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INTERNET PARSHA SHEET ON MISHPATIM - 5768

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Rabbi Benjamin Yudin Mishpatim: The Starting Line

The immediate proximity of Mishpatim, the Torah's interpersonal legal system, to the Aseres Hadibros is explained by the Mechilta to indicate that just as the Dibros are from Sinai, so to the Mishpatim are from Sinai. Rav Yosef Salant zt"l, in Be'er Yosef, explains that only the purification process undergone by the Jews at Sinai enabled them to accept the mishpatim. At first glance, an integral part of many of the mishpatim is tzedaka. If one purchases an eved Ivri, the fact that there are serious limitations regarding the nature of the work the master can impose on the servant (ex. - carrying his robe and slippers to the bath house is not allowed) reflects the dignity and rehabilitation that is to be afforded the former thief. Our acceptance of this higher standard of law that integrates great sensitivity to the next one's feelings could only occur after that Jewish people experienced the revelation of Hashem at Sinai (Shabbos 146a).

I'd like to suggest another understanding of the juxtaposition of mishpatim to the revelation. The Medrash Shemos Rabba (29:1) teaches on the pasuk, "kol hashem bakoach - the voice of Hashem comes in power" (Tehillim 29:4) to refer not to the koach of Hashem which would be unbearable by man, but rather b'koach means in accordance with the ability (koach) of each individual. Young people understood the Aseres Hadibros one way, and those more mature understood it on a more sophisticated level. The mitzvah not to murder can be understood literally or to prohibit embarrassing someone publicly. The mitzvah not to steal was understood by some to prohibit kidnapping, by others to prohibit taking someone else's property, and by others to forbid giving a false impression (gneivas da'as). Just as these laws were understood in a variety of ways and beyond the literal meaning there are additional levels of comprehension, similarly the mishpatim are often presented speaking to the lowest common denominator, but contain many additional levels of application.

The Torah teaches (Vayikra 19:13) that one is to pay one's workers in a timely fashion. The Talmud (Bava Metzia 83a) teaches that Rabbah Bar Rav Huna hired workers to transport barrels of wine on his behalf. The workers were negligent and broke some of the barrels, prompting Rabbah to confiscate their coats as collateral for the damages caused. They went to Rav who ordered Rabbah to return their coats. When Rabbah questioned if this indeed the halacha, Rav answered in the affirmative citing Mishlei (2:20), "Ima'an teilech b'derech tovim - in order that you may walk in the way of the good." When the workers further complained that they had worked all day and are poor and had not been compensated, Rav ordered Rabbah to pay them. Once again Rabbah questioned if this is the halacha, and Rav answered yes, citing the second half of the above verse, "v'orchos

tzadikim tishmor - and keep the paths of the righteous." This teaches the very important concept of lifnim mishuras hadin - going beyond the letter of the law. Rav understood that Rabbah had attained such a high level of character development that for him "vhalachta bdrachav" (Devarim 28:9) required that he pay his negligent workers, just as Hashem enables the sinner to sin (as noted by the Tomer Devora).

The Torah (Shemos 35:4) teaches regarding Shabbos, "yhiyeh lachem kodesh - it shall be holy for you." The Netziv understands this to mean that each individual ("you") shall make Shabbos holy according to his spiritual station. For the ignorant unlearned Jew this means that Shabbos is the day that he is especially careful not to lie. Thus while a buyer of produce generally could not rely on the uncultured farmer's assertion that the produce had been tithed, on Shabbos the farmer can be relied upon. Clearly the extended application of this teaching is that the table talk of the learned and more observant Jew should rise above politics and sports to be comprised of divrei Torah.

In conclusion, there is a delicious relevant story. Someone stopped the Chafetz Chaim and asked him if he change of a large bill. When the Chafetz Chaim took out his wallet to look, the enquirer grabbed his wallet and ran. The Chafetz Chaim did what every person would do and ran after the scoundrel. However, instead of shouting the usual "thief" or "stop that man", he shouted repeatedly "I am mochel - I forgive you and absolve you of the obligation to repay". To the Chafetz Chaim, lo tignov was such a serious offense that his immediate response was to prevent a Jew from being labeled a robber, rather than to attempt to retrieve his money. Rabbah Bar Rav Huna and the Chafetz Chaim might not yet be representative of the norm, but they do raise the bar and demonstrate the lofty levels of our Divine Mishpatim.

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Helping Unload The Donkey of One's Enemy

The commentaries struggle to provide a simple interpretation of the pasuk [verse] in our parsha that begins with the words: "When you will see the donkey of your enemy lying under its burden" (Ki tir'eh chamor son'acha rovetz tachas ma'aa'oh...) [Shmos 23:5]. The pasuk continues "and you will stop from helping him" (v'chadalta mei'azov lo) and concludes with the words "you shall surely help along with him" (azov ta'azov eemo).

Rashi points out that the word "azov" at the end of the pasuk does not have its usual connotation of abandonment. That interpretation would not make sense in the context of this Commandment. Rather, here "azov" means providing aid or help. Rashi cites other Biblical pasukim where the verb "azov" means to provide help.

Even before we reach the word "azov", however, there is a difficulty in this pasuk. What do the words "v'chadalta mei'azov lo" mean? The normal translation would be "and you stop from helping him". Rashi says that this too could not be what the Torah means. Rashi therefore gives the unusual interpretation that the phrase is to be followed by a question mark -- as if to ask rhetorically, "Will you not help him?" To which the pasuk continues with the answer, "No. You should certainly help him."

However, Rashi also quotes a Mechilta that teaches that the Torah purposely worded this Mitzvah in an ambiguous fashion. The Torah did so

in order to teach us that there are indeed situations when one is allowed to not help the struggling donkey. An example of this permission to ignore the plight of the animal is a "zaken, v'ayno l'fi kvodo" — an elderly person and a person for whom it would be beneath his dignity to unload the burden from a donkey.

This is medrashic exegesis. The simple interpretation of the pasuk according to Rashi, however, is "And you would think not to help him? Certainly you should help him!"

The Kli Yakar makes an interesting comment that reveals that he opposed welfare, or "big brother handouts" to the unfortunate. The Kli Yakar notes that the pasuk first says "v'chadalta mei'azov LO" [you will refrain from helping HIM] and then concludes "azov ta'azov EEMO" [no — certainly help WITH HIM]. The Kli Yakar comments on the change of pronoun in the two phrases from LO [him] to EEMO [with him]. The Kli Yakar asks, "Why does the Torah not use the same pronoun consistently?"

The Kli Yakar answers that "LO" means helping TO him, giving him help; "EEMO" means helping WITH him. The owner of the donkey is not allowed to wait for another Jew to come along and then tell him "since this is your Mitzvah, go unload my donkey for me." The Torah is saying that if the donkey owner wants to be helped while he sits there and watches, then one may abstain from offering such help — v'chadalta me'azov lo. What does the Torah demand? "Azov ta'azov EEMO" — help TOGETHER, WITH HIM! If the "enemy" rolls up his sleeves together with "you", then you should help him.

Thus, unlike Rashi who interprets the first part of the pasuk as a question, the Kli Yakar learns that the Torah starts out by saying one should not help, and concludes by saying one should help. How is that? It all depends: if he does not try to help himself, do not help him. If he is working at unloading the donkey himself but needs assistance, then indeed help him.

The Kli Yakar provides a sociological comment: From here we see a rebuttal to some poor people in our nation who throw themselves upon the community to provide their needs, but they themselves are unwilling to do any kind of work, even though they are able-bodied. They do not want to lift a finger to support themselves, but turn to others and say "it is your mitzvah to give me tzedakah." G-d does not require that of us. The Torah advises us to help our neighbor — EEMO — together with the effort that he himself makes to meet his own needs.

This is a nice homiletic interpretation by the Kli Yakar, but the "peshat" [simple reading] of the pasuk is much closer to Rashi's interpretation.

The novelty of this Mitzvah is that we are dealing with a person who is one's sworn enemy. Our inclination would certainly be to not help him. The Torah teaches us that we should overcome our inclinations and help him out. The truth of the matter is that there is no better way of restoring friendship and mending fences than to help out one's enemy.

A Thought In Honor of the 125th Yahrzeit of Rav Yisrael Salanter
This Erev Shabbos, the 25th of Shevat, is the 125th Yahrzeit of Rav Yisrael Salanter. I happen to remember that on the 100th Yahrzeit, Rav Ruderman, who was a student of the Alter of Slabodka, who in turn was a disciple of Rav Yisrael, came into the Beis Medrash and gave a special lecture on the personality of Rav Yisrael Salanter and the mussar movement in general. Rav Ruderman felt very close to the entire mussar movement and in fact named Ner Israel, the Yeshiva he founded, after the founder of the mussar movement — Rav Yisrael (Lipkin) of Salant...

We have all, in one way or another, been affected by the mussar movement. On the occasion of this special Yahrzeit, I therefore would like to relate the following story about Rav Yisrael. May it be a source of merit for him.

Rav Yisrael was once traveling by train from Salant to Vilna. In those days, it was not prohibited to smoke on the train. Rav Yisrael was smoking a cigar. (It may be hard for us to picture the founder of the mussar movement smoking a cigar, but in those days it was a sociologically different experience.) A much younger person came up to him and started yelling that the cigar smelled up the car. Although technically he was within

his rights to keep on smoking, being who he was, Rav Yisrael extinguished the cigar. He felt so bad about it that he opened the window to air out the car. Then this same fellow started yelling at Rav Yisrael that the car was too cold because he opened the window. He humiliated Rav Yisrael with his tirades. Rav Yisrael closed the window.

When they arrived in Vilna, the young man noticed there were hundreds of people waiting to greet Rav Yisrael. He found out who Rav Yisrael was and started crying to the rabbi with profuse apologies. Rav Yisrael said he forgave the man.

The man then began pouring out his heart to him. He told Rav Yisrael that he came to Vilna because he needed a livelihood and had no job. He was a shochet but in order to receive a slaughterer's license he needed a "kesav kabalah" (written Rabbinic permission) from one of the Rabbis in Vilna who issued such licenses.

Rav Yisrael told him that he had a son-in-law who was a Rav in Vilna. He offered to write him a letter of recommendation and sent him to his son-in-law for a test for his Shechita license. Unfortunately, when he went to the son-in-law for the test he failed it miserably. He returned to Rav Yisrael and again cried to him with his tale of woe. Rav Yisrael found him tutors to learn with him and they prepared him for the test, which he was eventually able to pass. He finally received his "kesav kabalah" from Rav Yisrael's son-in-law.

When he was about to leave Vilna he came back to Rav Yisrael and said to him: "it was nice enough that you forgave me for my rudeness in the train, but the fact that you sent me to your son-in-law with a letter of recommendation and found tutors for me when I failed — why were you so nice to me?"

Rav Yisrael responded, "Anyone can say the words 'I forgive you.' But the only way I felt it would be possible for me to really forgive you was to get to like you. The only way to get to like someone is to help him. The key to becoming someone's friend is not to take from him but to give to him. I wanted my forgiveness to you to be sincere and not merely lip service. In order to be able to forgive you with a full heart, I really had to be able to go out of my way a bit to help you. This was not YOUR golden opportunity. It was MY golden opportunity."

This is exactly why the Torah singles out the fact that the burdened donkey belongs to "your enemy". One might be thinking to himself "This could not have happened to a nicer guy." One's natural inclination is "v'chadalta me'azov lo" — "I don't want to help this guy."

Therefore the Torah commands: "You shall surely help him". The only way to overcome this situation of enmity is by, in fact, helping him. There used to be a bumper sticker: "Love your enemies — It will drive them crazy". This is not a mussar idea. The mussar idea is "Love your enemies, and they won't be your enemies anymore!"

That was what the mussar movement was all about — to teach people how to overcome their natural inclinations and to live up to the standards of "man created in the Image of G-d".

These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape #581, Lending Without Witnesses 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.

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however, there is more at stake than merely helping someone in distress. There is also the challenge of overcoming estrangement, distance, ill-feeling. Therefore, it takes precedence. The sages were here reading a nuance in the text. The phrase, 'you shall not pass by' is apparently superfluous. What it signals is that when we see our enemy suffering, our first instinct is to pass by. Hence part of the logic of the command is 'to suppress the evil inclination'.

More remarkable are the Aramaic translations (Targum Onkelos, and more explicitly Targum Yonatan). They take the phrase 'You shall surely release' to mean not just the physical burden, but also the psychological burden: 'You shall surely let go of the hate you have in your heart towards him.'

There is an accusation against Jews and Judaism in the New Testament which has done incalculable harm: 'You have heard it said, "You shall love your neighbour and hate your enemy." But I say to you: "Love your enemy also.'" Nowhere in the Pentateuch does it say 'hate your enemy'. To the contrary: Moses commands: 'Do not hate an Edomite, because he is your brother. Do not hate an Egyptian, for you were strangers in his land.' (Deut. 23: 8). These were the paradigm cases of enemies. Edom was Esau, Jacob's rival. The Egyptians were the people who enslaved the Israelites. Yet Moses commands that it is forbidden to hate them.

A more general prohibition against hating enemies occurs in the very passage that commands the love of neighbours:

Do not hate your brother in your heart. Rebuke your neighbor frankly so you will not share in his guilt. Do not seek revenge or bear a grudge against one of your people, but love your neighbor as yourself. I am the Lord. (Lev. 19: 17-18) On this, Maimonides writes:

You shall blot [any offences against you] out of your mind and not bear a grudge. For as long as one nurses a grievance and keeps it in mind, one may come to take vengeance. The Torah therefore emphatically warns us not to bear a grudge, so that the impression of the wrong should be completely obliterated and no longer remembered. This is the right principle. It alone makes civilized life and social interaction possible. (Hilkhos Deot 7: 8). In speaking about enemies, the Torah is realistic rather than utopian. It does not say: 'Love your enemies'. Saints apart, we cannot love our enemies, and if we try to, we will eventually pay a high psychological price: we will eventually hate those who ought to be our friends. What the Torah says instead is: when your enemy is in trouble, come to his assistance. That way, part of the hatred will be dissipated. Who knows whether help given may not turn hostility to gratitude and from there to friendship. That surely is enough to refute the suggestion that Judaism contemplates, let alone advocates, hating enemies.

There is, however, a fascinating provision of the law. The text says, 'You shall surely release it [the burden] with him'. From this the sages deduced the following:

If [the owner of the animal] sits down and says to the passer-by: 'The obligation is yours. If you wish to unload [the animal], do so' the passer-by is exempt because it is said, 'with him' [meaning: they must share the work]. If however the owner [is unable to help because he] is old or infirm, then one must [unload the animal on one's own]. (Mishnah, Baba Metzia 32a) Why should this be so? After all, the beast is still suffering under its burden. Why should the enemy's refusal to help excuse you from the duty of help?

A fundamental principle of biblical morality is involved here: reciprocity. We owe duties to those who recognise the concept of duty. We have a responsibility to those who acknowledge responsibility. If, however, the person concerned refuses to exercise his duty to his own overloaded animal, then we do not make things better by coming to his aid. On the contrary, we make it worse, by allowing him to escape responsibility. We become - in the language of addiction-therapy - co-dependents. We reinforce the very problem we are trying to help solve. We allow the individual to believe that there will always be someone else to do what is morally necessary. We create what the psychologist Martin Seligman calls 'learned helplessness'. We may feel that we are being super-righteous; and we may be right. But

we are thereby making ourselves better at the cost of making society worse. And biblical morality is not a code of personal perfection but of social grace.

Tenakh, the Hebrew Bible, is not a code for Utopia. That is a prophetic dream, not a present-tense reality. In the here-and-now, however, the Torah tells us something not without its moral grandeur, namely that small gestures of mutual assistance can in the long run transform the human situation. At the heart of the law of the overlaid ass is one of Judaism's most beautiful axioms (Avot de-Rabbi Natan, 23): 'Who is a hero? One who turns an enemy into a friend.'

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Shvat, 5763 The Robber, Slave and the Shomer Parashat Mishpatim

Rabbi Chanoch Yeres

To extend beyond six years the servitude of a Jewish slave who had been enslaved in order to pay for a theft, the Torah prescribes the piercing of his ear at the doorpost. Why the ear? Rav Yochanan ben Zakkai (Kiddushin 22b) explains that it was the ear which heard at Har Sinai the words "do not steal", and in addition it was stated "ki li bnai yisrael avadim"-unto Me are the Jewish people slaves", "v'lo avadim l'avadim"-and not slaves to other slaves." In both of these dictums the ear was delinquent of its duties and did not listen.

However, one may still ask: Why the ear? After all, the hand was just as responsible for stealing and taking the goods. Furthermore, if the ear is held accountable, let it be pierced immediately upon being convicted of stealing. Why wait until the end of the six years?

Rav Chaim Yaakov Goldvicht z"l, Rosh Yeshiva of Kerem B'Yavneh explains by means of a parable: An individual who works hard during the six days of the week, barely finds a moment for Torah studies. When he reaches Shabbat and is entranced by the speakers and shiurim, he is inspired to undertake further delving into Torah. The man sincerely wants to change, leave his job and devote his time to learning Torah. Yet, when Shabbat ebbs away, and the weekly routine begins, his dreams and new commitments are slowly put aside or simply forgotten. With each Shabbat that he experiences, more shiurim and other lectures will accumulate in "his ear", and ultimately will enable him to fulfill his dream and change his lifestyle.

Similarly, it takes a long time for the slave to recognize that what truly lay behind his theft was his loss of sh'miah-his power to hear and change himself. After the six years he completes as punishment for stealing, the lesson has been learned and he can now become a better person, growing closer to Hashem. However, if he voluntarily extends his servitude, he in essence gives up his hearing power and can only do what he is told to do by his master. This loss of the ability to be inspired, influenced and impressed in order to change his ways, is the tragedy that is memorialized with the pierced ear.

The lesson is clear: we must be careful never to enter situations or lifestyles where our ability to achieve spiritual heights is removed from our hands. Never turn a deaf ear. Listen and take advantage of change to come closer to both Torat Yisrael and Eretz Yisrael.

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Efrat, Israel - "And if two men strive together, and hurt a woman, causing her to miscarry, and there is no fatal harm he shall surely be fined...But if fatal injury [to the mother] follows, then you shall give life for life" (Exodus 21:22-23)

A mother's right to abort vs. the fetus' right-to-life remains an explosive issue even today. Jewish law has an ethical, but also a pragmatic, approach to the question of abortion. In this week's portion, Mishpatim, we learn that a woman who miscarries as a result of being accidentally injured by two men fighting amongst themselves, is rewarded a monetary compensation for the unborn child; but if the injury is fatal to the woman, the punishment is much more severe: a life for a life, as noted in the above quote.

The rabbis gleaned from these two cases that a fetus was not considered a life. The basis for this interpretation is found in a Mishnaic ruling on the question of a life-threatening pregnancy: "If a woman suffers a difficult childbirth, we are allowed to destroy the fetus in the womb, removing the fetus limb by limb, because the mother's life takes precedence over the child's. But if the head [or major portion of the body] of the child has emerged, the newborn cannot be harmed because one life cannot push aside another life." (Mishnah Ohalot 7:6)

This view, however, which seems to look upon the fetus as less than life, is not the only one we find among the Sages. In the Talmud, Tractate Erchin, 7a and 7b, R. Nachman reports in the name of Shmuel that if a pregnant woman dies on the Shabbat before the time of birth, we must do whatever is necessary in order to remove the fetus, even if it means desecrating the Shabbat. This means that the Sabbath may be violated to possibly save the life of a fetus - that a fetus is considered to be a life!

The ruling of Maimonides (1194-1270) sheds light on the true nature of the fetus, thereby orchestrating the various Talmudic sources. We can't help but notice that his abortion law appears in a section devoted to the Laws of Murder and saving a life (Chapter 1, Halacha 9). In codifying the law that the mother's life takes precedence over the fetus as long as the fetus is inside the womb, but once the head has emerged, one life is not pushed aside for another life. Maimonides adds an explanation: we are obligated to destroy the fetus when the mother's life is threatened because the fetus is considered a "rodef," a pursuer, in effect, a murderer.

Earlier in this very same chapter, Maimonides rules that if we come upon a "rodef" (a potential murderer clutching a knife in hot pursuit of someone in desperate flight), we are obligated to do what it takes to stop the pursuer, even if it means killing him. Now were the fetus to be considered as merely a part of the mother's body, like another limb or organ, we would certainly be obligated to amputate the "limb" to save the mother's life; the notion of referring to the fetus as a "pursuer" would be totally superfluous. Hence, Rav Hayim Soloveitchik explains that while the fetus prior to its entry into the world is not yet a person, a "soul," neither is it a mere "piece of meat" or even a limb or organ of its mother: it is rather potential life, a potential soul. As such, it may be sacrificed to save the mother's life, because it is endangering the mother's life like a rodef, but one may also desecrate the Sabbath in order to save this potential soul.

In Judaism, what determines the "right of life" for the fetus is its potential danger. If it "pursues" the mother, threatening her life, then the fetus must be destroyed; if genetic testing finds that it will be born with Tay-Sachs or a similar disability which will mean that the baby will only live for a brief period, the fetus is not a potential life but a potential "treifa" (truncated and limited existence), and abortion may be justified. If there is psychological damage to the mother's state of mind with a problematic birth which is less serious than the afore-mentioned instances, this must be judged by rabbinical and medical counseling on a case-by-case basis. But when no mitigating circumstances exist, and the proposed abortion proves to be only a desire to get rid of an inconvenience, Jewish law would question such a decision and clearly forbid the taking of potential life.

One of my most moving experiences involved a couple who had been married for years without being blessed with children. Finally, the woman did give birth, to a baby who survived only a very short time due to severe genetic difficulties. .

During the week of shivah, a congregant asked me to speak to a relative of his --all of 15 years old-- who had gotten pregnant by her boyfriend and was about to go through an abortion. The young mother-to-be agreed to meet, and during the course of the talk she was convinced not to abort her fetus but to give the baby up for adoption once it was born, specifically to this family that had just suffered the tragic loss of the month-old baby.

It's not very difficult to imagine the joy we felt at the bat mitzvah celebration of this young woman, practically snatched from the knife of the abortionist. When she was married - and I was honored to be sandak (god-father) at the circumcision of her son, I truly understood to what extent a potential life is indeed a potential world.

Peninim on the Torah by Rabbi A. Leib Scheinbaum - Parshas Mishpatim Inbox Shema Yisrael Torah Network
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PARSHAS MISHPOTIM

But if the bondsman shall say, "I love my master, my wife, and my children - I shall not go free".and his master shall bore through his ear with the awl, and he shall serve him forever. (21:5,6) Chazal comment us that the "ear" which heard at Har Sinai, "For to Me shall Bnei Yisrael be avadim, slaves, and not avadim l'avadim, slaves to slaves. Yet this man went and acquired a master for himself." It is one thing to become a slave in order to repay one's debt. It is totally another thing when one seeks to make servitude a life-long endeavor. Horav Sholom Schwadron, zl, suggests that this halachah provides us with a powerful lesson. Chazal tell us that one who purchases an eved Ivri, Hebrew bondsman, actually acquires a "master" for himself.

Let us attempt to present this idea and put it into perspective. The master visits the shopping mall and sees an exquisite suit - on sale, no less. He is about to make the purchase when he remembers that if he buys a suit for himself, he must do the same for his eved. The servant must be equal with his master. He has no choice but to buy two suits.

The master continues his shopping expedition. Everywhere he stops to buy, he buys double. It is more like, "Buy two; get one!" Another scenario that presents an ironic outcome is the Yamim Tovim. Chanukah is approaching, and the master has a beautiful, ornate, silver menorah. It is an expensive heirloom that he inherited from his father. Regrettably, this year he is not going to light this menorah, because if the master has only one menorah, or if he has one expensive menorah and one of lesser value, the eved gets the expensive one! This incongruity applies equally on Purim if the master has only one Megillah. He can always hope that his servant will be nice enough to share it with him!

This reverse state of affairs continues on Shabbos if the master only has one special set of clothes. He will be wearing his weekday clothes while his eved will be clothed in his expensive suit and cotton shirt. They return from shul walking through the street - the eved in his fancy Shabbos clothes and the master in his weekday garb. Imagine, the people that mistakenly wish Gut Shabbos to the servant and completely ignore the master. It may seem ironic, but that is the meaning of acquiring a "master" for oneself. The master is selfless in his generosity and benevolence. All this is to provide the Hebrew bondsman with an environment that maintains his dignity - even if it is at the expense of the master. He was aware of the repercussions when he made the decision to purchase an eved Ivri.

There is more. The master cannot have the eved perform any labor that might be below his dignity. The eved must be treated as royalty. When we take into consideration that the type of individual that was sold as a servant had been a thief who could not repay the money he stole, we understand

that we are not dealing here with a member of the higher echelons of society.

Clearly, one who purchases an eved is a tzaddik of the highest order, a benevolent, generous man who feels the pain of his fellow Jew who is down and out. He wants to help, even if it is at the cost of personal convenience and degradation. All that matters is the opportunity to be of assistance to a fellow Jew.

Having digested all of this, is it any wonder that the eved wants to continue his servitude after the initial six year period? Who would not want to "work" for such a virtuous master? The man must have the middos, character traits, of a saint to make such a sacrifice.

Rav Sholom explains that after all is said and done, if the master asks his servant to do something "respectable," such as mail a letter or deliver a package, the servant most certainly has to oblige. This is servitude. The servant must listen to his master. He cannot refuse. This is the blemish created by servitude. A Jew can have no master other than Hashem. This is a Jew's shibud, obligation, to Hashem. We are His servants and only His servants. Thus, any responsibility or obligation to a human being that detracts from our total and unequivocal commitment to Hashem is, by its very nature, a negation of our servitude to the Almighty. Therefore, the "ear" that heard at Sinai that a Jew must be totally committed to Hashem--yet proceeded to sell himself to another human being--should be bored with an awl.

Rav Sholom takes this thesis further. Until now we have addressed a situation in which a Jew sold himself to a saintly master who provides for all of his needs and accords him the greatest respect. What about someone who sells himself to a master of less credible virtue? Surely, one who sold himself to a gentile would be demeaning himself and placing a serious strain on his relationship with Hashem. After all, if one who is sold to a tzaddik must have his ear drilled because it indicates a breach in his commitment to Hashem, certainly one who sells himself to a gentile is crossing the line of devotion. Furthermore, the gentile is not likely to treat him nearly as well as the Jewish master would treat him.

Wait! We are not yet finished. What if a Jew were to sell himself not to a Jew - not to a gentile - but to an animal? Could there be a worse form of denigrating the Tzelem Elokim, G-dly Image, in which he was created? Is there a lower form of disgrace than servitude to an animal? One might question the feasibility of such a transaction taking place. It does occur, however, more often than we are willing to admit.

There is such a beast as the animal within us; the base character; the physical desires; the moral deficiencies from which we have a very hard time severing our relationship. Is this any less a form of slavery than to an animal? Yet, we do it all the time! We are so busy feeding our physical and base desires that we have become slaves to the animal from within. If the eved Ivri who has sold himself to a virtuous master is assailed for wanting to remain in servitude, because it detracts from his commitment to Hashem - how should we, who have sold ourselves to a beheimah, the animal within, justify our actions?

If a fire goes forth and finds thorns. (22:5)

If one makes a fire, even if it was created in his own field for discretionary purposes, he is still obligated to tend to it. Therefore, he is responsible to pay whatever damages result from his uncontrolled fire. Fires have the potential to cause great devastation. While it is not as common in contemporary times, in previous centuries in Europe, when houses were made out of wood and were built in close proximity to one another, an uncontrolled fire could destroy an entire community. Even today, we have only to peruse the headlines of a few months ago to read about the havoc which fire caused in California. The following incident may not be totally relevant to the parshah; nonetheless, I feel the lesson one may derive from it is critical.

Horav Yitzchak Zilberstein, Shlita, cites the sefer, Yesod V'Shoresh Ha'Avodah, Shaar Ha'gadol, perek 5, which mentions a tzaddik by the name

of Rav Moshe Eiveyer, who would perform specific customs in honor of Hashem. He proceeds to describe the areas in which this righteous man distinguished himself. Rav Zilberstein writes that for some time he had searched for data concerning Rav Moshe's life and endeavor. He finally found a story in the Bais Avraham from Horav Avraham zl, m'Slonim which records the following episode.

Prior to his passing, Rav Moshe assembled members of his community in his home and attempted to inspire them concerning the significance of Birkas Ha'Mazon, Bentching after meals: "I assure you that whoever recited Birkas Ha'Mazon from a written text, his house will not sustain the damages of fire." This was stated during a time in history when every blaze carried the potential for destroying an entire community. Everyone in the community heeded Rav Moshe's advice. Well, almost everyone. There was one person who simply refused to read the Bentching from a written text. It was not convenient. The Jewish community was spared the effects of a conflagration as a result of their adherence to Bentching from a written text.

One night, the wife of the individual who refused to comply with Rav Moshe's request woke up to a noxious odor. It smelled like fire! She looked out of the window and saw a non-Jewish house down the block that was ablaze. She woke her husband and they both stared in shock and disbelief. Their home was in the line of the fire. What were they going to do? Suddenly, the wife looked at her husband and said, "Quickly, run to the cemetery and pray at the grave of Rav Moshe. Ask his mechillah, forgiveness, for your disregard of his warning and ask him to intercede on our behalf."

The man might have been obstinate, but he was not a total fool. He ran to the cemetery and prostrated himself in front of the tzaddik's grave, begging forgiveness for his insolence. He promised that he would never again separate himself from the community and would always recite Bentching from a written text.

It did not take long for the miracle to occur. The man returned home to notice that all of the homes belonging to gentiles were gone, while his home was standing, unscathed, because the fire had just been put out - at his door step.

The lesson is there for all of us to heed.

So it will be that if he cries out to Me, I will listen, for I am compassionate. (22:26)

When the oppressed cry out to Hashem, they have a captive audience - Hashem listens and responds. The response may not always be what we want to hear, but our entreaty is never ignored. The word that the Torah uses to describe Hashem's compassion, chanun, is a derivative of chinam, free, implying that Hashem's compassion is often the result of His altruism, rather than a reward for something we deserve. It is Hashem's boundless love for His People that catalyzes His compassion - not necessarily our own worthiness. If so, why do we find tragedy occurring in some of the finest homes? Unquestionably, Hashem's ways are a secret to which the human mind is not privy, but how are we to understand the meaning of His unwarranted compassion in the context of catastrophe?

As we said, Hashem's ways are beyond the grasp of human ken. In place of some rationale, I cite a letter of condolence which Horav Yosef Sholom Elyashiv, Shlita, sent to the bereaved family of a young Jewish scholar who was taken suddenly from them.

"Regarding the question that I was asked: Why? For what reason did Hashem do this? I cannot answer such a question. Hashem's ways are hidden from us, but the "Rock - perfect in His work" (Devarim 32:4). We believe that Hashem's ways are just - even though, due to our limitations, we do not understand them. Nonetheless, I would like to quote the Zohar HaKadosh on Parashas Vayishlach: David HaMelech was born without years. In other words, no specific time was allotted for his life. When Adam HaRishon saw this, he granted him seventy years of his life. We derive from here that a person can live in this world and be unaware that every

day of his life is a special gift that Hashem, in His overwhelming kindness, has given him. Therefore, one must thank Hashem for whatever life has been granted to him, for that life (however short or adverse) might be something special that was granted to him above and beyond that to which he was entitled. One who was fortunate enough to have spent his time on this earth serving Hashem, warranting the crown of Torah, earning the crown of a good name and meriting to leave after him a generation of committed, righteous offspring, is truly a blessed individual." While these words may not decrease the pain, they give us a positive insight and help us to maintain perspective under the most trying moments. Horav Yitzchak Zilberstein, Shlita, cites an incident that took place concerning Horav Shmuel Birnbaum, zl, the venerable Rosh Yeshivah of Mir, America. The Rosh Yeshivah sustained two heartrending losses with the passing of two of his sons at a young age, under tragic circumstances. It was during the shivah, mourning period, for the second catastrophe that the Rosh Yeshivah sat there in deep pain, unable to accept comfort. One of his closest students moved over to his rebbe and asked, "Rebbe, if Avraham Avinu would have carried out Hashem's command during the Akeidas Yitzchak, and Yitzchak would have been slaughtered, would Avraham have to sit shivah?"

The Rosh Yeshivah thought for a moment and said, "It seems that if this was the will of the Almighty, then it would countermand shivah. How can one sit shivah and mourn for an occurrence that Hashem Himself in His Glory commanded Avraham Avinu to carry out?"

"If that is the case," the student continued, "can the Rosh Yeshivah question the tragedy that took place with his son? Is there any doubt that this is the unequivocal will of Hashem? This is what we believe, that everything is in accordance with Hashem's will. It is not as apparent as it was at the Akeidah, so, therefore, we must sit shivah, but we must permit ourselves to be consoled."

The Rosh Yeshivah looked at his student and said, "Nichamtani. You have comforted me."

Do not respond over a dispute to tilt after the many. (23:2)

According to the simple interpretation of this pasuk, it is exhorting us to convict a defendant of capital punishment only if there is a majority of two judges that render a guilty verdict. A court that tries capital cases is comprised of twenty-three judges. A verdict of acquittal can be passed with a majority of one. Hence, when twelve judges find for acquittal and eleven for guilty, the defendant is found innocent. In order to issue a guilty verdict, it has to be at least thirteen to ten. Rashi adds a homiletic interpretation based on the fact that the word riv, dispute, is written chaseir, missing a yud, which makes it sound like rav, master, or rabbi. This prompts Rashi to say, "Do not respond against a master," meaning that they may not dispute the ruling of the outstanding member of the court. Therefore, in cases of capital punishment, they begin polling the judges from the side, so that the lesser judges may state their opinion first.

Rashi is teaching us the importance of listening to the manhig, leader, of a community. Regrettably, this is not in vogue in contemporary times, when we often do what we want or what conforms to our perception of right and wrong. Torah leadership is hardly an issue to some. Perhaps the following episode will explain what seems to be the standard today. In a small community in Eastern Europe, the boorish members assembled and decided to rebel against the leadership of the town's rabbi. Sadly, this was not unusual. It was just that these individuals lacked the "finesse" and "diplomacy" that some of today's self-righteous, duplicitous denizens of the Jewish community manifest. These people had no shame, and they told it from their own perspectives. They saw no reason for the rav to have the last word regarding kashrus, education, mikveh and other religious activities. After all, they were the majority, and the Torah enjoins us to follow the majority.

The rabbi was as clever as he was a scholar. He listened to their claims and replied, "Let me share a story with you. Once, all two hundred and forty-eight organs of the body got together and came to the head with a

challenge. They felt that they were all nothing more than his servants. He made the decisions for the body, and they had to follow along obsequiously. He never consulted with them. Does the Torah not teach us that the majority rules? Why did he not listen to the Torah?"

"The head was not stymied by their allegation. He replied, 'The Torah is addressing a case in which the Sanhedrin, the great body of Jewish Law, is comprised of seventy-one heads, each one a Torah scholar of great erudition and sterling character. When one is confronted with so many heads, it is necessary to question each one and obtain his opinion. Thus, if there is no consensus, we follow the majority. Among all of you, however, there is not a single head. You are all tails, each one vying to present his opinion. The axiom of "majority rules" does not apply in such a circumstance!'"

Three times during the year shall your men folk appear before the Lord, Hashem. (23:17)

The idea of Aliyah l'Regel, pilgrimage to Yerushalayim for the Three Festivals, is repeated three times in the Torah: in Parashas Mishpatim; in Parashas Ki Sissa (Shemos 34:24); and in Parashas Re'eh (Devarim 16:16). Horav Yosef Sholom Elyashiv, Shlita, posits that these three sets of three emphasize the three primary principles of faith upon which our religion is founded. They are: the existence of Hashem; Torah from Heaven; Divine Providence. We believe in the Supreme Being/Hashem Who gave us the Torah at Har Sinai and Who guides and directs every aspect of the world and our lives.

The Pesach Festival attests to the existence of Hashem. Indeed, Hashem begins the Ten Commandments by introducing Himself as the One Who took us out of Egypt, as opposed to the One Who created the world. Hence, it is something one must believe. It is not something that we saw, but the exodus from Egypt was experienced by the entire Jewish People. The experience was transmitted through the generations from parent to child so that it has become inculcated into our psyche.

On Shavuot, Hashem gave us the Torah amid miracles and wonder, on a fiery mountain that was resounding with thunder and lightning. On this day every year, man can reflect upon the meaning of the festival and what it represents. The Torah is eternal and has the same validity to us today as it had some thousands of years ago when it was given to us on Har Sinai.

The Festival of Succos provides us with a unique window into Hashgachah Pratis, Divine Providence. The succah, which all observant Jews either build or sit in, might have for its base a variety of components. In other words, one person will have a simple four wall succah made of wood or fiberglass, while his neighbor might have an addition to his house that is converted into a succah. One area in which all succos coincide is the roof: the schach, covering, must be kosher and uniform, its covering meeting the criteria for all Jews across the board. This teaches us that there is one covering for all Jews. We are all individually and collectively under Hashem's protection and guidance. This is the lesson of Succos.

Three Festivals - three times - three lessons.

Va'ani Tefillah V'lo anachnu amo v'tzon mariso And we belong to Him, His People, and the sheep of His pasture.

The kri, the way the word v'lo, to Him, is read-- and the ksiv, the way it is written, do not correspond. It is read v'lo, with a vav, to Him, and it is written v'lo, with an aleph, making it mean "and not." Horav Yaakov Neiman, zl, quotes the Chafetz Chaim who related that he had heard in the name of the Maggid m'Dubno, a mashal, parable, which reconciles these two contrasting spellings.

Two men were traveling together on a road on which they were the only travelers. During the night, one of the travelers sensed that his wallet was missing. He immediately grabbed his travel mate and accused him of being a thief. "How dare you take my money," he screamed, to which the accused replied, "What makes you think that I am the thief? Perhaps it was someone else. After all, did you actually see me in the act?"

"Do I then have to see you steal to know that you are the thief?" the other man asked. "There is no one else here but you and I, and I surely did not steal my own wallet. It must be you!"

This, says the Dubner Maggid, is the meaning of the pasuk, "He created us - because v'lo anachnu - "we surely could not have done this." Therefore v'lo anachnu, "we belong to Him." We are His handiwork.

L'zechar nishmas HILLEL BEN CHAIM AHARON JACOBSON by his family: David, Susan, Daniel, Breindy, Ephraim, Adeena, Aryeh and Michelle Jacobson and great grandchildren

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The Price of Turning Shabbat into Saturday

"Six days shall you accomplish your activities, and on the seventh day you shall desist... and your maidservant's son and the sojourner may be refreshed." (23:12)

Possibly one of the least understood areas of Shabbat observance is amira l'akum — hinting to a non-Jew to do something for a Jew that the Jew him or herself cannot do because of Shabbat.

The basic premise of this prohibition is to preserve the other-worldly quality of Shabbat, for it would be all too easy to employ a non-Jew to continue one's weekday activities without contravening a single Torah law. In other words, you could turn Shabbat into Saturday.

For example, many people assume that if the circuit breaker trips and the lights go out at the Shabbat night meal one could hint to a non-Jew to turn them on again. This is not true. Except in certain specific cases, a Jew on Shabbat may not receive any direct benefit from the melacha (forbidden Shabbat action) of a non-Jew.

There are many people who would never dream of allowing a cheeseburger to cross the portals of their dwelling (let alone the portals of their lips) but would cheerfully hint to the maid to turn the lights on on Shabbat

Ignoring this prohibition, however, can lead to dire consequences — and not just in the world-to-come.

Around the year 1800, there was a large fire in the city of Maerkisch-Friedland. Much of the Jewish quarter was destroyed and many homes had to be rebuilt. Rabbi Akiva Eiger, the rabbi of the city, issued a proclamation advising those rebuilding their homes to stipulate in their contracts with the builders that no work should be done on Shabbat or Yom Tov.

The community was united in its observance of Rabbi Akiva Eiger's degree, with one exception. The president of the community, who was extremely wealthy, wanted his house rebuilt as quickly as possible, and instructed his workers to work non-stop through Shabbat and Yom Tov.

The protestations of the community and even the Rabbi himself fell on deaf ears, and the work proceeded unabated. Shocked by this flagrant breach of Halacha, Rabbi Akiva Eiger was heard to say that he did not expect the house to last very long.

Not only was the president's house the first to be completed; it was undoubtedly the finest of the new homes.

Not long afterwards, and without any previous warning, one of the beams of the president's mansion suddenly crashed to the ground. A subsequent investigation revealed that the beam was riddled with timber decay. Not only this, but the wooden frame of the mansion was similarly affected and the entire structure had to be demolished.

A check was made of all the other re-built buildings, but not one of them showed the slightest inclination to dry rot. The engineers were at a loss to

explain why only this particular house, built at the same time and from the same timber supply, was affected.

The Jews of Maerkisch-Friedland, however, were in no doubt about the answer to this puzzling enigma.

- Sources: The 39 Melachos, Rabbi Dovid Ribiat
Written and compiled by Rabbi Yaakov Asher Sinclair
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[http://www.aish.com/societyWork/sciencenature/Is_Stem_Cell_Research_Ethical\\$.asp](http://www.aish.com/societyWork/sciencenature/Is_Stem_Cell_Research_Ethical$.asp)

Is Stem Cell Research Ethical? by Daniel Eisenberg, M.D.

Today, a man lies dying of liver failure in a hospital. There is little expectation that he will be one of the lucky few to receive a transplant before he becomes too ill to save. Even if he did receive a transplant, he will be burdened with taking multiple anti-rejection drugs for the rest of his life, which in and of themselves would significantly compromise his health.

Tomorrow, scientists develop a method to build this man a new liver, one that would be a perfect match for him, requiring no anti-rejection drugs whatsoever. There is a catch. To perfect such a solution would require the destruction of other lives. Would Judaism sanction such a solution?

Jewish law clearly forbids the taking of one life to save another. The Talmud forbids saving one's life at the expense of another by asking how one knows that his life is more valuable than his neighbor's. Perhaps your neighbor's life is more valuable.

WHEN THE FETUS IS A THREAT TO LIFE

But, what if the life that would need to be sacrificed was that of a fetus? May we permit abortion to save the life of an already born person? The Mishna clearly states that if the life of a woman in labor is threatened by her fetus, the fetus should be aborted. But once a portion of the baby has emerged, we may not abort the fetus, because "one may not set aside one person's life for the sake of another." The principle behind this ruling is that one may kill someone who is unjustly pursuing a third party to kill him. Since the fetus, who is not yet considered a "complete" person, is "pursuing" the mother in a way that will inevitably result in her death, we may kill it first. But, once it has even partially emerged, it is considered a full-fledged person. Now we are faced with a dilemma, states Rabbi Moshe Feinstein, one of the most respected rabbis of the 20th century: who is pursuing whom?

WHEN PURSUING EACH OTHER

Imagine that you are transported back in time to Weehawken, New Jersey, on July 11, 1804. As you step out of the time machine you see Aaron Burr, pulling out a revolver to shoot Alexander Hamilton, Former United States Secretary Of The Treasury. Simultaneously, you see Hamilton also drawing his revolver to kill Burr! What should you do? Kill Burr? Kill Hamilton? Jewish law would rule that you may kill neither, because they are pursuing each other and you do not know which one, if either, is an innocent party.

In our case of the baby struggling to be born at the expense of the mother and the mother struggling to survive at the expense of the fetus, are not the baby and the mother each "pursuing" the other? In such a case, the general rule is that we may not choose either, since each is a complete and autonomous person, and each is both the pursuer and the pursued. Luckily for us, these scenarios are very rare occurrences in our day thanks to Caesarian sections.

But, since the rationale for abortion in Jewish law is based on the fetus being a pursuer of the mother, a life-threatening situation for another adult would not justify our killing a fetus, since the fetus does not threaten the life of anyone except the mother. Therefore, we cannot allow abortion, even to save the life of our patient with liver failure.

DESTROYING "PRE-EMBRYOS"

But there is hope. What if the scientists "merely" needed to destroy excess fertilized eggs from in vitro fertilization (IVF) procedures that are only a few days old and have not yet been implanted in a woman's uterus? Is the

destruction of these "pre-embryos" ethically acceptable to us? That is exactly the debate that currently rages regarding stem cell research.

While stem cells can be derived from aborted fetuses and even adults, the best source for stem cells is the small clump of cells that compose the early zygote only a few days following conception. Therefore, to best investigate the latent possibilities inherent in stem cells, scientists wish to use the approximately 100,000 "excess" frozen pre-embryos that are "left over" from earlier IVF attempts. Is it ethical to allow the destruction of pre-embryos to obtain stem cells for research that may some day save thousands of lives?

Early stem cells have the ability to differentiate into every cell of the human body, potentially forming an entire fetus. If we were able to manipulate the conditions controlling cellular differentiation, we might create replacement cells and organs, potentially curing illnesses such as diabetes, Alzheimer's disease, and Parkinson's disease.

But, the ultimate promise of stem cell technology would be to combine it with cloning. Imagine our man dying of liver failure. If we could clone one of his cells, but instead of allowing the cloned cell to develop into a fetus, we might place it into the appropriate environment that would cause it to differentiate into a liver that would be virtually genetically identical to that of the sick man. If we could "grow" this liver to maturity, we could offer the sick man a liver transplant without the risk of rejection and without the need for anti-rejection drugs.

Unfortunately, we still do not know if we can successfully clone a human, nor are we sure what practical value can be derived from stem cells. It will require years of very expensive, labor-intensive research to determine the potential that stem cells hold for the treatment, palliation, and cure of human illness.

ARE "PRE-EMBRYOS" INCLUDED IN THE PROHIBITION OF ABORTION?

Is it ethical to sacrifice pre-embryos to experiment with their stem cells in the hope of some day saving many lives? While many ethical issues arise, the key one is whether pre-embryos are included in the prohibition of abortion. The consensus thus far is that an embryo is not protected by the limitations on abortion until it is implanted in a woman. Most rationales given for why the Torah forbids abortion, except to save the mother's life, revolve around the fetus being within the woman.

The logic of only ascribing humanity to an embryo once it is implanted in the womb is simple. Left undisturbed, an embryo in its mother's womb will most likely continue to grow and reach parturition. But the pre-embryo created by IVF, if left untouched in its "test tube," will die. The pre-embryo requires active intervention to even reach a situation which we consider to be true potential life. The alternative to this reasoning would be to argue that the killing of adult skin cells is forbidden, since a person could potentially be cloned from any cell in an adult's body.

ANOTHER RATIONALE

Additionally, there is another sound reason to allow destruction of pre-embryos to save a life. When necessary to save a life, Judaism requires us to transgress all of the laws in the Torah, with the exception of murder, adultery, and idol worship. For example, if someone is gravely ill on Yom Kippur, we would drive in a car to get them even non-kosher food even if necessary to save their life. If a pre-embryo is not covered by the Biblical commandment of "thou shall not murder," then we might allow destroying a pre-embryo for its stem cells if it would save the life of an already born person. We are left with the question of whether research is considered the saving of a life. This argument becomes even more appealing if concrete life-saving medical treatments can be demonstrated.

For these as well as many other reasons, many contemporary halachic decisors have ruled that the destruction of preexisting pre-embryos for stem cell research is permitted (see my more extensive article on stem cell research and Jewish Law at:

<http://www.jlaw.com/Articles/stemcellres.html>)

CHEAPENING THE VALUE OF HUMAN LIFE

Nevertheless, many Rabbis oppose the deliberate creation of pre-embryos for the purpose of their destruction, as this would cheapen the value of human life.

The halachic process offers fascinating insight into all areas of ethics, including biomedical ethics. It gives us the opportunity to evaluate the explosion of technology that surrounds us through the lens of the Torah, insuring that we remain the masters of our science and not vice versa. Judaism has no issue with technology. It only requires the ethical and responsible use of science to better our lives. Let us pray that tomorrow, our patient with liver failure will be cured.

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RABBI JOSH FLUG

Lo Ta'amod Al Dam Rei'echa: The Mitzvah of Saving a Life

The Torah (Vayikra 19:16) states "lo ta'amod al dam rei'echa," do not stand idly by your brother's blood. The Gemara, Sanhedrin 73a, cites a Beraita that states that this verse teaches that if one sees someone in a life-threatening situation (e.g. he is drowning in a river or being dragged by wild beasts), he has an obligation to save him. This week's issue will discuss the parameters of this mitzvah/prohibition. How far must one go to save someone else's life?

Is There a Monetary Obligation to Save Someone's Life?

The Gemara, *ibid*, notes that this verse seems to be extraneous. After all, the mitzvah of hashavat aveidah (returning a lost item) already encompasses an obligation to restore a "life that is being lost." The Gemara answers that the mitzvah of hashavat aveidah only requires one to personally return an object. It does not require one to hire someone else if he is not personally capable of performing the mitzvah. The verse of lo ta'amod al dam rei'echa requires one to hire someone else if he is not capable of performing the life-saving mission.

Rabbeinu Asher, Sanhedrin 8:2, states that although the bystander is required to hire someone else, the one who his rescued must reimburse the bystander if he has the means to do so. Implicit in Rabbeinu Asher's ruling is that if the one who is rescued does not have the means to pay for the rescue, the bystander must incur the cost. R. Meir HaLevi, Yad Ramah, Sanhedrin 73a, rules that there is an absolute legal obligation to reimburse the bystander.

Rabbeinu Asher's requirement of the bystander to pay for the rescue (when the one being rescued does not have the means) seems to be based on the general obligation to spend money for performance of mitzvot. Rama, Orach Chaim 656:1, rules that one must spend up to one-fifth of his assets in order to fulfill a positive mitzvah and his entire fortune in order not to violate a negative commandment. R. Akiva Eger, *Glosses to Yoreh De'ah 157:1*, s.v. V'Lo, cites a dispute between R. Yair Bachrach, Chavot Yair no. 139 and Rivash no. 387, regarding a negative commandment that is violated by passivity. According to Chavot Yair, it is treated as a positive commandment and one must spend up one-fifth of his assets. According to Rivash, it is treated as a negative commandment and one must spend his entire fortune in order to avoid violation of the prohibition. Pischei Teshuva, Yoreh De'ah 152:4, notes that this dispute is applicable to the mitzvah of lo ta'amod al dam rei'echa. The mitzvah of lo ta'amod al dam rei'echa is phrased as a negative commandment, yet one violates the mitzvah by passively allowing someone to die. Therefore, according to Chavot Yair, one must only spend up to one-fifth of one's fortune in order to save someone else's life. According to Rivash, one must spend his entire fortune in order to save someone else's life.

Comparing Saving a Life to Hashavat Aveidah

There are a number of Acharonim who present novel ideas based on the Gemara's comparison between saving a life and hashavat aveidah. They all infer from the Gemara that the only difference between lo ta'amod al dam rei'echa and hashavat aveidah is the requirement to hire someone else to save a life. First, R. Shlomo Kluger, Chochmat Shlomo, Choshen Mishpat no 426, notes the principle of zaken v'aino l'fi k'vodo, the principle that if a distinguished individual finds an item that would be embarrassing for him to return, he is exempt from the mitzvah of hashavat

aveidah (Baba Metzia 30b). R. Kluger suggests that the Gemara's omission of the zaken v'aino l'fi k'vodo principle as an added feature of lo ta'amod al dam rei'echa, implies that the principle exists for life-saving missions. Therefore, if the life-saving mission will cause someone embarrassment, he is not required to perform the mission. R. Moshe Feinstein, Igrot Moshe, Yoreh De'ah 2:174 (3), rejects R. Kluger's assertion and considers it "an absolute mistake." R. Feinstein notes that the principle of zaken v'aino l'fi k'vodo is quantified by how the finder (rescuer) would deal with the situation if it was his own property. If he would forgo his own property because the embarrassment of retrieving it is too great, he is not required to embarrass himself to save someone else's property. Otherwise, this principle does not apply, even if returning the item causes minor embarrassment. When it comes to saving a life, one would certainly do whatever possible to save his own life, even if it will cause tremendous embarrassment. Therefore, the same standards apply to someone else and one is required to save a life, even if it will cause tremendous embarrassment.

Second, Minchat Chinuch, no. 237, suggests that one can deduce from the Gemara that there is no obligation to save someone from suicide. There certainly is no mitzvah of hashavat aveidah on property that was intentionally discarded by its owner. If in fact there is an obligation to save someone from suicide, the Gemara should have listed this as a distinction between hashavat aveidah and lo ta'amod al dam rei'echa. R. Moshe Feinstein, op. cit., rejects Minchat Chinuch's position with the same certitude as his rejection of R. Kluger's position. The reason why there is no hashavat aveidah on intentionally discarded items is that one has a legal right to discard his own items and in doing so, he forfeits the right to the item. However, one has no legal right to end his own life, and therefore, if he attempts to do so, one must make every effort to save him.

Third, the Talmud Yerushalmi, Terumot 8:4, 47a, records an incident where R. Shimon b. Lakish risked his own life in order to save someone else. Hagahot Maimoniot, Hilchot Rotzei'ach 1:15 (Defus Kushta) deduces from the Talmud Yerushalmi that lo ta'amod al dam rei'echa requires one to put his own life at some degree of risk in order to save someone else. S'ma, Choshen Mishpat 426:2, posits that most Rishonim disagree with Hagahot Maimoniot and maintain that one is not required to risk one's own life to save someone else.

R. Ya'akov Etlinger, Aruch LaNer, Sanhedrin 73a, s.v. V'ha MeHacha, suggests that the reason why most Rishonim do not require one to risk his own life to save someone else is that the aforementioned Gemara seems to imply the opposite. If in fact one must risk his own life in order to save someone else, the Gemara should have listed this as an important distinction between lo ta'amod al dam rei'echa and hashavat aveidah. The Gemara's omission of this distinction implies that one is not required to risk one's life to save another life. R. David Freidman, She'eilat David, Even HaEzer no. 6 (note 4), presents the same logic and adds that one can include life-saving missions that cause physical pain or distress in this discussion. The fact that the Gemara never included pain or distress as a difference between hashavat aveidah and lo ta'amod al dam rei'echa implies that one is not required to place oneself in a position of pain or distress in order to save a life.

Fourth, Radvaz, 3:627, discusses the question of whether one is required to give up a limb of his body in order to save someone else's life. He concludes that one is not required to do so, but if one does it is considered a pious act (midat chasidut). Radvaz implies that one can prove this point from the aforementioned Gemara. If in fact lo ta'amod al dam rei'echa requires that one give up a limb of one's body, that would be an obvious difference between hashavat aveidah and lo ta'amod al dam rei'echa.

Radvaz's ruling is applied to the discussion of live kidney donations. R. Yitzchak Y. Weiss, Minchat Yitzchak 6:103, and R. Ovadia Yosef, Yechaveh Da'at 3:84, both rule that one is not required to give up one's kidney in order to save someone else's life. However, they conclude that if the procedure is not dangerous to the donor, it is meritorious to do so.

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Monetary Aspects of Saving a Life

In last week's issue, we discussed the mitzvah of saving a life based on the verse "lo ta'amod al dam rei'echa," do not stand idly by your brother's blood. We mentioned the requirement to hire someone else to save a life if the bystander is not capable of doing so himself. We also discussed who is required to pay for the rescue. In this week's issue, we will further develop the concept of monetary payment as it relates to the mitzvah of saving a life.

Is there Monetary Value in a Life-Saving Mission?

In last week's issue, we presented a dispute between Rabbeinu Asher and R. Meir HaLevi regarding the obligation of the bystander to hire someone else to save a life. Rabbeinu Asher is of the opinion that if a bystander hires someone to save a life, the one who is rescued must reimburse the bystander if he has the means of doing so. If he does not have the means, the bystander incurs the cost. According to R. Meir

HaLevi, there is an absolute requirement upon the one who is rescued to reimburse the bystander. One might query according to Rabbeinu Asher as to whether the responsibility of the bystander to incur the cost of saving a life (if the one who is rescued does not have the means) is a function of a legal monetary obligation or whether it is merely a moral obligation.

The Vilna Gaon, Biur HaGra, Yoreh De'ah 336:12, implies that this issue is addressed in the Gemara. The Mishna, Kiddushin 2a, states that a man can perform kiddushin (betrothal) by giving a woman money or something of monetary value. The Gemara, Kiddushin 8b, states that kiddushin may be executed if the prospective groom feeds the prospective bride's dog. [It is as if he gave her the food.] The Gemara then presents a case of woman who is being chased by a dog (not her dog) and the prospective groom would like to execute the kiddushin by throwing food to the dog causing it to cease its pursuit of the prospective bride. The Gemara states that on the one hand, the prospective bride benefits monetarily from his act because he provides food on her behalf that results in ceasing the dog's pursuit of her. [It is as if he gave her the food as a gift and then threw it to the dog as her agent.] However, the Gemara contends that one might still question the validity of the kiddushin because the prospective groom has an obligation to save the woman from the dog with his own money regardless of his interest in marrying her. The Gemara provides no conclusion to this question. Rambam, Hilchot Ishut 4:4, and Shulchan Aruch, Even HaEzer 30:11, rule that in such a situation the woman will have the status of being questionably married.

The Vilna Gaon notes that ostensibly, the Gemara's problem with the validity of the kiddushin should lead one to the conclusion that the kiddushin is definitely invalid. After all, the food that he provides to the dog is something that he is obligated to provide regardless of his interest in marrying her. Why then, does the Gemara remain doubtful whether the kiddushin is valid? The Vilna Gaon implies that the answer is that the obligation for the prospective groom to provide his own food to the dog is a moral obligation and not a legal one. Therefore, from a strictly legal perspective, by feeding the dog, he provides the woman with a benefit that he does not owe. The Gemara's doubt is based on whether providing something that one is morally obligated to provide is considered providing something of monetary value.

The Vilna Gaon cites this Gemara as the source for a ruling of Ramban. Ramban, Torat HaAdam, Inyan HaSakanah (pp. 44-45), states that because saving a life is a mitzvah, one may not charge for the actual service. The bill should only include a charge for use of the rescuer's time (s'char batalah) and his effort (s'char tircha). It should not factor in the rescuer's cost of training or his expertise. However, Ramban then states that if a medical researcher discovers a medication for a disease and his price for the medication is reflective of his expertise, a Jewish court cannot intervene and force him to lower his price. Although the price should not reflect his expertise and the researcher has an obligation to treat the patient, Ramban asserts that the researcher's obligation to lower his price is only a moral obligation and if he is not willing to accept it the court cannot force his hand. Ramban's statement is codified by Shulchan Aruch and Rama, Yoreh De'ah 336:2-3. The Vilna Gaon comments that the aforementioned Gemara is the source for the idea that the obligation to spend money to save someone's life is a moral obligation and not a legal obligation.

Saving a Life Using Someone Else's Money

The Gemara, Baba Kama 60b, states that it is prohibited to damage someone else's property in order to save a life. Tosafot, ad loc., s.v. Mahu, state that the question is not whether one is permitted to damage the property but rather whether one must reimburse the property owner when one damages property in order to save someone else's life. However, Rashi, ad loc., s.v. VeYatzilah, seems to interpret the Gemara literally and that the question is not one of reimbursement but one of permissibility. Accordingly, one may not damage property in order to save someone else's life. Shulchan Aruch, Choshen Mishpat 359:4, codifies the opinion of Tosafot.

It is possible to explain the opinion of Tosafot that since stealing/damaging property is not one of the three cardinal transgressions, one may violate the prohibition against stealing in order to save a life, just as one violates Shabbat in order to save a life. However, the act is still considered an act of theft even though it was for the purpose of saving a life. Therefore, the monetary consequences of theft are not lifted and one must reimburse the property owner. [See Even HaEzer, Hilchot Chovel UMazik 8:4, who explains Rambam's position in a similar manner.]

Nevertheless, there is an alternate way of understanding the opinion of Tosafot. Ra'avad, Baba Kama 117b, seems to side with the opinion of Rashi that it is prohibited to steal or damage property in order to save someone else's life. However, Ra'avad distinguishes between a case where the property owner is himself a bystander to the life-threatening situation and a case where he is not. If the property owner is a bystander, one may steal or damage his property in order to save a life. When he is not a bystander, one may not damage his property. Ra'avad explains that when the property owner is a bystander, he is personally obligated to spend his own money to save a life. Therefore, one may steal or damage his property as long as he is reimbursed. If the property owner is not a bystander, one may not steal or damage his

property in order to save a life because he has no personal obligation towards that life-saving mission.

One must add to Ra'avad's explanation that in principle, one may not violate an interpersonal law (bein adam l'chaveiro) in order to save someone's life. [See HaElef L'Cha Shlomo, Yoreh De'ah no. 200. This concept will be discussed further in the next issue.] Therefore, if the property owner is not present, he has no obligation towards the victim and one may not damage his property in order to save a life. If he is present, he has a moral obligation to spend money in order to save the victim. The prohibition against stealing or damaging property is strictly moral in nature, whereas the obligation to reimburse for damages or return stolen property is legal in nature. The moral obligation binding on the property owner to save the victim overrides the prohibition against stealing or damaging his property, allowing one to steal or damage his property without consent. However, since there is no legal right to his property he must be reimbursed. Therefore, one may steal or damage his property to save a life as long as he is reimbursed. [R. Ovadiah Yosef, Yabia Omer, Choshen Mishpat 4:6, and R. Yisrael Y. Fischer, Even Yisrael 8:105, both assert that Rashi is of the same opinion as Ra'avad and that Rashi only prohibits damaging or stealing property in order to save a life when the property owner is not present.]

Accordingly, one can explain that Tosafot agree in principle with Ra'avad that one may not violate an interpersonal mitzvah in order to save a life. However, Tosafot assume that the moral obligation to save someone else's life applies even when one is not present to witness the life-threatening situation. Therefore, one may always steal or damage someone else's property in order to save a life as long as the one causing the damage incurs the cost. R. Joshua Flug is the Rosh Kollel of the Boca Raton Community Kollel, a member of the YU Kollel Initiative and senior editor for the Marcos and Adina Katz YUTorah.org, a division of Yeshiva University's Center for the Jewish Future. To access the archives of the Weekly Halacha Overview click [here](#). To unsubscribe from this list, please click [here](#).