר"ל דיסקין (ק"א סי' קב), ועוד. [9] ס' החינוך (מצוה תרג), דכל כבודה בת מלך פנימה, ותמה ע"ד במנ"ח. וע' יב"א (ח"ח סי' נד אות א) מש"כ ליישב. [10] מרחשת (סי' כב אות ג), וע"ע באבנ"ז (סי' תקט) ובמה שהעיר ע"ד ביב"א (שם אות ה). וע' מטה יהודה (סי' רפב סק"ז)

Sponsor
the Halacha
Weekly!

Understanding the Mitzvah of Taking a Shevua

The *Rishonim* appear to dispute the definition of this *Mitzva*. The *Rambam* (ibid.) explains that this *Mitzvah* applies when one needs to officially confirm or deny a claim. In this case, says the *Rambam*, there is a *Mitzvah* to take an oath using the *Shem Hashem*. The *Ramban* there (*Hasagot to Sefer HaMitzvot*) appears to interpret the *Rambam* to mean that in this situation, it is an obligation to do so, and disagrees with this approach. He argues instead that this phrase is only intended to derive the negative - that swearing by other gods is forbidden - a concept referred to as "*Lav HaBa Michlal Asseh*". Consequently, the implication is that one is permitted, not obligated, to swear by the name of *Hashem* when necessary, but one may not swear by other gods.

However, the language of *Rambam* himself in the *Mishneh Torah* (*Hilchos Shevuos* 11:1) seems to indicate that one should not push himself to swear, and it is not a *Hiyuv* - obligation. Rather, it is only if he is forced to by the *Bet Din* due to being in the situation where the Torah mandates it (discussed below), then he fulfills it if done it properly.²

Taking a Shevua to Fulfill a Mitzvah

There may be another situation where taking an oath would be relevant outside the confines of *Bet Din*. The *Gemara* (*Nedarim* 8b) says that it is permitted (though not necessarily obligated or specifically recommended) to encourage oneself to fulfill a certain *Mitzvah* by taking a *Shevua* to do so, a *Halacha* in accordance with which the *Rambam* (*Shevu'ot* 11:3) rules as well.

The *Ramban* (*Hasagot* cited above) in fact interprets the phrase "*U'Vo Tidbak*" - you shall cling to Him - which directly precedes the phrase of "*BiShmo Tishavea*" in the *Passuk* under discussion, to refer to this situation: attaching oneself and binding oneself to a *Mitzvah* by taking a *Shevua*.³ The *Rambam*, though (*Mitzvat Asseh* 6), interprets the *Devekut* here as performing acts that bring one emotionally closer to *Hashem*, such as serving *Talmide Hachamim*, marrying their daughters, doing business with them, and the like.

שהוכיח מודלא מצינו שחייבו את הנשים אלא בפ' הקהל, מכלל שבשאר קריאות פטורות, אפי' הן מה"ת. [11] יב"א (שם אות כב), יחז"ד (ח"א סי' פד), אול"צ (ח"ד עמ' רחצ), ועוד. [12] יב"א (שם במילואים) וחז"ע (הל' פורים עמ' י). [13] סי' תרצה סק"א [14] מהר"ל (הל' פורים אות טו), שכנה"ג (שם הגה"ט סק"ל) ועוד, וכ"נ דעת המשנ"ב (שם סק"כ) [15] וכדפרש"י בביצה (יד: ד"ה אלא מנות) [16] שו"ת יב"א (ח"ח סי' עג), ובחז"ע (הל' פורים עמ' ק"ז ס"ב). [17] ט"ז (שם סק"ד), פרי"ח (שם סק"ד), פמ"ג (שם ע"ד הטי"ז והמג"א), הנצי"ב (עמק שאלה סי' סז אות ט) ועוד אחרונים] דמקיים את המצווה אפי' אם שולח בשר חי, אמנם אם שולח תרנגולת שעדיין לא נשחטה נראה שלא קיים את המצווה [וכי האחרונים דלדבריהם מיפרשא מילי דבית שמאי בביצה (שם) דאמרי אין משלחין אלא מנות כדפי' המאירי דהיינו מנות שהם מוכנות בכך שא"צ לשחטם, אמנם חסרים הם בישול, וכ"נ ממגילה (ז). בהא דר"י נשיאה, ע"ש. [18] שו"ת בנין ציון (ח"א סי' מד), משנ"ב (סי' תרצה סק"ח) [19] יפה ללב (שם סק"ט), שו"ת ויען אברהם (פלאג"י, סי' מח), שד"ח (אס"ד מע' פורים ס"ו) ועוד [20] מהרש"ק בשו"ת האל"ש (סי' שפג), כה"ח (שם אות מא), יב"א (ח"ח סי' ע) וחז"ע (הל' פורים עמ' קמג), אול"צ (ח"ד עמ' שמא) ועוד.

Taking the Oath

The Propriety of Taking an Oath in Bet Din according to Halacha¹

Introduction

The name of *Hashem*, as we would expect, must be used very carefully. Due to its great sanctity and holiness, there are rules and limitations as to when and how it may be used.

One might surmise that it should also be prohibited to take an oath using the name of *Hashem*. The *Rambam* (*Sefer HaMitzvot*, *Lo Ta'aseh* 62) indeed counts not swearing in vain using *Hashem's* Name as one of the 613 *Mitzvot*. In addition, it is generally assumed, correctly, the only potentially appropriate place for a *Shevua* would be in *Bet Din*, religious court, when necessary to protect the interests of one of the litigants (see below). Otherwise, though, taking an oath should not be done.

However, despite these expectations, the Torah actually says quite explicitly (*Devarim* 10:20), *BiShmo Tishavea*, "You shall swear in His name." Moreover, the *Rambam* (*Mitzvot Asseh* 7) somewhat surprisingly counts this as one of the positive *Mitzvot*. How is this *Passuk* to be understood, and what are the parameters of this directive?

Taking a Shevua Nowadays

Although it is unclear when this *Minhag* began, the common practice today is that a *Shevua* is never administered, even by a *Bet Din*, in any situation, due to its severity and resulting punishment should it be performed improperly or falsely.⁴ Even in cases where the Torah or *Hachamim* command a defendant to swear to deny a claim and thereby exempt oneself, it is not performed anymore. If this is the case, how do we afford defendants the protection they would have received from the *Shevua* to deny a claim?

The practice today is that if there is a basis easily discerned for the claim against the defendant, we would execute a *Peshara* - a legal compromise.⁵ This compromise would dictate that the defendant must pay part of the money, usually either 1/3 or 2/3 of the total sum, depending on the perception of the *Dayanim* as to the likelihood of the truth of the claim.⁶

Shevua according to Torah Law and Rabbinic Law

According to the Torah, the only time a *Shevua D'Orayta* is required in court is when someone is defending himself against the claim of another. For example, a *Shomer*, legal guardian, may agree that he was given merchandise by another, but insists that he cannot return it because it was stolen. In this case, where there is a certain amount of truth to the claim of the one requesting the money, but there is a counterclaim why the money should not be returned, a *Shevua D'Orayta* would be administered. This type of *Shevua* is referred to as a *Shevu'at HaNiftarin*, an oath taken by one to exempt himself from liability.⁷

There are some cases where *Hachamim* instituted that a *Shevua* can be taken even to extract money from another, known as a *Shevu'at HaNotlin*, an oath for taking money. For example, Reuven claims he is owed by Shimon a debt of 100,000 dollars and has a *Sh'tar*, a legal document, to prove it. Shimon though claims that he has paid the debt already. In this case, the fact that Reuven possesses the document indicates that Shimon has not yet paid, as otherwise the document would have been torn up already upon payment of the debt. This is what is referred to as the claim of *Sh'tarcha*

B'Yadi Ma'e Ba'e - "why is your document in my [Reuven's] hands". Therefore, Reuven may collect the money, but some *Amora'im* in the *Gemara* add that *rabbinically*, he can only collect the money with a *Shevua* that he has not yet collected the money.⁸

Even during the time when oaths were administered in *Bet Din*, these types of cases were generally the only times that it was done. The idea that exists in secular law of being under oath in court, and committing perjury if he is lying does not exist within the *Halachic* system.

The Difference Between a Shevua to Extract and a Shevua to Exempt

As we noted, though, in principle, the Torah does not allow for a *Shevua* to be effective except for the case of *Niftarin*, where he wishes to exempt himself from a claim. What is the reason for this distinction? The basis for this type of *Shevua* may be that we normally apply the rule of *HaMotzi M'Havero Alav HaRe'aya*, one who claims money from another must prove his claim. In these cases, the *Shevua* simply is taken as an additional support for applying this principle, and allowing the one wishing to exempt himself to strengthen his claim. However, taking a *Shevua* is not considered a proof or evidence that he is owed the money, and would therefore not be taken to extract money.

Rav Hirsch (in his commentary on *Parshat Mishpatim*) suggests a deeper explanation for this issue. He notes that the word *Shevua* is related to the word "*Sheva*", the number seven. The city *Be'er Sheva* is where *Avraham* and *Avimelech* signed their agreement under oath to each other. This is because seven represents nature operating under the orchestration of *Hashem's* guiding hand. During the six days of creation, *Hashem* established the natural order so that the rain would fall, the sun would shine, and the animals would roam, which all appear to be natural activities. However, the seventh day of the week, *Shabbat*, and *Hashem's* resting on that day, shows us that all of these seemingly natural phenomena come from Him, are not really natural at all.

When one takes a *Shevua* while holding a *Sefer Torah*, which is the required *Halacha* (see *Rambam, Hilchot Shevu'ot ch. 11*), he is testifying that all of his

possessions belong to him only due to *Hashem*. Likewise, everything we gain during the six weekdays during our labor is in reality due to *Hashem*, which we mark by celebrating the seventh day of the week as *Shabbat*. Thus, the *Shevua* binds the symbolism of seven, the existence of *Hashem*, to his physical existence.

The reason why this can only be performed in a case of *Niftarin*, to exempt oneself from a claim, and not *Notlin*, to extract money from another, is that one can only testify that Hashem has given Him everything he has with regard to his own possessions, not what belongs to another. He cannot testify that the other's possessions come from Hashem, as he has not experienced that in his life.

Sources:

[1] Based on a *Shiur* by Dayan Yosef Greenwald [2] There is a well-known episode involving the *Ga'on of Vilna* where he was locked up by Russian authorities in Vilna for a time. At one point during this period, a girl had been kidnapped from the jail, and authorities suspected the *Ga'on of Vilna* was involved. Therefore, they forced him to take a *Shevua* using the name of Hashem. Rav Haim of Volozhin suggested that the reason this occurred was that the *Ga'on of Vilna* exerted himself to the utmost to fulfill every one of the 613 *Mitzvot* he possibly could, but he would never take a *Shevua*, due to the considerations discussed in the text. Therefore, suggested Rav Haim, *Hashem* facilitated events in such a manner that he would have the opportunity to fulfill this *Mitzvah* as well. [3] As mentioned, he does not interpret this as an obligation to do so, but as the Torah giving permission to do so in this context. [4] See *Aruch*

HaShulhan (H.M. 92:15) [5] This is different from the times of the *Gemara*, where such a *Shevua* would be administered even if the basis for the claim was not readily evident, such as where a random person demands money from another, and the defendant claims he doesn't even know the person. This is known as a *Shevu'at Hessed*. [6] For more on this, see an article written on the subject by Rav Shlomo Levi in *Tehumin* Vol. 12. [7] There are a number of other similar cases where there appears to be truth to each claim that a *Shevua D'Orayta* would be taken, such as *Modde B'Miktzat*, where the defendant agrees that he owes half the money demanded, but not the whole sum, or a case of *Ed Ehad*, where the defendant claims he owes nothing, but there is one witness against him claiming he does owe it (normally two witnesses are required to establish liability). See *Rambam, Hilchot Shevu'ot* 11:5 for a synopsis of these cases. [8] See the 6th chapter of *Masechet Shevu'ot* where these principles are discussed in more detail.

Sephardic Halacha Center

Halacha Consultation Line:
Dayanim (Talmudic judges) and Poskim (Halachic decisors) available for Halachic consult
Available throughout the day via phone, email, text, or in person
Weekly Halacha e-Journal
Monthly print Journal
State-of-the-art website
Parasha and Halacha – Audio Series
Awareness and education

Business Halacha Services

Contracts and Heter Iska
Halachic wills and estates
Partnership, employment, and other business agreements
Shabbat agreements
Business Halacha consultations
Halachic resources

Sephardic Bet Din and Dispute Resolution Center

Experienced Dayanim and dedicated administration
Professional, expedient, and cost effective
Business, divorce, and familial matters
Mediation and arbitration
(Licensed mediators and arbitrators)
Legal Advisory Board

To dedicate an issue of the Sephardic Halacha Weekly E-Journal in honor, Refu'ah Shelema or memory of a loved one, please email us at info@theshc.org or call 732.276.1332

For Halachic guidance, questions, or services, call or text 732.9300.SHC (742)

SEPHARDIC HALACHA CENTER / WWW.THESH.C.ORG / P 1.844.200.TSHC (8742) / E INFO@THESH.C.ORG