

HALOCHOSCOPE

This week's question:

Someone began a practice of eating dairy meals for the entire *Shavuos*. Now he would like to eat some meat. Should he get a *Hataras Nedarim*, annulment of vows and oaths?

The issues:

- A) *Simchas Yomtov*, enjoying *Yomtov*; *Oneg* and *Kavod*
- B) The *Minhag* of eating dairy on *Shavuos*
- C) When a positive practice becomes an oath
- D) An oath that contradicts a *Mitzvah*

A) *Simchas Yomtov*; *Oneg* and *Kavod*

Simcha is a Scriptural *mitzvah*, and refers specifically to *Yomtov*. The other two appear in the *Navi Yeshaya* in reference to *Shabbos*. *Yomtov*, like *Shabbos*, is called *kodesh*, holy, and these *mitzvos* apply to it as well. They are all considered basically Scriptural in most of their applications. *Kavod*, honoring *Shabbos* and *Yomtov* means making them special. It includes wearing special clothing, cleaning the house, setting the table festively and preparing the appropriate foods. Some say that anything done ahead of time constitutes *kavod*. *Oneg* is defined as enjoying *Shabbos*, including eating the special food, such as a bread meal and delicacies according to taste, and rest and relaxation.

Simcha has two connotations: joy of *Yomtov*, and joy due to being at the *Bais Hamikdash*. Joy is stimulated by means of special treats. Different family members appreciate different treats, such as wine for the men, new clothing for the women and sweets and nuts for the children. The particular items relating to the joy include the meat of an offering. In Temple times, *shalmei simcha*, a special offering was brought, or one could consume the meat of another offering that had been offered anyhow. This had to be an animal offering, rather than a meal or fowl offering. As the Talmud derives from Scripture, this kind of joy can only be attained by eating meat, along with drinking wine.

Nowadays, no meat offerings are available. Many *poskim* maintain that *simcha* can only be fulfilled with wine. Others maintain that the Scriptural *mitzvah* is fulfilled with regular meat, nowadays. Some maintain that, in the absence of the *Bais Hamikdash*, the obligation is not Scriptural but Rabbinical. Others point out that the Talmud clearly does not limit *simcha* to the meat of *korbanos*, but includes other types of *simcha*. While there is a specific *mitzvah* to offer a *simcha korban*, the other means of stimulating the joy are also part of the Scriptural obligation, and count toward the fulfillment.

The Talmud debates how one should spend the day on *Yomtov*. In one view one should divide the day between study and eating and drinking. In the other view one may choose between devoting all day to Torah study or to physical pleasures. This view considers the Scriptural *mitzvah* of *simcha* to be voluntary. Normally, this would mean that one is not obliged, but is rewarded for fulfillment. In this case, we know that one not en-

gaged in study is obliged to eat and drink. Some explain, this view agrees that there is a *mitzvah* of *simcha*, but that the Torah gives one the choice to fulfill it by delighting in Torah study. Accordingly, we who follow the other view, dividing our time, also consider each pursuit part of the *mitzvah*. We should, therefore, spend time in Torah study. Both sides in the debate agree that on *Shavuos* one must devote some time to personal pleasure. This means that on *Shavuos* there is a special obligation of *oneg* and *simcha*.

Kavod yom adif, honoring the daytime of both *Shabbos* and *Yomtov* is more important than honoring the night. One must prepare better food for the day meal than for the nighttime meal. All offerings in the *Bais Hamikdash* were made by day. There would be no *korban* meat to eat by night. The Talmud debates whether one fulfills the *mitzvah* of *simcha* with meat from an offering made before *Yomtov*. The conclusion, based on Scripture and logic, is that Scripturally, *simcha* does not apply on the first night of *Yomtov*. Many poskim maintain that it applies Rabbinically. This is partial basis for the opinion that nowadays that we have no *korban*, there is still a Rabbinical obligation.

Based on this, some poskim say that there is no requirement to eat meat on the first night of *Yomtov*. [The requirement to drink wine seems to apply to all meals.] Since this meal need not be meat, according to this view, some eat their dairy *Shavuos* meal at night, though the *poskim* mention it as a *minhag* by day. [See *Shabbos* 118b, *Psachim* 71a, 109a, *Beitza* 15b, *Moed Katan* 14b, *Chagiga* 7b-8b, *Kidushin* 34b, *Chulin* 83a, *Poskim*. *Chinuch* 488. *Tur*, *Sh. Ar.* OC 249, 529:2, 551:10, commentaries.]

B) Dairy on Shavuos

The best known reason for this practice is that the Jews received the Torah on *Shavuos*, including the laws of preparing kosher meat. From now on, they would need to prepare a knife, slaughter, devein, and salt before they could cook meat. Due to the shortage of time, they prepared dairy food instead. Furthermore, their pots were now considered non-kosher, and *kashering* would take time. Dairy does not require cooking.

A similar reason is suggested. The angels hosted by Avraham were served meat and then milk. This is Rabbinically forbidden. Therefore, says the Midrash, by contrast, the Jews coming home from Mt. Sinai ate milk and then meat. This is one response Hashem gave the angels when they complained that the Jews did not deserve the Torah. A *Yomtov* commemorates the events that took place at this period. It is appropriate to reenact the practices of the Jews at that time.

A third reason is based on the rule that bread eaten with dairy may not be eaten with meat, and vice-versa. Hands might have some residue, which would then be mixed with the other food type. If we eat dairy food and then meat, we are compelled to eat two separate loaves of bread. Just as on *Pesach* night we remind ourselves of the two offerings, on the *sefer*-plate, so do we symbolize the two wheat loaves offered on *Shavuos* from the new crop. By eating dairy and then meat we place ourselves in a situation in which we commemorate this. Some poskim add that the bread used should therefore be wheat. The *minhag* actually 'grew' into a practice to bake a dairy loaf. Normally, this is forbidden. It could mistakenly be eaten with meat. If it has a distinctive shape or form, it is permitted. By making the dairy loaf, one was all the more compelled to have a second, *parev* loaf.

According to the latter two reasons, one should eat both dairy and meat at his *Yomtov seuda*. According to all three reasons the dairy should be eaten by day. The

Torah was given by day, and the two breads were offered by day. The *Shulchan Aruch* records the custom to eat dairy on the first day. It has become common to eat it by night. Many eat only dairy at this meal. They do not wish to diminish the *simchas yomtov* of eating meat. Therefore, they eat the dairy at a time when meat is a lesser obligation.

In addition, Torah is compared to milk and honey. According to this reason, it need not be eaten at a meal, but at some point during *Yomtov*. The *poskim* discuss a custom to eat cheese in the afternoon. It could be within the normal six-hour waiting period after the meat meal. Some *poskim* consider this a stringency over an original shorter waiting period, or simply a different meal. For the sake of this *minhag*, some people suspend the stringency. [This is the probable source of the *minhag* of cheesecake, made of milk and honey products.] However, other *poskim* maintain that one may not practice any leniencies to fulfill the *minhag*. Another reason for dairy is that milk is metamorphosed blood. Thus, it is like something holy coming from the unclean, in the same way that the Jews came from Egypt and received the Torah. It hints to changing justice to mercy.

One must separate the two if eating both at a meal. The table cloth must be changed. After cheese, one must wipe his mouth with solid food and rinse it with a drink. Hands should be washed. Some maintain that one should say *bircas hamazon* between them, but the prevailing *minhag* follows the *poskim* who do not require it. [See *Medrash Tehilim* 8. *Daas Zekeinim Vayera* 18:8. *Sh. Ar.* OC 494:3 *Rema*, *YD* 88-89, commentaries.]

C) A positive practice becoming an oath

One who follows a pious or good practice three times becomes bound to continue with it. It takes the status of a *neder*, vow, or a *shvua*, oath. If the practice is not merely a nice thing but a *mitzvah*, it becomes a *shvua* the first time he does it. Therefore, it is highly recommended that one not begin this before stating that he does this '*bli neder ushvua*' not intending it as a permanent practice. At the annual annulment of vows on *Erev Rosh Hashana*, there is a formula to renounce future pious practices as *bli neder*. Thus, if one forgets to state it at the time he does the practice, he is insured by this formula.

If one wishes to retract a ban or vow, he must present it before a tribunal of three. They determine whether the vow is to be continued. If it is shown that the person undertaking it did not realize its full implications, they annul it. It is as though it never happened, because the person could only have undertaken it with full consent. Since he has shown that he could not have meant it quite the way it worked out, he was not fully aware of what he was doing. If it was a meritorious practice, the panel's decision must examine whether it is the type of practice that requires annulment, because it is indeed a meritorious practice with some basis. If it turns out to be a mistakenly meritorious practice, or that the one undertaking it thought it was required, rather than voluntary, or even if he knew that it was a voluntary stringency, but he thought that it was not an extreme stringency and then found out that it is extreme, it does not need annulment. A minority say that if the one undertaking it knew that it was not required, yet treated it as such, he must abide by it, and may not gain annulment.

There is some debate on whether the type of *neder* that applies to a pious practice is Scripturally binding or only Rabbinical. Normally, to be Scripturally binding, one must have verbalized the ban. If it is Rabbinical, one may rule leniently in cases of doubt. [See *Nedarim* 15a, 81b, *Psachim* 51a, *Poskim*. *Tur* *Sh. Ar.* *YD* 214:1, 232:10, commentaries.]

D) An oath that contradicts a *Mitzvah*

There is a basic difference between a *neder* and a *shvua*. A *neder* is a ban on an item, that indirectly makes the item forbidden. A *shvua* is a binding promise directly on the person. The item is not banned, but the activity is forbidden. One difference between the two is seen when a person undertook something that contradicts a *mitzvah*. The power to effect a ban or oath is given by the Torah, and it is limited to anything that does not contradict the Torah. A person has no authority to effect an obligation that overrides the Torah. Thus, a *shvua* made like this would not take effect. However, a ban would not contradict an obligation directly. By prohibiting the item, the person will be unable to fulfill the *mitzvah*, but not due to a contradictory obligation. By making the language impersonal, such as mentioning the activity as an item, one can even cause a *neder* on an activity. There is some debate on whether a *neder* that violates a negative *mitzvah* takes effect. A *shvua* to contradict a Rabbinical *mitzvah* can take effect. Thus, one can not effect a *shvua* not to eat on *Shabbos* or *Yomtov*. *Oneg* and *simcha* are at least quasi-Scriptural. One can effect a *neder* to ban food on these days. One can also effect a *neder* or *shvua* banning eating for a period, that includes *Shabbos* or *Yomtov*, indirectly.

Our case could be seen as a *shvua*, since the questioner did not ban the meat. However, it closely resembles a case discussed by the poskim, wherein a person had a practice not to eat meat at certain times. This is treated as a *neder* to restrict or ban meat for a period of time. If *simchas yomtov* can only be fulfilled with meat, the *shvua* would contradict this. However, we have already shown that this is not necessarily the case. Those who consider it an obligation might consider it Rabbinical. Furthermore, the practice might be like a *neder*, which can take effect against a *mitzvah*. In addition, if a *minhag* is instituted that seems to undermine a Rabbinical *mitzvah*, the poskim rule that the *minhag* takes precedence. We have shown that at least some opinions consider the *minhag* of dairy to exclude eating meat. Evidently, this is sufficient, according to them, for *simchas yomtov*. Therefore, it appears that our questioner's practice is indeed quite well founded. There is strong basis to say that it takes effect as a *neder*, or even as a *shvua*. Since it is not a universal practice, he may ask a panel for annulment. [See Nedarim 14a 16a-17a, 66a, YD 215, 239:4, 6, commentaries. Ar. Hash. YD 214:33.]

On the Parsha ... And the [Leviyim] shall take care of ... the charge of the Bnei Yisroel to do the service of the Mishkan ... [3:8] For the [Bnei Yisroel] were all really obliged to take care of the needs of the Mishkan, but the Leviyim came in their stead as their agents ... [Rashi] One could ask, at the *seder* we commemorate the offerings that we would all eat on *Pesach* night if there were a *Bais Hamikdash*. On *Shavuot* only the *Kohanim* would eat the two breads that were offered. Why, then do we all commemorate them nowadays? Really, we all participate in the offering and we would all get to eat it. However, the rest of the tribes became invalid to serve due to the Golden Calf. Only the *Kohanim* and the *Leviyim* could serve in the *Mishkan*. That is why they got to eat the offering. Nowadays, that our table serves as our *Mizbaich*, everyone is equally 'eligible to serve'. Therefore, we all commemorate the two loaves.



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