

# HALOCHOSCOPE



**This week's question:**

**If a person pledged fruits as *bikurim* in the present day, what is the status of the fruits? If the pledge was made by children acting out the *mitzvah*, does this change?**

**The issues:**

- A) *Mitzvas bikurim*, the first fruits offering
- B) *Bizman hazeh*, in modern times
- C) The status of a mistaken or misguided consecration

## A) *Bikurim*

The *mitzvah* to dedicate the first fruits of the season is Scriptural. The fruits are brought to the *Bais Hamikdash* for a ceremony and then given to the *kohain* for personal use. It only applies in *Eretz Yisroel* and at the time of the temple. It applies specifically to the seven species with which *Eretz Yisroel* is praised. The grower of the produce is obliged to bring *bikurim*. He must own the land on which it grows, though the levels of ownership can vary. According to the level of ownership, it is possible that one is exempt, obliged to bring *bikurim*, and possibly obliged to make the declaration.

There is a long process to the *mitzvah*. When one sees the first fruit beginning to ripen, he should tie a reed around it to mark it. If one did not do so, he may use any high-quality fruit. This is known as the *hafrasha*, separating. At this time he declares it *bikurim*, known as *krias shem*. When the fruit is fully ripened and ready to bring to the *Bais Hamikdash*, it is picked. The Talmud debates whether it requires another *krias shem*. It is then taken to the *Bais Hamikdash*, known as the *hava'ah*. Before taking it in, it is prepared in a beautiful presentation. One may add to the original *bikurim*, known as *tosefess bikurim*. One may also decorate the *bikurim* with other fruits, known as *itur bikurim*. The baskets used for the *bikurim* should be beautiful as well. Along with the fruits there is an offering. This animal should also be decorated.

People should join in a group to bring their *bikurim*. This is connected to the verse, *berov am hadras melech*, with the multitude of people there is glory for the King. In other words, when many people perform a *mitzvah* as a group it brings more glory to Hashem. This procession is called the *ha'ala'ah*. Music would be played as the procession moved along. The animal used for the *korban* would walk along, wearing an olive-branch wreath. The people would sing about going to the *Bais Hamikdash* all along the way. They would only travel during daylight. They would lodge overnight in towns along the way, but in the open, to minimize possible contact with *tumah*, defilement. They would send a message ahead as they neared the *Bais Hamikdash*, or in its time, *Yerushalayim*. They would sing about their arrival in *Yerushalayim*. The procession makes a strong impression on those who watch it. They stand up and interrupt their busi-

ness to show honor to those in the procession. They call out a welcoming praise.

When they arrive in the *Bais Hamikdash*, the *Leviyim* begin *shir*, the song. Next, the grower who is qualified to do so begins the *kriah*, declaration. There are two parts to this. The first part is said while he has the *bikurim* on his shoulder. He then lowers it and does *tenufah*, waving. The basket is held by the *kohain* together with the grower and waved in all directions. The second part of the *kriah* is proclaimed. The *bikurim* is then placed next to the *mizbaiach*, the altar. This is known as the *hanachah*. Some say that the *kohain* places it at the south-west corner of the altar, and the grower then picks it up again and waves it a second time and does *hanacha* a second time himself. After this ceremony, the grower prostrates himself, known as *hishtachava'ah*, and leaves. Along with the *bikurim*, the grower offers a *shlamim* offering, which he then eats. The grower must remain overnight before heading home, known as *linah*.

All of these details are actually *mitzvos* in their own right. However, they are not all counted as separate *mitzvos* in the 613. All authorities agree that the *hava'ah* and the *kriah* are counted as *mitzvos*. The *hafrasha* may be done whenever the new seasons fruit begins to bloom, as early as the Fifteenth of *Shevat*. The *hava'ah* may only be done on or after *Shavuos*, once the two loaves of wheat from the new crop have been offered. If someone brings it early, it is not accepted. When brought between *Shavuos* and *Sukos*, the time of *simcha*, the *kriah* is also performed. After *Sukos*, no *kriah* is done. *Bikurim* may be brought until *Chanukah*. The poskim debate whether this is a defined time, meaning that anything later than this is part of the next year's *bikurim*, or whether the fruits past this time are not acceptable due to their poor quality.

As mentioned, one must own the land on which the fruits or produce grows in order to be obliged in *bikurim*. Furthermore, it only applies to the produce of *Eretz Yisroel*. Though there is a Talmudic debate on produce from the territories across the Jordan, the consensus is that no-one considers those fruits *bikurim* Scripturally. This is because being part of the conquered lands is not the determining factor. It only applies to the Land flowing with milk and honey. This applies specifically to the main parts *Eretz Yisroel* east of the *Yarden*. There is no minimum amount for *bikurim*. The maximum, according to the consensus, is to dedicate all the produce minus a small amount for oneself. This is because it is called 'the first' of the produce, implying that there is more after it is separated. Whereas other tithes must be separated before the produce may be eaten, the same is not true of *bikurim*. If it was not separated, the rest of the produce is not deemed *tevel*, untithed. Once the entire process has taken place, the *bikurim* is treated like *terumah*, the tithes given to the *kohain*. A non-*kohain* who eats it is liable in the same way. However, after *hafrasha* but before the full *hava'ah*, the *bikurim* is forbidden to a non-*kohain* but not with the same level of liability. [See Mishpatim 23:19 Ki Savo 26:1-11, commentaries. Mishna Bikurim, Poskim. Chinuch 91 449 606, Minchas Chinuch. Rambam Hil. Bikurim 1-4, commentaries, Derech Emunah.]

## **B) Bizman hazeh**

As mentioned, *bikurim* only applies at the time of the temple. The Torah specifies that it must be brought to the “house of Hashem.” Furthermore, the Torah requires that it is placed before the *mizbaiach*. In fact, there is some discussion about bringing *bikurim*

when the actual *Bais Hamikdash* is not standing, but there is a *mizbaiach*. Our question is, if a person consecrated the *bikurim* anyhow, with a *hafrasha*, what is its status? The grower lives in *Eretz Yisroel*, and thinks that it would be nice to fulfill the *mitzvah* even nowadays. He might be uneducated, and think that it applies nowadays.

The issue is that sometimes an item can be considered consecrated such that one may not use it, while it may not be possible to perform the *mitzvos* with it. As such, should the *bikurim* become forbidden to consume? There is no other prohibition on *bikurim*, such as benefit. However, if indeed it is sanctified, it becomes the property of the *kohanim*. One cannot give it to *kohanim* without going through the entire process. [Besides this, nowadays it is impossible to avoid *tumah*. Everyone is presumed defiled by contact with a corpse. This precludes eating the *bikurim* in the same way as it precludes eating *terumah*. In addition, the *bikurim* is defiled, forbidding its eating. It may, however, be burned and benefited from. In addition, *kohanim* nowadays cannot verify their priestly status with enough certainty to consume the *bikurim*.] Nonetheless, a non-*kohain* may not benefit from burning the *bikurim*. Even the *kohanim* cannot make use of it without the process of all other *mitzvos*.

Assuming that the *hafarsha* does take effect, one cannot do *pidyon*, transfer its sanctity in the way one does with *maaser shaini*, the tithe that was meant to be taken to *Yerushalayim*. Some maintain that it may be reversed through *she'ayla*. This is the procedure in which one asks a panel to annul his vows. Since the *hafrasha* is in the nature of a verbal commitment, *she'ayla* would apply. Usually, one may not use this method for no good reason. However, nowadays that allowing it to retain its status would lead to other issues, it would be allowed.

The Talmud actually debates whether one who consecrates *bikurim* nowadays has accomplished anything. This passage is, in turn, debated. Some say it refers to one who did a *krias shem* on *bikurim* nowadays. Others say it refers to one who consecrated fruits that had already become *bikurim* to be dedicated to the *Bais Hamikdash*. Taken simply, this refers to the times of the temple. However, this is inconsistent with the rest of the same *mishna*. Accordingly, some say this refers to the post-temple period. This might be taken to mean that the original *bikurim* can take effect. Otherwise, how did he get *bikurim* to further consecrate? However, it could refer to the period right after the destruction of the *Bais Hamikdash*. The *bikurim* took effect before the destruction. Now the owner consecrates them to the *Bais Hamikdash*. Since it does not exist, his words are somewhat futile. The debate is whether it has an effect anyhow and requires *she'ayla*.

There is also a view that if one did set aside *bikurim* nowadays, he must wait until, hopefully, it can be offered. In the interim, this can lead to problems, as mentioned. Therefore, he says that one should rather not do *krias shem* nowadays. It seems that *she'ayla* is not an option according to this view.

The poskim debate how to rule. Assuming that it refers to *krias shem bikurim*, one view rules conclusively like the opinion that there is no effect at all. Another view follows the other opinion, concluding that it does take effect. The question is, how would those who explain the passage differently, rule in this issue? Some poskim conclude that this same posek would follow the lenient view. Some maintain that it should be viewed

as a *safek*, doubt. [An interesting twist in this debate would be: what happens if someone did *krias shem*, and then Moshiach came and the Bais Hamikdash is built (bimehairah veyamainu)? Does the original *krias shem* apply later?] [See Refs to section A, Sifri. Shekalim 8:8, Rambam Bartenura, Yerushalmi 4, commentaries. Makos 19a Tosafos. Rambam Erchin 6:16. Even Haezer [Raavan] 51 (end). Minchas Chinuch 91:4 13 105:8. Mishpat Kohain 57. Tur Sh Ar YD 258:1, commentaries. Derech Emunah Bikurim 2:4.]

### **C) Mistaken consecration**

According to the stringent view, if children made the *bikurim*, it would depend on various factors. Obviously, they must own the land, or the entire issue does not arise. Minors are not *bnei chiyuva*, which means that they do not have the *mitzvah*. Accordingly, their consecration should have no value. In addition, they probably did not understand the consequences of their declaration. Thus, even if we are concerned that an undertaking of a child can be binding, as we shall see, this particular undertaking is made in error.

A child can make a *neder*, binding undertaking. If he is *mufla samuch le'ish*, close the age of majority, he is questioned as to his level of intent. If he knows the meaning and consequences, his *neder* is effective. As we mentioned, some aspects of *bikurim* have elements of binding vows. According to a minority Talmudic view a minor can consecrate *terumah*. By this reasoning, while a child is not obliged to bring *bikurim*, if a twelve year old with enough intent did a *hafrasha* and *krias shem*, it is effective.

Annulment is based on the concept that the undertaking was mistaken, or in a state of diminished awareness. Thus, the initial undertaking is deemed non-binding.

There are various types of mistaken undertakings. In the simple case, the *neder* was intended, but the consequences were not understood at the time. If someone undertakes something thinking that it is an obligation, he might be mistaken on the level of obligation. For example, it might be a *chumra*, self-imposed stringency by the pious. If so, the person who undertook it is bound by it. He can annul it later when he realizes that it was not obligatory. This is his excuse for not meaning to undertake it. It might be a misguided stringency, with no *halachic* basis. If it was undertaken under the impression that it is obligatory, this is totally mistaken. It does not even require *hatarah*. This seems to be the case with *bikurim* nowadays. The *mitzvah* does not apply, both because he is a minor and because it cannot be performed. [See Terumos 1:2 Yerushalmi 1, Poskim. Rambam 4:5, commentaries. Minchas Chinuch 91:12. Tur Sh Ar YD 214:1, commentaries.]

In conclusion, the fruits have no status of *bikurim* and are totally permissible.

### **Good Yomtov.**

**Sponsored by the Silver family in memory of R. Shimon ben R. Eliezer (Blumenthal) a"h, whose *yahrzeit* was on the 25<sup>th</sup> of *Iyyar*, Yitele bas R. Shimon (Silver) a"h, whose *yahrzeit* is on the 1<sup>st</sup> day of *Shavuos*, Hagaon R. Moshe Chaim ben Hagaon R. Avraham Ysachar (Ratzker) a"h, whose *yahrzeit* was on the 16<sup>th</sup> of *Iyyar*, Rachel bas Hagaon R. Moshe Chaim (Glicksman) a"h, whose *yahrzeit* was on the 13<sup>th</sup> of *Iyyar*. ☞**

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