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THE LOVE OF ISRAEL AS A FACTOR IN HALAKHIC DECISION-MAKING IN THE WORKS OF RABBI BENZION UZIEL

At first glance, the subject which we have undertaken to clarify and the manner in which we have formulated it seem absurd. What is the connection between the love of Israel and halakhic decision-making? Isn't halakhah decided according to analytic halakhic principles? So what is the relationship between halakhah and the love of Israel?

But anyone who knew at first-hand our teacher, Rabbi Uziel of blessed memory, knows that his personality was stamped with the love of kindness and mercy to all people, and certainly to Jews, who are called children of God (*Avot* 3:14). It is not plausible that the heart which beat with pure love did not wield its influence on his general and halakhic thinking.

I am a witness that all his public service was deeply influenced by that love of Israel which infused him. I am not able in the framework of this essay to elaborate on actual incidents which I saw reflecting his manner of conduct. How would it be possible that his halakhic thinking not be influenced in this direction? But first we shall demonstrate that this matter is anchored in the principles of halakhic decision-making.

Said Rabbi Abba in the name of Shemuel: For three years Bet Shammai and Bet Hillel argued. Each side claimed that the halakhah should follow its opinion. A Heavenly voice proclaimed; both these and these are the words of the living God, but the halakhah follows Bet Hillel. Since both opinions were the words of the living God, why did Bet Hillel merit to have the law established according to them? Because they were gentle and *aluvin*, and they

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studied both their opinions and the opinions of Bet Shammai. Moreover, they even gave precedence to the words of Bet Shammai over their own words. (*Eruvin* 13b)

Rashi explains the word *aluvim* to mean “patient.” Yet there is a great and obvious question to be asked: Is halakhah determined on the basis of good personality traits and nice character? Let us first consider another question which has been dealt with by leading Rishonim.

The rabbis of France, whose words were quoted by the Ritba in his novellae to the tractate *Eruvin*, asked: “How is it possible that both opinions represent the words of the living God, when one prohibits and one permits?” They answered, “When Moses ascended on high to receive the Torah, he was shown 49 ways to prohibit and 49 ways to permit everything. He asked the Holy One blessed be He about this, and He said that the final decision was left to the sages of Israel of each generation, and the law would follow their decision. This is correct according to the interpretation and also has a hidden mystic meaning.”

The Ra’abad wrote as follows: “If a person with heretical tendencies contends that he is confused about the law since the sages themselves disagreed, you should immediately set him straight by telling him that our holy ancestors never argued about a basic aspect of a *mitsvah*, but only about derivatives. They heard the principle from their rabbis and did not inquire about the derivatives because they did not attend to their learning as much as was needful. For example, our sages did not argue about whether a candle should be lit for Shabbat, but only on the details of what may be used to fulfill this *mitsvah*. Likewise, they did not argue whether one must recite the *Shema*, but only on the details of when the *Shema* was to be recited.”

From all that has been stated we can learn:

1) There are the basic principles of a *mitsvah*, not only those explained in the Torah or received as a halakhah from Moses at Sinai, where there is no dispute at all about them, but even ancient rabbinic enactments such as the lighting of the candle in honor of the Sabbath—these are basic commandments about which there was never any controversy.

2) In the derivatives and details of the *mitsvot*, there were controversies “because the students did not attend to their learning as much as was needful.” The source of these words is in the tractate *Sanhedrin*, 88b: “When the students of Shammai and Hillel multiplied who did not attend to their learning as was needful, controversies multiplied in Israel and the Torah became as two Torahs.”

3) This controversy is not like the normal human disagreements where only one side can be correct. Rather, in all the details of the *mitsvot*, it is possible for there to be controversy, since Mosheh Rabbeinu was shown 49 ways to prohibit and 49 ways to permit. It was told to him that the sages of each generation would have to decide the law.

4) There are clear principles for making halakhic decisions in all controversies, whether the controversies are between Tannaim or Amoraim, or among the leading Rishonim or Aharonim, and even to the latest of the Aharonim. Nevertheless, each *posek* has the possibility, from the body of halakhah and without turning from its basic principles, also to decide in accordance with the circumstance and condition. How is this done?

The early disputants in halakhah were Bet Shammai and Bet Hillel, who argued on nearly 300 laws. Obviously, all these disputes arose on questions which were beyond the accepted and decided halakhot. They argued over specific details which were not clear to them or about new situations which had not come up before.

Much effort has gone into the explanation of the principles of the method of Bet Shammai who generally tended to be strict, in contrast to Bet Hillel who generally tended to be lenient. It is likely that all the explanations have some basis. But we will consider one fundamental explanation, the one hinted at by the *beraita* with which we began this discussion. Since the words of both Bet Hillel and Bet Shammai were the words of the living God, why was the halakhah established according to Bet Hillel? Because they were gentle and patient. It seems to me that our rabbis have hinted here at the basis of the lenient approach of Bet Hillel (stressed in those details which were not expressly clarified in the halakhah received by them). In saying that both opinions represent the words of the living God, we learn that the sages of Israel have a right to decide the law in whatever manner seems correct to them. Obviously this does not mean that they can be arbitrary; it seems that the rendering of a decision in such cases rests within rabbinic authority so they can judge according to the circumstance and situation. Therefore, since Bet Hillel were gentle and patient, they sensed, in their humility and patience, reality, human frailty, the difficulties of life—the reality which is not always paralleled in theory and good intention. They rendered decisions based on the authority vested in them and tended to leniency. Bet Shammai, who were more exacting, were not concerned with such matters, and they used their authority to rule strictly. Let us consider just two examples.

Our rabbis learned: How do we dance before the bride? Bet Shammai says, the bride as she is. (Rashi explains, what do we say before her? We praise her as

she actually is according to her beauty and status.) Bet Hillel says, beautiful and pious bride. Bet Shammai stated to Bet Hillel: If she were lame or blind, can you say she is beautiful and pious? Doesn't the Torah teach us to stay far away from falsehood? Bet Hillel responded to Bet Shammai: According to you, if someone made a bad deal in purchasing something from the store, should you praise the item in his presence or ridicule it? One should say that you should praise it in his presence. From this our sages taught that a person should always have his thoughts intertwined with the thoughts of others. (*Ketubbot* 16b-17a, see also the *Tosafot*)

Now, both the words of Bet Shammai and of Bet Hillel were the words of the living God. Bet Shammai's words were based on a clear statement of the Torah calling upon us to remove ourselves from falsehood. Nothing could be truer than that. But it is also true that if one follows truth strictly, human society cannot maintain itself. Would it not destroy the life of this bride if her husband realized the true opinion of those who came to praise her? After all, she did find favor in his eyes so that he chose to marry her, and in his eyes she is "a beautiful and pious bride." Therefore, the words of Bet Hillel are also the words of the living God, and there is no falsehood stated here (see the *Maharsha* on this text.)

The second example regards a bailee who thought of absconding with the object entrusted to him. The verse (*Shemot* 22:8) states that one is culpable "for every manner of sin." Bet Shammai states that this teaches that a person is responsible even after speaking of taking the object. Bet Hillel says that a person is not responsible until he actually takes it, since the verse also states (22:7) "If he has not reached out his hand against the property of his friend."

Bet Shammai said to Bet Hillel: Has the Torah not already stated that one is guilty for every manner of sin (including speech)? Bet Hillel responded: But doesn't the Torah also say that a person is guilty only if he reaches out his hand against the work of his friend? If so, why does the Torah state "for every manner of sin"? I might have thought that a person would be guilty if he himself took the object entrusted to him; but how would I know that he is guilty if he instructs his slave or messenger to take it? We learn this from the phrase, "For every manner of sin." (*Bava Metsia* 43b)

From this example, we may learn that both opinions can be true. There is no clear logical reason which compels us to obligate a person for saying that he will take the object or to declare him guilty only if he actually does so. Both opinions base themselves on the authority vested in the sages of Israel to render halakhic decisions. Bet Shammai ruled strictly because by uttering one's desire to take the object of another person which was entrusted to him, one becomes obligated for anything that happens to that object. And the verse is cited as proof. But Bet Hillel tended to be lenient. They considered

the human frailty and evil inclination. Perhaps the person's economic condition at that moment led him to this evil thought. Nevertheless, he did not actually do anything wrong. Since Bet Hillel were gentle and patient, they did not rule strictly on the basis of speech alone. And they too relied on a verse in Scripture, and they freed him from obligation in case of subsequent damage which occurred beyond his control.

In our generation, there is a clear decision-making process, and there are accepted principles for rendering decisions. Nevertheless, there is a great basis in decision-making for the important principle of gentleness and patience. This is the power of the Torah of God which is the eternal Torah. It could not be eternal unless it left authority to the *posek* to rule according to accepted principles of decision-making, among them having an awareness of the weakness of humans and their needs, as in the case of Bet Hillel who were gentle and patient. The *posekim* and teachers of law in all places and times have known the implications of these words for the practical application of halakhah.

After this introduction, let us now seek to understand the approach and the principles of thinking of our teacher, Rabbi Benzion Uziel of blessed memory. We should first note that he was very great in Torah knowledge. His understanding encompassed the span of the sea of halakhah and our holy Torah. In addition, he apprehended things quickly and clearly; he was a man of profound analytic ability. To these we may add the fact that he was an outstanding student of Bet Hillel who were gentle and patient. He was very humble and patient, graced with a profound and sincere love of Israel. Respect for others and their needs played an important role in his thought and in his halakhic decision-making. All this we shall attempt to prove by considering decisions he rendered on practical questions which were put before him (and not on other of his halakhic writings). From them, we can gain a sense of the love of Israel which infused his heart.

A GRAFTED *ETROG*

This is an ancient problem dealt with by the great *posekim* throughout the generations. The question became more of a reality with the reestablishment of Jewish settlement in the land of Israel. Rabbi Uziel was asked to render a decision on the status of a grafted *etrog*. He himself wrote, "Many great rabbis dealt with this question, some forbidding and some permitting, and all offered reasons and lengthy explanations to justify their positions." Rabbi Uziel also considered

the details of the halakhah with a sense of pure halakhic analysis. He concluded that "all who buy *etrogim* grown in Israel, even if it is known that they were grafted, may rely on the opinion of those who permit them."

I wish to underscore an important point for our topic, a statement of Rabbi Uziel at the conclusion of his responsum. He cited the words of the late *Rishon le-Zion, Yissa Berakhah* (Rabbi Yaakov Shaul Elyachar) who also had permitted the grafted *etrog*. The latter had relied on a comparison with the *mitsvah* of giving precedence to a blessing over the seven species for which the land of Israel is praised (*Berakhot* 40). Even according to the opinion that one should give precedence to the fruit which one likes best, this debate only is in regard to things which will be eaten. But in a matter of a blessing over a *mitsvah*, everyone would agree that one should give precedence to the fruits of the land of Israel. Rabbi Uziel disagreed with this argument, believing that the issue relates only to the seven species for which the land of Israel was praised, but that there is no evidence that one should seek out fruits from the land of Israel in order to bless them. However, he concluded,

... even though halakhically there is no law to give precedence to the fruits of Israel, nevertheless because of the love of the land and the *mitsvah* of settling Erets Yisrael, it is a *mitsvah* to seek out *etrogim* grown in Israel. This is in order to aid those who exert effort to establish the land among the Jewish people. Anyone who prefers *etrogim* grown in the diaspora sins against his people and his land, since he weakens the position of his brethren who dwell in the land of Israel and who wish to support themselves by their labor. (*Mishpetei Uziel*, [henceforth: *MU*] first edition, *Orah Hayyim*, no. 24. See the responsum for further amazing comments.)

Even though there is no compelling halakhic reason to permit them (and a case can also be made to prohibit them), Rabbi Uziel argued that there was a responsibility to purchase such *etrogim* out of love for the land and to participate in the *mitsvah* of settling the land, strengthening the hand of the laborers so they may support themselves from their work. These words speak for themselves.

THE RECITATION OF BLESSINGS BY WOMEN ON POSITIVE COMMANDMENTS BOUND TO TIME

Much ink has been used to clarify this significant halakhah. The conclusion has been reached that women who follow the opinion of Rabbeinu Tam, and who recite blessings on positive commandments bound to time, are not guilty of reciting needless blessings. The controversy among the great *Rishonim* and *Aharonim* in this

halakhah is well-known (see what I wrote in *Mekor Hayyim ha-Shalem*, vol. 1, chapter 5). The opinion of those who strongly limit women from making blessings on positive commandments bound to time is also well-known. When Rabbi Uziel considered this issue, and reached his conclusion based on halakhic analysis, he added an important conceptual point, relating to our present discussion, and said (in the general principles at the end of *Mishpetei Uziel* on *Hoshen Mishpat*, no. 4):

And this relates to all *mitsvot* with the exception of *lulav* and *shofar*. Since they hint at the unity of the heart of all Israel towards their Father in Heaven and to the elevation of Israel's reputation before Him—and in this regard women are also included—therefore women may make blessings on these *mitsvot*. Indeed, this custom has spread throughout all the Jewish communities, and one should not deviate from it.

It is worthy of note that he used the concept of the unity of the Jewish people as an additional support to the halakhic basis of his decision.

A PERFORATION IN THE STOMACH

In the early days of Jewish settlement in Palestine, when economic life was beginning to develop, Rabbi Uziel was asked about the frequently occurring problem of cattle suffering from a stomach problem which endangered their lives. In order to cure them, a certain implement was inserted through the skin into the stomach. In this way, the excessive air was released from the stomach and the animal returned to health. In a short while, the hole in the stomach, created by this incision, healed completely. The difficult question was whether this animal is made *terefah* by having had a hole in its stomach. If it is, its milk is forbidden during its lifetime, and its meat is forbidden after *shehitah*. The animal should be killed and sold to non-Jews, so that Jews will not drink its milk nor eat its meat. Rabbi Uziel dealt at length with this serious question, basing himself on halakhic sources and his consultation with a veterinarian.

After a deep halakhic analysis, he made a final—even decisive—point to conclude his inquiry (*MU*, second edition, *Yoreh De'ah*, no. 3):

The situation demands [that we not prohibit such animals] because if we do prohibit them, we will preclude the possibility of Jewish involvement in the milk industry, and we will remove an important economic enterprise which supports purveyors of drink and food to the entire public. In such an instance, certainly we are allowed to say that “Rabbi Shimon is worthy enough that we

may follow his opinion in a crisis situation." So we will rely on the opinion of those who declare the animal to be *kasher*, even when an incision has been made in its stomach at a certain point under its bones.

We see that a concern for economic life and the income of milk purveyors led Rabbi Uziel to rule leniently in this special case. This question apparently bothered him greatly, and he was reluctant to take full responsibility for his decision. He sent his responsum to his colleague, Rabbi Isaac Halevy Herzog. When Rabbi Uziel received Rabbi Herzog's response agreeing with him, Rabbi Uziel wrote to him, as one who had had a heavy rock lifted from his heart (*ibid.*, no. 4):

I read your epistle with great joy . . . may your mind be at ease as you have eased my mind. From the time I faced this question, I suffered greatly in order to resolve it. I saw in it an essential problem which affects our entire settlement, and our milk industry in particular. Therefore, I sought arguments to be lenient and I sent them before you. . . . I was greatly gladdened by your important conclusion using the power of lenience. May your strength on behalf of Torah be enhanced. (*MU, Yoreh De'ah*, no. 9).

In his answer to this serious question, we see Rabbi Uziel's stature revealed as a person of kindness and humility, one who loves Israel, a student of Bet Hillel, pleasant and self-effacing.

A NON-JEWISH WOMAN WHO MARRIES A JEW: QUESTIONS OF CONVERSION

In the halakhic field which deals with personal and family matters, Rabbi Uziel is exceptionally strong. He proved his power in halakhah and also his great sensitivity, his recognition of his responsibility to help solve the problems of his generation, in the fashion characteristic of his approach.

Exile has led to intermarriage. This is perhaps the greatest curse of exile, as the Torah itself has stated: "And you will be lost among the nations and the lands of your enemies will swallow you" (Vayikra 26:38). This may refer to physical or spiritual destruction.

During the period when he served as Chief Rabbi of Salonika at a time of its efflorescence, he dealt with a question of a Jewish man who had been married to a non-Jewish woman for several years, and to whom a child had been born. The woman now wanted to convert to Judaism and be married to her husband according to the laws of Judaism.

The first part of his responsum dealt with establishing the permissibility of performing this conversion, a far-ranging decision.

Here, too, he added his personal insight following his halakhic analysis. "If we do not permit him to marry her after her conversion, they will remain married all their days with her being non-Jewish. Their children will be products of a mixed marriage, uprooted from the soil of Israel. May God in his mercy return us to a better situation" (*MU*, first edition, *Yoreh De'ah*, no. 14. See what I wrote on this in *Aseh Lekha Rav* 3:29).

In the second part of his responsum, Rabbi Uziel dealt with the question of whether the woman be required to wait the three-month period before marriage. This is a great controversy among *posekim*. He examined the various arguments relating to this halakhah, concluding that the essential law required the three-month waiting period (indeed, this is the obvious meaning of the halakhah expressed in the clear language of the *Shulhan Arukh*). Rabbi Uziel listed the opinions of those who ruled leniently, since he believed that the couple certainly would not accept the decision to wait the three months.

For this reason it appears to me that we should rely on the position of those who are lenient because this is an *et la'asot la-Shem*. We should permit their marriage after informing them that it is proper for them to wait for the three months. In this way we have saved our own souls. The children of Israel are holy and will listen to the voice of their teachers; and those who listen will be rewarded and will receive a good blessing.

Rabbi Uziel returned to this question again (*MU*, *Even ha-Ezer*, first edition, no. 26), and it is clear that he sought a compromise between what appeared to him to be the basic law and the hard reality. With difficulty, he permitted the couple to be married according to halakhah.

To speak the truth, many rabbinic courts are lenient in this matter. Many others turn their eyes from the subject altogether. Those who take the stricter view have ample authority, and perhaps it is better to follow the stricter view not to perform the marriage until the end of the three-month period, since it is possible that we have not saved our souls merely by informing them of their responsibility. If we were not to perform the religious marriage ceremony for them, they would be responsible for their own actions, and we would not be responsible for them. I have seen a number of decisions rendered by rabbinic courts which were strict in this matter.

AGUNOT

Many questions came before Rabbi Uziel in the matter of *agunah*. When the decision to permit the woman to remarry was more or less

clear, Rabbi Uziel did not need to present humanistic arguments relating to the suffering of the *agunah*. But when a case was more difficult and the ruling to permit was not altogether clear, then he invoked arguments reflective of his intense sensitivity to the sufferings of others. A certain *agunah* appeared before his Bet Din. Her husband had left his home in Petah Tikvah on 25 Nisan 5681, with a group of men who were going to defend the residents of Tel Aviv who were being overpowered by Arab rioters. The man disappeared. He never arrived in Tel Aviv, nor did he return to Petah Tikvah. In opening his lengthy responsum on this case, Rabbi Uziel wrote:

Since I am aware of the suffering of this distressed woman who has been an *agunah* for about ten years, and since I listened to the rule of our early and later sages to try to rule favorably on behalf of an *agunah*, I have undertaken to clarify this question in all its aspects based on halakhic principles, in order to permit her to be freed from the chains of being an *agunah*. I place my trust in God that He will save me from errors and will teach me wondrous things from His Torah.” (*MU, Even ha-Ezer*, first edition, no. 29)

PRE-NUPTIAL AGREEMENTS: A SUGGESTION TO SOLVE THE *AGUNAH* PROBLEM

The abandonment of God’s ways and His Torah has without doubt caused weakness also in the area of family life, which has been a sacred national stronghold. In the words of Rabbi Uziel (*ibid.*, no. 44), family life was the “tabernacle of peace and love, pleasantness and joy for all the house of Israel” (*MU, Even ha-Ezer*, first edition, no. 44).

Difficult days came. Major breaches were made in the wall of the sanctity of the Jewish household. The rabbis of Istanbul turned to Rabbi Uziel with their suggestion to make an ordinance calling for conditional *kiddushin* (pre-nuptial agreements) in order to resolve difficult problems relating to the *agunah*. Rabbi Uziel opened his response to them by saying:

When I was in the exile, serving as the chief Rabbi of Salonika, I felt all the bitterness of this question. In the rabbinic courts in the exile, these sad cases come before them regularly—abandoned widows tied to brothers-in-law for *yibbum*, but the brothers-in-law have disappeared; living widows, abandoned by their husbands—they are young, and their husbands have disappeared, with no sufficient testimony available to free them from the chains of *agunah*. . . . The rabbis sigh deeply from heartfelt pain, due to their inability to save these women. This condition of hopelessness can lead to apostasy or immorality.

After this opening, Rabbi Uziel described at length the previous status of the Jewish home “filled with happiness, peaceful life, quiet

contentment.” The destruction of this lifestyle had followed as a result of the movement away from Torah study, following the ways of God, providing proper education for children, etc.

Then, Rabbi Uziel turned to a halakhic analysis, long and profound, where he engaged in discussion with the rabbis of Istanbul, who were themselves great men in Torah. Still, Rabbi Uziel rejected their suggestion, feeling that it would bring about more harm than good.

In Iyyar 5695, Rabbi Uziel wrote an article in *Ha-Ma'or*, then published in Tel Aviv. (It later appeared in *Mishpetei Uziel, Even ha-Ezer*, first edition, no. 45.) The article relates to a responsum of Rabbi Yaakov Mosheh Toledano, rabbi of Alexandria, who offered a solution to the *agunah* problem. His suggestion was that at the time of *kiddushin*, the bridegroom must state clearly that he is betrothing his wife on the basis of the approval of the rabbinic court of the city; should they find that he does not behave with her properly, they have the power to annul the *kiddushin* retroactively. This condition would be made at the time of *yihud* and the *shevuah*.

Rabbi Uziel reacted to this with his characteristic enthusiasm and his deep-felt love of Israel:

However, it is impossible to completely avoid dealing with this bitter question (i.e., the suggestion of the rabbis of Istanbul which Rabbi Uziel had rejected). We see many young women who are left stranded all their lives, some due to the wickedness of their husbands, others because their husbands are in faraway places where there is no authoritative Bet Din available to arrange a divorce; and yet others who are tied to their brothers-in-law for *yibbum*. The results of this situation are many and bitter, and it is our responsibility to think and ponder over this question. In considering this suggestion of Rabbi Toledano, I have found that it has merit.

After a halakhic analysis, Rabbi Uziel supported the suggestion of Rabbi Toledano, with certain modifications. He added, though, that his words were only to be considered as a general suggestion, as a way of putting the issue on the table for consideration by the great halakhic authorities. Through this process, a proper solution could be found to save women from the *agunah* status.

Rabbi Uziel published another responsum in *Ha-Ma'or* (Kislev 5696—also published in *Mishpetei Uziel, Even ha-Ezer*, first edition, no. 46). It was written as a result of the reactions of rabbinic scholars to his previous responsum. Rabbi Uziel carefully considered and refuted the arguments against his previous decision. He concluded: “From all that has been said, it is clear that my original suggestion remains standing and has proper basis. However, I repeat that my words were only stated as a suggestion to halakhic authorities, and not more than a suggestion.” Since the topic of our discussion is the

love of Israel as manifested in Rabbi Uziel's halakhic decisions, the following words, written at the end of this long responsum, are relevant:

In conclusion, let heaven and earth be my witnesses that I have not engaged in this question for the sake of arrogating to myself the privilege of solving a problem which my ancestors and rabbis had left unfinished. But the omniscient God of Israel knows that it is only due to a sense of responsibility to become involved in this painful question. Aside from the *agunah* problem itself which can create suffering for men and women, there is yet another consideration. The condition of our generation is such that this problem creates much damage which stems from a sense of helplessness. This bad situation will lead people to establish rules which are not halakhically sound, or they will seek to rely on civil divorces, or false witnesses, in order to break the bonds of being an *agunah*. Therefore, I have supported this ordinance of Rabbi Toledano which seems to me to be based on solid halakhic foundations—namely that everyone who betrothes does so on the approval of the rabbis. Moreover, let me say that since this is a general question, it cannot be solved by one rabbi, or even one rabbinic court in one country or another. This leads to division and destruction within the community of Israel, since all Jews in all their tribes and communities are one pure and holy family. A blemish in one place blemishes the entire family. Only with a general agreement which will be applicable to all Jews will we have the power to establish ordinances which are helpful for our time and for generations to come.

In these wondrous words, the radiant image of Rabbi Uziel shines before our eyes. With all his heart and soul he worked to solve this difficult problem, to eliminate sufferings of *agunot*, to prevent such painful occurrences. Still, he was concerned—as a leader and a rabbi—that an ordinance which would not be accepted by the general Jewish community would lead to divisiveness and negative consequences. Therefore he conditioned his suggestion, saying that it could only be implemented if the Jewish people in general accepted it.

These difficult questions continue with greater frequency and intensity, causing many rabbinic judges to lose sleep. To our pain, the sad prophecies of Rabbi Uziel have been completely fulfilled. Yet the courage to solve the problem is still lacking.

KIDDUSHIN IN JEST

The great rabbis of earlier and later generations have dealt with unfortunate incidents of *kiddushin* which were performed in jest or by deceit. The problem stems from the fact that *kiddushin* takes effect quite easily according to halakhah, requiring only something of the value of one *perutah* and two witnesses—and the lack of

understanding of the woman who does not fully realize what is happening and that the *kiddushin* are valid. She may become an *agunah* and be subject to blackmail if she wishes to receive a divorce.

Every rabbinic court has had similar questions, and each court has tried to save the oppressed from the hand of her oppressor. Nevertheless, there have been serious cases where it was difficult to free the woman without requiring a divorce; and where the man refuses to grant the divorce, the problem becomes even more serious.

In Adar 5674, such a case came before the court of Rabbi Uziel. It is noteworthy that in his responsum, he did not follow his normal halakhic process. Normally, he first analyzed the question, divided it into specific details, and then dealt with these details one by one. Only at the conclusion did he arrive at his halakhic decision. But in this case, he conducted himself with great feeling. He opened his responsum with his decision in favor of the woman. Only later did he give a detailed account of his reasons for this decision. This change in style testifies to his deep emotional response to this problem.

He wrote:

Truly, it greatly pains me to see this wantonness, where a man has betrothed a woman on the street through deceit. This is the manner of detestable and immoral people. This desecrates, Heaven forbid, the honor of our people and our Torah. It is our obligation to close the breach in such cases so that the laws of our holy Torah—all of whose ways are ways of pleasantness—should not serve the interests of despicable men who prey on pure and wholesome Jewish girls, who humiliate and abandon them. Therefore, I have set my heart and mind, with the help of the Lord, to bring to light the judgment of this poor young woman who was meanly and intentionally ensnared, so that we can clarify this case according to halakhah. In my humble opinion, after studying the books of our *posekim*, the earlier and the later ones who are our sustenance, I believe that the *kiddushin* in this case have no validity whatever. The young woman is free to marry whomever she wishes and does not require a divorce at all, the reasons which will be clarified now, with the help of the Lord, may He be blessed. (*MU, Even ha-Ezer*, first edition, no. 55)

It should be noted that this was a very difficult case. The decision in favor of the woman was based on a careful and deep halakhic analysis. Rabbi Uziel sought approval for his decision from his colleague Rabbi Avraham Yitshak Kook; and it was given.

A GET PREPARED BY NON-EXPERTS

Certain responsa reveal the *posek* in all his Torah greatness and glory. Such a responsum was written by Rabbi Uziel, concerning the problematic situation in which three unlearned people executed a Jewish divorce following the instructions in a book. They performed

the entire process without the knowledge and understanding necessary to undertake this project properly. Meanwhile, the woman who received that divorce married another man. Only later did a proper rabbinic court become aware of the problem. It is difficult to quote even a small portion of Rabbi Uziel's moving words at the opening of his responsum, but here is how he began his decision: "I was seized by shuddering and trembling when confronted by this outrageous situation." He added that if the woman had not remarried, he would have required her to receive another divorce as a safeguard. But since she had already remarried, if we required her to receive a divorce from both men, she would then be forbidden to both of them. Therefore, "in order to help this unfortunate woman, I find it incumbent upon myself to become involved in this case and to analyze the law. I have placed my trust in God, that He lead me in the path of truth so that we can establish this case according to the halakhah (*MU, Even ha-Ezer*, first edition, no. 67). This responsum, on one of the most difficult problems in halakhah, Rabbi Uziel sent to the Sephardic Chief Rabbi of Israel, Rabbi Hayyim Mosheh Elyachar, for his approval—and his approval was given.

THE CREDIBILITY OF A SINGLE WOMAN WHO CLAIMS THAT A CERTAIN MAN IS THE FATHER OF HER CHILD

I present the following case as a typical example of Rabbi Uziel's method. Although his personality was imbued with the love of compassion and mercy, he never allowed these feelings to pervert true judgment, Heaven forbid. The law was decided according to the halakhic principles which we have received. Compassion had the power of a "*mi-de-rabbanan*," leading him to find openings in difficult cases, to engage in cases that not every judge was ready to involve himself in, to search the sources strenuously in order to find a lenient position to be utilized in an emergency situation. But never was compassion invoked in a non-halakhic fashion. The following responsum proves this point.

A case occurred in Morocco (similar to hundreds of other cases elsewhere) concerning a single man who had had sexual relations with a single woman after having assured her that he would marry her. She became pregnant, gave birth, and now claimed with certainty that he was the child's father. He claimed, though, that he could not be sure of this, since if she had been loose with him, she may have been loose with others as well.

The head of the rabbinic court in Meknes ruled that the young man was obligated to pay child support, and to recognize the child as

his own. Among his other points, he wrote that in earlier days such incidents were not common and there may have been reason not to believe the woman in her claim. However, in our times when such occurrences happen all too regularly, this becomes akin to capital cases. If we don't recognize the man as the father, then a number of problems may result: 1) Abortion; 2) Abandonment of the child once it is born; 3) Murder of the child; 4) Selling the child to non-Jews who will convert him. Therefore, there is a need to be lenient.

Rabbi Uziel responded to this case: "The absolute opposite seems to make more sense. If in those days when immorality was not common our rabbis nevertheless stated that a woman who has been loose with one man might be presumed to be loose with others, then certainly in our times—when the bounds of modesty have been totally breached . . . we should suspect that she had relations with other men." Rabbi Uziel continued:

One should not make distinctions between the times of the Talmud and our own times, and between the times of the Ribash and our times. However, it is a *mitsvah* and an obligation upon us, compassionate Jews, to be merciful on the young women of Israel who have sinned. We should lighten their burden and have mercy on those who are orphaned from their fathers, so that we provide for their sustenance and education. . . . Yet, this quality of compassion does not overturn the law. . . . One may not favor a poor person in his judgment. . . . Compassion should not alter the law (*Ketubbot* 84a). This means that one cannot be merciful to one person at the expense of another; rather, the law must be judged according to its absolute truth.

I have written these words since I have seen in these days a number of rabbis who try to establish halakhah with the argument that times and conditions have changed, and because of compassionate feelings. Therefore, I found it to be my responsibility to say these few words which fulfill the short verse in the Torah, "Judgment is the Lord's." (*MU, Even ha-Ezer*, second edition, no. 2)

However, after a lengthy halakhic discussion, Rabbi Uziel agreed with the decision of the rabbinic court in Meknes to obligate the young man to pay child care, and that the child was to be considered his in every respect. This responsum has been cited to indicate the halakhic method of Rabbi Uziel and to clarify the boundary which he established for himself between the quality of compassion and love, as against the obligation of a judge to reach a true judgment.

"THE OPENING OF MY LIPS SHOULD BE FOR UPRIGHT THINGS"

Is this method of Rabbi Uziel, when he sits in judgment or to decide a law, easy? Or, perhaps we should ask, is it even possible? How can

one balance absolutely between love and compassion on the one side and strict adherence to law on the other? How can one avoid perverting the law by rendering a decision influenced by one's compassionate and loving nature? Let us consider what Rabbi Uziel said.

In his book, *Mishpetei Uziel*, in the section of *Hoshen Mishpat*, Rabbi Uziel began with a verse, "The opening of my lips should be for upright things." I do not know for certain why Rabbi Uziel used this verse for this section specifically or what hidden meaning is in it. Perhaps he was aiming at a solution to this difficult problem of ours, which is more apparent in the laws of *Hoshen Mishpat*. Rabbi Uziel stated clearly:

Among all the areas and halakhot, the laws concerning monetary matters excel since they relate to all the ways of life and society in all their various aspects. In these laws, one can see in their clarity the distinctive qualities of Judaism whose glory is righteousness and justice. This is an inheritance from the founding father of Judaism, as it is stated: "Because I know of him that he will command his children and household after him and they will observe the way of God to do righteousness and justice" (Bereshit 18:19). Righteousness and justice, which are the way of God in His providence and care for the world in general and in particular, are the foundation of the throne of honor of the God of Israel, all of Whose ways are righteousness and justice. They are the basis of the laws of justice of Israel and the foundation of the chair of the judges of Israel, who are commanded and warned to judge with complete and absolute righteousness. They factor into their decisions the principle of judging "within the letter of the law," utilizing the quality of mercy in order that they walk in the ways of the upright, doing that which is good and upright in the eyes of God and man.

Righteousness and justice, compassion and truth—these concepts exist simultaneously, as difficult as this is to comprehend. The fundamental teaching of the laws of justice is that one may not show compassion in justice, but should uphold the law whatever the consequences. On the other hand, we are taught to do that which is good and upright, and we may compel behavior which is beyond the letter of the law. The question stands in all its strength: How can we blend these two opposites? The short but profoundly poignant answer is: The Lord is with the judge; the holy presence of the God of justice hovers above the head of the judge as he sits in judgment, filled with fear and trembling, seeking complete objectivity to judge correctly, since justice is God's. The judge stands before God and God is with him in judgment.

Rabbi Uziel continued weaving the amazing ideas which stems from this principle which teaches that the polarities of mercy/truth and righteousness/justice are possible only with the help of God who sits with the judge. As it is stated, "The Lord stands in the congregation of the Lord" (Tehillim 82:1).

Here is another passage from his moving introduction: "The judges of Israel in all times exerted themselves with all their hearts and minds to bring peace. They presented the image of Judaism in its

merit and purity. . . . The entire image of Judaism is reflected in the judges of Israel, who were—and are supposed to be—the regulators standing at the rudder and the watchtower to guide the ways and to strengthen the fortifications for peace and unity, the eternal foundations of the nation of Israel and its Torah.” Again we find this central thought which is woven into all his thinking.

THE TESTIMONY OF A NON-JEW:
“PRECIOUS IS MAN
WHO WAS CREATED IN GOD’S IMAGE”

We have already said at the beginning of this discussion that Rabbi Uziel’s personality was stamped with the seal of love, mercy and compassion to all human beings. As the mishnah (*Avot* 3:14) states: “Beloved is man since he was created in God’s image.” This matter finds clear expression in a responsum which Rabbi Uziel wrote on his own, without anyone asking him an actual question. The issue was the validity of testimony given by a non-Jew. In passing, we learn from this responsum how much he respected all human beings. Moreover, we learn—and this is very important—his abhorrence of discrimination based on religion or race. These points are especially important today, when we have a battle in the Knesset where the religious struggle against acceptance of a law against racial discrimination. To our sorrow and shame, this has presented God’s Torah and His laws as being racist. No clever explanations will help erase the sad and painful impression that this battle—and particularly the desire to defend the law on the basis of halakhah—has caused a desecration of the name and honor of the halakhah. The words of Rabbi Uziel testify as one hundred witnesses that there is not the slightest trace of racism, Heaven forbid, in the Torah of God.

The responsum of Rabbi Uziel on this topic is undated, but seems to have been written following World War I, in the early days of British rule over Israel. This is implied in the opening of the responsum:

The new government rule in our land awakens a number of problems which have political and civil importance. One of the questions relates to testimony. Is it possible to validate the testimony of a non-Jew, according to the Torah? Or at least, are the rabbis empowered to make a regulation allowing non-Jewish testimony, when the public accepts this concept? This question is of great significance and relevance at the time when we are building our national home. One of the greatest yearnings of the people of Israel is the re-establishment of Jewish justice according to the laws of the Torah. And one of the most important goals of the redemption is to establish our system of justice as it was in ancient times. Therefore, when justice returns to our power, and

Jewish judges sit on the chairs of judgment, and the Torah rules in all matters among people—will we then be able to accept the testimony of a non-Jew and pass judgment based on it? It is impossible to answer this question negatively, because it would not be civil justice to disqualify as witnesses those who live among us and deal with us honestly and fairly. Weren't we ourselves embittered when the lands of our exile invalidated us as witnesses? If in the entire enlightened world the law has been accepted to receive the testimony of every person without consideration of religion or race, how then may we make such a separation? (*MU, Hoshen Mishpat*, no. 17)

Here Rabbi Uziel began his halakhic analysis, explaining the reason why idolators were disqualified as witnesses (*Shulhan Arukh, Hoshen Mishpat* 34:19). With his vast erudition and deep insight, he cited the responsum of Rashbats (Vol. 1, no. 78) who wrote: "I saw in the writings of the French sages that [non-Jews] are valid witnesses according to the Torah. We have found no place which even hints at their disqualification, as we have found in regard to relatives or other disqualified witnesses. Rather, the concern was lest they not tell the truth. And if we can argue that they will not lie, then we do accept their testimony. . . . If we have reason to believe that they will not lie, we accept their testimony."

Rabbi Uziel, too, proved this point from the Talmudic discussions. He also quoted from the Responsa of the Gaonim (no. 278): "This land in which we dwell, Baghdad, only accepts in the non-Jewish courts witnesses who are very intelligent and wealthy and of unblemished reputation. Such individuals are known as 'the upright.' If such witnesses testified on a document of sale or a loan and presented their testimony in the non-Jewish courts and the judge accepted them—then we [the Jews] also accept that document as being valid. This is our practice every day."

Rabbi Uziel wrote:

From this we learn that wherever there is reason to rely on their trustworthiness—even when their testimony was received in front of their own judges—we accept their testimony and rule according to it. So much more would this be true if their testimony were received before a Jewish judge, where the Jewish judge accepted the testimony as being true. In such a case we would render judgment on the basis of their testimony.

Rabbi Uziel then elaborated upon the opinion of those who invalidate the testimony of non-Jews. He reached the following conclusion:

According to this, in our times when the non-Jews who live among us are knowledgeable in law, science and business, and they respect their conscience and the truth, and they are commanded according to their own laws regarding giving true testimony (and they are punished for false testimony), and additionally, they would not want to defame their own honor (by lying)—all

this is sufficient for us to accept their words as truth, and verify that they are careful when their testimony is received. We assume they will not do something to harm their own reputations. According to Rashi and Rabbeinu Yakar and Tashbets, they are believed even according to the laws of the Torah. Only according to the Tosafot are they not believed by Torah law, unless a community established a regulation to accept their testimony.

Since there is no one who opposes accepting their testimony if there is a communal regulation, and since the public has the right to establish regulations which are helpful to them and which are required by the time (see *Shulhan Arukh, Hoshen Mishpat*, no. 25:23 in the gloss), certainly it is proper to establish this rule.

Rabbi Uziel concluded, knowing that it was not within the power of one person to establish such a rule: "I wrote this not as halakhah and not for practical implementation, but only as an attempt to clarify the halakhah." Among the things we have learned from this responsum, we have learned another important point: As a rabbi and leader in Israel, Rabbi Uziel pondered and considered regulations for the generation; he wrote and presented issues which were important for the sages of the generation to consider.

VOTING AGE

We cite the following responsum not for its specific topic but to extract from Rabbi Uziel's words a short statement which characterizes the pure love within his heart and soul: "the peace of our settlement." The responsum was written to the *Poel Hamizrahi* in Israel on 22 Kislev, 5698:

With great pleasure I read your worthy letter to me dated the 11th of the month. I express to you my great feelings of appreciation at your good will to find a solution to the labor problems of our settlement according to the law of the Torah of God. From my heart filled with love and appreciation, I say to you—my beloved friends: Follow this path, for there is blessing in it for the achievement of peace in our settlement. I would have wanted to answer all your questions, but am presently exceedingly busy . . . I will leave my answers to your questions for some days or weeks. For the moment I will just answer the question about the voting age for positions of leadership and for positions in the organization." (*MU, Hoshen Mishpat*, no. 4)

Let me note that Rabbi Uziel thought that anyone under the age of twenty should not have voting privileges, and he proved this from biblical verses and the words of our sages. He added: "Anyone under twenty is not permitted to vote or be elected to public office, and the decision of the majority is not enough to obtain this right for him." He concluded, though:

The law of the land is law in all matters of elections. The regulations of a country obligate the entire public of that country or city, for such is the halakhic practice among Jews.

THE LOVE OF ISRAEL, THE TORAH OF ISRAEL,
THE LAND OF ISRAEL

In conclusion we will cite the responsum of Rabbi Uziel which he wrote to a great rabbinic scholar, a farmer on a moshav (*MU, Hoshen Mishpat*, no. 14, "General Principles" at the end of the book). The words speak for themselves:

Your worthy letter reached me in due time. Very precious to me indeed are your wonderful words, you who fulfill the verse "and he dwelled there in the valley," teaching that he dwelt in the depth of halakhah after a day of hard labor in the field. . . . In general, your words are very pleasing to me because of their extensive knowledge and also because of the depth of their analysis. I offer you the blessing that you may merit to dwell in the depth of halakhah and to give blossom in your work both to the land of the valley and to the spirit of those who dwell there, its children—its builders, who will merit to rebuild the desolation of the land, building it in the spirit of God and His Torah which protects it. May we all merit to witness God's returning our people to Zion and to hear the sound of the *shofar* of redemption before which our enemies and detractors will tremble. To the voice of the shofar will gather all the Jewish people from the lands of their dispersion to the holy mountain in Jerusalem.

Amen and amen.