

**Weekly Internet Parsha Sheet**  
**Mishpatim 5774**  
**שבת פרשת משפטים**

**In My Opinion :: Rabbi Berel Wein**  
*Requiem For A Movement*

In an article that appeared two months ago in the Jewish Review of Books, Daniel Gordis wrote about the sorry state of the Conservative movement in the current American Jewish scene. The Pew Report documented, with a great body of anecdotal evidence, the demise of this once most numerous and powerful movement.

Gordis himself is the scion of a distinguished rabbinical family that exercised great influence in the Conservative movement over the past six decades. Gordis correctly bemoans the fact that for most American Jews their connection to Judaism can only be found in halachically rigorous Orthodoxy or in a vague liberal, upper crust, vacuous social agenda which claims somehow to be a representation of the Jewish religion.

I also bemoan this fact of American Jewish life. I have long felt that a great deal of the responsibility for the apparently inexorable demise of the American Jewish community lies with the failure of the Conservative movement in preserving the Jewish identity and self-worth of its lay adherents.

If Conservative leadership would have spent energy and creativity in preserving Jewish values, families, a spirit of the Sabbath and a sense of loyalty to fellow Jews instead of aping current social trends that were doomed to spiritual obsolescence, the movement would be stronger and vital today.

Instead it seems doomed to extinction as the title of Gordis' article indicates. I feel that it is not an exaggeration to state that the failure of the Conservative movement to maintain itself over the past decades has contributed greatly to the sorry state of non-belief, disloyalty and lack of spirituality, which characterizes current American Jewish society.

Gordis rightly puts the blame for this failure on the spiritual leadership of the movement, which made few demands on its congregants and succumbed to every societal whim of the time. A religion, which in essence stands for nothing and allows everything, cannot in the long run remain viable and alive.

Gordis emphasizes how the (in)famous decision of the Conservative movement in 1950 to allow its congregants to drive to the synagogue on Shabbat not only helped destroy the Shabbat but also contributed to the destruction of the movement itself. People instinctively saw through the sham and realized that if it was permissible to drive to the synagogue than it must also somehow be permissible on Shabbat to drive to the golf course.

People have the ability to do as they please but nevertheless a religious movement must always remain an arbiter of right and wrong, of what is permissible and what should not be done. By blurring that line the Conservative movement lost its identity and its reason for existence.

There are many Orthodox Jews who are not really halachically observant in all forms of technical requirements. Nevertheless they realize that Orthodoxy stands for basic principles and historical beliefs that remain valid and uncompromising in its demands on its adherents. The Jew who drives his automobile to attend Shabbat services at an Orthodox synagogue is aware that he or she is not observing the Shabbat as it should be observed.

One is entitled to behave as one wishes but the requiem for the Conservative movement was pretty much self inflicted by its dumbing down of the core principles of Judaism and severing itself from the ideas of Jewish spirituality and historical continuity.

There is a dangerous trend that exists in the fringes of the Modern Orthodox Jewish world to imitate these errors of the Conservative movement. Feminist fetishes, women rabbis, condoning what the Torah specifically forbids, and disregarding lessons of past history and current

conditions will in no way guarantee the survival of the Jewish family, the Orthodox synagogue or the general Jewish society.

A greater concentration on the value systems that the Torah represents, a true sense of tolerance for others and for differing opinions and an emphasis on spiritual growth as a necessary companion for pure Torah knowledge can create a wider reach and a stronger appeal in Orthodoxy. A clear definition of what we are, a delineation between true Jewish values and passing current fads and a sense of response to the existential questions of life – who I am, what am I doing here, and of what value is my existence – is the basic core of Jewish belief, theology and history.

The Conservative movement was somehow unable or unwilling to address these basic needs of the human soul. This more than anything else has led to its decline and predicted extinction. One would hope that the Orthodox Jewish world, instead of the exulting in unwarranted triumphalism, would learn the proper lessons from the debacle of current American Jewish life.

Shabat shalom

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**Weekly Parsha :: Rabbi Berel Wein**  
*Mishpatim*

The Torah reading of this week deals with the difficulties and pettiness of human life. I find this to be extraordinary since only last week the Torah dealt with the exalted principles and values system of holiness as represented by the Ten Commandments.

It seems to be a letdown to have to speak about oxen goring and people fighting, enslaving and damaging one another when we were apparently just elevated to the status of being a kingdom of priests and a holy nation.

The beginning point of the education of many a Jewish child in Mishna and in Talmud is located in the very prosaic laws of torts and damages discussed in this week's Torah reading. In effect the law book part of the Torah begins by showing us people at their worst behavior and weakest moments. Would it not be more inspiring if the Torah somehow began this detailed part of Jewish law with more inspiration and spirituality?

Yet we are all aware that the most studied volumes of the Talmud - the real meat and potatoes - are those tractates that deal with many of the laws presented in this week's Torah reading. The rabbis in fact advised us to study these laws of torts and of human failures, translated into negative actions and behavior, in order to sharpen our brains and somehow make us wiser.

And most of the study effort concerns itself with how to deal with the damage and hurt that has already been done and very little time and effort, so to speak, with the moral strength necessary to prevent these very damaging events from occurring.

The Torah is a book of reality. It does not gloss over situations nor is it in the least bit hagiographic in dealing with the main characters that appear in its narrative. The perfect Torah speaks to a very imperfect world. The Torah does not allow us to have illusions about how people will behave when money, emotions, negligence and spite are present in society and in the lives of people.

Slavery is wrong, perhaps the greatest wrong, but it has been a fact of life in human history till and including our time. Slavery breeds inequity and as we have witnessed time and again ending slavery does not in any way end bigotry.

The Torah comes to address the how and why of overcoming this inequity and of making slavery subject to such rigorous legal restraints as to prompt the Talmud to say that he who acquires a slave for himself in reality is acquiring a master for himself.

People will be people, damages and hurts will occur and the temptation of wealth and money will not disappear from the face of this earth. Therefore we have to have a set of rules and an ability to deal with these problems so

that they do not completely consume us. The Torah, of necessity, must propose a program of compensation to help the victims and restrain the perpetrators. It is this recognition of human behavior that sets the Torah apart from all other so-called spiritual and religious texts. These assume the best of behavior and values. The Torah makes no such assumption. It is the book of reality and the most holy of all works.  
Shabat shalom

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**Ohr Somayach :: Torah Weekly :: Parshat Mishpatim**  
**For the week ending 25 January 2014 / 24 Shevat 5774**  
**by Rabbi Yaakov Asher Sinclair - [www.seasonsofthemoon.com](http://www.seasonsofthemoon.com)**  
**Insights**

*The Wisdom of Precision*

*And these are the laws... (21:1)*

At first glance, Judaism seems like an ocean of 'do's' and 'don'ts' — an ocean that's easy to drown in.

The 'New' Testament canard of the "nit-picking legalistic Old Testament" is a familiar anti-Semitic slur down through the centuries.

But why does Judaism seem to be "nit-picking?"

I'm writing this but a short time after the first yartzeit of our beloved Rosh Hayeshiva, Rav Mendel Weinbach zt"l. A few years ago, a member of the Ohr Somayach staff could not get his daughter into one of the 'Ivy League' seminaries in Jerusalem because he had no family or contacts to vouch for them. Despite numerous phone calls and the passing of months, the young lady still had no school. In a state of near-desperation, the father went in to see Rav Mendel. He said, "It's a pity you didn't come to me six months ago. I have a certain influence at that school, but now it will be very difficult."

The beginning of the semester came and went. A week into the semester, the young lady was still sitting at home and sinking not-too-slowly into depression. On the morning of the third day Rav Mendel appeared at the family's home and said to her, "Come, we're going to school." Together they climbed into a taxi and arrived at the school that had rejected her. They walked into the First Year classroom. As they entered, fifty heads turned in unison. Rav Mendel said, "Sit down." And then he proceeded to sit down in the chair next to her.

He would not leave until the school agreed to take her.

In last week's Torah Weekly I recounted the story of one of the great Rabbis of the Mussar (Ethics) Movement whose glove slipped under his departing train and he threw the other glove under the carriage so the person who found the first glove would have a pair.

And who can forget the wonderful story of Rabbi Moshe Feinstein who traveled quietly for several miles with his hand trapped in a car door so the driver wouldn't be embarrassed by having slammed the door on the Rabbi's hand?

From where does that great sensitivity come?

From all that "nit-picking".

Torah is the wisdom of precision. Every movement, every feeling, every thought must be weighed and evaluated and checked to see whether it is perfect or not.

The power of Torah lies precisely in its laser-like attention to differences of a hair's breadth. When a person trains himself to be recognize hair's breadth differences in the physical world, the fine line between a glatt kosher shechita and one that was 'glatt treif', he creates in himself the sensitivity to recognize the subtle flaws in his character — flaws which the rest of the world would trumpet as virtues.

However these virtues don't come cheap. They only appear in someone who accepts the Torah as a yoke, who views his Torah observance as obligatory. When life's trials confront us, as they must inevitably do, all our refinement will vanish unless we have been through 'boot camp' — the rigorous regimen of precise mitzvah observance. If our attitude to the Torah is that it's going to give me a better life, better relationships, a faithful spouse, nice festivals, and children who are unlikely to be drug addicts, or if I'm looking for a mystical high, we will not become loftier and more sensitive individuals.

When life's 'ups' inevitably turn into 'downs', our values will also plummet.

Worse, we will excuse our lackings with excuses like, "You can't judge someone when they're under pressure." And to excuse our failings we will bring as proofs the dicta of the Sages. Inexorably, we will become less and less sensitive until we descend into anger, rage, trickery and the whole lexicon of bad character. And all because we failed to accept the Torah as a yoke.

The sensitivity and character refinement of our great Torah Sages which has no parallel amongst the cultural glitterati of the nations comes from our holy Torah, and can only come from the wisdom of precision.

Sources: based on Rabbi Shlomo Wolbe zt"l; thanks to Rabbi Heshy Grossman

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**Peninim on the Torah by Rabbi A. Leib Scheinbaum**  
**Parshas Mishpatim**

*And these are the judgments that you shall place before them. (21:1)*

Rashi teaches that Hashem told Moshe Rabbeinu, "It should not occur to you to say, 'I shall teach them the chapter and the law two or three times, until it is set in order in their mouths according to its format (i.e. until they memorize it), but I shall not trouble myself to make them understand the reasons of the matter and its explanation.' Therefore it says, 'that you shall place it before them - like a table that is set and prepared to be eaten from, placed before a person.' In other words, there is no room for error in teaching. The student must be clear, understanding the subject matter to the best of his ability. A rebbe may not say, 'I have done enough.'"

In his Igros Moshe, Horav Moshe Feinstein, zl, writes a compelling charge to Torah educators. In explaining how they should teach and how far they should go in reaching out to each student, he writes: "One should know that Torah study is unlike any other form of study... A Torah teacher must explain the subject matter well until the student achieves proficiency in the lesson, to the point that he accepts the lesson as a way of life." Torah is not a discipline which one teaches and moves on to the next lesson. If the student has not incorporated the lesson into his psyche - if, for example the student studies the laws of tefillah, prayer, but does not pray better, with greater kavanah, intention/concentration, feeling and enthusiasm- the rebbe has failed. Teaching Torah means infusing Torah within the hearts and minds of each and every student. It must become a part of their lives.

Rav Moshe adds that a rebbe should never give up on his student - regardless of his inability to grasp the lesson, or lack of commitment to the program. As long as he is not adversely affecting other students, he should be kept in the school. One never knows what inspiration a student may receive while in the spiritually positive environment of a makom Torah. He might be positively influenced by a rebbe, or even a classmate.

Horav Yehudah Tzedakah, zl, would often say that a true marbitz Torah, disseminator of Torah, is completely devoted to his students. Nothing else takes precedence over his students. They are his life. He felt this is alluded to by Chazal, who say, "If the rav/rebbe is likened to an angel of Hashem, seek Torah from his mouth - if not, do not seek his teachings" (Moed Kattan 17a). The sage explained that an angel does not perform two shlichos, missions, at once. He is devoted to one at a time. Thus, a rebbe should devote himself entirely to his students.

Once, a distinguished Torah activist came to speak with him concerning an important communal issue. The Rav informed the gentleman that at present he was teaching a class and thus unable to take time off and interrupt the shiur, lecture. The man countered that the issue at hand had ramifications that might very well be considered life and death in nature. Rav Tzedakah looked at the man and said, "To me, taking off time from my regular shiur is also life-threatening."

A rebbe's relationship with his student is unique. The rebbe plays a dominant role in shaping that student's future. They sort of partner in the future. With this idea in mind, the rebbe must maintain a keen interest in the student, since his mentoring and care are an investment in the student's future. The following inspirational story intimates this idea. The scene takes place in Yeshivas Ohr Sameach one Yom Kippur night following Kol Nidrei. The bais ha'medrash was packed, standing room only, as one of the Roshei Yeshivah, Horav Nachman Bulman, zl, ascends to the lectern

to address the hundreds of students, many of them only recently completing their return to Orthodoxy. Rav Bulman appears majestic, bedecked in his white kittel, yarmulke and tallis. His students were his children. He was their father - perhaps not biologically, but, in a spiritual sense - unquestionably. This was the most solemn night of the Jewish calendar year. Everyone listened with rapt attention as he began to speak.

"In many Jewish homes, prior to leaving for shul on Erev Yom Kippur, fathers and mothers take their children aside and bless them. This is a custom that dates back for centuries." Rav Bulman stopped a moment and gazed deeply at his students. "This blessing is referred to as Bircas HaBanim, the blessing of the children. Many of you hail from homes where parents had no inkling of this blessing. Thus, for many of you, tonight is your first opportunity for Bircas HaBanim. As your rebbe, I will bless each of you - but, first, let me relate some background.

"When the revered Ponevezher Rav, Horav Yosef Kahaneman, zl, established Yeshivas Ponevez in Bnei Brak, he also opened an orphanage. Sadly, following World War II there were many children who fell into this category. When the Rav named the orphanage, Batei Avos, Homes of the Fathers, it raised eyebrows. The accepted name for an orphanage was Bais Yesomim, Home of the Orphans. He explained, 'I want the children - and their teachers - to focus on their bright future ahead, not their dismal, sad past. The little boys will eventually become adults, fathers in Klal Yisrael. They will be part of our nation's future. This is why I called the orphanage Batei Avos, to emphasize the positive future which these children should look forward to enjoying."

"Tonight," Rav Bulman continued, "I will do the same. I will bless you as a father blesses his child, but I will not call it Bircas HaBanim. Instead, I will call it Bircas HaAvos, to emphasize your future. You will, in due time, all become fathers in Klal Yisrael, ushering in a new generation which will be a pride to all of Klal Yisrael."

***But if the bondsman shall say, "I love my master... I shall not go free... then his master shall bring him to the court and shall bring him to the door or to the door post, and his master shall bore through his ear with the awl, and he shall serve him forever. (21:5,6)***

The Torah takes a dim view of an eved Ivri, Hebrew bondsman's, desire to continue his servitude. His ear is bored with an awl as he stands near the doorpost. Why the ear? The ear (together with the rest of the body) stood at Har Sinai and heard Hashem declare, "Lo signov, Do not steal." Yet, the man went ahead and stole. He had a list of excuses to justify his behavior. But, at the end of the day, he was a ganov, thief, and must pay for his actions. He had no money - otherwise, why would he steal? He was broke; his family starving; what should he do? So, he was sold as an eved to pay back his theft. That was then. This is now. He had already spent six years of payback. He could now go free. Rather than view his circumstances of the last six years as being adverse, he seemed to have developed a liking for his master. It is not a difficult life. He was treated well - almost as a member of the family. Why should he leave?

The Torah is not happy with him. He should not enjoy slavery - especially if it was to reimburse his debts. He is now frowned upon by the Torah. Why? Is it so wrong to like his master? Perhaps, if he would have been a happier person he would not have resorted to stealing. He now has a greater sense of self-esteem, or, he just likes the comfort and stability of three meals a day, decent clothes, a roof over his head. Is this a reason to have his ear bored?

In his inimitable manner, Horav Yaakov Galinsky, Shlita, addresses this question and responds pragmatically. The lesson for each and every one of us is invaluable. In Pirkei Avos 3:1, Akavya ben Mehalleshah articulates his well-known dictum for protecting oneself from sins. Histakeil b'sheloshah devarim, "Consider three things and you will not come into the (hands) grip of sin: Know from whence you came; where you are going and before Whom you will give justification and reckoning." What is the meaning of not falling into the grip of sin? Is this different than not sinning? Horav Elya Lopian, zl, explains that Akavya ben Mehalleshah is not giving us a guarantee against sin. He is not ensuring us that by looking at these three concepts we will never sin. He is not saying this, because it is not

foolproof. Considering these three rules will not be a guarantee against the act of sinning. But - one who considers them will not fall into the grip of sin. Sin will not have a stranglehold on him that will compel him to sin again. One who takes these three images to mind will perhaps sin, but he will not be a slave to sin. He will sin, but he will not become a sinner.

Rav Galinsky adds flavor to this exposition with a personal anecdote. As a slave laborer for the Russians during World War II, Rav Galinsky, together with thousands of other prisoners of war, many of them yeshivah students, were transported by train to the North and beyond, to Siberia. The train was outfitted for carrying livestock and mail - not people. Understandably, the usual creature comforts required for a human being to function were not included among the train's amenities. The noise was overwhelming as the train rattled on through the night. Adding to the noise was the constant moaning and groaning of a wounded Polish soldier who would not stop complaining about how thirsty he was. As weary and bone-tired as he was, Rav Galinsky could not sleep through the constant, "I am so thirsty," that kept reverberating through the night.

Rav Galinsky arose from his place on the floor, went over and took an old cup, poured some water into it and brought it to the Polish soldier. Finally - there would be some quiet on the train. He was wrong, for no sooner had the man quenched his thirst, that he began groaning, "Oh, what a terrible thirst I had." The Rav derived a powerful lesson from this. A person who is not tarud b'ytzro, engrossed as a slave to his evil inclination, once he has quenched his thirst - or carried out his sinful act, it is over and done with. Why continue thinking about it? Why hash it over and over? Simply face the reality: "I was thirsty, I drank; now, I am fine. Likewise, I had an evil inclination to sin; I carried out my passion. Case closed, I am moving on with my life." A person, however, who is in the grip of sin cannot break through the tentacles which envelop him. Thus, even after he has satisfied his desires, he is thinking about the "next time."

This is the abysmal situation in which the eved Ivri finds himself. He needed money, so he foolishly stole. He then spent the money and now cannot pay it back. He sinned; he was a fool. Now, he must pay by becoming a slave. Six years go by and now he is free. What does this dolt do? Rather than join the rest of the world as a free man, this hare brain wants to continue his degradation. When he is questioned regarding his ability to use his G-d-given brain, he responds, "So what! I enjoy slavery. You think that I am a little bit soft in the brain. So, I can live with it. I am not concerned with what you think." Is this such a terrible reaction to life? If he does not care, why should we? Why put a hole in his ear?

The difference, explains Rav Galinsky, is between performing a sin, and becoming a full-fledged sinner. The first time the fellow erred, he deferred to his momentary needs, acted foolishly, and stole. The second time he is what we may call a habitual sinner. Once he sins twice, it is no longer a sin. It becomes a way of life! He has adopted a new culture - one in which stealing is permissible.

The fellow that wants to extend his servitude manifests such an attitude. He has accepted his newly-found lifestyle. So, he will be an eved. Is it so bad? Three meals a day; roof over his head. What can be so bad about that? He is in the mud and refuses to extricate himself. This, unfortunately is the story behind every "loser." He begins to accept his self-imposed predicament. Rather than look for ways to break out, he acquiesces and expounds the virtue of this lifestyle. Perhaps, blemishing his ear will serve as a wake-up call.

***Then his master shall bring him to the court... and his master shall bore through his ear with the awl, and he shall serve him forever. (21:6)***

Rashi interprets Elokim as bais din, the Jewish court of law. Why would the court be compared to the Almighty to the point that they carry his Name? While there is no doubt that the members of the court are distinguished scholars, men of repute and distinction, but referring to them with G-d's Name seems to be carrying their distinction a bit too far. Horav Gamliel Rabinowitz, Shlita, views this from a practical standpoint. An individual stands before the Bais Din and presents his claim in a clear manner. He lays out the proof, clears up any ambiguity that might exist,

and is certain that everything fits into place. He is clearly the winner - or, so he thinks. The judges are clearly mistaken; they must be wrong; they are crooks, having certainly been bribed by the other litigant - and it goes on. No one sees the truth any longer and sides are taken, with the judge usually serving as the fall guy, the source of blame.

Therefore, when the Torah refers to Bais Din as Elokim, a person must realize that all that occurs in his life is part of Hashem's Divine plan. The judges are simply His mouthpiece, articulating His plan for the individual who stands before them. Nothing happens within a vacuum. Everything has its reason and purpose. In the World of Truth it all makes sense. This is true even if the litigant has proof that he is innocent and, concomitantly Bais Din rules wrongly.

This attitude of accepting whatever is thrown at us applies equally in the sector of the individual. At times, life throws us a curve and we blame others, we attribute it to the fault of others; we never take responsibility for our actions. The Chafetz Chaim writes that when one loses money in Bais Din, he should know that the judges are not more than Hashem's agents. One should never fault the judge whose decision does not coincide with what he was hoping to achieve. It all comes from Hashem.

Divine Providence is a part of life, as we see in the parsha of rotzeach b'shogeg, the unintentional killer. Chazal present us with a powerful analogy. Two people - one of whom had killed unintentionally, and one of whom had killed with intention. Neither incident had witnesses who could testify to either case. It seems like they are both going to get off scot-free. The one who killed intentionally will not be executed, and the one who killed unintentionally will not go to the arei miklat, cities of refuge. Hashem solves the problem by having them "meet" in the same inn. The one who killed intentionally "just happened" to be sitting beneath a ladder, while the one who killed unintentionally ascended the ladder. Guess what happened? He fell! The fellow who was sitting beneath the ladder was killed and the one who fell goes into exile for his unintentional act of murder. Everybody has their day in "court" and pays their due. Hashem does not permit anything to go unrequited - good or bad.

We must live with this cheshbon ha'nefesh, personal soul-searching. Who knows if we did not unintentionally harm someone - physically, emotionally or spiritually? Sure, we did not harbor any evil intentions. In fact, we are, for the most part, not even aware of it. But Hashem does not forget, nor does He overlook. There is a record of everything we have done, and if it adversely affected someone else, we will be called to task for our actions.

#### ***Distance yourself from a false word. (23:7)***

Sforno writes that one must distance himself from anything that might lead to falsehood. Sometimes we do something innocuous, but it creates a situation in which someone else is compelled to lie - albeit inadvertently. Sefer Chassidim mentions an all-too common situation, whereby one notices a group of friends speaking furtively among themselves. Of course, he wants to know what it is they are shrouding in so much secrecy. If he approaches them and asks, "What are you talking about?" he knows that he might cause them to lie. Let's face it, if they wanted him to know the topic of their conversation, they would have included him. Apparently, they want to keep it from him. So, why is he bothering to ask?

Chazal teach (Bava Metzia 59a), "From the day the Bais HaMikdash was destroyed, the Gates of Prayer have been sealed..." Nevertheless, the Gates of Tears remain open. What this means is that prayer no longer has as ready access as it used to during the Temple's tenure. The Shaarei Demaos, Gates of Tears, remain open and ready to accept the Jews' tearful entreaty. Horav Bunim, zl, m'Peshischa, wonders why there is a need for gates, if they always remain open. Just do away with the doors. He explains that there are sincere tears and there are insincere tears. Often, one cries for the wrong reason or misguided motivation. Those tears do not gain access - the gates close on them.

When Horav Eliezer Gordon, zl, Rosh Yeshivah and founder of Telshe, Lithuania was nifter, passed away, suddenly - on a fundraising trip to England, it was a great shock to the Telshe community. The town and its Yeshivah were thrust into mourning and sadness. It is told that his

grandson, Horav Eliyahu Meir Bloch, zl, who would one day be co-founder of Telshe, America, who was seventeen years old at the time, broke into uncontrollable weeping. He was very close with his zaide and the loss had a profound effect on him. His father, Horav Yosef Yehudah Leib Bloch, zl, son-in-law and successor to Rav Leizer said to him, "It appears to me that you are crying a bit overzealously. Are you really that broken-up, or are you trying to impress people with how sad you are over the loss of your grandfather?"

Many years later, Rav Eliyahu Meir remarked, "My father was correct. I was zealous in my display of grief." The Rosh Yeshivah was known for his adherence to honesty. Rav Eliyahu would not sway one iota from the truth, regardless of the repercussions. He had strong opinions and was very critical of secular Zionism. A prominent rabbi once told him, that in America one must please his financial supporters. To be so critical of their secular beliefs might undermine his ability to sustain the yeshivah.

The Rosh Yeshivah answered, "My revered father told me that I do not have to be a Rosh Yeshivah, but I do have to be an ehrlicher Yid, honest Jew." Integrity - whether in business, or in interpersonal relationships - is a Jewish standard of life. Emes, truth, is one of three amudim, pillars, upon which the world stands. This means that a lack of honesty can weaken the world's support system. The Yalkut Me'am Loez, Shemos, states that it is because of the prevalence of falsehood among our people that we are still suffering from the miserable galus, exile. I am not even referring to outright, open lies, whereby one prevaricates for monetary or political gain. These are white lies, and lies that are expressed to fool or simply impress people. At the end of the day, a lie is a lie - regardless of its motivation, one who lies distances himself from Hashem. Indeed, this very idea is homiletically interpreted by Rav Zushe, zl, m'Annapole, into the pasuk, Mi'dvar sheker tirschak. He explains that one mi'dvar sheker - from a word of falsehood; tirschak - one becomes distanced from Hashem.

In his book, Echoes of the Maggid, Rabbi Paysach Krohn presents a few vignettes which demonstrate the level of honesty reached by our Torah leaders. One might ask why I present stories of Torah leaders; why not expound stories of "regular" people whose commitment to honesty is integral? It is to demonstrate that their sense of honesty remained uncompromised regardless of their distinction- unlike secular leadership whose commitment to integrity diminishes with their ascension up the ladder of prominence and power.

Rabbeinu Bachya writes (Kad HaKemach), "All those who maintain lives committed to honesty and integrity will have their prayers answered." This is derived from the pasuk we say thrice daily in Tefillas Ashrei, Karov Hashem l'chol korav, l'chol asher yikrahu b'emes, "Hashem is close to all those who call upon Him, to all who call upon Him - b'emes, with truth." This means Hashem listens to all those who can claim that they live their lives with integrity.

Three short vignettes which are inspiring and are especially significant when we take into account how great were these individuals and how incredibly important it was to them not to bend the truth - one iota. This in itself is a commentary on their illustrious nature.

The Chazon Ish would have a minyan, quorum of ten men, for mincha, afternoon service, every afternoon at his house. The minyan took place at 12:30 p.m. Once, they were short a tenth man. The clock was running. It was 12:45 before a tenth man to complete the minyan showed up. As they were beginning tefillas ashrei, the opening prayer of Minchah, the Chazon Ish's brother-in-law, Horav Shmuel Greineman, zl, turned to him and said, "I have a 1:00 p.m. meeting with someone. If I remain here for Minchah, I will be late for the meeting, thus keeping the person waiting. What should I do?"

The Chazon Ish gave a classic reply. "Coming late for a meeting is deceitful. An honest man must keep his appointments in a timely fashion. It is better that this minyan be adjourned today than you be involved in a sheker, falsehood." When we come late to an appointment, we are not only sending a message to the other person that his feelings mean very little to us, we are also transgressing a Divine principle. In other words, we are acting inappropriately to Hashem, as well as to our fellow man.

A number of years ago, I quoted a frightening statement, from the Bnei Yissachar, Horav Mendel m'Rimonov. Often quoted by the Manchester Rosh Yeshivah, Horav Yehudah Zev Segal, zl, who would observe the strange occurrence of young, sweet, innocent children, who, as they mature, somehow begin to stray from the Torah way. "It is because of timtum ha'lev, stuffed/numb heart, which is the result of maachalos asuros, eating forbidden food." How do observant children obtain forbidden food? He explains, "They eat food purchased with funds secured through dishonest dealings." In other words, a father makes a "deal." Someone loses money - someone benefits from his loss. He feeds his ill-gained profits to his children. They now become the losers. It is as simple as that. Rav Segal was naeh doresh, naeh mekayeim, practiced what he preached. His life, among many other things, was a lesson in honesty. He was once traveling intercity by train. The conductor would come by and collect the fares and issue tickets to the passengers. Rav Segal commenced the trip in the second-class economy section, but later during the trip, moved to the first-class section which had many seats available. The passengers in his car redefined the nature of second-class. The noise was unbearable for a man attempting to concentrate on his learning. Hoping the conductor would come through the first-class section and collect the added fare, the Rosh Yeshivah turned to his sefer and learned for the rest of the trip. When he reached his destination and realized that the conductor had not come by, he proceeded to the station master to pay the difference in price. Despite being told repeatedly that it was unnecessary, he insisted on paying the money. As the Rosh Yeshivah left the booth, the stationmaster exclaimed, "That man is one in a million!" Someone once called Horav Yaakov Kaminetzsky, zl, and asked if he could call in sick for Purim so that he could spend the day with his family. "Surely it is more appropriate to spend simchas Purim with one's close family and friends than to be working in an office," he asked. Rav Yaakov replied that it is patently prohibited to call in sick if one is not sick. It is dishonest.

#### *Va'ani Tefillah*

*v'lo neivosh l'olam va'ed. So that we will not be put to shame for all eternity.*

This shame is not a reference to humiliation one experiences in this world. Such shame is temporary - for two reasons: First, our world is but a temporary habitat upon which we tread during the physical lifespan which is allotted to us. Nothing here is permanent - neither physical pain nor humiliation. As impermanent as our world is, so, too, is the shame we sustain. Second, we have a habit of becoming complacent. Physical shame - regardless of its nature and intensity, has a way of being accepted. Give it time, and people become used to their predicament. Otherwise, why would so many individuals who have acted nefariously - either in their personal lives or in the context of their community - be able to raise their heads in their respective communities. Embezzlers, thieves, moral profligates - within time - some more, some less, all return to normal lives. The only ones who continue suffering are their victims. Shame in this world is temporary. In Olam Habba, it endures forever.

The Chafetz Chaim, zl, posits that v'lo neivosh is connected to v'yacheid levaveinu, "Unite our hearts to love and fear Your Name," whereby we entreat Hashem that our heart unites to perform the mitzvos b'shleimus, perfection/completion. Otherwise, we will eternally be humiliated in the World of Truth to collect our reward, only to discover that it is incomplete. In loving memory of HILLEL BEN CHAIM AHARON JACOBSON by his family: David, Susan, Danial, Breindy, Ephraim, Adeena, Aryeh and Michelle Jacobson and his great grandchildren

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Rabbi Weinreb's Parsha Column, Parshat Mishpatim

Sponsored in memory of Nathan and Louise Schwartz a"h n

#### *Careers*

"What do you want to be when you grow up?" That was once the standard question to ask an eight- or nine-year-old when trying to make

conversation with him or her. Somehow, every child had an answer, which ranged from "fireman" to "football player" to "nurse."

It seems to me that we don't ask that question of children these days, at least not as frequently as we used to. Perhaps we are afraid to put pressure upon them. Or perhaps ambition is no longer viewed as a positive value, as it once was.

The fact is that our tradition does value ambition, if it leads to some positive goal. A career which helps a person support himself and his family is one such goal. A career which serves the community is another.

Which careers are especially valued by the Torah? This week's Torah portion, Parshat Mishpatim (Exodus 21:1-25:18), provides us with an occasion to reflect upon one highly valued career, serving on a court of law as a judge.

Our parsha begins with the verse, "These are the rules that you shall set before them." Rashi understands the phrase "before them" to mean that questions regarding these rules must be adjudicated by Jewish judges familiar with the rules which are outlined in the ensuing several chapters of the parsha. Already in last week's parsha, Yitro, we learned that Moses saw the role of judge as being one of his leadership responsibilities. Only at the advice of his father-in-law did he assign the role of judge to a hierarchy of others. Judgeship is thus one of the first careers prescribed by the Torah.

The Talmud has something to say about just how noble a career judgeship is and in the process recommends several other excellent career paths for "nice Jewish boys." I am referring to the following passage in the tractate Bava Batra 8b, which in turn interprets two biblical verses:

"The knowledgeable will be radiant like the bright expanse of sky, and those who lead the many to righteousness will be like the stars forever and ever" (Daniel 12:3).

'The knowledgeable' are the judges who adjudicate the law with absolute truthfulness, as well as those who serve the community as trustees who distribute charity (gabba'ei tzedakah). 'Those who lead the many' are the schoolteachers of young children...

And as for Torah scholars? To them, the following verse applies:

"May His beloved be as the sun rising in might!" (Judges 5:31).

There we have it. Four admirable careers are set forth by the Talmud: the judiciary, involvement in the distribution of charity, primary education, and Torah scholarship.

Tosafot, the collection of commentary in the margin of every page of Talmud, suggests that there is a rank order to these "careers." Starlight is less bright than "the bright expanse of sky." This implies that school teaching is less praiseworthy than acting as a judge or gabbai tzedakah, whereas the Talmud scholar, who is compared to the sun, ranks highest.

Other commentaries interpret the Talmudic text differently. One interesting approach is taken by the 19th-century rabbi of Lyssa, Rabbi Yaakov Loberbaum, who is known for his masterwork on civil law, Netivot HaMishpat. He objects to the approach taken by Tosafot. After all, he asks, "Our eyes can see that the stars are brighter than the 'expanse of the sky,' and what connection is there between judges and gabba'ei tzedakah that allows us to compare both of them to the celestial expanse?"

His answer is most instructive: "There are materials which are colorless, but which reflect whatever color shines upon them. An example is glass. It has no color of its own. Shine a red light upon it, and the color red is reflected. Shine a green light, and green is reflected. The expanse of the sky is itself colorless like glass. This is what a judge has in common with a trustee of charity. They both must be absolutely neutral, with no color of their own. The judge must be totally unbiased, and so must be the person who determines how charity is to be distributed. He must not favor one needy person over another but must distribute the community funds 'without color.' But schoolteachers are compared to the stars, which glow equally upon all. Whereas judges and gabba'ei tzedakah must discriminate between one party and the other, the schoolteacher must 'shine' upon all of his pupils equally, without discrimination."

Although the Lyssa Rav does not comment on Torah scholars and their likeness to the sun, we can speculate on that connection for ourselves. The sun is the ultimate source of light and heat, and so too the Torah is the

ultimate source of intellectual light and spiritual warmth. Torah study, our tradition teaches us, outweighs all other values in its importance.

Truth to tell, each one of us individually must strive to incorporate into our behavior all four of these career roles. We are all "judges," even if not clothed in judicial robes or sitting in judicial chambers. We are constantly called upon to judge others in all sorts of ways, and we must always attempt to honestly judge ourselves.

We all must decide how to distribute our charitable resources: the time we give to the community and the money we contribute to the needy.

We are all teachers; if not in the classroom, then in the family and synagogue and shopping mall.

And we certainly must all, according to our intellectual limitations and the restrictions that time places upon us, be diligent in our Torah study and become as knowledgeable in Torah as we possibly can.

From this perspective, each and every one of us is called upon to discharge the duties of our "careers:" judge others without bias; distribute our resources compassionately and fairly; teach little children in some appropriate manner; and, above all, study Torah.

If we do, then we are all worthy of being called luminaries as bright as the bright expanse of the sky, shining like the stars at night, and lighting up the world like the sun by day.

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Rabbi Lord Jonathan Sacks**

### *Mishpatim (5774) – Vision and Details*

Our parsha takes us through a bewildering transition. Until now in Shemot we have been carried along by the sweep and drama of the narrative: the Israelites' enslavement, their hope for freedom, the plagues, Pharaoh's obstinacy, their escape into the desert, the crossing of the Red Sea, the journey to Mount Sinai and the great covenant with God.

Suddenly, now, we find ourselves faced with a different kind of literature altogether: a law code covering a bewildering variety of topics, from responsibility for damages to protection of property, to laws of justice, to Shabbat and the festivals. Why here? Why not continue the story, leading up to the next great drama, the sin of the golden calf? Why interrupt the flow? And what does this have to do with leadership?

The answer is this: great leaders, be they CEOs or simply parents, have the ability to connect a large vision with highly specific details. Without the vision, the details are merely tiresome. There is a well-known story of three men who are employed cutting blocks of stone. When asked what they are doing, one says, "Cutting stone," the second says, "Earning a living," the third says, "Building a palace." Those who have the larger picture take more pride in their labour, and work harder and better. Great leaders communicate a vision.

But they are also painstaking, even perfectionist, when it comes to the details. Edison famously said, "Genius is one percent inspiration, ninety-nine percent perspiration." It is attention to detail that separates the great artists, poets, composers, film-makers, politicians and heads of corporations from the merely average. Anyone who has read Walter Isaacson's biography of the late Steve Jobs knows that he had an attention to detail bordering on the obsessive. He insisted, for example, that all Apple stores should have glass staircases. When he was told that there was no glass strong enough, he insisted that it be invented, which it was (he held the patent).

The genius of the Torah was to apply this principle to society as a whole. The Israelites had come through a transformative series of events. Moses knew there had been nothing like it before. He also knew, from God, that none of it was accidental or incidental. The Israelites had experienced slavery to make them cherish freedom. They had suffered, so that they would know what it feels like to be on the wrong side of tyrannical power. At Sinai God, through Moses, had given them a mission statement: to become "a kingdom of priests and a holy nation," under the sovereignty of God alone. They were to create a society built on principles of justice, human dignity and respect for life.

But neither historical events nor abstract ideals – not even the broad principles of the Ten Commandments – are sufficient to sustain a society in the long run. Hence the remarkable project of the Torah: to translate historical experience into detailed legislation, so that the Israelites would live what they had learned on a daily basis, weaving it into the very texture of their social life. In the parsha of Mishpatim, vision becomes detail, and narrative becomes law.

So, for example: "If you buy a Hebrew servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything" (Ex. 21: 2-3). At a stroke, in this law, slavery is transformed from a condition of birth to a temporary circumstance – from who you are to what, for the time being, you do. Slavery, the bitter experience of the Israelites in Egypt, could not be abolished overnight. It was not abolished even in the United States until the 1860s, and even then, not without a devastating civil war. But this opening law of our parsha is the start of that long journey.

Likewise the law that "Anyone who beats their male or female slave with a rod must be punished if the slave dies as a direct result" (Ex. 21: 20). A slave is not mere property. He or she has a right to life.

Similarly the law of Shabbat that states: "Six days do your work, but on the seventh day do not work, so that your ox and your donkey may rest, and so that the slave born in your household and the foreigner living among you may be refreshed" (Ex. 23: 12). One day in seven slaves were to breathe the air of freedom. All three laws prepared the way for the abolition of slavery, even though it would take more than three thousand years.

There are two laws that have to do with the Israelites' experience of being an oppressed minority: "Do not mistreat or oppress a stranger, for you were strangers in Egypt" (Ex. 22: 21) and "Do not oppress a stranger; you yourselves know how it feels to be foreigners, because you were foreigners in Egypt. (23: 9).

And there are laws that evoke other aspects of the people's experience in Egypt, such as, "Do not take advantage of the widow or the fatherless. If you do and they cry out to me, I will certainly hear their cry" (Ex. 22: 21-22). This recalls the episode at the beginning of the Exodus, "The Israelites groaned in their slavery and cried out, and their cry for help because of their slavery went up to God. God heard their groaning and he remembered his covenant with Abraham, with Isaac and with Jacob. So God looked on the Israelites and was concerned about them. (Ex. 2: 23-25).

In a famous article written in the 1980s, Yale law professor Robert Cover wrote about "Nomos and Narrative." [1] By this he meant that beneath the laws of any given society is a nomos, that is, a vision of an ideal social order that the law is intended to create. And behind every nomos is a narrative, that is, a story about why the shapers and visionaries of that society or group came to have that specific vision of the ideal order they sought to build.

Cover's examples are largely taken from the Torah, and the truth is that his analysis sounds less like a description of law as such than a description of that unique phenomenon we know as Torah. The word "Torah" is untranslatable because it means several different things that only appear together in the book that bears that name.

Torah means "law." But it also means "teaching, instruction, guidance," or more generally, "direction." It is also the generic name for the five books, from Genesis to Deuteronomy, that comprise both narrative and law.

In general, law and narrative are two distinct literary genres that have very little overlap. Most books of law do not contain narratives, and most narratives do not contain law. Besides which, as Cover himself notes, even if people in Britain or America today know the history behind a given law, there is no canonical text that brings the two together. In any case in most societies there are many different ways of telling the story. Besides which, most laws are enacted without a statement of why they came to be, what they were intended to achieve, and what historical experience led to their enactment.

So the Torah is a unique combination of nomos and narrative, history and law, the formative experiences of a nation and the way that nation sought to live its collective life so as never to forget the lessons it learned along

the way. It brings together vision and detail in a way that has never been surpassed.

That is how we must lead if we want people to come with us, giving of their best. There must be a vision to inspire us, telling us why we should do what we are asked to do. There must be a narrative: this is what happened, this is who we are and this is why the vision is so important to us. Then there must be the law, the code, the fastidious attention to detail, that allow us to translate vision into reality and turn the pain of the past into the blessings of the future. That extraordinary combination, to be found in almost no other law code, is what gives Torah its enduring power. It is a model for all who seek to lead people to greatness.

[1] Robert Cover, 'Nomos and Narrative,' Foreword to the Supreme Court 1982 Term (1983), Yale Faculty Scholarship Series, Paper 2705; [http://digitalcommons.law.yale.edu/fss\\_papers/2705](http://digitalcommons.law.yale.edu/fss_papers/2705).

Rabbi Lord Jonathan Sacks is a global religious leader, philosopher, the author of more than 25 books, and moral voice for our time. Until 1st September 2013 he served as Chief Rabbi of the United Hebrew Congregations of the Commonwealth, having held the position for 22 years. To read more from Rabbi Sacks or to subscribe to his mailing list, please visit [www.rabbisacks.org](http://www.rabbisacks.org).

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### **Drasha Parshas Mishpatim by Rabbi Mordechai Kamenetzky**

#### ***Sealed and Delivered***

This parsha is called Mishpatim. Simply translated it means ordinances. The portion entails laws that deal with various torts and property damages. It discusses laws of damages, of servitude, of lenders and borrowers, employers and laborers, laws of lost items and the responsibilities of the finder. Many of these mitzvos that are discussed in the section of Shulchan Aruch Choshen Mishpat. But there are quite a few mitzvos mentioned that engage the purely spiritual quality of the Jew. Some of them deal with kosher restrictions, others with our relationship with the Almighty.

One verse that deals with the requirement of shechita (ritual slaughter) begins with a prelude regarding holiness. "People of holiness shall you be to Me; you shall not eat flesh of an animal that was torn in the field; to the dog shall you throw it (Exodus 22:30). The question is simple. There are many esoteric mitzvos whose only justifiable reason is spiritual. Why does the Torah connect the fact that Jews should be holy with their prohibition of eating meat that was torn as opposed to ritually slaughtered? There are myriad mitzvos that require self-control and abstention. Can there be another intonation to the holiness prelude?

(I heard this amazing story a number of years ago from a reliable source; I saved it until I was able to use it as an appropriate parable to answer a scriptural difficulty. I hope that this is it!)

Dovid, a serious yeshiva student, boarded the last flight out of Los Angeles on his way back to his Yeshiva in New York. He was glad that they were going to serve food as he had left his home in a rush and did not get a chance to eat supper. Sitting next to him on the airplane, was a southern fellow who knew little about Judaism, and considered Dovid a curiosity. As the plane flew eastward, he bantered with Dovid about Jews, religion and the Bible, in a poor attempt to display his little bits of knowledge. Hungry and tired Dovid humored him with pleasantries and not much talking. He was pleased when his kosher meal was finally served. The kosher deli sandwich came wrapped in a plastic tray, and was sealed with a multiple array of stickers and labels testifying to its kosher integrity. His new-found neighbor was amused as Dovid struggled to break the myriad seals and reveal the sandwich, which unbelievably looked just as appetizing as the non-kosher deli sandwich the airli ne had served him.

"Hey," he drawled, "your kosher stuff doesn't look too bad after all!" Dovid smiled and was about to take his first bite into the sandwich when he realized that he had to wash his hands for the bread. He walked to the back of the plane to find a sink. It took a little while to wash his hands properly, but soon enough he returned to his seat. His sandwich was still on his tray, nestled in its ripped-open wrapping, unscathed.

And then it dawned upon him. There is a rabbinic ordinance that if unmarked or unsealed meat is left unattended in a gentile environment, it is

prohibited to be eaten by a Jew. The Rabbis were worried that someone may have switched the kosher meat for non-kosher.

Dovid felt that in the enclosed atmosphere of an airplane cabin, nothing could have happened. After all, no one is selling meat five miles above earth, and would have reason to switch the meat, but a halacha is halacha, the rule is a rule, and Dovid did not want to take the authority to overrule the age-old Halacha.

Pensively he sat down, made a blessing on the bread and careful not to eat the meat, he took a small bite of the bread. Then he put the sandwich down and let his hunger wrestle with his conscience. "Hey pardner," cried his neighbor, "what's wrong with the sandwich?"

Dovid was embarrassed but figured; if he couldn't eat he would talk. He explained the Rabbinic law prohibiting unattended meat and then added with a self-effacing laugh, "and though I'm sure no one touched my food, in my religion, rules are rules."

His neighbor turned white. "Praise the L-rd, the Rabbis, and all of you Jewish folk!" Dovid looked at him quizzically.

"When you were back there doin' your thing, I says to myself, "I never had any kosher deli meat in my life. I thought I'd try to see if it was as good as my New York friends say it is!"

Well I snuck a piece of pastrami. But when I saw how skimpy I left your sandwich, I replaced your meat with a piece of mine! Someone up there is watching a holy fellow such as yourself!"

The Pardes Yosef explains the correlation of the first half of the verse to the second with a quote from the Tractate Yevamos . The Torah is telling us more than an ordinance. It is relating a fact. "If you will act as a People of holiness then you shall not eat flesh of an animal that was torn in the field; to the dog shall you throw it. The purity of action prevents the mishaps of transgressions. Simple as that. Keep holy and you will be watched to ensure your purity. Sealed and delivered.

Good Shabbos

Best wishes to the Bergman Family of Flatbush thank you for your kind compliments.

Rabbi Mordechai Kamenetzky is the Rosh Yeshiva of Yeshiva Toras Chaim at South Shore and the author of the Parsha Parables series.

Questions or comments? Email [feedback@torah.org](mailto:feedback@torah.org). Project Genesis, Inc.

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### **Rabbi Yissocher Frand - Parshas Mishpatim**

#### ***Reading the Simple Interpretation Into "Ayin Tachas Ayin"***

A heretic once remarked to Rav Shimon Sofer (son of the Chasam Sofer) that the Torah is barbaric because it demands "an eye for an eye and a tooth for a tooth, a hand for a hand, and a foot for a foot." [Shmos 21:24]. Rav Sofer responded (based on Talmudic exegesis in Bava Kamma 84a) that the pasuk is not to be taken literally (e.g. -- that the attacker's hand should be cut off if he causes someone else to lose a hand) but rather it refers to monetary payment.

The heretic did not accept this response which he dismissed as "apologetics" added in later generations by the Rabbis of the Talmud and which does not take away from the fact that the Torah itself is barbaric. Rav Sofer insisted that the interpretation of monetary payment rather than literally taking of an eye, tooth, hand, and foot was not invented by the Rabbis but was what the pasuk literally intended to say.

He pointed out that whenever the Torah speaks of crime and punishment the crime is menti oned before the punishment. For example in the pasuk "A person who smites a person and he dies, that person shall surely be put to death" [Shmos 21:12] the crime of administering a death blow to a person is stated at the beginning of the pasuk and the punishment (he shall surely be put to death) is stated at the end of the pasuk. Likewise in "And if a man plot against his fellow man to stealthily kill him, (even) from My Altar you may take him to be put to death" [Shmos 21:14] the crime is stated first, followed by the punishment. So too in "And one who smites his father or mother, shall surely be put to death" [Shmos 21:15] — we have crime followed by punishment.

Given this very consistent rule, if the Torah wished to tell us that for the crime of putting out someone's eye, a person should have his own eye

taken out then the way the Torah should have written this would be "Tachas Ayin, Ayin" – If you took out someone's eye (crime), then your eye should be taken out (punishment).

Given the Torah's pattern of "crime followed by punishment," we must interpret the pasuk as follows: "Ayin" (for the crime of taking out someone's eye), "Tachas Ayin" one must pay the "value of an eye" as punishment. "Yad" (for the crime of cutting off someone's hand), "Tachas Yad" one must pay "the value of the hand" as punishment. And so forth.

Rav Shimon Sofer insisted, not only is this interpretation not apologetics or "Rabbinics," it is absolutely the simplest way of explaining the pasuk (p'shuto shel Mikra). This is literally what the pasuk is trying to communicate.

### ***"Es Ha'Ani Imach": The Poor Person's Money Is With You!***

The pasuk says "If you lend money to my nation [Im Kesef Talveh es ami], (to) the poor amongst you, do not be an oppressive lender to him, do not charge him interest" [Shmos 22:24] According to the simple reading of this pasuk, "Im Kesef Talveh es ami" is a conditional clause which basically means "if you will lend money to your friend," implying that the Torah gives us the option of whether we lend money or not.

However, Rabbi Yishmael states in the Mechilta that this pasuk is an exception to the normal usage of the word 'im,' which is usually translated as 'if.' Here the word 'im' is translated according to the Mechilta as 'when'.

Even granting the interpretation of the Mechilta we can still ask why the Torah wrote the pasuk the way it did. Why did the Torah purposely use a word that 99% of the time means 'if' such that the phrase regarding lending money might be misinterpreted as an optional activity? The Or HaChaim HaKadosh provides a beautiful insight which addresses this question:

Sometimes the Almighty makes it very difficult for a person to earn his livelihood. The Master of the Universe gives people numerous challenges in life for a variety of reasons. Either He makes people suffer in this world so that they will have things better in the World To Come or for whatever reason it may be. Poverty is one of those things Hashem inflicts on people so that they may pay a penance, as necessary per the "Master Plan."

That explains poverty, but what about wealth? Why is it, asks the Or Hachaim haKadosh, that some people in this world merit fantastic wealth? Why – if G-d wants to reward people – doesn't he give them exactly as much as they need, so they will not have any problems or lacks in life? Why do some people have so much wealth that it is far more than they will ever need?

The Or Hachaim haKadosh answers that this too is part of the Almighty's 'Grand Plan.' Some people need to struggle for their livelihood. Some people need to suffer and can't make ends meet. For whatever reason, G-d wants them to have that challenge. This poor person needs to pay the mortgage and he needs to put food on the table and has to keep his business running. So what is he supposed to do? Part of G-d's 'Grand Plan' is that He gives some people in this world 'extra money'. He makes them wealthy so that people who are in need will have an address to come to in order to make up their shortfall.

Is it pleasant to beg for money? No it is terribly unpleasant. It is sometimes humiliating, but that is part of the package that the Almighty decided for this person. This is part of the indignities he needs to suffer as part of his lot in this world. But there needs to be someone in the world who has the money to be able to sustain this poor individual.

Really, the extra money that I have should go to help this person who is down on his luck. It is really his money, except that the Almighty does not want him to have it so easily. Unfortunately, he wants him to need to suffer for it. The Almighty deposits the extra money with me so that it is available for the person who has to endure the challenges of poverty by coming to me to ask me for it.

This is the correct interpretation of this pasuk according to the Orach Chaim haKadosh. If a person is sitting there making money hand over fist, month after month, and he asks himself "Why do I have all this money? Why did G-d give me so much?" It is because "If the poor person comes to you – because you indeed have extra money – then you should know "es ha'Ani imach" – the money of the poor person is WITH YOU!"

Therefore, the Orach Chaim haKadosh continues, do not act towards the poor person as a 'noshe.' 'Noshe' literally means a creditor, but it also – at least homiletically – can be seen as coming from the same root as 'Nesius' with the pasuk meaning "lo si'hiyeh lo k'noshe": "Don't lord it over him." Do not say to him "You are a schlemiel. I am so successful and you have to borrow from me!" No! Do not be like a prince (Nasi) to him, because in truth it is really his money. There is no reason to lord it over him because "es ha'Ani imach" – his money is really with you!

### ***Abusing The Widow and The Orphan: A Tale of Two Incidents***

I would like to relate two very interesting incidents relating to a pasuk in the parsha that I have spoken about many times in the past.

Parshas Mishpatim contains the biblical prohibition against inflicting pain on widows and orphans [Shmos 22:21]. The Torah warns: "For if you cause him pain and he cries out to me, I will hear his cry. And My wrath will be kindled and I will kill you by sword and your wives will become widows and your children will become orphans." [Shmos 22:22-23]

A person must be extremely careful when it comes to widows and orphans. The reason is that these are people who are already in pain. The Almighty, as it were, has special affinity for people in pain. He identifies with them and will take revenge – as it were – against those responsible for afflicting them with additional pain.

The father of the Netziv (Rav Naftali Tzvi Yehudah Berlin) was a great Talmid Chocho, but he was not a Rosh Yeshiva. He was a successful business man. He once returned from an extended business trip and brought his wife a beautiful crystal vase. She was thrilled with the gift and told the maid (who happened to be a widow) to put the new vase in the breakfront with all her silver. She specifically told her: "Be very careful with it; whatever you do, do not drop it. It is very expensive. I just got it and I love it. Do not drop it!"

Of course, when one tells someone 50 times "Do not drop it", inevitably the maid dropped the vase and it shattered. The Netziv's mother started yelling at her: "Look what you did. You are a schlemiel. I told you not to drop it!" The Netziv's father told his wife, "Please do not yell at her like that. If you have a problem with what happened, take her to a 'Din Torah.'" The Netziv's mother said, "You're right." She told the maid, "Put on your coat right now, I am taking you to a 'Din Torah.' I am going to bring you to a Din Torah before the Rav of the community." So the maid put on her coat, the Netziv's mother put on her coat, and the Netziv's father put on his coat.

Mrs. Berlin told her husband, "That is okay. You do not need to come. I can argue in front of the Rav myself". The Netziv's father told his wife, "I am not coming to the Din Torah to argue for you, I am coming to argue for her (pointing to the maid). I am afraid she will be too intimidated to open her mouth in front of her mistress, so therefore I am going to support her, not you."

And that is what happened. He went to the Din Torah to act as the lawyer not for his wife but for her maid.

The second story was told to me by Rabbi Yoel Burstyn, who is the principal of the Beis Yakov in Los Angeles. When Rabbi Burstyn was a young student in Lakewood, he lived in an apartment complex. There was an older Jew who had been born in Kovno in his building. At the time of the story, this Jew was 81 years old.

The older Jew told Rabbi Burstyn that his family came from Kovno to this country and lived in Philadelphia. They were extremely poor. He did not even have car-fare to take the bus to school and had to walk two miles in all kinds of weather to get to school. His mother passed away when he was yet a young boy. He once went to shul to say kaddish on her Yahrzeit.

A Jew approached him in shul and asked him (in Yiddish), "For who are you saying Kaddish?" The boy explained he had Yahrzeit for his mother and was saying Kaddish. The man then asked him, "Oh, you have Yahrzeit so where is the bottle of whiskey and cake (customarily served in some communities on the occasion of a Yahrzeit)?" The poor boy was embarrassed to say he could not even afford car-fare, let alone whiskey and cake. The man told him, "A Yahrzeit without whiskey and cake? Feh! That is disgusting!"

The old man recalled to Rabbi Burstyn that when this incident occurred, he went home, ran to his bed and started crying uncontrollably. His father came in and asked him "Why are you crying?" The boy told his father what happened. The father told him not to worry, he met an uncouth person and he should just ignore what the man told him. The little boy said, "Tatty (father), I swear I will never step into a shul again the rest of my life!" When this gentleman from Kovno told this story, crying, to Yoel Burstyn he was already 81 years old and he told him "I never went to shul again in my life. On my parents' Yahrtzeit, I would go into the kitchen and say Kaddish for my mother or my father, but I would not step foot into a shul!" When the Jew who asked the young orphan where the whiskey and cake were will pass away and go before the High Court in the next world, he will be told, "There was a child in the world below who never went to shul for the rest of his long life because of you! The fact that you once told an orphan "Feh!" is being held against you for all eternity."

This is how careful one must be with orphans and widows. Their cries go directly to the Yeshiva Shel Ma'la. We do not want to suffer the consequences of the Almighty's wrath.

Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD

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## Rav Kook List

### Rav Kook on the Torah Portion

#### *Mishpatim: An Eye for an Eye*

##### Azar's Question

During the years that Rav Kook served as chief rabbi of Jaffa, he met and befriended many of the Hebrew writers and intellectuals of the time. His initial contact in that circle was the 'elder' of the Hebrew writers, Alexander Ziskind Rabinowitz, better known by the abbreviation Azar. Azar was one of the leaders of Po'alei Tzion, an anti-religious, Marxist party; but over the years, Azar developed strong ties with traditional Judaism. He met with Rav Kook many times, and they became close friends.

Azar once asked Rav Kook: How can the Sages interpret the verse "an eye for an eye" (Ex. 21:24) as referring to monetary compensation? Does this explanation not contradict the peshat, the simple meaning of the verse?

The Talmud (Baba Kamma 84a) brings a number of proofs that the phrase "eye for an eye" cannot be taken literally. How, for example, could justice be served if the person who poked out his neighbor's eyes was himself blind? Or what if one of the parties had only one functioning eye before the incident? Clearly, there are many cases in which such a punishment would be neither equitable nor just.

What bothered Azar was the blatant discrepancy between the simple reading of the verse and the Talmudic interpretation. If "eye for an eye" in fact means monetary compensation, why does the Torah not state that explicitly?

##### The Parable

Rav Kook responded by way of a parable. The Kabbalists, he explained, compared the Written Torah to a father and the Oral Torah to a mother. When parents discover their son has committed a grave offense, how do they react?

The father immediately raises his hand to punish his son. But the mother, full of compassion, rushes to stop him. "Please, not in anger!" she pleads, and she convinces the father to mete out a lighter punishment.

An onlooker might conclude that all this drama was superfluous. In the end, the boy did not receive corporal punishment. Why make a big show of it?

In fact, the scene provided an important educational lesson for the errant son. Even though he was only lightly disciplined, the son was made to understand that his actions deserved a much more severe punishment.

##### A Fitting Punishment

This is exactly the case when one individual injures another. The offender needs to understand the gravity of his actions. In practice, he only pays monetary restitution, as the Oral Law rules. But he should not think that with money alone he can repair the damage he inflicted. As Maimonides explained, the Torah's intention is not that the court should actually injure him in the same way that he injured his neighbor, but rather "that it is fitting to amputate his limb or injure him, just as he did to the injured party" (Mishneh Torah, Laws of Personal Injuries 1:3).

Maimonides more fully developed the idea that monetary restitution alone cannot atone for physical damages in chapter 5:

"Causing bodily injury is not like causing monetary loss. One who causes monetary loss is exonerated as soon as he repays the damages. But if one injured his neighbor, even though he paid all five categories of monetary restitution - even if he offered to God all the rams of Nevayot [see Isaiah 60:7] - he is not exonerated until he has asked the injured party for forgiveness, and he agrees to forgive him." (Personal Injuries, 5:9)

##### The Revealed and the Esoteric

Afterwards, Azar commented:

"Only Rav Kook could have given such an explanation, clarifying legal concepts in Jewish Law by way of Kabbalistic metaphors, for I once heard him say that the boundaries between Nigleh and Nistar, the exoteric and the esoteric areas of Torah, are not so rigid. For some people, Torah with Rashi's commentary is an esoteric study; while for others, even a chapter in the Kabbalistic work Eitz Chayim belongs to the revealed part of Torah." (Saphire from the Land of Israel. Adapted from Malachim Kivnei Adam by R. Simcha Raz, pp. 351, 360.)

Comments and inquiries may be sent to: [mailto:RavKookList@gmail.com](mailto:mailto:RavKookList@gmail.com)

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## R' Netanel Gertner

### *Parshas Mishpatim*

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#### *Integrity And Social Responsibility*

The first law after Sinai addresses a Jew who steals, and cannot afford to repay the theft. Such a person is sold into temporary slavery, and the value of his labor accrues until his debt has been paid off. The laws after Sinai open with ואלה המשפטים – And these are the laws... Rashi points out how ו – "and" – continues what was previously said; in this case that these laws are a direct continuation of Sinai.

This is very perplexing. Should the first instructions on becoming fully fledged Jews not be to charge us with being good, kind and responsible for society? The subsequent laws address charity and social responsibility; why aren't they first? Why does the first law the Jews need to know concern a cheating thief?

The Beis Halevi explains that the Torah has a prerequisite for kindness, charity, and social responsibility. The money has to be kosher, and the ingredients properly sourced.

The Jew who steals becomes a slave. He must be treated exceptionally well, and he is not the permanent property of his owner; but nor is he a fully fledged Jew for the duration of his slavery. He is devoid of responsibility to Hashem, and is responsible to his owner. He is allowed to marry a non-Jew in this state, and create a family of slaves who do belong to his owner. Consider that this is what the Torah proscribes as the solution to theft. The Torah terms renouncing Judaism, marrying a non-Jew, and having a family of slaves as being less bad than stealing!

It should be very clear why a law concerning theft comes before the laws regarding Jewish duties and obligations for bettering society and the world at large. The Torah demands high standards of its adherents – the integrity of the individual is paramount to being capable of aiding society.

#### *How To Relate To Money*

Among the first laws given after Sinai, are some interpersonal laws, particularly the laws requiring that the needy are taken care of:

וְאָמַרְתָּ לְעַמִּי הַדָּל אֶת עֵינֵי עַמִּי הַדָּל לְעֵינֵי עַמִּי הַדָּל... – When you lend money to My people, to the poor person with you.... (22:24)

Although not readily noticeable in a translation, the phrasing is quite cumbersome, particularly the word עִמָּךְ – with you – in the context.

The Alshich explains that everything is Hashem's, and merely deposited with us. We are given the privilege of having money in order to distribute it. With this thought, the Torah is imploring us to remember that no matter what we do with our money – אִם בָּרַךְ תִּלְוֶהָ אֶת עַמִּי – that אֶת הָעֲנִי עִמָּךְ – it belongs to the poor; it is incidentally with you. We should therefore take great care and responsibility.

The Vilna Gaon explains that the Torah is alluding to a standard monetary law: loans are agreed before witnesses to prevent unscrupulous activity, whereas charity is done in solitude, and no-one needs to know. אִם בָּרַךְ תִּלְוֶהָ – When you lend money – אֶת עַמִּי – do so before My people; – אֶת הָעֲנִי – To the poor however – עִמָּךְ – do it alone. The Torah advises the correct way to give charity – in secret. There is a world of difference between being good, and looking good – here the Torah stresses to be good, when no one will ever know.

The Kli Yakar explains that when a person gives charity or a charitable loan, all good deeds and benefits resultant from it are credited to the person who financed the good deeds and actions. The reading would then be – אִם בָּרַךְ תִּלְוֶהָ אֶת עַמִּי – If you lend/give money to my people or the needy – עִמָּךְ – all the merits that result are “with you” too!

All these novel teachings have a very simple underpinning; money is not meant to be accumulated and stockpiled for personal gain. If people are privileged enough to earn their daily bread, or even more, spread it around, with class. The word for charity, צדקה, literally means “justice”. By engaging in charitable pursuits, you are, in a very real way, dispensing a little more justice into the world.

We would all do well to internalise that we do not get rich off the sweat of our brows alone; that we should care for the needy, away from the spotlight too; and that the effects of charity continue to compound long after. If everyone knew that, the world might look quite different.

It starts with one.

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## Weekly Halacha by Rabbi Doniel Neustadt

### *Havdalah over the Telephone*

Question: Can one fulfill his obligation to hear Havdalah by listening to the words recited over a telephone, a microphone or a loudspeaker?

Discussion: In order to be motzi another person with Havdalah (or any other blessing or mitzvah), the listener must hear the words directly from the mouth of the speaker. But is a voice heard over the telephone considered as if one is hearing the speaker's actual voice? In the early days of voice amplifying technology, when the science was not well understood, some halachic authorities were of the opinion that the amplified sound was the speaker's actual voice, only amplified.<sup>1</sup> Accordingly, one who hears Havdalah recited over the telephone is yotzei. But today, it is universally agreed that the listener is not hearing the speaker's actual voice but rather an electronically generated version of his voice. [Both the telephone and the microphone “transform” sound waves in the air, the spoken words, into an electrical current within the instrument, and ultimately back into sound waves. Those sound waves are then heard by the audience.] In that case, one cannot fulfill his obligation to hear Havdalah by listening over the telephone or microphone according to the vast majority of poskim, and even b'diavad, the Havdalah would have to be repeated.<sup>2</sup>

Still, a minority view among the poskim suggests that even if we assume that the voice heard over the telephone is not the actual voice of the speaker, perhaps one is nevertheless yotzei since the voice is still generated by the power of the speaker's voice and the Havdalah is heard at the exact same time that it is being recited.<sup>3</sup> The poskim who suggest this approach stress that they remain undecided as to whether or not their argument should be relied upon, and therefore, it is only under extenuating circumstances—when no other possibility exists—that one may fulfill his obligation of hearing Havdalah over a microphone or telephone.<sup>4</sup>

In practice, therefore, it is clear that when there is another option, voice amplifiers should not be used for fulfilling a mitzvah or listening to a berachah.<sup>5</sup> For example, a woman who is home alone and has no one to make Havdalah for her should rather recite Havdalah herself<sup>6</sup> than listen to it being recited by someone else over the telephone. Even if she cannot or will not drink wine, grape juice, or beer, it is preferable that she recite Havdalah over coffee,<sup>7</sup> tea (with or without milk),<sup>8</sup> or milk alone<sup>9</sup> (and, according to some poskim,<sup>10</sup> undiluted grapefruit, orange or apple juice as well) than listen to Havdalah recited over the phone?<sup>11</sup>

If one finds himself in a situation where he cannot recite Havdalah and his only possibility of being yotzei is to hear it over the phone, e.g., he is in a hospital and there is no one who can come until Tuesday evening<sup>12</sup> to make Havdalah for him, he may have to rely on the poskim who permit listening to Havdalah over the telephone.<sup>13</sup> But if someone could come and recite Havdalah for him before Tuesday evening, the correct procedure is to wait until then for Havdalah to be recited.<sup>14</sup> If he is weak, he may eat before hearing Havdalah. If he expects to hear Havdalah before chatzos on Sunday and he does not feel weak, he should refrain from eating until then.<sup>15</sup>

A related issue is whether or not it is permitted to answer Amen, etc. to a blessing or Kaddish heard over a microphone or telephone, or during a live telecast transmitted by satellite. Some poskim<sup>16</sup> permit this and do not consider answering Amen, etc., to be l'vatalah (“for naught”), since they remain undecided about the halachic status of amplified sound waves, as explained above. Some poskim<sup>17</sup> permit answering Amen based on the ancient precedent set in the great synagogue in Alexandria.<sup>18</sup> There, most of the worshippers could not hear the actual blessings being recited due to the vast size of the building, but were nevertheless permitted to answer Amen when signaled to do so by the waving of a flag. In our case as well, the Amen is being answered in response to the recital of a blessing – even though halachically the blessing it is not being “heard.”

Rav S.Z. Auerbach, though, rejects this comparison and rules that it is prohibited to answer Amen upon hearing a blessing in this manner.<sup>19</sup> He agrees, however, that one who is in the same room as the speaker—even though he hears the speaker's voice only over a microphone, etc.—is permitted to answer Amen, as was the case in Alexandria where everyone was inside the Shul and part of the congregation that was davening.<sup>20</sup>

- 1 Minchas Elazar 2:72; Minchas Aharon 18 (quoted in Tzitz Eliezer 8:11).
- 2 Da'as Torah, O.C. 689:2; Gilyonei ha-Shas, Berachos 25a; Eretz Tzvi 1:23; Kol Mevaser 2:25; Mishpatei Uziel 1:5; 1:21; Rav Y.E. Henkin (Gevuros Eliyahu, O.C. 98:8); Minchas Yitzchak 1:37, 3:38; She'arim Metzuyanim b'Halachah 129:25; Minchas Shelomo 1:9; Ashrei ha-Ish, O.C. 2:13-15; Kinyan Torah 1:75; Yechaveh Da'as 3:54; Moadim u'Zemanim 6:105. See also Teshuvos P'eat Sadcha 1:126 who quotes a similar ruling from Rav C. Soloveitchik.
- 3 Rav T. P. Frank (Mikraei Kodesh, Purim 11 and in Minchas Yitzchak 2:113); Igros Moshe, O.C. 2:108; O.C. 4:126. [See, however, Igros Moshe, E.H. 3:33 and O.C. 4:84]. See also Minchas Shelomo 1:9 quoting an oral conversation with the Chazon Ish.
- 4 Igros Moshe, O.C. 4:91-4 (and oral ruling quoted in Kol ha-Torah, vol. 54, pg. 18); Tzitz Eliezer 8:11. See also Shevet ha-Levi 5:84.
- 5 Rav Auerbach makes it clear that the same ruling applies to hearing-impaired individuals who cannot hear without a hearing aid. Igros Moshe, O.C. 4:85 is hesitant about comparing hearing aid to a microphone.
- 6 Women are obligated to recite Havdalah and may recite it themselves. Although there is a well-established custom that women do not drink the wine from the Havdalah kos, this custom is discounted when a woman must fulfill her obligation of Havdalah; Mishnah Berurah 296:35; Aruch ha-Shulchan 296:5.
- 7 Instant or brewed (Rav S.Z. Auerbach, Shemiras Shabbos K'hilchasah 60, note 18).
- 8 The tea or coffee should be cool enough that one may drink at least 1.6 fl. oz. of it within 3-4 minutes.
- 9 Aruch ha-Shulchan 272:14; Igros Moshe, O.C. 2:75.
- 10 Tzitz Eliezer 8:16; Shemiras Shabbos K'hilchasah 60:5.
- 11 If a woman refuses to recite Havdalah on her own and there is no one available to recite it for her, her husband (or another man or woman) may repeat it for her, even if he has already fulfilled his obligation; see

Mishnah Berurah 296:36; Aruch ha-Shulchan 296:5; Da'as Torah 296:8; Ben Ish Chai, Vayeitzei 22. The blessing over the candle, though, should be omitted, in the opinion of several poskim.

12 O.C. 299:5.

13 Igros Moshe, O.C. 4:91-4; Tzitz Eliezer 8:11.

14 In this case, one should definitely not listen to Havdalah over the phone, since then it may not be repeated for him when the visitor comes.

15 Mishnah Berurah 296:19, 21. Rav Y.S. Elyashiv, too, rules that it is preferable to eat before Havdalah than to listen to it over the telephone (Ashrei ha-Ish, O.C. 2:13-1).

16 Igros Moshe, O.C. 4:91-4.

17 Yechaveh Da'as 3:54.

18 See Succah 51b and Tosafos, ibid.

19 See Ashrei ha-Ish, O.C. 1:10-14 for a concurring opinion.

20 See Minchas Shelomo 1:9 and Halichos Shelomo 1:22-15.

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### ***The Saga of the Expired Ticket***

**By Rabbi Yirmiyohu Kaganoff**

#### ***PART I: The Saga of the Expired Ticket***

Two yeshiva students, Beryl Bernstein and Aaron Adler\*, make an appointment to discuss a financial matter with me. Thank G-d, there is no ill feeling between them, just a practical question regarding who is required to pay for a plane ticket. Here is the background to the story:

Beryl and Aaron were taking a brief trip to visit their families. Beryl purchased a round trip ticket, whereas Aaron had the return ticket from his previous trip and was planning to purchase a ticket back to Yeshiva from home. All went well on the trip there; however, shortly after their arrival, Beryl took ill and realized that he would be unable to return to yeshiva on the flight he had originally booked. The travel agent informed his parents that although it was impossible to transfer the ticket to a later flight, he could rewrite the ticket in someone else's name with only a small transfer fee.

Beryl called Aaron, asking him if he had as yet purchased a ticket back, which indeed he had not. Aaron discussed the matter with his parents, who decided to help out the Bernsteins, since Aaron needed a new ticket anyway. Beryl's parents instructed the agent to change the name on the ticket while leaving the billing on their credit card. The Bernsteins agreed that they will pay the change fee whereas the Adlers will compensate them for the price of the ticket.

All was fine until the morning of the flight. Aaron woke up sick; clearly he would not be flying today. The Adlers contacted the issuing travel agent to find out what he could do with the ticket. He responded that he could transfer the ticket yet again but needed the Bernsteins' approval to change the billing on their credit card. The Adlers tried many times to contact the Bernsteins to arrange the change of ticket, but were unsuccessful at reaching them. Unfortunately, the ticket went unused and became worthless.

Later, both Aaron and Beryl purchased new tickets for the flight back to yeshiva. In the meantime, the Adlers have not yet paid the Bernsteins for the first ticket and have the following question: Must they pay for the ticket which they were unable to use, thus requiring them to pay for two tickets? In their opinion, all they were trying to do was to help out the Bernsteins from having the ticket go to waste, although unfortunately it did anyway. The Adlers contend that they had found a cheaper ticket and chose to help out the Bernsteins even though it was more expensive. They feel it unfair to expect them to compensate the Bernsteins for attempting to do a favor that backfired, particularly since they tried to reach the Bernsteins to make sure the ticket did not go to waste.

On their part, the Bernsteins contend that other people were interested in using Beryl's ticket, and that they sold it to the Adlers for the Adlers' benefit. Furthermore, they note that they were not home the day the Adlers called because they were away at a simcha and that they did have their cell phones with them.

Are the Adlers obligated to compensate the Bernsteins for the unused ticket or not?

#### **PART II: Who Appears Before the "Judge"?**

Aaron and Beryl came to me with the request that I resolve an issue germane to the payment of an airline ticket. Before hearing details of the case, I asked them who were the parties to the litigation. Were Aaron and Beryl assuming responsibility to pay? Both fine, young gentlemen respond that the parents are assuming responsibility. The bachurim noted that there is no ill will between the families, simply a true desire to do what is halachically correct. Both sets of parents felt that a rav near their sons' yeshiva would be the easiest way to resolve the issue in an amicable and halachically proper fashion.

I pointed out to Aaron and Beryl that while asking a rav to clarify the halacha is indeed an excellent way to resolve the matter, at the same time, the situation was in one way somewhat unusual. Ordinarily, when two parties submit litigation to a rav or a Beis Din, each party makes a kabbalas kinyan (to be explained shortly) obligating them to obey the decision of that particular rav or Beis Din. In the modern world, the two parties also typically sign an arbitration agreement that they are accepting this rav's or Beis Din's adjudication. Although halacha does not require signing an arbitration agreement, this is done nowadays in order to provide simple proof that both parties accepted the particular Beis Din's authority and to strengthen the Beis Din's power as an arbitration board under secular law. (In most locales and circumstances, a civil court will accept the decision of a Beis Din as a form of binding arbitration.)

#### **WHAT IS A KABBALAS KINYAN?**

A kabbalas kinyan means performing an act that obligates one to fulfill an agreement. For example, prior to the signing of a kesubah, the chosson makes a kabbalas kinyan, usually by lifting a pen or a handkerchief, thereby demonstrating that he has accepted the responsibility to support his wife. Similarly, when appointing a rav to sell one's chometz, one performs a kabbalas kinyan to demonstrate the authorization of the rav as one's agent.

In our instance, a kabbalas kinyan demonstrates that one accepts the authority of this particular rav or Beis Din to rule on the matter at hand.

#### **HARSHA'AH – POWER OF ATTORNEY**

Beryl asked me, "Can't I represent my parents in this matter?"

I answered him, "Certainly. One can appoint someone to represent him in halachic litigation by creating a harsha'ah. For example, let us say that it is impractical for the suing party to appear before the Beis Din in the city where the defendant resides. He can sue by appointing someone on his behalf and authorizing this by executing a harsha'ah, the halachic equivalent of a power of attorney."

I returned to the case at hand.

"Therefore, in our case, the two of you could represent your parents by having them execute harsha'os appointing you as their respective agents."

Aaron piped up: "I don't think anyone really wants to make a full din torah out of this. I think we simply want to know what is the right thing to do according to halacha."

Technically, without execution of harsha'os, either side could later claim not to have accepted the decision of the rav or Beis Din involved, and could avoid having the litigation binding. Nevertheless, in our situation, both parties seemed honorable and simply wanted to know the halacha. Both sons said that their parents had requested that they jointly ask a shaylah and that they would follow the decision. Thus, although following the strict rules of litigation requires both a harsha'ah and a kabbalas kinyan from each side, I elected to handle the situation informally, calculating that this would generate the most shalom.

#### **PART III: Are They Parties or Participants?**

Why didn't I have the two bachurim each make a kabbalas kinyan binding themselves to my ruling?

Such a kabbalas kinyan would have no value, since the person making the kabbalas kinyan binds himself to accept the authority of the specific rav or Beis Din. However, the sons here are not parties to the litigation and therefore their kinyan would not bind either themselves or their parents unless they had previously executed a harsha'ah.

#### PART IV: Opening Arguments

Let us review the points made by each of the parties: The Adlers claim that they were simply doing a favor for the Bernsteins. They were willing to absorb a small loss for the sake of the favor, but certainly had no intention of paying the Bernsteins for a ticket that they would never use. They also feel that since they could not reach the Bernsteins to change the ticket, the Bernsteins were partially responsible for the ticket becoming void.

The Bernsteins are claiming that the Adlers purchased the ticket from them and that what occurred subsequently is exclusively the Adlers' predicament and responsibility. Furthermore, the Bernsteins contend that the Adlers did not really save them money because there were other people who would have purchased the ticket from them. And regarding their unavailability, they were at a simcha, which is certainly a reasonable reason to be away, and they were reachable by cell phone. It is not their fault that the Adlers did not ask them for cell phone numbers.

Do the Adlers owe the Bernsteins for the ticket that they did not use? After all, the Adlers point out that they were doing the Bernsteins a favor, and that they tried to contact the Bernsteins before the ticket became worthless. Having discussed the background to this "litigation," we need to address the halachos pertinent to the case.

#### PART V: In the Judge's "Chambers"

At this point, we can consider the arguments and counter-arguments of the two parties. The Adlers' contention that the Bernsteins were unavailable does not affect the issues at stake. The Bernsteins are not obligated to be accessible at all hours of the day, and cannot be considered as having damaged the Adlers through their unavailability. Thus, whether the Bernsteins could have been reached by cell phone or not, whether they should have remembered to supply the Adlers with their cell phone number or not, and whether they were away to celebrate a simcha or not, are all not germane to the issue.

#### WHO OWNED THE TICKET?

Essentially, the Adlers are contending that they assumed no fiscal liability for the ticket unless they used it, and were simply attempting to help the Bernsteins. Does this perception reflect what happened?

Certainly, if the Adlers had told the Bernsteins that they were not assuming any responsibility for the ticket unless they actually used it, they would not be liable for it. However, they did not say this when they arranged for Aaron to obtain the ticket. Rather, they had agreed that the ticket be reissued in Aaron's name without any conditions.

The issue we need to resolve is, "Who owned the ticket when it became invalid?" Here we have a somewhat complicated issue, since the ticket was reissued, yet it remained billed to the Bernsteins' credit card.

Someone who purchased an item that was subsequently damaged cannot claim a refund from the seller unless the seller was guilty of deception (Bava Metzia 110a). Once the item has changed possession, any damage that occurs is the loss of its current owner and he cannot shift responsibility to the previous owner. This occurrence is called mazalo garam, his fortune caused this to happen (see, for example, Rashi to Bava Metzia 103a, s.v. azla lei). This means that each person has a mazel that will bring him certain benefits and losses during his lifetime, and one must learn to accept that this is Hashem's will. Specifically, the Gemara refers to children, life and sustenance as three areas dependent on mazel (Moed Katan 28a). [One can daven to change one's mazel, but that is not today's topic (Meiri, Shabbos 156).] Thus, if the Adlers indeed owned the ticket, the resultant loss is theirs, and they should chalk it up to Hashem's will. (Colloquially, we very accurately refer to this situation as being bashert.) Thus, what we need to determine is whether the Adlers had halachically taken possession of the ticket.

#### KINYAN

According to halacha, for property to change hands there must be not only the meeting of the minds of the buyer and the seller, but also the performance of an act, called a maaseh kinyan, that transfers the item into the possession of the buyer. Although both the buyer and the seller agreed to transact an item, it does not actually change possession until the maaseh

kinyan transpires. Therefore, if the item is damaged after the two parties agreed to a deal, but before a maaseh kinyan transpired, the seller takes the loss since the item was still his when it became damaged. Determining the exact moment that the act of kinyan takes place and that therefore the item changed possession is therefore highly significant.

[It is important to note that, although a deal may not have been finalized without a kinyan, it is usually forbidden to back out once the two parties have made an agreement. This is based on the verse in Tzefaniah (3:13) which states that a Jew always fulfills his word (see also Pesachim 91a; Bava Metzia 106b). Someone who has a question whether he is bound to an agreement must ask a shaylah to find out whether he may abandon the deal.]

What act creates the kinyan? There is a vast halachic literature devoted to defining what exactly constitutes a maaseh kinyan and under which circumstances these kinyanim work. For example, the methods of transacting real estate are quite different from how one acquires chattel or food.

How does an airline ticket change possession? Obviously, there is no Mishnah or Gemara discussion teaching how one acquires an airline ticket. In reality, we should first analyze, what exactly does one purchase when one buys an airline ticket? The ticket itself is only a piece of paper, and is even less if it is an e-ticket and has no intrinsic value.

What one is purchasing is the right to a seat on a flight, and the ticket is basically a receipt verifying the acquisition. If our analysis is correct, then the purchase of a non-refundable ticket is essentially buying a right to a particular flight. So we now have a halachic question: How does one acquire such rights and how does one transfer those rights to someone else?

#### SUTIMTA

One way of acquiring property is called sutimta, which means using a method of acquisition that is commonly used in the marketplace. Since society accepts this as a means of acquiring property, halacha recognizes it as a kinyan. For example, in the diamond trade, people consummate a deal by a handshake accompanied by the good wishes of "mazel ubracha." Since this is the accepted method of transacting property, the kinyan is binding and halacha recognizes the deal as complete.

Based on the above, we can reach the following conclusion: When the Bernsteins instructed their travel agent to transfer the ticket to Aaron's name, they were asking him to change the ownership of the right to the seat on that flight from Beryl to Aaron. Once the agent followed up on their instruction and reissued the ticket, the right to that seat became Aaron's, and the Bernsteins are exempt from any fiscal responsibility. Although Aaron was unfortunately unable to utilize this right and it became void, there is no basis to making the Bernsteins pay for the ticket once it was transferred.

Therefore, the Adlers should accept that Aaron's illness and the resultant loss of the ticket is Hashem's will which we do not challenge. Since the loss of this money is attributed to mazel, had the ticket situation developed differently they would have suffered this loss in a different, perhaps more painful way, and they should not be upset at the Bernsteins for the financial loss.

Knowing how some people react to these situations, there is a good chance that the Adlers may be upset at the Bernsteins for what happened, even though this anger is unjustified. To avoid this result, I suggested that the Bernsteins offer some compensation to the Adlers for the ticket. It is very praiseworthy to spend some money and avoid bad feelings even if such expenditure is not required according to the letter of the law.

A Jew must realize that Hashem's Torah and His awareness and supervision of our fate is all encompassing. Making this realization an integral part of our lives is the true benchmark of how His kedusha influences us personally.

\*Although the story is true, all names have been changed.