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From the Masechta

Simanim

ADAPTED FROM A CHABURAH BY RAV HERSHEL SCHACHTER

Do simanim play the same role in hashavat aveidah and hetter agunot? The Gemara (see Bava Metzia 27b) indicates that they do play the same role. The Gemara compares the relative standing of simanim in both areas of Halacha: if simanim beinoniyim (mid-level simanim, which are shared by a few people or objects but not by most people or objects) are biblically valid, then they must be equally valid for hashavat aveidha and hetter agunot. If they are biblically invalid, then they must be equally invalid for hashavat aveidha and hetter agunot. By contrast, the Rambam seems to write that simanim do not play the same role for hashavat aveidah and hetter agunot; he rules that simanim are biblically valid proof of a lost object's identity but are not biblically valid proof regarding the identity of an agunah's missing husband.

Rav Soloveitchik, while not addressing the discrepancy

between the Gemara and the Rambam, suggested a possible rationale for the Rambam's distinction between hashavat aveidah and hetter agunot. In the context of hashavat aveidah, simanim do not serve to identify the lost item. Rather, simanim serve to prove the honesty of the person claiming ownership of the item. The lost item is identified by the presumed owner's eye-recognition (tevi'ut ayin) after his honesty has been established. By contrast, in the context of hetter agunot, simanim serve to identify the agunah's missing husband, something that on a biblical level they are incapable of doing.

The thesis that eye-recognition rather than simanim establishes the lost item's identity is supported by the fact that a talmid chacham is believed to claim ownership of a lost item without providing simanim. Since talmidei chachamim are presumed by halacha to be honest, they do

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not need simanim to prove their honesty.

Further support for this idea may be adduced from the Gemara's statement (Chullin 96a) that eye-recognition is better than simanim. The Gemara notes that if witnesses report the simanim of murderers, we cannot convict the murderers solely on that basis. If the witnesses claim eye-recognition of those murderers, though, we can convict them. The Gemara notes, however, that this concept seems to run counter to the halacha that we return aveidot based on simanim, yet we do not return aveidot based on eye-recognition. Rabbi Soloveitchik's idea resolves this inconsistency; really, aveidot are only returned based on eye-recognition; simanim are insufficient to identify the aveidah (just as they are insufficient to identify the agunah's missing husband, and just as they are insufficient to

identify murderers), and they are required only to ascertain the honesty of the aveidah's presumed owner.

The Pnei Yehoshua writes that a claim of certainty (ta'anat bari) is sufficient grounds to claim money if there is no known possessor (muchzak). If so, it is hard to understand the need for simanim in the context of an aveidah, as nobody is muchzak on an aveidah. Why, then, do we require simanim to return an aveidah? Based on Rabbi Soloveitchik's analysis, we can address this difficulty. The Torah imposes an obligation to ascertain the honesty of someone claiming the right to an aveidah by requiring him to provide simanim. Having determined his honesty, we in fact return the aveidah based on his ta'anat bari and eye-recognition.

Ad Sheyavo Eliyahu

By Avi Levinson

The Mishnah (Bava Metzia 2:1) states that upon finding a lost object, one sometimes is obligated to publicize his find so that the owner will be able to reclaim his item. From the Gemara throughout the second perek it becomes clear that the guiding principle is whether or not the object has any identifying marks (simanim). If the object has simanim, its owner will not give up hope of finding it, and one thus is required to publicize his find, whereas if the object essentially is nondescript, the owner presumably gave up hope of ever reclaiming it and thus one is entitled to keep the item. What happens, however, if one publicized an item with simanim but the owner never appeared to reclaim his item? What is the finder supposed to do?

Surprisingly, there is no explicit Gemara or Mishnah about this topic. The Rambam (Gezeilah V'aveidah 13:10), though, rules clearly that one must hold on to a lost object until Eliyahu comes to identify its owner. The Shulchan Aruch (C.M. 267:15) cites this Rambam as normative. From where did the Rambam derive this Halacha? The Gr"a comments that the source for this rule is the comment of the Gemara (28b). The Mishnah there states that if a lost object requires serious investment for its upkeep, the finder is permitted to sell it after a certain amount of time has elapsed without the owner claiming

it. The money then is set aside for the owner should he ever successfully identify the original lost object. But, the Mishnah states, if the lost object is something that generates profit, such as a cow that can plow, one should use the profits it generates for its upkeep. The Gemara then queries "Is one obligated to do this forever?" The Gemara answers that one is permitted to sell even a profit-generating cow after twelve months.

The implication, claims the Gr"a, is that if an item requires little or no cost for upkeep, one is in fact obligated to hold onto it "forever." The Gr"a then adds that this is explicit in the Torah, as the pasuk states that if one cannot identify the owner of a lost object, he should take it into his house "And it shall be with you until your brother seeks it out, and you return it to him" (Devarim 22:2). The Torah does not give any time limit; the finder is required to hold onto the object until its owner seeks it out.

Sometimes, though, it can be a big hassle to hold onto a particular lost object whose owner never comes to reclaim it. Are there any alternatives? Rav Moshe Feinstein (Igrot Moshe C.M. 2:45) writes that once it seems that the owner will not reclaim the object, one should carefully record the object's simanim and the time and place he found it, determine the object's value, and then sell it. One then is permitted to use the money for himself.

If, hypothetically, the item is still useful as is, one is permitted to use it for himself as an alternative to selling it. Should the owner ever respond to the finder's publication of the item's loss, the finder will reimburse him according to the object's value that he recorded. Rav Yisroel Pinchos Bodner (Sefer Mamon Yisrael pp. 188-9 n 182) notes that Rav Yosef Shalom Elyashiv concurred with Rav Moshe's ruling. Rav Bodner also notes (ibid. n. 186) that one exception to this rule is a case where the lost object is difficult to replace – in such a case, one is not permitted to sell it, but rather must take care of it until Eliyahu arrives.

How, precisely, does one determine the value of an object? If it is a standard item and is unused, one simply can look up the price of another comparable item in a store. But what if the object is used or is non-standard, such as a

work of art? Rav Moshe (ibid.) writes that one should ask three people who have a sense of how to appraise items of this nature and obtain an estimate that way. Presumably, Rav Moshe means that one would be obligated to assume the most stringent estimate, as the mitzvah of hashavat aveidah is biblical and, accordingly, the principle of safeik d'oraita l'chumra applies. One might suggest, though, that nowadays (Rav Moshe's Teshuva was written over thirty years ago), the value of many used items can be obtained on the internet. Used books, for example, have a thriving electronic market. As such, it is possible to determine the value of many more items nowadays than when Rav Moshe wrote his responsum.

May we all merit to see the coming of Eliyahu and thus see all of our questions of hashavat aveidah answered.

Gezeirah Shavah

By Ephraim Meth

The Halichot Olam (4:2:16) writes that there are two types of gezeirah shavah. The first type consists of a Sinaitic tradition that a word of pair of words are meant to participate in a gezeirah shavah. For instance, a tradition might report that words with the root sin-mem are meant to participate in a gezeirah shavah. Following this, the sages identify which occurrences of the word are meant to participate and what laws are derived therefrom. For instance, the sages determined that the words whose root is sin-mem, in the contexts of ribbit and motzi sheim ra, are meant to participate in a gezeirah shavah. These words teach us to punish a motzi sheim ra only if he used money to hire false witnesses (to the exclusion of a motzi sheim ra who relied on volunteer false witnesses), just as ribbit is relevant only when money is used. The second type of gezeirah shavah consists of a Sinaitic tradition that a topic or pair of topics (i.e. ribbit and motzi sheim ra) are meant to participate in a gezeirah shavah, followed by rabbinic elaboration of which words (i.e. sin-mem) link the topics and which laws are derived therefrom (i.e. we do not punish someone who relied on volunteer false witnesses).

The Rashba (Bava Metzia 61a) is uncertain about precisely which type of gezeirah shavah links ribbit to motzi sheim ra via the word sin-mem. Furthermore, the Rashba notes two halachic questions – first, whether or not rib-

bit applies to land, and second, whether or not we punish someone who hired false witnesses with cash equivalents such as fruits or tools – whose outcome hinges upon which type of gezeirah shavah is being used.

If the topic-linking type of gezeirah shavah was employed, writes the Rashba, then the laws of ribbit must be applied wholesale to motzi sheim ra. Thus, when the Gemara (Ketubot 46a) derives from ribbit that one who hires false witnesses for land is not punished, it must mean that the ribbit prohibition does not apply at all to land. Indeed, Tosafot (ibid.) suggest a scriptural derivation permitting lending land for ribbit, although no such derivation is advanced by the Gemara. Moreover, if the topic-linking gezeirah shavah is being employed, the Gemara must hold that a motzi sheim ra who hires false witnesses for cash equivalents is punished, just as one who lends fruits or tools for ribbit is punished.

If, however, the word-linking type of gezeirah shavah is employed, then the laws of ribbit need not be applied wholesale to motzi sheim ra. Rather, only the text surrounding the word sin-mem in the paragraph of ribbit must be applied to motzi shem ra. Since the text of the verse where sin-mem appears mentions only cash, the motzi sheim ra can be punished only if he hires false witnesses for cash. If, on the other hand, he used fruits or

tools to hire the witnesses, he cannot be punished. Moreover, this derivation can be accurate even if we are prohibited from lending land with interest, provided that such a prohibition appears somewhere other than the paragraph where sin-mem appears. Indeed, this understanding of the gezeirah shavah fits harmoniously with the Gemara's omission of a scriptural derivation to permit lending land with interest, which implies that we are forbidden from lending land with interest.

Yado al Hatachtona: Rashi's Response to the Selfish Socher

By Shlomo Zuckier

The beginning of Perek Hasocher et Ha'umnim (Bava Metzia 75b-76a) records the Halacha for cases where one side backs out of an employment deal:

Ha-socher et ha'umnin ve'chazeru ba'hen: yadam al hatachtonah. Im ba'al ha-bayit chozer bo: yado al hatachtonah.

If, after a project agreement (kablanut) between the employer and his hired hands, the employer backs out, yado al hatachtonah, his hand is below, as he receives the short end of the stick in each case.

What is included in saying that the employer loses out here? Rashi (76a s.v Ve'im) presents an interesting possibility. If the employer backs out in the middle, argues Rashi, he must pay his workers at least as much as was agreed upon, even if the cost of labor goes up. In other words, if he hired them for \$8 to do a job, and then backed out in the middle, though the rest of the job will cost him \$6, he still must pay the workers the full \$4. And in the opposite case, where the price of labor goes down, he must pay the workers more than the agreed upon price for their job. In other words, if the agreement was for \$8, and he backed out halfway through, and it will only cost him \$2 to hire other workers to finish the job, he must pay the original workers \$6 for their partial job.

Tosfot (76a s.v. Hasocher) take issue with Rashi's explanation. Why should the employer have to pay more than the agreed upon amount for the work? He is not hurting the workers; if anything, they now have a chance to make more money overall – for example, if they can make \$4 for the remaining time, as they were planning, they will now have pocketed a total of \$10! For this reason Tosfot reject Rashi's reading, and they would argue that the employer

would pay the workers \$4. If so, yado al hatachtonah refers to the case where prices go up, and he must pay them the original wage even if he will end up spending more money overall. [This is discussed in Tosfot R. Peretz in the name of Ri, and this discussion is cited in Ritva.]

Several meforshim come to the Rashi's defense. The Ramban (76b s.v. Noten), Ritva (76a s.v. Ve'im), and Nemukei Yosef (47a-b in the Rif's pages) argue that the reason the workers are paid \$6 for a (half) job that was originally priced at \$4, is because, due to the now-cheaper employment market, they will only receive \$2 for their services the rest of the way, and thus the employer is compensating them for that loss. Ritva presents his understanding of Rashi's opinion as saying that, since the employer hired the workers for \$8, he is responsible for their receiving this amount of money over their time of work. If they are asked to stop in the middle and can only receive \$2 for their work the rest of the way (due to the now lower rates), they must be compensated, and thus they receive \$6 for the entire job.

However, this explanation in Rashi appears to be somewhat problematic. First of all, why are we to assume that they can only receive work for \$2? Maybe the employer found some other workers who were willing to be hired for \$2, but the market itself was still strong. We never find either Rashi or the Gemara positing that they could receive work only for that lower price. Furthermore, we would expect Rashi to tell us the more novel point, that if the workers could not find any employment they would receive the entire \$8 from the original contract! At the very least, Rashi should connect the amount of money the employer must pay with his ex-employee's next salary.

But Rashi simply says, "Al korcho yitten lahem kamah shepasak, chutz mimah shetzarich lehotzaot behashlamatah," that the employer pays the rate they agreed upon, minus the further expenses he (the employer) will have.

He could very easily have said "minus what the workers can expect to earn," but he did not, instead focusing on the cost that the employer will have to expend to finish the job.

Given these difficulties, I believe it is possible to explain Rashi in another fashion. As Rashi's language focuses on the employer and his future costs, rather than the income of the workers, it is reasonable to assume that Rashi's reasoning centers around the employer. We can understand that the higher payment of \$6 is a penalty (kenas) that devolves upon the employer who backed out, rather than a form of compensation to the workers. As a measure taken against the employer's breach of contract, he is proscribed from earning any profit on this underhanded move. For that reason, the amount he pays the original workers is exactly enough to ensure that he not profit on the deal. The Halacha ensures that, at the end of the day, this employer will pay \$8 for both parts of the work, just as he committed originally.

We can explain this understanding of Rashi in one of two ways. The first possibility is that this penalty is established by Chazal out of a concern for the viability of the Torah's economic system. For very pragmatic reasons, Halacha should not allow people to profit by walking out of a deal.

However, there is another possible basis for this kenas, one not focused on economic expediency but on essentially ethical concerns. Earlier in the Masechta (Bava Metzia 44a), we find another case where backing out earns the moral outrage of Halacha:

Mashach heimenu peirot velo natan lo maot: eino yachol lachzor bo. Natan lo maot velo mashach heimenu peirot: yachol lachzor bo. Aval ameru: mi shepara mei'anshei dor hamabbul u'midor hapalagah hu atid lehipara mimi she'eino omed bedibburo.

If one reneges on an acquisition after paying money for fruits but before acquiring them, the deal is void but the person receives a curse; his actions are presented as tantamount to the sinners of the deluge and the Tower of Babel. Failure to stand by one's word, while not violating a formal prohibition, is the scourge of proper economic behavior, and it therefore receives a curse in one case (of acquiring fruits) and a kenas in another (of firing workers)

We can suggest a reason why the generation of the deluge is singled out as the first evil group of people who are compared to our reneging retrogrades. Just as the sinners who precipitated the flood would steal less than a shaveh perutah in order to not be held accountable for their offense, (Bereshit Rabbah Noach 31:5), employers, wielding all the power, who back out on the workers dependent on them just to make a little extra profit, might not technically violate anything (at least on a d'oraita level), but their attitude is fundamentally one of hashchatah, depravity. Chazal, according to Rashi, endeavor to limit this behavior by creating a kenas such that no misfeasor may benefit from his corruption.

Inyana D'yoma

The Mitzvah of Teshuvah

By Josh Wernick

As the Yamim Nora'im approach, teshuvah features prominently in everyone's mind. It is, of course, of paramount importance to do teshuvah during this time. But is there a technical mitzvah to do teshuvah? In Parshat Nitzavim, the Torah states, "V'shavta ad Hashem Elokecha." The Ramban comments that the Torah later refers to

this phrase when it describes "hamitzvah hazot," meaning that teshuvah indeed is a technical mitzvah.

There is much evidence that the Rambam has a more nuanced position. He states (Hilchot Teshuvah 1:1) that when one violates a negative commandment and wants to does teshuvah, he must do confess before Hashem. The

Rambam does not mention that teshuvah is a mitzvah; rather, it seems that teshuvah is something that leads up to confession. Furthermore, when Rambam cites the source for this obligation, he refers to a pasuk that describes confession - "V'hitvadu et chatatam." In his Sefer Hamitzvot (73), the Rambam also explains that there is a mitzvah to confess with teshuvah. In the koteret of Hilchot Teshuvah, the Rambam also describes a mitzvah to do "Teshuvah and confession." The Mishnat Yaavetz (O.C. 55:3) quotes a dispute whether this confession is considered part of the teshuvah process or is a separate Halacha. He also refers (54:1) to a dispute whether the teshuvah or the confession is the main part of mitzvah.

The Sefer HaChinuch (364) writes that there is a mitz-vah to confess. The Minchat Chinuch explains that there is a choice to do teshuvah- it is not an obligation, but rather a procedure, an option Hashem gave us. The Smag (16) explains that there is a mitzvat aseih to do teshuvah and to confess. Rav Soloveichik explains this Smag to mean that confession is a way to fulfill the mitzvah of teshuvah. The ma'aseh mitzvah is confession, while the kiyum ham-

itzvah is the teshuvah of the heart.

Rabbeinu Yonah explains that there is a mitzvat aseih to do teshuvah for sins committed from all year round. However, on Yom Kippur, there is a special idea of taharah, based on the pasuk "Lifnei Hashem titharu."

What exactly is teshuvah? On Rosh Hashanah and Yom Kippur, we exclaim that teshuvah, tefilah, and tzedakah have the power to destroy any bad decrees against us, as explained in the Gemara (Rosh Hashanah 17b). The Ritva explains that through teshuvah, a person comes to change his whole identity, allowing for the negative decrees to be eliminated. It is not just returning from one's bad ways, as Rashi explains, but a change in one's whole identity.

The Rambam (Hilchot Teshuvah 2:4) writes that through teshuvah, one needs to create an impetus for himself that he won't come to do a certain sin again. As we have seen before, confession is a necessary process to accomplish this goal. This idea also is also found in the Me'iri. May we all merit to do complete teshuvah before Hashem.

From the Parasha

Writing a Sefer Torah

By ZAC KATZ

In Parshat Nitzavim, we are given our 613th mitzvah, the mitzvah for every individual to write a Sefer Torah. This mitzvah is learned from the pasuk (31:19) "Now write for yourselves this song (i.e. the song of Ha'azinu)." This means: write for yourself a Torah, which has this song in it. The Sefer HaChinuch explains that the reason for this mitzvah is to enable people to have the Torah next to them at all times; by doing so, people will be able to learn from the Torah, fear Hashem, and keep His mitzvot. It seems that even today, each person should have a Sefer Torah; we have to understand why we seem not to practice this mitzvah. Also, we must consider whether the mitzvah is to write a Sefer Torah or to acquire a Sefer Torah for the purpose of learning it.

The Gemara (Sanhedrin 21b) rules that one must write his own Sefer Torah even if he receives one from his father. The Rambam (Sefer Torah 7:1) writes it is a mitzvah to write a Sefer Torah, and that if one writes it with his own hand, it is as if he received it from Mount Sinai. Even if he were to write just one letter, it is as if he wrote the whole Sefer Torah. If one does not know how to write, hecan ask someone to write it for him. But if one were to receive it from his father, he does not fulfill the mitzvah. It seems from here that the mitzvah is to write the Sefer Torah.

On the other hand, Rashi (Menachot 30, s.v. kechotef), seems to say that if one buys a Sefer Torah, he fulfills his obligation. The Rambam and Ramah argue on this, and say the only way to fulfill the obligation is by writing it personally.

The Sha'agat Aryeh quotes a Rosh, who seems to be on the side that one does not have to write a Sefer Torah. The

Rosh says that this mitzvah applied only in earlier generations, since they used to learn out of the Sefer Torah itself. After all, the mitzvah of writing the Sefer Torah is in order to learn from it. Nowadays, since we learn out of chumashim and printed sefarim, we fulfill the mitzvah through acquiring those sefarim.

Another reason why we seem not to practice this mitzvah is offered by Rav Shlomo Ganztfried. Rav Ganztfried suggests, based on a pasuk, that this mitzvah applies only until the time Torah Sheb'al Peh was written down; at that time, the mitzvah was transferred to the writing of Torah Sheb'al Peh.

In summary, according to some, the mitzvah is writing the Sefer Torah, while acquiring it would not suffice. Others argue that the mitzvah is having resources to learn from, and purchasing or acquiring a Sefer Torah or sefarim would fulfill the mitzvah. Rav Moshe Feinstein suggests that in order to fulfill the mitzvah according to all opinions, one should financially participate in the writing of a communal Sefer Torah.

The YU Ethicist

Judaism in the Age of Multi-tasking and Overspecialization

By Elchanan Poupko

We live in a time and age in which we are busier than ever before. In this age of multitasking, specialization, and tight economic climate, time seems to be one of the scarcest commodities people have. This is a challenge to everyone; yet to the committed Jew, it seems to represent an especially difficult challenge. With spiritual and religious responsibilities, the religious Jew finds himself walking an extra thin rope, attempting to balance scarce time and abundant responsibilities. It is at this point that the religious Jew finds himself in a serious moral dilemma: does one use this scarce remaining time for his or her own religious growth, or for the spiritual and physical well-being of others? Must one neglect his or her own spiritual growth for the sake of others?

This seems to be an ethical dilemma of the highest order. It becomes even more difficult and challenging when one has his or her own family and children; must one neglect one's own growth for the spiritual and emotional needs of family?

Let us examine both possible answers to this question. On the one hand, one may advance the principle of "chayecha kodmin" (see Bava Metzia 62a) to argue that one should do all he can to maintain and preserve his own spiritual well-being before attempting to further the spiri-

tual and physical well-being of others. One may not be expected to drop his own religious and spiritual responsibilities before going to help others, and one may not be expected to help others grow before assuring the growth and well-being of one's own family and children.

On the other hand, we must note, the alternative does not seem plausible either. Must we abandon the principles of arayvut, chessed, and communal responsibility? Must we relinquish principles that have been the veritable epicenter of our religion for the past thousands of years? (See Bereshit 19:19, Yeshayahu 56:1, and Michah 6:8.) Surely not! So we are left with this seemingly irreconcilable conundrum of personal versus communal responsibility.

Rav Moshe Feinstein rules (Iggrot Moshe E.H. 26:4) that just as one should give a tenth of his income to charity, so too one should dedicate a tenth of his time to others.

However, I would like to point out an important corollary to Rav Moshe's ruling, based on a story that took place in the early 1800s. A student of Rabbi Yisrael Salanter had become a successful businessman. One day, he presented the following question to Rabbi Salanter: "I have only fifteen free minutes a day," he said. "In those fifteen minutes, what part of the Torah should I study?" Rabbi Salanter responded to him that in those fifteen minutes, he should

learn mussar. "Do you mean that in the only fifteen minutes I have, I should study mussar? Not Gemara? Not Halacha, or Chumash?" the astonished student asked. "If you learn mussar for fifteen minutes a day," Rabbi Salanter responded, "you will realize that you have more than just fifteen minutes a day to learn."

Similarly, in our situation, without sensitivity to the needs of others, one cannot begin making suggestions or calculations. Before we acquire sensitivity, we are like Rabbi Salanter's student who thought he did not have time. Furthermore, without sensitivity, we probably will not realize that people are really in need out there. Who would think that our roommate, classmate, or the person next to us in the Beis Midrash was going through difficult times, and that some interest, attention, and caring

might save his day? Who would think that a quick phone call before Shabbat to the orphan, widow, convert, or to the elderly, might be the thing that will give him or her strength to go through another challenging week? Clearly, a sharpened awareness about the pivotal roles chessed and mutual responsibility play in Judaism is necessary not only to realize that we have the tools for the solution in our hands, but also to see that there is a problem to begin with.

So how do we balance are our spiritual needs with the responsibilities to others? We dare not compromise our responsibilities to ourselves and to our families. But by realizing that the other is also a part of us, we will be able to realize that helping others is also, ultimately, helping ourselves.

From the Editor

The Mishnah (Avot 5:21) states that "Kol HaMezakeh Et HaRabim, Ein Cheit Ba Al Yado," "Anyone who brings merit to the masses will be spared from sin." The Mishnah's example of the Mezakeh Et HaRabim par-excellence is Moshe Rabbeinu because, as the Bartenura explains, Moshe taught Torah to all of Bnei Yisrael. And of course that is the best example; as we say every morning, Talmud Torah is equivalent to all of the other mitzvot. As such, the biggest Mezakeh Et HaRabim would be the one who taught the most Torah to the most people, and Moshe Rabbeinu definitely fits this bill.

The Lamdan hopes to fulfill a dual purpose: first, to provide the YU student body a journal in which to express their Torah thoughts and ideas in a clear and succinct form; secondly, to enrich a wider audience with first-rate divrei torah from the YU community. It is our belief that this Torah journal will be the catalyst for its authors to articulate their writing in an eloquent manner that can be enjoyed by a vast readership, with the ultimate goal l'hagdil torah u'leha'adirah.

As The Lamdan begins its second year of publication, we hope that all of you will join us in this wonderful project of being Mezakeh Et HaRabim. Anyone interested in contributing to future editions of The Lamdan can e-mail thelamdan@gmail.com, and we will be glad to make you a part of this undertaking.

