

BS"D

To: Parsha@YahooGroups.com
From: crshulman@aol.com

INTERNET PARSHA SHEET ON MISHPATIM - 5763

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From: torahweb@zeus.host4u.net
Subject: THIS SUNDAY - Jewish Parenting - Bergenfield, N.J.
The TorahWeb Foundation Proudly Presents.....
Jewish Parenting:
Obligations, Challenges, and Practical Application
Sunday, February 2, 2003
Location: Congregation Beth Abraham
[396 New Bridge Rd Bergenfield, NJ For directions see www.bethabraham.org and click driving directions]
In Conjunction With: Bnai Yeshurun, Keter Torah, Rinat Yisrael, and Tzemach Dovid
8:00 pm - Rabbi Herschel Schachter
8:45 pm - Rabbi Mordechai Willig
color flyer available at <http://www.torahweb.org/yomlyun.pdf> audio from past yemei iyun available at www.torahweb.org/audio

From: torahweb@zeus.host4u.net
Subject: Rabbi Herschel Schachter - Did the Rabbi Distort the Psak?
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www.torahweb.org/torah/2003/parsha/rsch_mishpatim.html

RABBI HERSCHEL SCHACHTER DID THE RABBI DISTORT THE PSAK?

The concept of human infallibility is foreign to our religion. All humans are frail. All men succumb to sin at some time or another. All humans err. Even Moshe Rabbeinu, who is assumed to have attained greater spiritual heights than all others, is described by the Torah as having erred, and also as having sinned. The nature of his sin is not exactly clear. The Ohr Hachaim quotes ten different interpretations regarding his sin at Mei Merivah. But still it was a sin of sorts.

We don't know if in fact a sacrifice of par he'elem davar shel tzibur was ever actually brought; but at least on the books, the Torah speaks of the theoretical possibility of the entire Sanhedrin issuing an incorrect "hetter" on a matter of "Kares", and having the majority of the Jewish population in Eretz Yisroel follow that erroneous psak, in which case the Beis Din would be obligated to offer the special sacrifice of Par He'elem Davar Shel Tzibbur. Every Beis Din has a tremendous responsibility not to err. It is humanly impossible for them to prevent error! It is for that reason that Hakadosh Baruch Hu promises us that "Elokim Nitsav Beadas Kel", that He will assist the rabbis in their deliberations - to see to it that they don't err. This divine promise only applies if the rabbis are G-d fearing. The possuk only promises us that "Sod Hashem Leyereiov", G-d will reveal his secret truth to those who fear Him.

Every so often we discover that an error was made in the psak of a rabbi. But unless this is obviously the case, we are

commanded by the Torah to follow the psak of the rabbanim, on the assumption that no error was made. Often a laymen, not familiar with the intricacies of halacha, will guess - based on common sense - that the rabbi's psak is in error. Laymen often don't appreciate the fact that halacha is a self-contained discipline, with a logic of its own, and the logic of common sense does not always determine what the halacha ought to be. We assume that G-d is there behind the scenes, guiding the rabbis in each generation in the development of the halacha. And if in different generations opposing views in halacha were adopted by the different rabbis, we are not that quick to jump to the conclusion that at one period in time the halacha was distorted. We often assume that "Eilu ve'eilu divrei Elokim Chaim." The Talmud records that during the period of the first Temple, for 410 years, the mitzvah of "nisuch hayayin" was observed one way; and then, when the second Temple was built, the rabbis of that generation did not follow the precedent, but required that the mitzvah be fulfilled in a different fashion - according to their understanding. They were not implying that during the entire period of the first Temple the mitzvah was never fulfilled properly. We assume that "eilu ve'eilu." The rabbis of the Talmud speak of "the book of Adam Harishon" which contains G-d's plan for the development of the halacha throughout all the ages. G-d will see to it that the rabbonim will not distort His Torah. And in an instance where the rabbis of a later generation determined that a specific position taken in an earlier generation was actually due to an error in judgement, they attributed that to Hakadosh Baruch Hu also. For His own reasons, G-d wanted the rabbis to take the wrong position. The Talmud quotes the possuk, "Meishiv chachomim achor, vedaitam yesakel."

Rav Soloveitchik zt"l pointed out on various occasions that when the Rambam speaks of the various heretics, he puts together the "one who denies the (Divine origin of the) Torah shebaal peh, and the one who contradicts its teachers." One who imputes ulterior motives to the psakim (halachic decisions) of an honest bona-fide rabbi, and says that Rabbi X was a convert, so that's why he always favors converts, and Rabbi Y didn't like women, so that's why in his decisions he will always put down women, and Rabbi Z is a Zionist, so that's why he will always pasken lehokol in matters regarding Eretz Yisroel, is in violation of this Ikar (principle) of faith. We not only believe that there existed at one time a Torah shebaal peh which was Divinely ordained; but rather we believe that Hashem continues to assist the G-d fearing qualified rabbis so that they should pasken properly. Emmunas chachomim is the foundation of all Orthodox Tradition!

<http://www.shamash.org/tanach/tanach/commentary/mj-ravtorah/mishpatim.02.ravtorah.02>

[From last year]

From: Rappsj@aol.com Subject: Shiur HaRav Soloveichik ZTL on Parshas Mishpatim To: <mj-ravtorah@shamash.org> mishpatim.02

Feb 10 2002

SHIUR HARAV SOLOVEICHIK ZT"L ON PARSHAS MISHPATIM (Shiur date: 2/3/81, Nordlicht tape 5087)

(The first half of this Shiur included the Rav's reminiscences of life in Europe and of Gedolei Yisrael. While not necessarily related to the topic at hand, they offer a picture of how Gedolei Yisrael perceived previous generations of Gedolei Yisrael, so I have included them in this summary.)

The Rav recalled that one of the many things that were never written down regarding life in Eastern Europe was that Mishpatim was the Shabbos dedicated to the annual festival of Chevra Shas.

The Rav recalled that in the town he grew up there were 12 shuls and on Shabbos Mishpatim the Chevra Shas would take over the services. The Shabbos morning Drasha was devoted exclusively to Torah Shebiktav. The afternoon Drashas was devoted to Torah Sh'Beal Peh, until Mincha. Because of the Halacha that we suspend Talmud Torah for Chacham Sh'mes, they suspended learning Gemara Shabbos afternoon because that's when Moshe died. Thillim was not studied until after Mincha on Shabbos. Apparently Mishpatim was viewed as the representative Parsha of Torah Sh'Beal Peh. This was integrated into the awareness of Torah Sh'Beal Peh. Nzikin was the preferred course of study in European Yeshivos, particularly Lithuania. In Berlin they had the custom to study some of the other tractates. The Rav noted that it was his innovation to introduce other tractates like Shabbos, Nidah, Mikvaos to the schedule of study because they are all Toras Hashem and must be studied. But even the the Gemara indicates the importance of studying Nzikin, as it says that 'one who wishes to be a scholar should study Nzikin, for there is no finer calling in the Torah than it'. The study of Nzikin contains some of the most wonderful problems through which one can sharpen his mind and intellectual capabilities. The Rav recalled that as a young boy he studied parts of Bava Kama and Bava Mtzia and these remained with him 'best'.

Nzikin is the strongest Seder in terms of inspiration and scholarship. Chachmei Yisrael gave preference to Nzikin. The best scholarly works, particularly among the Achronim, were composed regarding Nzikin. For example, the Ktzos HaChoshen revolutionized the study of Hilchos Nzikin. The Ktzos was superior to the Avnei Miluim, which deals with Nashim. The Rav noted that some attributed the difference in quality between the two works to the son-in-law of the Ktzos HaChoshen, who was a Maskil, that he was the involved with the Avnei Miluim. The Ktzos was a teacher who was relieved of his position by the people of his town because they felt he performed poorly. The Ktzos was so poor that he could not afford fuel to heat his home in the winter. The Rav surmised that the cold in winter forced him to say his Shiurim from under the blankets in his bed. The Rav was not sure how the Baalei Batim who attended his Shiur stayed warm ; -).

The Nsivos wrote the Chavas Daas as well, but the Nsivos is the better known of the two. The Nsivos was a Rabbi in a city and married into wealth and was thus able to support himself. The Rav noted that the only one who showed no preference for a particular topic was Rabbi Akiva Eiger. Reb Chaim recognized that his strength was concentrated in Shtaros and Tumas Mes. All of the above were revolutionaries in their time and methods of study, yet most if not all were more outstanding in the area of Nzikin.

Why this preference for Nzikin? The Rav felt that this preference was introduced by Hashem. After the receipt of the 10 commandments, Parshas Yisro concludes with a short topic related to idolatry and the building of the Mizbeach. The next topic in the Torah should have been the command to Moshe to ascend the mountain, as noted at the end of Mishpatim. That episode should have been followed by the story of the fright of the people regarding the fate of Moshe due to the delay in his return, as detailed in Parshas Ki Tisa. Yet the Torah continues with the laws in Parshas Mishpatim, various laws regarding torts, in all its many facets. One can also say that Parshas Terumah, which describes the Mishkan, should have logically followed Yisro because the building of the Mishkan would have been the conclusion of the command to worship Hashem on the mountain upon leaving Egypt, in other words Avodas Hashem. Avodas Hashem comprises two things, Kaballas Hatorah and, in order to facilitate the Avoda, Binyan Hamikdash. Moshe promised that they would build the Mishkan when he said Zeh Kayli Vanvayhu, Unkelos

translates this as I will build a home for Hashem, the Mikdash. Reb Saadyah Gaon classifies all 613 Mitzvos under the 10 commandments. The juxtaposition of the Mitzvos, represented by the 10 Commandments, with the blueprint for the Beis Hamikdash would have fulfilled the obligations of Avodas Hashem and Zeh Kayli Vanvayhu. Parshas Mishpatim could have been placed in Sefer Vayikra. So why was Mishpatim introduced here? Apparently Parshas Mishpatim is the footnotes and interpretation of the 10 commandments. Essentially Mishpatim deals with one central topic, Mitzvos Bayn Adam L'Chavayro. Kdoshim and Ki Taytzay also contain Mitzvos Bayn Adam L'Chavayro. But Kdoshim does not specify the punishment associated with each crime. [The Parsha of Arayos (forbidden sexual relationships) at the end of Kdoshim that mentions penalties, really belongs to the following Parsha of Achray Mos.] Mishpatim tells us what to do and what obligation or punishment I incur for Tashlumin, payment for the crime. However, the focus is on restitution, not punishment. Mishpatim stresses details of civil law in order to show that civil as well as moral relationships and laws are important in Judaism. Otherwise, the Torah could have left the details of the civil laws discussed in Mishpatim for Torah Sh'Beal Peh. For example, all the rules and regulations regarding the 4 Shomrim and charity in Mishpatim could have been left for Torah Sh'Beal Peh. After all, much of Bava Mtzia and Bava Basra deal with laws that are civil in nature. Why was it important to discuss it in Torah Sh'Biktav as well? Because Judaism emphasizes the importance of details, especially those of civil relationships. Therefore these topics were placed in Mishpatim, right after the 10 commandments.

Ultimately, all these topics (civil, moral) are Toras Hashem. One receives the same reward and inspiration for studying a Mishna in Chezkas HaBatim as he does for studying the Avodas Yom Hakippurim on Yom Kippur night. Even though Bava Basra deals with the laws of the squatter who is trying to take over the land with or without rights, it has the same potency of Kiddush, and Talmud Torah is a Mkadesh (sanctifies the one who studies), as the study of the Avodas of the Kohen Gadol. Both inspire the Jew the same way. The fact that the Torah deals with these issues and introduces the laws that regulate civil interaction and dispute resolution shows the significance of the topics and grants them 'moral law' type stature.

The Rav recalled that in Warsaw there lived a Gerer Chasid by the name of Palevsky who was also an admirer of Reb Chaim. The Rav called him an Adam Gadol, as to be an admirer of Ger AND Reb Chaim was a great accomplishment since Reb Chaim and Ger did not go hand in hand. He once told the Rav that he was singing and dancing while building a Sukkah when someone asked him why he was so happy and excited to place a piece of Schach on top of four boards. He answered that yes, he was feeling great joy. Apparently Judaism feels that this act is more than a simple placing of a cover on top of boards. Everything, even small actions, is within the purview of Judaism. This is our attitude towards Nzikin, torts. Judaism doesn't only deal with moral and immoral problems. It deals with everything in human life. Even when the moral character of some law is invisible, when one studies that law within the frame of reference of Halacha it becomes saturated with meaningfulness of a moral nature. When I study Bava Basra, on the one hand I am studying a tractate that has no relationship to morality, on the other hand it does. Details are very important in Judaism. For example, When the Torah says that Yom Tov starts with Shkiah it means exactly at Shkiah, the fraction of a second in either direction determines Chiyuv and Ptur. Again, the emphasis is on details in the observance of Mitzvos. Mishpatim is the representative Parsha about the importance of details.

After Hashem presented the 10 commandments, Moshe was ready to descend the mountain and present them to the people. Why did Hashem command Moshe to remain with Him? Had Moshe given them just the 10 commandments, they would be lacking the details of the 613 Mitzvos. They needed the Torah Sh'Beal Peh, represented by Mishpatim, to fully understand and appreciate the Torah. Hashem emphasized that every detail in man's life is saturated with sanctity and man must recognize and understand that sanctity, in moral or civil situations. Mishpatim is the detailed explanation of the 10 commandments through which Bnay Yisrael will understand the Torah Shbiktav. Without these details, the 10 Commandments would be incomplete, it would just be the highlights. Hashem told Moshe to remain with Him so He could give him Parshas Mishpatim and all the details of the law. Moshe was then commanded to carefully transmit the details to Bnay Yisrael, Simah B'pitem, to place the details in their mouths. Hashem told Moshe that the people would be an Am Segula MiKal HaAmim and later He tells him they will be a Mamleches Kohanim V'Goy Kadosh. What is the difference between these descriptions? Also, at the conclusion of Parshas Yisro, Bnay Yisrael accept the Torah and at the conclusion of Parshas Mishpatim there is another acceptance, followed by Moshe being commanded to ascend the mountain. At the end of Parshas Mishpatim, the injunction against the people ascending the mountain was lifted and Moshe was accompanied by Aaron and the elders. The elders ate and drank and they beheld Hashem. Why were there multiple acceptances and what is the significance of the story of the elders?

There are two distinct ways that Hashem reveals Himself to man. The first is the cosmic revelation, through creation and Maasay Breishis. The second form of revelation is through the supernatural, the miraculous. Initially Hashem promised Moshe that He would reveal Himself to the people through Ma'asay Breishis. Bnay Yisrael would be treated as the best among the nations of the world. However this form of revelation would not engender any major distinction or Havdalah between Bnay Yisrael and the other nations of the world. Simply to be better than the other nations of the world is no great Yichus, no great accomplishment. (The Kelmer Maggid asked what is Gog and Magog? He answered that the Hebrew letters G'o'g stands for Ganiv V'Gazlan. If so, what does Magog mean? Mer Ganiv V'Gazlan, a bigger Ganiv V'Gazlan than Gog.) The second promise of V'Atem Tihyu Li Mamleches Kohanim V'Goy Kadosh came after Bnay Yisrael accepted the Torah. Hashem said that He wanted to elevate Bnay Yisrael to a higher level than that of Segula M'Kal HaAmim. How would that be accomplished? Through a second type of revelation, that of prophecy, that would truly separate Bnay Yisrael from the other nations of the world. Hashem gave the Jew two alternatives at Sinai. The Jew can demonstrate that he is better than the other nations by simply performing the Mitzvos of Hashem. [The obligation to perform Mitzvos is linked to the presence of the Shechina in this world.] The rest of the nations have 7 Mitzvos, while the Jew must observe 613. Clearly, the Shechina was never taken away from the nations of the world, for otherwise the world could not exist. Prior to Mattan Torah, Hashem promised that with the acceptance of the vastly greater number of Mitzvos, the Shechina would relate to the Jews in a similar, though more favorable, way. After Kabbalas Hatorah, Hashem offered the Jews a second possibility, that of striving to attain the level of prophecy and through its attainment to demonstrate that there is a real separation between the Jew and the rest of the world, that there is no basis for comparison at all. When we say that one is the best, we are comparing one to another. It is a subjective statement of value and importance. But when we say that someone is different, it is

no longer a subjective evaluation. The promise of Segula from all the nations meant that even though you are relatively better, you still share the same destiny as the rest of the world. The promise of Mamleches Koahnmim Vgoy Kadosh means that the Jews will have a separate Giluy Shechina and distinct destiny from the rest of the world. There will no longer be a basis of comparison.

We now understand why there are two stories related to Bnay Yisrael's acceptance of the Torah and the story of the elders at the end of Parshas Mishpatim. They relate to the two distinct Giluy Shechina types that Bnay Yisrael experienced at Sinai. The first, described in Parshas Yisro, entailed limits that had to be observed. Hashem repeatedly told Moshe to warn the people not to trespass on Mount Sinai. Only Moshe could ascend the mountain. This revelation was based on the level Bnay Yisrael could attain as measured through comparison with the other nations of the world. The second story, at the end of Parshas Mishpatim, revolves around the granting of an additional Giluy Shechina, one based on miracles and prophecy, that would render meaningless any comparison between the Jews and the other nations. Now others besides Moshe could ascend the mountain. As the Torah tells us, Vayiru Es Elokay Yisrael V'sachas Raglav Kmasaei Livnas Hasapir Uketzem Hashamayim Latohar. The elders were now able to perceive Hashem. The warnings and boundaries were abolished, prophecy was available to all of Bnay Yisrael.

The Ramban says that that each time Hashem gave additional Mitzvos, an increase in Kedushas Yisrael was created and the recipients were required to undergo Tevila, immersion, as a conversion process. Avraham had more Mitzvos than Noach, Amram had more Mitzvos than Avraham. Bnay Yisrael underwent 2 separate conversions at Sinai that correspond with the two different Giluy Shechina stories. The first conversion was connected to the Giluy Shechina and role of Am Segula. They had just been given an additional level of sanctity with the acceptance of the 613 Mitzvos that necessitated a conversion process, Tevila. [This was initiated by the requirement for the people to purify themselves before Mattan Torah.] The second conversion happened when they were granted the Giluy Shechina of Mamleches Kohanim V'Goy Kadosh, to be demonstrated by their striving for and attainment of prophecy. This occurred after Mattan Torah, at the end of Parshas Mishpatim, where Moshe brings sacrifices and sprinkles the people. (The Rav noted th at there is a Machlokes between Rashi and the Ramban as to when the story at the end of Mishpatim took place. According to Rashi it occurred prior to the sixth of Sivan. According to the Ramban it took place after.)

The Ramban says in several places that Bnay Yisrael are not guided by the Mazal, but by Hashem Himself. Natural law is an expression of the Giluy Shechina of Maasay Breishis. But Bnay Yisrael received the promise that a higher Giluy Shechina, that of miracles and prophecy, has selected us and guides us. According to the Rambam, the highest aspiration of the Jew is to attain prophecy. Each Jew has the capabilities to do so. We can be content with simple observance of the Mitzvos, to perceive G-d through Maasay Breishis alone, through the attainment of Am Segula. Or we can strive to attain the level of Mamleches Kohanim V'Goy Kadosh, of prophecy, a higher level than Segula. Each of us has the ability to reach that level, to be as great as Moshe Rabbeinu, but it requires great sacrifice and effort. We can fulfill the obligation of Bo Tidbak, to cling to Hashem, through the attainment of Nevuah. It is up to us to act on that ability. Hashem promised us that we have the ability to achieve this goal if we persevere. This is the idea of Yemos Hamoshiach. The Rambam (see the conclusion of Hilchos Mlachim) describes the eschatological age as the world filled with the knowledge of

Hashem. This is the attainment of the Giluy Shechina through prophecy.
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From: RABBI YISSOCHER FRAND [ryfrand@torah.org]
Sent: January 29, 2003 To: ravfrand@torah.org Subject: Rabbi Frand on Parshas Mishpatim "RavFrand" List - Rabbi Frand on Parshas Mishpatim This week's class is dedicated in loving memory of Rev. Frederick Goldberg, L'zaycher nishmas Reb Efraim Fishel ben Yisroel.

Haughtiness Which Allows Us To Serve G-d

A pasuk [verse] in this week's parsha teaches that a person is not allowed to be a false (bribed) witness [Shmos 22:1]. The Talmud [Sanhedrin 29a] describes that we frighten the witnesses so that they will be encouraged to tell the truth. One opinion suggests that we tell them (based on a verse in Proverbs) that false testimony causes drought, which ultimately causes famine. A second opinion counters that this will not scare the witnesses because they can rationalize that they are not farmers, so they are not directly effected by drought. Another opinion suggests that we tell them (based on another pasuk in Proverbs) that false testimony causes a plague, which leads to illness and death. The Talmud responds that this too might not scare them because they may have the fatalistic attitude that "everyone dies when his time is up". Finally the Gemara concludes that we tell them "you will appear to the people who hired you as despicable people of infinitesimal moral value". We tell them that selling their integrity for money will make them appear to me miserable worthless people in the eyes of those who hired them. This, the Gemara concludes, will frighten them into telling the truth.

This appears to be a very strange Gemara. How is it that their love of money might blind them to the threat of drought and plague, yet not blind them to the threat of appearing to be miserable people?

Rav Henoch Leibowitz says that we learn an interesting insight into the personality traits of people from this Gemara. A person's sense of self and personal pride in who he is may be more important to him than even his money or his very life. People cannot exist without a sense that they are people of worth and value. A person needs to feel that he has scruples and morals - and that other people recognize that fact.

He says that we see the same principle from another teaching of our Sages, found in the Medrash Rabbah on this week's parsha. The pasuk says, "If you will lend My nation money..." The Medrash comments that the most difficult type of suffering that one can ever experience is poverty. The Medrash says that G-d gave Job the choice of suffering physically or becoming destitute. Job responded that he would rather suffer any punishment in the world other than poverty. He would rather experience anything other than the humiliation of going to the market place and not having any money to buy the basic needs of life.

Why was this so? It was not because Job loved money. It was because the humiliation of being penniless and destitute destroys a person's sense of self. That sense of self was more precious to him than his physical well-being.

Rabbeinu Yonah writes in Shaar HaAvoda [the Gate of Service] that a person must realize his self worth and that of his ancestry. He needs to feel that he is a 'somebody' and that he has importance. Rabbeinu Yonah writes that when a person is

confronted with the temptation to do something that is inappropriate, his sense of worth and his sense of aristocracy will stop him from sinning. He will be embarrassed to do such a thing because of his own self-worth and he will be embarrassed because of his parents.

A person can appeal to a healthy self-image to protect him from moral shortcomings. However if a person sees himself as a worthless low-life, he has nothing to which he can appeal. Dr. Abraham J. Twerski always mentions that the way his father, of blessed memory, would chastise his children was by telling them "es past dir nisht" (this is unbecoming of you). If we do not have a father around to tell us "es past dir nisht", we sometimes need to tell this to ourselves. "This is unworthy of me. I am bigger than this. This is beneath me."

Rabbeinu Yonah writes that this is "approved haughtiness", and is a primary entrance-way to proper service of G-d.

Transcribed by David Twersky; Seattle, WA DavidATwersky@aol.com
Technical Assistance by Dovid Hoffman; Baltimore, MD dhoffman@torah.org
These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape # 361, Bankruptcy. Tapes or a complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyechiel.org or visit <http://www.yadyechiel.org/> for further information. RavFrand, Copyright © 2003 by Rabbi Yissocher Frand and Torah.org. Join the Jewish Learning Revolution! Torah.org: The Judaism Site brings this and a host of other classes to you every week. Visit <http://torah.org> or email learn@torah.org to get your own free copy of this mailing. Project Genesis - Torah.org is a recognized charity and depends upon your support. Please help us by visiting <http://torah.org/support/> for information on class dedications, memorials, annual giving and more. Torah.org: The Judaism Site <http://www.torah.org/> Project Genesis, Inc. 122 Slade Avenue, Suite 203 Baltimore, MD 21208

AROUND THE MAGGID'S TABLE

By RABBI PAYSACH J. KROHN

~ Lost and Found

The Tosefta (Peah 3:13) relates a story about a pious man who was gathering bundles of wheat on his farm. Inadvertently, he forgot to collect one of them and it remained lying outdoors. When he realized later that he had forgotten a bundle, he became ecstatic. He ordered that the bundle be left in the field. The surprised son asked his father, "Why such joy that you want sacrifices brought?"

The father explained to his son that it is not often that one gets the opportunity to perform the mrtzvah of shikchah (leaving a forgotten bundle in the field - see Devarim 24:19). Thus his sudden 'good fortune,' which allowed him to fulfill this mitzvah, gave him cause to rejoice and give thanks to Hashem through sacrifices. (One cannot plan to perform the mitzvah of shikchah, for it is impossible to plan to forget something.) Pious Jews view their performance of every mitzvah as a privilege, not a burden. The minutes or even hours involved in doing a mrtzvah are moments to be treasured. It is for this reason that many Jews offer the prayer Hineni Muchan Umezuman - Behold, I am ready and prepared to perform ...' before they perform a mitzvah, to emphasize their preparedness and joy at what they have a chance to do.

R' Upa Geldwerth of Brooklyn witnessed just such a spontaneous burst of joy from one of the gedolim in our time, the Steipler Gaon, R' Yaakov Yisrael Kanievsky (1899-1985), when he realized that he could perform (what was for him) a rare mitzvah.

One time R' Lipa was studying in Eretz Yisrael, he made it a point to visit the Steipler at his home in Bnei Brak to seek advice and counsel. The Steipler, who made few public appearances, would

spend most of the day learning in his home on Rechov Rashbarn and then, during specified hours, would see the people who were lined up outside his door. He saw literally hundreds of people every week.

One time as R' Lipa spoke to the Steipler, the Steipler noticed that he was carrying a rare sefer, Kochav M'Yaakov, written by R' Lipa's great-grandfather, the Rimaliver Rai), R' Yaakov Weidenfeld (1840-1894).

The Steipler's eyes lit up. "You know," he said, "I have been searching for years for this wonderful sefer, but no one that I know seems to have it. Do you perchance know where I can buy a copy of this precious sefer?"

"Here, please take mine," R' Lipa offered. "I am a descendant of the Kochav M'y(iakov and I can surely get a replacement for myself through the family." "Chas veshalom Sone Matanos Yichye — He who hates gifts will live long (Mishlei 15:27)," the Steipler retorted as he quoted the famous verse. Having no other choice, R' Lipa told the Steipler where he thought he could purchase it.

A few weeks and a few hundred visitors later, R' Lipa returned to the Steipler Gaon. Once again he was carrying the sefer Kochav Miyaakov. The Steipler didn't recognize R' Lipa, but when he noticed the sefer he was carrying, he praised it as he had a few weeks earlier. When it became obvious to R' Lipa that the Steipler had not yet had the opportunity to purchase the sefer for himself, he once again offered it to him, explaining that as a family member of the Kochav M'Yaakov he could easily get another one. Once again the Steipler refused to accept it unless he could pay for it with an exchange of sefarim that he himself had written. The Steipler began piling up his own works, and said humbly, "For the value of what's written in that sefer, and for the fact that it's printed on American [superior] paper, here are these as equal payment." R' Lipa counted eight sefarim!

Then the Steipler asked R' Lipa whether he had cousins in Israel who were also from the family of the Kochav Miyaakov. "Yes," said R' Lipa, curious as to why the Steipler would be interested. "A descendant of the Kochav M'Yaakov was here a few weeks ago," the Steipler exclaimed, "and left something behind. Wait right here!"

The elderly Rav got up from his chair, rushed into the next room, and came back carrying something in a brown paper bag that had some writing on it. The Steipler removed the item — a brown scarf — from the bag, and said, "He lost this when he was here." R' Lipa was stunned. He had lost his brown scarf a few weeks ago, but had no idea where he had left it. R' Lipa nodded and said, "That is my scarf. It was I who was here, but I didn't remember that I forgot it here. I'm truly sorry for troubling the Rav."

"Now," said the Gaon, beaming, "I have a rare opportunity to fulfill a mitzvah that I hardly get a chance to fulfill, the mitzvah of haghavas aveidah (returning a lost object). "You see," the great Gaon continued, "I am confined here to this room most of the day. I am rarely in the streets. Where would I get the opportunity to find a lost item? But you, Baruch Hashem (blessed is G-d), gave me the opportunity."

The Steipler paused, then with great fervor said aloud, Hineni Muchan Umezuman Likayem Mizvas Aseh Shel Hashavas Aveidah — Behold, I am ready and prepared to fulfill the positive commandment of returning a lost item."

He then gave R' Lipa his brown scarf and a bright smile. R' Lipa also has the bag in which the scarf was kept all those weeks. On the outside is written in the Steipler's own handwriting, "Tuesday night, parshas Tetzaveh. Item inside that may possibly belong to a descendant of the Kochav M'Yaakov. "

From: DR. MEIR TAMARI [mtamari@torah.org]

Sent: Wednesday, January 29, 2003

To: business-ethics@torah.org

Subject: Business Ethics - Mishpatim

THE CHALLENGE OF WEALTH. MISHPATIM.

Mishpatim cover the whole gamut of business relationships and the widest spectrum of economic transactions. They relate not only to economic and material issues but have important spiritual and religious perspectives.

"These are the social laws that you shall put before them; before them and not before the nations of the world" (Talmud, Gittin 88b, based on Exodus, 21:1). Menachem Mendel of Kotsk asked, "Do only we have such ordinances? After all, every people and every nation have social laws. Only with us these laws are a way to worship G-d," came the reply.

"Moses said to Israel, 'G-d gave you the Torah, if you do not keep the dinim, He will take back the Torah'. Because He only gave the Torah in order that you keep the dinim, as it is written 'The power of the King is the Justice that He loves' (Shmot Rabbah)..... this includes the laws of returning lost articles and the [business] actions of people" (Abarbanel, Introduction to Sefer Shmot).

The discussion of Mishpatim will continue over a number of weeks, each one devoted to a different major sector of business behavior.

DAMAGES NEZIKIN-TORTS.

The Talmudic sages said, "One who wishes to be a saintly person, a chasid, will observe the laws of nezikin, [tort law] scrupulously" (Bavah Kama, 30a). It is in this perspective that we must study the laws of damages presented in our sedrah. Although they are meant primarily for the judge to be able to compensate the injured party, for those of us who are not judges, they come to teach us what we may or may not do. This is exactly the manner in which we study the laws of kashrut or Shabbat. Not in order to know what the punishment is but in order to prevent transgressing them.

Since space, light, air, water etc. - our environmental resources - are all limited, the benefit that one person or group derives from some economic act, causes damage, material or otherwise, to the property or personal rights of others. The issues involved in the resultant conflicts between the individual and the community will be discussed in the book of Leviticus. Here we are dealing with the conflict between two individuals or groups of individuals, arising from the restraints placed upon us by the proximity in which we live. In a Jewish perspective it is quite irrelevant whether such damages are caused by economically motivated firms, by individuals gratifying some ecological or aesthetic need as in the case of landscaping or home improvement, or even by simple vandalism. Halakhic sources are adamant that we are responsible for preventing such damage caused by our own actions, or by those of our employees or by our property. Further, we are liable to pay for such damages. (Choshen Mishpat, sections 153-156)

Our sedrah presents 4 major categories of damages caused by property. 2 of them like the ox, represent damage caused by living creatures through grazing or through walking. and fire typifying damages caused or spread by natural forces (Exodus, 22: 4-5). Then, there is the pit, the example of damage caused by inanimate objects (Exodus 21 : 33-34). The ensuing discussion in the Talmud (Baba Kama, chapter 1, mishnah 1), held a person responsible for the damage caused, even in areas that are public property; the pit dug in the public thoroughfare or the vehicle parked there. So too we would be responsible for damage from objects propelled by natural forces, if we set them

in motion. In the Mishnah, these are sparks from an anvil or chips from felling trees. In our own days, they are also pollution of water and air through industrial wastes.

Not only is the obligation to pay for the damage clear, but so is the obligation to prevent it. At the outset, a person may not destroy or damage even their private property, since we are only guardians of our economic assets, not possessed of absolute ownership of them. "He who tears his clothes, breaks his utensils or scatters his money in anger, should be in your eyes as one who serves idols". (Shabbat,105b). The biblical paradigm of this baal taschit, are the laws against destroying trees bearing edible fruit, in time of war for permitted military purposes. (Deut. 20:19). Even though this refers to trees belonging to an enemy, we are forbidden such destruction, since we are destroying part of the creation of the Lord, who gives humanity its sustenance. The rabbis extended this injunction to include all useful items, so that the waste through inefficient use of fuel, in our day, would be considered baal taschit.

We are obligated to take all the reasonable steps to prevent damages to others. It is important to distinguish this moral obligation from the obligation to compensate for damage caused. There are cases where it is cheaper to compensate the injured parties than to relocate or to make technological changes that would prevent the damage. Sometimes only few of the injured parties know their legal rights or are able to enforce them. Often the wheels of justice grind slowly, even when they do.

Nevertheless we have the obligation to prevent our property or our selves from causing damage. "The owners of a field must warn the owner of an animal that has entered fields or vineyards in search of food, irrespective of whether as yet any damage has been done. If the animal's owner does not prevent future entry, the owners of the fields may slaughter it according to the laws of shechita and the carcass belongs to its owner. This is because a person may not cause damage on the assumption that compensation will be paid, since it is forbidden to cause damage" (Mishneh Torah, Hilkhos Nizkei Mamon, chapter 5, halakhah 1). This idea of preventing damage goes beyond that caused by us or our property. It includes actions geared to saving people from financial loss or physical harm caused by others or even by natural causes. Basically this is flows from the mitzvah of returning lost articles (Exodus, 23:4) [preventing their loss being seen as such], and from "You shall not stand on your brother's blood (Lev. 19:16)- damim being literally blood but also money. So, one who has knowledge that can assist another in a court is obligated to come forward and bear witness. If we see a river or other natural force threatening the property of another, we are obligated to prevent it; the beneficiary is also liable to compensate us for any losses incurred in such actions. The same idea has been applied halakically, to informing the object of hostile plans or conspiracies in the market against them (Choshen Mishpat, section 426).

Naturally, the prevention of damages as often as not entail additional costs, so that it is necessary to see what limits if any are imposed on this obligation. Within their own property, each person is permitted to make normal and legitimate use of their property and assets. This does not mean ignoring the question of other people's welfare. Rather we need to balance our right to use our property against the welfare of others, both as individuals and communally. Where the damage is direct, we are obligated to prevent it and compensate for it. However, the property rights of the injured party and the injunction against causing damage may be limited in those cases where the complaint borders on selfishness or rests on an unwillingness to help our neighbors. The principle of one has a benefit and the other suffers no loss is a characteristic of Jewish behavior in this area as well. " A

person should not pour out well water [that is legally theirs] as long as there are others who need it" (Yevamot, 11b).By invoking my property right to the water, I am preventing somebody from enjoying a benefit. See how Rivkah is careful not to waste the water she had drawn even though this involved physical hardship of having to carry it back into the trough. "Where the damage is indirect and the injured party can easily prevent it or enjoy the same benefit simply by relocating, while the other party suffers great loss or cannot conduct normal every day activities elsewhere on his property, we obligate the injured party as a chesed" (Teshuvot HaRosh, section 108, subsection 10).

However, beyond any considerations of chesed or the dictum, 'one has a benefit and the other suffers no loss', there is the concept of reasonable risk that legally also limits prevention of damages. Since all living and all actions entail a risk of suffering damages, halakha freed us from having to prevent those things that do not affect average people in their normal activities yet may sometimes affect some people; costs of preventing anything ever happening to anybody would be prohibitive. So the fence that has to be erected to prevent anyone falling off a roof is only to be of a height or strength that could prevent a normal person from falling over simply by leaning on it. So too the gates etc that prevent animals from damaging others property are such as can withstand normal weather conditions. A worker who fell out of a tree from which people seldom fall, is not compensated by his employer, nor is the employer liable for wages lost through a worker's illness, nor for the medical costs during the period of the contract (Mishnah, Baba Bathra, chapter 2, mishnayot 8 -9. See Choshen Mishpat section 155, subsections 22 -23, based on them).

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From: National Council of Young Israel
[YI_Torah@lb.bcentral.com] Sent: January 27, 2003 To: List Member
Subject: Parshat Mishpatim Parshat Mishpatim 29 Shevat 5763 F
February 1, 2003 Daf Yomi: Shvuot 8
Guest Rabbi: RABBI CHAIM LANDAU
Associate Member, Young Israel Council of Rabbis
[Rabbi Chaim Landau is the rabbi of Congregation Ner Tamid in Baltimore, Maryland.]
Parshat Mishpatim: A lesson in equality
Are there any parts of the Torah more important, more significant, to the exclusion of others? Do we pick and choose what we consider to be the most important, as it appears to our intellects, or are all mitzvot created equal, and not given to be separated into major and minor leagues? We might answer that question with Rashi's comment to the very first letter to the Parsha, the letter Vav. He teaches us that wherever the word "Eleh" is used, it comes to indicate a separation from everything that preceded this

word. But when you add the Vav to the word, to spell "Ve-eleh", then this comes to inform us that we are adding the following section to that which came before. And so, just as the preceding section, Yisro, taught us that the ten commandments originated at Sinai from HaKodosh Boruch Hu, so too the commandments found in Parshat Mishpatim come from Sinai from G-d. To which we might ask on the Rashi: Did we really need to be told this? Isn't that obvious for all of us believing Jews. Surely everything in Torah came from HaShem. Answers the Terumas Hadeshen (Rabbi Isserlein) in the following manner: We would have thought that all mitzvot: bein adam lamokom - between man and G-d originated from HaShem for that would have strengthened our relationships to Him. But the mishpatim, dealing as they do with relationships "bein adam lechaveiro - between man and man," would have given rise to the idea that Moshe Rabbeinu added these on his own without any Divine sanction. In this regard, those from Sinai might have been accorded the title of being the real religious laws, while those from Mishpatim could have been entitled moral and ethical laws, not in the same category of those that preceded them. Thus, the Vav of "Ve'eleh" come to inform us that no such importance should be accorded one area of laws to the exclusion of the other. They are exactly equal, all from G-d. How exactly? We are told in Chapter 24, verse 6 that Moshe, in fulfilling the Bris (Covenant) Torah with HaShem, took "Chatzi Hadam (Half the blood)" in the basins, and threw half against the Mizbeach. What does "half" mean? More or less, or exactly? Rashi states that an angel descended and exactly divided the blood into two halves, one half of which was cast against the Mizbeach, the other half of which was cast on the people. Rabbi Hutner, in his commentary the Pachad Yitzchak, explains from this incident that we learn that there are two categories of mitzvot in the Torah. One category is symbolised by the Mizbeach (bein adam la-mokom), and the other is symbolised by the people (bein adam lechaveiro), and to show the need to reflect the exact equality between the two, and angel had to come down to reflect this fact and participate in the division of the blood. When Rabbi Salanter was asked about his "hiddurim" stringencies regarding the baking of his Passover matzos, he responded as follows: the lady who cleans up the floors between the mazto baking rotations - she is a widow. Be gentle when you speak with her!! Bein Adam Lechaveiro and bein adam Lamokom. Alas, we hear too much about the minutiae of the latter and not enough spoken about, taught and stressed about the former. It is perhaps this Parshah which warns us not only to be careful what enters our mouths but what also comes out of our mouths! Shabbat Shalom.

From: Menachem Leibtag [tsc@bezeqint.net] Sent: January 29, 2003
 Subject: [par-new]Parshat Mishpatim - shiur #1 THE TANACH STUDY CENTER [http://www.tanach.org] In Memory of Rabbi Abraham Leibtag
 Shiurim in Chumash & Navi by Menachem Leibtag
 RABBI MENACHEM LEIBTAG
 PARSHAT MISHPATIM [shiur # 1]

WHEN DID BNEI YISRAEL SAY 'NA'ASEH VE-NISHMA'?
 When did Bnei Yisrael declare 'na'aseh ve-nishma'? Most of us would probably answer: before they received the Ten Commandments (Rashi's opinion / and most of all elementary school teachers). However, many other commentators (including Ramban) disagree! In the following shiur, we will uncover the source of (and the reason for) this controversy. WHERE DOES PARSHAT MISHPATIM REALLY BEGIN? Recall from Parshat Yitro that after Bnei Yisrael heard the Ten Commandments directly from G-d, they were overcome by fear and asked Moshe to act as their intermediary (see Shmot 20:15-18). The result of this 'change in the plan' (i.e. from 'directly from G-d' to transmission via Moshe) becomes apparent in the very next pasuk. Note how the next 'parshia' (i.e. 20:19) begins as G-d commands Moshe (now acting as His intermediary) to relay an additional set of mitzvot to Bnei Yisrael: "And G-d said to Moshe: "Ko tomar el Bnei Yisrael..." [Thus you shall say to Bnei Yisrael:] * "You

saw that I spoke to you from the Heavens. * Do not make any idols of Me... * An altar made from earth you shall make for Me..." (see 20:19-23).

However, this set of commandments that began with 'ko tomar' does not end here with the conclusion of Parshat Yitro. If you follow these psukim carefully, you'll note how these mitzvot continue directly into Parshat Mishpatim with: "And these are the mishpatim (rules) that you shall set before them..." [see 21:1 / see also Rashi & Ibn Ezra]. In fact, this set of laws that began with 'ko tomar' continues all the way until the end of chapter 23! It is only in 24:1 where this long quote (of what Moshe is instructed to tell Bnei Yisrael) finally ends. At that point, the Torah then resumes its narrative by describing the events that take place at Har Sinai.

In other words, we have identified a distinct unit of 'mitzvot' [from 20:19 thru 23:33] embedded within the story of Ma'amad Har Sinai. In the following shiur, we will show how the identification of this unit can help us understand the controversy concerning when the story in chapter 24 takes place. [In our next shiur, we will return to discuss the content of this special unit, which contains not only the dibrot, but also a select set of mitzvot.]

WHAT MOSHE DOES WHEN HE RETURNS Considering that this unit began with G-d's commandment to Moshe of: 'ko tomar' - thus you shall say to Bnei Yisrael - followed by a set of mitzvot; once the quote of those mitzvot is complete (at the end of chapter 23), we should expect to find a narrative that tells us how Moshe fulfilled this command. And indeed, this seems to be exactly what we find in the beginning of chapter 24: "... And Moshe came [back down from the mountain] and told the people all the divrei Hashem (G-d's words) and all the mishpatim" (see 24:3).

If 'divrei Hashem' refers to the laws in 20:19-22, and 'ha-mishpatim' refers to the laws in Parshat Mishpatim (see 21:1), then this pasuk is exactly what we're looking for! However, as you probably noticed, there is one minor problem. We would have expected this (i.e. 24:3) to be the first pasuk in chapter 24; but instead it is the third. For some reason, what should have been the opening pasuk is preceded by a short recap of another commandment that G-d had given Moshe: "And Moshe was told to ascend the mountain [to G-d] with Aharon, and Nadav & Avihu, and the seventy elders to bow at a distance, after which Moshe himself will approach closer, while the others will not..." (see 24:1-2, read carefully).

It is important to note that 24:2 forms the continuation of G-d's command that began in 24:1 - and is not a description of what Moshe did after that command! In other words, these psukim describe some sort of ceremony that G-d had commanded Moshe to conduct at Har Sinai. The question will be: When did this ceremony take place, and why? Even though the meaning of these psukim (i.e. 24:1-2) may first seem unclear, later in chapter 24 we find precisely what they refer to: "Then Moshe, Aharon, Nadav & Avihu, and the seventy elders ascended the mountain, and they 'saw' the G-d of Israel..." (see 24:9-11). Therefore, to determine what Moshe is 'talking about' in 24:3, we must take into consideration not only the 'ko tomar' unit (20:19-23:33) that he was commanded to convey, but also this ceremony where he and the elders are instructed to ascend Har Sinai and bow down from a distance, as 'parenthetically' described in 24:1-2.

RAMBAN'S APPROACH [the 'simple' pshat] Ramban explains these psukim in a very straightforward manner. He keeps chapter 24 in its chronological order, and hence understands 24:1-2 as an instruction for Moshe to conduct a ceremony immediately after he relays the mitzvot of the 'ko tomar' unit. Therefore, when "Moshe came and told the people the divrei Hashem and all the mishpatim" (see 24:3), the 'divrei Hashem' and 'mishpatim' must refer to what was included in the 'ko tomar' unit. Hence, Ramban explains that 'mishpatim' refers to the 'mishpatim' introduced in 21:1, while (by default) the 'divrei Hashem' must refer to all the other 'mitzvot' in this unit that do not fall under the category of 'mishpatim' (surely 20:19-22, and most probably some of the laws and statements in chapter 23 as well). As Bnei Yisrael now hear these mitzvot for the first time, they immediately confirm their acceptance: "... and the people answered together saying: 'All that G-d has commanded us - na'aseh - we shall keep'" (24:3). Even though Bnei Yisrael had already proclaimed 'na'aseh' before Matan Torah (see 19:5-8), this second proclamation is necessary for they have just received an additional set of mitzvot from G-d, even though it had been conveyed to them via Moshe.

THE CEREMONY It is at this point in the narrative that Moshe begins the 'ceremony' that was alluded to in 24:1-2. Let's take a look at its details.

First, Moshe writes down the 'divrei Hashem' (see 24:4) in an 'official document' - which most all commentators agree is the 'sefer ha-brit'

described in 24:7. Then; he builds a 'mizbeiach' [altar] and erects twelve monuments (one for each tribe) at the foot of the mountain. These acts are in preparation for the public gathering that takes place on the next day - when Bnei Yisrael offer olot and shlamim on that altar (see 24:5-6). The highlight of that ceremony takes place in 24:7 when Moshe takes this 'sefer ha-brit' - and reads it aloud: "... Then Moshe took the sefer ha-brit and read it aloud to the people, and they answered: Everything which G-d has spoken to us - na'aseh ve-nishma [we shall keep and obey] (24:7). [Later in the shiur we will discuss what precisely was written in this sefer ha-brit and why the people respond 'na'aseh ve-nishma'.] As a symbolic act that reflects the people's acceptance of this covenant: Moshe then took the blood [from the korbanot] and sprinkled it on the people and said: This is the dam ha-brit - blood of the covenant... concerning these commandments..." (24:8). As a symbolic act that reflects the national aspect of this covenant, the ceremony concludes as its official leadership ascends the mountain and bows down to G-d: Then Moshe, Aharon, Nadav, and Avihu, and the seventy elders of Israel went up (the mountain) and they saw the G-d of Israel... And upon the nobles of Israel He laid not His hand; and they beheld G-d, and ate and drank (24:9-11).

Clearly, this ascent by the elders fulfills G-d's command as detailed in 24:1. In this manner, G-d had instructed Moshe not only to convey a set of laws to Bnei Yisrael, but also to present them as part of national ceremony.

This seems to be a nice and simple interpretation for 24:1-11. It is this the approach of Ramban, as well as Ibn Ezra and Rashbam. Yet despite its simplicity, Rashi (and most likely your first Chumash teacher) disagree! RASHI'S APPROACH - LAST THINGS FIRST Quoting the Mechilta on 24:1, Rashi claims that this entire ceremony - including Moshe telling over the 'divrei Hashem & mishpatim', writing down and reading the 'sefer ha-brit', and proclaiming na'aseh ve-nishma, etc. (i.e. 24:1-11) - all took place before Matan Torah, and hence before this 'ko tomar' unit was ever given to Moshe Rabeinu. This conclusion obviously forces Rashi to provide a totally different interpretation for the phrases 'divrei Hashem & ha-mishpatim' in 24:3 and for 'sefer ha-brit' in 24:7 - for they can no longer refer to mitzvot in the 'ko tomar' unit. At first glance, Rashi's approach seems unnecessary (and rather irrational). [Note how Ramban relates to this approach in his opening comments on 24:1!] However, by undertaking a more comprehensive analysis, we will show how Rashi's interpretation is not only textually based, but also thematically quite significant. Let's first consider some factors that may have led Rashi to his conclusion. First of all, the very manner in which chapter 24 begins is quite peculiar - as it opens in 'past perfect' tense ["Ve- el Moshe amar..." - and to Moshe it was told (see 24:1), indicating that all of the events recorded in 24:1-11 may have occurred earlier. Furthermore, if chapter 24 is indeed a continuation of the 'ko tomar' unit, then 24:3 should have been the first pasuk (as we discussed above). These considerations alone allow us to entertain the possibility that these events may have taken place at an earlier time. Recall however that the events that took place before Matan Torah were already described in Shmot chapter 19. Recall as well (from our shiur on Parshat Yitro) that chapter 19 contained numerous details that were very difficult to explain. Therefore, Rashi's approach allows us to 'weave' the events described 24:1-11 into chapter 19, thus explaining many of the ambiguities in that chapter.

FILLING IN THE MISSING LINKS For example, recall from 19:22 how G-d tells Moshe to warn the 'kohanim who stand closer', yet we had no idea who these kohanim were! However, if the events described in 24:1-11 took place at that time (i.e. before Ma'amad Har Sinai), then clearly the kohanim in 19:22 refer to the elite group (Nadav, Avihu, and the seventy elders) singled out in 24:1 & 24:9 - who were commanded to 'come closer' - but not as close as Moshe. Furthermore, this interpretation explains the need for the extra warning in 19:20-25 [what we referred to as the 'limitation section']. Recall how the ceremony (described in 24:4-11) concludes as this leadership group ascends the mountain and actually 'sees' G-d (see 24:10). Nevertheless they are not punished (see 24:11). Despite G-d's leniency in this regard at that time, He must command Moshe before Ma'amad Har Sinai to warn both the people and the kohanim not to allow that to happen once again! [See 19:20-25.] Rashi's interpretation carries yet another 'exegetic' advantage. Recall that Bnei Yisrael had already proclaimed 'na'aseh' in 19:7-8. If so, then there appears to be no need to repeat this proclamation in 24:3. However, if 24:3 takes place before Matan Torah, then 24:3 simply recaps the same event that already took place in 19:7-8. Finally, Rashi's interpretation can also help us identify the 'heim' mentioned in 19:13 - who are allowed to ascend Har Sinai once

the Shofar sounds a long blast. Most likely, the 'heim' are that very same elite group who are permitted to partially ascend Har Sinai during the ceremony (as described in 24:1-2, 9). [See Ibn Ezra aroch on 19:13, quoting this peirush in the name of Shmuel ben Hofni!] These 'textual' considerations supply the 'circumstantial evidence' that allows Rashi to place the events of 24:1-11 within chapter 19, and hence before Matan Torah! With this in background, let's see how Rashi explains the details of 24:3 based on the story in chapter 19! And Moshe came [see 19:14] and told the people 'divrei Hashem' = the laws of 'prisha' [see 19:15] and 'hagbala' [see 19:12-13] and the 'mishpatim' = the seven Noachide laws and the laws that Bnei Yisrael received at Mara (see Shmot 15:25). [See Rashi on 24:3.]

In the next pasuk, Rashi reaches an amazing conclusion. Because these events took place before Matan Torah, Rashi explains that the 'divrei Hashem' which Moshe writes down in 24:4 [which later become the 'sefer ha-brit' that Moshe reads in 24:7] is no less than all of Sefer Breishit (and the first half of Sefer Shmot)! How about Bnei Yisrael's reply of 'naaseh ve-nishma' (in 24:7)? Even though Rashi doesn't explain specifically what this refers to, since it was stated before Matan Torah, it clearly implies Bnei Yisrael's acceptance of all the mitzvot that G-d may give them, before they know what they are! Hence, this statement is popularly understood as reflective of a statement of blind faith and commitment. Let's consider the thematic implications of Rashi's interpretation, for they are quite significant.

'WHY' BEFORE 'HOW' Identifying Sefer Breishit as the 'sefer ha-brit' that Moshe reads in public (in 24:7) ties in beautifully with our discussion of the primary theme of Sefer Breishit. First of all, by referring to Sefer Breishit as 'sefer ha-brit' highlights the centrality of G-d's covenant with Avraham Avinu [i.e. brit mila & brit bein ha-btarim] as the primary theme of that book (just as we had discussed in our Parsha series on Sefer Breishit).

But more significant is the very fact that G-d commands Moshe to teach Sefer Breishit to Bnei Yisrael before they receive the Ten Commandments and the remaining 'mitzvot' of the Torah. Considering that Sefer Breishit explains how and why Bnei Yisrael were first chosen, it is important that Bnei Yisrael must first understand why, i.e. towards what purpose - they are receiving the Torah, before they actually receive it. [This would imply that before one studies how to act as a Jew, it is important that he first understand why he was chosen.]

Finally, Rashi's interpretation (placing 24:1-11 before Matan Torah) adds tremendous significance to the nature of the three-day preparation for Ma'amad Har Sinai (see 19:10-16). From chapter 19 alone, this preparation reflects a very 'repressive' atmosphere, consisting primarily of 'no's' [don't touch the mountain, don't come too close, wash your clothes, and stay away from your wives, etc.]. But if we weave the events in 24:1-11 into this three-day preparation, then what emerges is a far more festive and jubilant atmosphere, including: * Torah study (see 24:3-4), * Offering (and eating) korbanot (see 24:5-6,11), * A public ceremony - where everyone participates [everyone declares 'na'aseh ve-nishma' (see 24:7-8), * The nation's leaders symbolically approach G-d (see 24:9-11). [What we would call today a full-fledged 'shabbaton']

YIR'A & AHAVA Despite the beauty of Rashi's approach, one basic (and obvious) question remains: What does the Torah gain by dividing this story of Ma'amad Har Sinai in half; telling part of the story in chapter 19 and the remainder in chapter 24? One could suggest that in doing so, the Torah differentiates between two important aspects of Ma'amad Har Sinai. Chapter 19, as we discussed last week, focuses on the yir'a perspective, the people's fear and the awe-inspiring nature of this event. In contrast, chapter 24 focuses on the ahava perspective, G-d's special closeness with Bnei Yisrael, which allows them to 'see' Him (see 24:9-11) and generates a joyous event, as they join in a festive meal [offering olot & shlamim (which are eaten) / see 24:5-6,11]. One could suggest that to emphasize the importance of each aspect, the Torah presents each aspect separately, even though they both took place at the same time. Recording the 'fear' aspect' beforehand, stresses the importance of the fear of G-d ['yir'at shamayim'] and how it must be the primary prerequisite for receiving the Torah. [See Tehillim 111:10: "Reishit chochma yir'at Hashem".] By recording the 'ahava' aspect at the conclusion of its presentation of the mitzvot given at Har Sinai, the Torah emphasizes how the love of G-d (and hence our closeness to Him) is no less important. Hence, this 'ahava' aspect is also isolated, but recorded at the conclusion of the entire unit to stress that keeping G-d's mitzvot can help us build a relationship of 'ahavat Hashem'. This lesson remains no less important as we adhere to the laws of Matan Torah in our daily lives. It challenges us to integrate the

values of both 'yir'at shamayim' and 'ahavat Hashem' into all our endeavors.

shabbat shalom, menachem

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From: Jeffrey Gross [jgross@torah.org] Sent: January 30, 2003 To: weekly-halacha@torah.org Subject: Weekly Halacha - Parshas Mishpatim WEEKLY-HALACHA FOR 5763

By RABBI DONIEL NEUSTADT Rav of Young Israel in Cleveland Heights A discussion of Halachic topics. For final rulings, consult your Rav
MA'ASER KESAFIM: OBLIGATIONS and EXEMPTIONS

Ma'aser kesafim, tithing one's income for charity, is an age-old practice dating back to our forefathers' days. Avraham gave ma'aser to Malki-Tzedek(1); Yitzchak gave ma'aser(2); and Yaakov, too, says, "And of all that You will give me I will surely give a tenth to You"(3). In addition, tithing is a time-honored formula for becoming wealthy(4), so much so that it is even permitted to give ma'aser with the intent of "testing" Hashem to see if one will become rich through giving tithes(5).

Some poskim imply that tithing is a Biblical obligation(6). Other poskim, noting that there is no explicit commandment in the Torah to tithe one's assets, consider this mitzvah to be Rabbinical in nature(7). These views notwithstanding, many poskim(8) consider ma'aser kesafim as neither a Biblical nor a Rabbinic obligation, but rather as an ancient custom that should be practiced by all Jews. According to this opinion, one who does not give a tenth of his income to charity still fulfills the mitzvah of tzedakah, although he has not done so "properly"(9).

Whether ma'aser kesafim is a Biblical commandment, a Rabbinic ordinance, or an ancient custom is of crucial importance in actual practice. When in doubt about certain applications of a law, for instance, a halachic authority may rule leniently on a Rabbinic or customary mitzvah, but must rule stringently on a Biblical one. Similarly, a Biblical mitzvah must be performed even under duress, while Rabbinical or customary mitzvos can - under certain extenuating circumstances - be dealt with leniently. There are other distinctions as well.

Concerning ma'aser kesafim, therefore, the poskim(10) offer the following advice: In order to avoid potential problems(11), one should stipulate - prior to the first time he gives ma'aser - that he is giving ma'aser beli neder, without the binding force of a vow. If he fails to make this stipulation, he becomes obligated to give ma'aser as if he had vowed to give a tenth of his money to tzedakah, and all the stringencies that apply when fulfilling a pure obligation command would apply to him.

If one had been giving ma'aser under the assumption that all poskim require him to do so, but would now like to give ma'aser only beli neder, he does not require hataras nedarim, an annulment of vows(12). If, however, he had been giving ma'aser knowing all along that he is not absolutely required to do so, he may not discontinue his practice without hataras nedarim(13).

QUESTION: Is a poor person required to give ma'aser kesafim from his income?

DISCUSSION: We have already established that the poskim differ on the degree to which one is obligated to give ma'aser kesafim. We mentioned, therefore, that at the time ma'aser kesafim is initially given, it should be given beli neder. The poskim generally agree that a poor person is not obligated to give ma'aser, in keeping with the principle that "one's life takes precedence over the lives of others"(14). Some poskim advise that although a poor person is exempt from ma'aser, he should, nevertheless, separate the ma'aser and then keep it for himself(15). The question remains as to the definition of "poor". The poskim maintain that a poor person is one who earns only enough for subsistence. Many poskim define subsistence as having "bread and water"(16) (the basic necessities of food, clothing and shelter). Anyone who has more than that would not be considered a poor person with respect to giving ma'aser(17). The Brisker Rav is quoted(18) as having ruled that "anyone who finds himself in dire circumstances - so that he needs financial help from others - and does not live a life of luxury at all, but lives frugally, should not give ma'aser. Rather, he should keep his own ma'aser money. A ben Torah in particular should not take money from others if he can use his ma'aser money for himself". A substantial savings account does not necessarily define a person as "rich" if he is not generating any income on his own. A couple who needs \$20,000 to subsist on and earns that amount from interest, is still classified as "poor" if they have no other income. This is especially so if the couple is

using the interest or the savings account as their source of income while learning in kollel(19). One who receives a government subsidy for rent (e.g. Section 8), or one whose rent is paid for him by another individual, is required to include that amount when figuring his overall income for the year(20).

FOOTNOTES: 1 Bereishis 14:20. 2 Rashi Bereishis 26:12. 3 Bereishis 28:22. 4 Tanchume Devarim 18. 5 Rama Y.D. 247:4 based on the verse in Malachi 3:10. Although Pischei Teshuvah 2 quotes dissenting opinions, Aruch ha-Shulchan 6 and Ahavas Chesed 18:1 rule in accordance with the Rama. 6 See Tosefos Chadashim (quoted and rejected by R' Akiva Eiger Pe'ah 1:1); Taz as understood by Aruch ha-Shulchan 249:5; Maharil as understood by Chasam Sofer Y.D. 232. 7 Taz (as understood by Tzitz Eliezer 9:1); R' Akiva Eiger Pe'ah 1:1; Aruch ha-Shulchan 249:2 and other poskim. 8 Bach Y.D. 331; Chavos Yair 224; Ya'avetz 1:3; 2:119; Chasam Sofer Y.D. 331; Yehuda Ya'aleh Y.D. 334. This is the view of the majority of the poskim - see Pischei Teshuvah Y.D. 331:12 and Igros Moshe E.H. 3:43. 9 See Y.D. 249:1 where the Shulchan Aruch rules that the "average" person gives a tenth to charity. Giving less than that is considered "giving with a bad eye," but as long as one gives a third of a shekel, he has fulfilled his minimum obligation. 10 Ahavas Chesed 18:2; Kisvei Harav Henkin 2:81; Minchas Yitzchak 5:34; Igros Moshe Y.D. 1:153; Harav S.Z. Auerbach (Ma'aser Kesafim (Domb) pg. 19). 11 There are numerous complicated issues connected with hilchos ma'aser kesafim - in both the giving and the disbursing end - in which there is no clear ruling or binding custom. Unless one wants to be stringent in all cases, he is advised to follow the poskim who rule that ma'aser kesafim is based on custom. One can then rely on a more lenient view. 12Y.D. 214:1 and Shach 5. 13If, as is the custom, one has "pre-nullified" all his vows on Erev Rosh Hashanah, he may then rely on that declaration and consider his customary practices as not having the force of a vow - Minchas Shelomo 91. 14 Rama YD 253:3; Shach 248:1; Chochmas Adam 144:2. 15 Minchas Yitzchak 6:101, based on Tashbatz 2:131. 16 Aruch ha-Shulchan Y.D. 251:5; Harav S.Z. Auerbach (Ma'aser Kesafim pg. 21). See also Igros Moshe Y.D. 2:112 who maintains that one with basic pamasah for a day or two is required to give ma'aser. 17 As opposed to the definition of "poor" regarding the receiving of ma'aser money - Harav S.Z. Auerbach (Ma'aser Kesafim pg. 23). 18 In Am ha-Torah vol. 2, no. 5, pg. 36, by Harav M. Shternbuch. 19 Harav M. Feinstein quoted in Ohalei Yeshurun pg.103. See also Igros Moshe Y.D. 2:112. See also Guide to the Ma'aser Forms pg. 14. 20 Harav S.Z. Auerbach (Am ha-Torah vol. 2, #11, pg. 13-15).

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