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INTERNET PARSHA SHEET ON MISHPATIM - Shekalim - 5775

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from: **Rabbi Yissocher Frand** <ryfrand@torah.org> reply-to: do-not-reply@torah.org to: ravfrand@torah.org date: Thu, Feb 12, 2015 at 11:05 PM subject: Rabbi Frand on Parshas Mishpatim

Parshas Mishpatim These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: CD #889The Neighbor Who Forgot To Turn Off The Fire. Good Shabbos! Yad Yechiels New Website <http://www.yadyechiel.org/>

A True Friend

The pasuk "If the ox of a man will gore his fellow man's ox and it dies they will sell the live ox and split its value and also the dead (ox) shall be split." [Shmos 21:35] is discussed at length in the beginning of Tractate Bava Kamma, along other laws involving damage to or by one's property. The expression at the beginning of this pasuk "v'ki yeegof shor ish es shor re'eyhu..." is normally translated "When a man's ox will gore his friend's ox". However, the Ibn Ezra quotes an interpretation from a certain 'Ben Zuta' who offers an alternate translation. Ben Zuta claims that the words "shor re'eyhu" mean the "fellow ox" of the ox who is doing the goring. It is not to be translated as "the ox of his friend" as we commonly translate but rather "the ox gores his friend" – another ox!

The Ibn Ezra minces no words in dismissing the interpretation of Ben Zuta. In his inimitable style he writes "the ox has no 'friend' other than Ben Zuta himself!" In other words any one who says such an interpretation is a worthy companion to an ox and has no place in the Study Hall.

The concept of friendship and the concept of "re'yah" [friend] as in "v'Ahavta l're'yahcha kamocho" [you should love your friend as yourself], only applies to human beings. Friendship is an emotional relationship that reflects an aspect of humanity. Animals can have companions and they can even have mates. But the whole concept of friendship is not applicable to them. Therefore, the Ibn Ezra dismisses the interpretation of Ben Zuta: Do not talk about "friends of animals" – there is no such thing.

Rav Hutner, zt"l, makes the following very interesting observation: The word "re'ya," which is one of several ways of saying "friend" in Hebrew comes from the same root as the word "teruah" as in "It shall be a day of teruah [blasting] for you" [Bamidbar 29:1] (referring to Rosh HaShannah). The Targum Unkelos on this pasuk translates "yom teruah" as "yom yevava". "Yom yevava" means a day of moaning, or a day of broken up cries.

That is why the main thrust of the shofar sound is the "shevarim" (the broken wailing sound). There is a question in Halacha as to whether the true shevarim is the 3 short sounds we call shevarim or the series of shorter blasts that we call teruah or a combination of both, but whatever its nature, the "shevarim" is the essence of the shofar blowing. The single blast sound (tekiah) that proceeds and follows the "shevarim" merely provides a frame, so to speak, to highlight the essence of the shofar sound – the sobbing cry of shevarim.

Thus, the etymology of Teruah, sharing the same root as re'yus [friendship] has the connotation of breaking something up. Rav Hutner says that is why a friend is called re'yah – the purpose of a friend is to "break you up" and to "give you chastisement". A true friend should stop us in our tracks and give us a kick in the pants, when necessary. A friend is not the type of person who always pats us on the back and tells us how great we are, always condoning whatever we do. The purpose of a friend (re'yah), as is the purpose of Teruah (shofar blast), is to tell us – sometimes – "you don't know what you are talking about!"

Obviously, there has to be an overall positive relationship. Someone who is always critical will not remain a friend for very long. A person needs to have a modicum of trust and confidence in someone before he is prepared to hear criticism from him. But the fellow who always slaps us on the back and tells us how great we are is likewise not a true friend. A true friend must be able to stop us and sometimes be able to break us.

In one of the blessings of Sheva Brochos (recited at a wedding and during celebration meals for the week thereafter), we make reference to the newlywed couple as being "re'yim ahuvim" [loving friends]. There is a message behind this expression. In order for a Chosson-Kallah / Husband-Wife to be "loving friends," they need to have the capacity to be able to say to each other "this is not the way to do it; this is not the way to act". Obviously, a relationship in which this is the entire basis of their interaction is not going to fly. But – if one is deserving of it – the type of wife a person will find will be one who will be a "re'yah ahuva" in the full sense of the word "re'yah".

This is why no ox ever had a "re'yah". No ox will ever tell its companion ox "It is not right to eat like that" or "You are eating too much" or "You are eating too fast." A true friend needs to do that.

Similarly, the Netziv says on the pasuk, "A helpmate, opposite him" [Bereshis 2:18] that sometimes in order for a person to be a helper (ezer), the person needs to be an opponent (k'negdo). It should not just be "Honey, you're great" and "Honey, you are always right." Sometimes it must be "Honey, you are an idiot!" This is a true instance of "re'yim ahuvim".

May we all merit having such true friendship between ourselves and our companions and between ourselves and our spouses.

This write-up was adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Torah Tape series on the weekly Torah portion. Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD

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webmaster@koltorah.org Parashat Mishpatim Feb. 9, 2013

One Small Step At A Time by Rabbi Darren Blackstein

Having just read the Parashah containing the Aseret HaDibrot, we now turn our attention to Parashat Mishpatim and its many laws that govern how we treat our fellow man. There seems to be a stark contrast between Parashat Yitro's involvement in our connection to the Divine and Parashat

Mishpatim's involvement in our interpersonal relationships. Parashat Yitro's drama is engulfed in a spectacular experience where Am Yisrael, under the weight of Hashem's words, need to beg for relief, while Parashat Mishpatim seems to be an aftermath containing civil laws, coupled with an innate moral code. Perhaps the transition between these Parashiyot is much smoother than it appears on the surface.

The last Pasuk of Parashat Yitro (Shemot 20:23) states that we should not ascend a Mizbei'ach by way of stairs. This implies that we should ascend by way of some type of ramp. The Pasuk explains that this is to avoid revealing any nakedness in our approach to the altar. Rashi (ad loc. s.v. Asher Lo Tigaleh Ervatecha) explains that climbing stairs necessitates the elongation of our stride, thereby increasing the chance of exposing the inner thigh. Rashi continues to explain that this remains an issue despite Hashem's commandment to the Kohanim to wear linen pants. The reason that this is an issue is due to the fact that the climbing stairs is a physical motion that, in a bodily way, advertises the nakedness of the leg, even though in this case it is covered. The motion of climbing stairs itself thereby becomes a disrespectful activity, and, consequently, should not be performed near such a holy place. Then, Rashi quotes a Kal VaChomer from the Mechilta that states the following: If we are careful to avoid humiliating inanimate objects such as stones because they have this holy use, we should, all the more so, be careful to avoid humiliating our fellow man because he is created in the image of Hashem! Rashi enables us to realize that inherent in our connection to Hashem is our connection to each other.

At the beginning of this week's Parashah, Rashi (Shemot 21:1 s.v. VeEileh HaMishpatim) asks how it can be connected to Parashat Yitro. Again quoting the Mechilta, Rashi explains that the message is that just as the topics of the altar in Yitro and interpersonal laws in Mishpatim are juxtaposed, similarly, the Sanhedrin, which adjudicates the laws of Mishpatim, should be located near the Mizbei'ach, which is described in Yitro. This is all well and good in terms of deriving a message from the juxtaposition, but this seems like a lesson born out of the convenience of these two topics being next to each other, and not out of a fundamental connection. The Maharal, in his Sefer Gur Aryeh, explains what Rashi has in mind. He writes that the function of the Mizbei'ach is to promote a sense of peace and well-being between us and Hashem through the sacrifices that are offered there. Similarly, the function of the Sanhedrin is to promote a sense of peace and well-being amongst the people through the debates that it resolves and the laws that it clarifies. Therefore, this similarity in function is reflected not only through the juxtaposition of the topics, but also through the physical proximity of one to the other.

What message can we extract from this? It seems that we are being told that there are underlying connections between the way we conduct our spiritual lives and the way we conduct our interpersonal lives. Jews must reflect a healthy respect and concern for the holiness that is inherent in Bein Adam LaMakom, as well as in Bein Adam LaChaveiro. This is necessitated by the Tzelem Elokim that is part of every human being. A similar point is made by the Maharal by way of Rashi in last week's Parashah. We are told in Perek 20 that Hashem described "all" these Aseret HaDibrot (20:1). Rashi (ad loc. s.v. Eit Kol HaDevarim HaEileh) explains that the word "all" implies that Hashem said all of the commandments at once. Bnei Yisrael were not able to tolerate that, though, so Hashem delivered the Aseret HaDibrot in another way. The Maharal explains that Rashi teaches that Hashem said them all together; while this was impossible to understand, He relayed the message that all of Hashem's words and all of the Torah are connected and part of a large harmonious whole. We must strive to reflect this message in our daily living. We must see the Kedushah in the performance of a ritualistic Mitzvot as well as in our social conduct. Both should reflect the holiness embedded in each.

As a recommendation in terms of our progress, I must echo the words of our Rosh HaYeshiva, Rav Yosef Adler. Rabbi Adler often suggests that progress must be made in small quantifiable amounts. Taking on too much

too soon will lead only to failure and disappointment. Perhaps this message can be seen through the ramp leading to the altar. A ramp provides for a slow, smooth journey to the next level, while a step proceeds in a sharp incline leading to a possibility of stumbling. As we are counted upon, through our contributions in Parashat Shekalim, to be a part of our nation's service to Hashem, may we all be Zocheh to uplift our treatment of, and connection to, one another in ways that reflect the message of the unified Kedushah of Hashem Himself.

from: Kol Torah Webmaster <webmaster@koltorah.org>
to: Kol Torah <koltorah@koltorah.org> date: Thu, Dec 13, 2012 at 8:11 PM subject: Kol Torah Parashat MiKeitz Vayigash Vayeichi 5773

Beit Din Basics – Part One by Rabbi Chaim Jachter

Many otherwise knowledgeable Jews find the contemporary workings of financial litigation in Beit Din to be obscure and even foreign. In this series we will highlight some basic points about Beit Din that every Jew should find helpful. In an effort to enhance comprehension, we will present a fictional case and explain how a Beit Din could resolve such a situation.

In order to make matters simpler, we will forego our usual copious citations to the sources of the issues we discuss. Many sources for these issues appear in the second volume of Gray Matter, where commercial litigation in Beit Din is discussed at great length. We will begin our discussion by presenting seven introductory concepts that are essential for understanding how Batei Din currently function.

Batei Din, Civil Courts, and Attorneys

Halachah forbids us to submit financial disputes to a Nochri court for adjudication (as we discussed at length in our past two essays). Financial disputes with our fellow Jews should be resolved "within the family" and according to the rules of our tradition. We should emphasize that this is entirely in harmony with civil law, as civil courts are most pleased with alternative dispute resolution. Civil courts are overburdened and the government is delighted to be relieved of the burden of resolving our disputes.

Indeed, civil courts will most often enforce the decisions of Batei Din. It is sound civil public policy to encourage such arbitration. However, the civil courts will enforce a Beit Din ruling only if the Beit Din adhered to the civil rules for arbitration. For example, a civil court will not enforce a Beit Din ruling if the Beit Din did not permit each litigant to be represented by a licensed attorney of his or her choice. For this and other reasons, litigants are often represented in Beit Din by attorneys, even though the Mishnah and Gemara hardly ever describe the presence of lawyers in a Beit Din.

It is very much in the interest of promoting Halachic observance to hew closely to the civil procedures for arbitration, since civil courts are currently the only mechanism for enforcement of Piskei Din (Beit Din rulings). The Torah speaks of the Mitzvah to appoint "Shofetim VeShoterim," judges and policemen, to enforce the rulings of the Dayanim (rabbinic judges). In a Torah society, the Jewish government appoints Shoterim to enforce the rulings of the Beit Din. In American society, the civil courts function as our Shoterim. Those who reside in the United States are most fortunate that the courts are strongly inclined to enforce properly-adjudicated Batei Din arbitrations. This is not the case in many other jurisdictions.

The Role of Civil Law in Beit Din – Three Portals

One might be rightfully puzzled at the title of this section – after all, a Beit Din is supposed to rule in accordance with Halachah. What role could civil law have in Beit Din? There are, however, three portals through which Halachah potentially incorporates civil law. The first is that in regards to financial matters, Dina DeMalchuta Dina, the Halachah obligates us to honor the laws of the jurisdiction in which we reside. However, there is considerable difference of opinion in regard to the scope of the applicability of this rule. Moreover, Posekim are most reluctant to eviscerate Halachah by too liberal an application of Dina DeMalchuta Dina.

Many Dayanim are more comfortable with a different portal, Minhag HaMedinah – the common commercial practice of a particular locale. The Mishnah and Gemara quite often apply Minhag HaMedinah even when it is not identical to Halachic mandate. Work hours is a classic example (Halachah expects employees to work from dawn to dusk). The common commercial practice of fewer or longer working hours overrides the Halachah. It is important to note that Dina DeMalchuta Dina often determines and creates the Minhag HaMedinah.

In fact, the rules and procedures of the Beth Din of America (available at www.bethdin.org) state that its Dayanim will incorporate common commercial practice in their rulings "to the fullest extent permitted by Jewish Law." A contemporary example is building codes. A Beit Din will not, for the most part, adjudicate a dispute between a home owner and a building contractor based on the standards for buildings articulated by the Gemara. Instead, compliance with contemporary building codes is the

basis, for the most part, of the decision. Indeed, the parties to a building agreement expect contemporary building codes to serve as the benchmark for proper fulfillment of their contract. Thus, civil building codes create a Minhag HaMedinah and are incorporated into the Halachah.

A more controversial portal is the contractual agreement for a Beit Din to adjudicate disputes in accordance with civil law of a specific jurisdiction as of the day of the contract. The Beth Din of America will, generally speaking, honor such agreements. They reason that Halachah follows Rabi Yehudah who permits structuring financial affairs in any manner provided that it is honest, consensual, and does not violate ritual law (such as the prohibition of Ribit, charging interest).

Other Batei Din view such agreements as violations of the prohibition to adjudicate in civil court. They reason that Halachah forbids submitting both to the authority of a Nochri court and to Nochri law. The Beth Din of America, however, argues that one submits to the authority of the civil law only if the contract calls for the Beit Din to rule in accordance with the civil law as of the date of the adjudication of the future dispute.

Indeed, the prenuptial agreement promoted by the Rabbinical Council of America and the Beth Din of America offers the option for couples to submit to the jurisdiction of the Beth Din of America for adjudication of any financial dispute emerging from divorce, based on civil equitable distribution laws or community property laws. Of course, the agreement calls for the Beit Din to apply these civil laws as they apply on the day of the signing of the prenuptial agreement.

Considering that Halachah incorporates some aspects of civil law, it is often desirable to select at least one Dayan who is expert in the civil law of the specific matter that is being adjudicated by the Beit Din. Many of the Dayanim who serve on the Beth Din of America earned a law degree.

Shetar Beirurin/Binding Arbitration Agreement

Batei Din require litigants to sign a Shetar Beirurin, a binding arbitration agreement, before they will adjudicate a dispute. Without such consent, the Beit Din might not have Halachic jurisdiction over the parties and the parties might choose to ignore the Beit Din's rulings. Moreover, a civil court will not enforce a ruling unless the parties signed a proper binding arbitration agreement. Batei Din do not enjoy authority in a country that separates state and religion, unless the parties contractually agree to submit to the jurisdiction of a specific Beit Din to settle a specific dispute.

Indeed, refusal to sign a Shetar Beirurin is regarded by Batei Din as tantamount to refusal to adjudicate the dispute in Beit Din and one who acts thusly is held in contempt of rabbinic court ("Mesareiv LaDin"). Refusal to sign a Shetar Beirurin is a strong indication that the party does not intend to respect and honor the Beit Din ruling if it does not rule in his or her favor.

Since the Shetar Beirurin is both a Halachic and civil necessity, it must conform both to Halachah and to civil law. The Beth Din of America's Shetar Beirurin is in English, for example. The aforementioned RCA/BDA prenuptial agreement is written in English and is independent of the Ketubah and the Tena'im.

The composers of the RCA/BDA prenuptial agreement considered the dissenting opinion in *Avitzur v. Avitzur*, a classic New York civil court (5-4) ruling. The majority upheld the civil enforceability of the Conservative movement's prenuptial agreement, a binding arbitration clause written in Aramaic and incorporated into the traditional Ketubah. The dissent argued that a civil court is not permitted to enforce a "liturgical document." In addition to avoiding the Conservative prenuptial agreement's Halachic flaws, the Orthodox prenuptial agreement steers clear of this critique and thereby enhances its likelihood of enforceability in civil court.

One Dayan or Three Dayanim

The first Mishnah of Mesechet Sanhedrin teaches that a Beit Din of three is required for adjudication of commercial disputes. However, Halachah permits parties to choose one Dayan to judge their dispute. As we mentioned earlier, Halachah grants us great flexibility in regards to financial matters. The advantage of choosing one judge is that the matter can be resolved more quickly since time is not needed for the judges to agree upon a ruling. Moreover, the expense of paying more than one Dayan is avoided.

The advantage of a Beit Din of three Dayanim is that there will be much more grappling with the issues involved. Most likely, a better decision will be reached since more perspectives are involved in arriving at a decision. Pirkei Avot specifically advises rabbis to refrain from resolving monetary disputes alone without the benefit of two additional Dayanim.

It is especially recommended to use a Beit Din of three Dayanim if the matter is under serious dispute and emotions are running high. In such cases, creating/restoring peaceful relationships is a major goal of a Din Torah (Beit Din litigation). There is much greater chance of achieving Shalom when three Dayanim decide a case. The losing party is much more likely to reconcile himself/herself to a decision of three experts rather than only one. A rational individual who is convinced of his or her stance in a dispute will relent when three respected figures believe otherwise.

Conclusion

IY"YH, we will continue with the presentation of Beit Din basics in our next issue.

Beit Din Basics– Part Two by Rabbi Chaim Jachter

Many otherwise knowledgeable Jews find the contemporary workings of financial litigation in Beit Din to be obscure and even foreign. Last week we began a series of essays in which we highlight some basic points about Beit Din that every Jew should find helpful. In an effort to enhance comprehension, we will present a fictional Din Torah and explain how a Beit Din could resolve the dispute.

In order to make matters simpler, we will forego our usual copious citations to the sources of the issues we discuss. Many sources for these issues appear in the second volume of *Gray Matter*, where commercial litigation in Beit Din is discussed at great length. We will continue our presentation of seven introductory concepts that are essential for understanding how contemporary Batei Din function.

Choice of Beit Din – Beit Din Kavuv'a or Zabla

Halachah offers two basic options of choosing a Beit Din to adjudicate a dispute. One is a sitting Beit Din (Beit Din Kavuv'a) and the other is a Zabla Beit Din, in which each litigant chooses a Dayan and the two Dayanim then choose a third Dayan. There are advantages and disadvantages to each type of Beit Din. Some prefer a Zabla because the parties exercise some control over the choice of Dayanim. Customarily, the two Dayanim chosen by the parties ascertain that the third Dayan (Shalish) is acceptable to both litigants.

A disadvantage of this type of Beit Din is that sometimes the Dayanim chosen are not compatible and do not work well together. While each Dayan may be excellent in his own right, the combination might not work well. Another disadvantage is that a Zabla Beit Din, generally speaking, will be more expensive, since the Dayanim serve not only as the judges but also as the administrators of the case. Since the Dayanim must invest more time, their fees are higher. Visit www.bethdin.org for a list of fees charged by the Beth Din of America, a Beit Din Kavuv'a.

Another advantage of using a Beit Din Kavuv'a is that many Batei Din, such as the Beth Din of America and the State of Israel's rabbinic courts, have published formal rules and procedures for the Dinei Torah that they adjudicate. An ad hoc Zabla Beit Din does not have such rules and procedures which specify the rules the Dayanim will follow. A solution to this problem, however, is to denote in the Shetar Beirurin/binding arbitration agreement that the Zabla Beit Din will be following the rules and procedures of a specific Beit Din Kavuv'a.

Choice of Law – Din, Pesharah, and Pesharah Kerovah LeDin

As surprising as it sounds, there is a choice of law in Beit Din. While every Beit Din judges based on Jewish Law, Halachah offers three options regarding the methodology of decision-making to be employed by the Beit Din. One option is "Din," the strict application of the Halachah. Another is "Pesharah," which can mean either compromise or equity (Batei Din vary in their understanding of the term Pesharah). The third option is "Pesharah Kerovah LeDin," which is a blend of the aforementioned two. While the Beth Din of America used to offer litigants the choice of pure Din in its rules and procedures, in recent years it has offered only either Pesharah or Pesharah Kerovah LeDin.

Both the Gemara and the Shulchan Aruch strongly discourage applying strict Din in practice. In fact, many Batei Din today regard a litigant who insists on a Din judgment as a Mesareiv LeDin, in contempt of rabbinic court. Such is the extent of the avoidance of conducting a Din Torah (Beit Din litigation) in accordance with strict Din.

The preferred method is Pesharah Kerovah LeDin, since Pesharah often appears to be arbitrary. Indeed, Batei Din will apply Pesharah only if the parties specifically request a pure Pesharah. Pesharah Kerovah LeDin is the preferred method of conflict resolution; on the one hand, it hews for the most part to the rules set forth in the Shulchan Aruch, but it nonetheless offers some flexibility to consider equity and fairness in decision-making.

One would think that a plaintiff would prefer Din, since this would allow collection of all he is owed without compromise. However, a plaintiff might prefer Pesharah, as the rules of evidence are somewhat relaxed in such a case, and therefore it may be easier for him to prove his case to the Beit Din. In addition, some Batei Din will not excuse *Gerama BeNezikin* (indirect damage) if ruling in accordance with Pesharah, unlike pure Halachah, which does not obligate one to pay for damage done indirectly. Thus, there are both potential advantages and disadvantages to both plaintiff and defendant in regards to choosing either Din, Pesharah, or Pesharah Kerovah LeDin.

The choice of Din, Pesharah, and Pesharah Kerovah LeDin is spelled out in the Shetar Beirurin/binding arbitration agreement signed by the litigants appearing before Beit Din. Litigants should also ask the written clarification for their understanding and application of Pesharah (is it compromise or equity) and Pesharah Kerovah LeDin (is it inclined more to Pesharah or to Din). The Beth Din of America explains its standards

regarding Pesharah and Pesharah Kerovah LeDin in its rules and procedures, available at www.bethdin.org.

We should clarify that Pesharah is not an extra-Halachic consideration. Rather, it is an integral component of Halachah, since the Torah commands us (Devarim 6:18), “VeAsita HaYashar VeHaTov BeEinei Hashem Elokecha,” to do the right and the good in the eyes of Hashem. Rashi explains that this refers to the idea of Pesharah. Thus, when Dayanim apply Pesharah Kerovah LeDin or Pesharah, they are acting well within their Torah mandate and not outside the boundaries of Halachic dispute resolution.

Role of your Rav

Generally speaking, it is not a good idea for one's Rav to resolve a monetary dispute. Tensions often run very high regarding monetary disputes, and it is usually preferable for a neutral and disinterested party/ies to resolve the dispute. Moreover, a Rav is generally biased toward his congregants, since he presumably has a deep connection with them, thereby rendering him disqualified to render an unbiased decision regarding a dispute.

Introduction to the Fictional Case

Before we present our model case we need to introduce three basic Halachic concepts. The first is HaMotzi MeiChaveiro Alav HaRe'ayah, that the burden of proof rests upon the plaintiff. Witnesses and documents are classic forms of evidence; e-mail correspondence today is often used as evidence in contemporary Batei Din. Thus, if one claims that his friend owes him \$40,000 and produces no evidence to that effect, the Beit Din will not award any compensation to the plaintiff.

The second concept is Shevu'at Modeh BeMiktzat. In this case, the plaintiff makes a claim and the defendant admits to part of the claim. Admission is the strongest form of evidence, as Chazal teach, “Hoda'at Ba'al Din KeMei'ah Eidim Dami,” an admission is the equivalent of one hundred witnesses. However, if there is no evidence beyond the amount of admission, the Beit Din does not obligate the plaintiff to pay any more than he has admitted to.

However, since he has admitted to part of the claim, the Torah demands an oath from the defendant that he does not owe any more money than that which he admitted. For example, if one demands \$24,000 from his friend, who admits to \$100 of the claim, the friend is required to pay only \$100 since there is no evidence to the amount beyond that sum. However, he must take an oath that he truly owes no more than \$100.

The third concept is called Pidyon Shevu'ah, the redemption of an oath. As we discussed at length last year in Kol Torah (archived at www.koltorah.org), the virtually universally accepted practice among contemporary Batei Din is to refrain from administering oaths. In a situation where one is obligated to take one of the three Torah level oaths, Modeh BeMiktzat, Shevu'at Eid Echad (where there is one witness to bolster the plaintiff's claim) and Shevu'at HaShomerim (the oath taken by a watchman who claims that the item he was guarding was stolen, that he did not take the item), the Beit Din will impose a Pesharah upon the parties. The Beit Din, in issuing such a Pesharah, must exercise good judgment to ensure that a fair and reasonable decision is issued, as we discussed at length last year.

A Fictional Case

A musician hired a website designer (both parties reside and work in San Francisco) to help sell twelve of his recordings on the internet. The musician engaged the website designer to perform three tasks: edit the recordings, post them to his website, and add e-commerce capability to his website. In testimony before the Beit Din, the musician and website designer had no disagreement about this point.

They did, however, sharply disagree about the terms of payment. The plaintiff (the website designer) claimed he was hired to work for \$120 per hour and that he worked for 200 hours to complete the assigned tasks. Thus, he claimed that he was owed \$24,000. The defendant (the musician) claimed that the agreement was to pay twenty-five percent of the proceeds from the sale of the recordings. The defendant stated that he received a total of \$400 for the recordings. Thus, he claimed that he owed only \$100. The terms of payment were not recorded in a document, nor were there any witnesses to testify what the parties agreed to pay.

Conclusion

We conclude our discussion at this point asking the reader to think how a Beit Din would resolve this issue, utilizing the introductory material from the essays of the past two weeks. Try to figure out how a decision would be made if either Din or Pesharah or Pesharah Kerovah LeDin were utilized by the Beit Din. The answers will be presented IY"H in next week's issue.

Beit Din Basics – Part Three by Rabbi Chaim Jachter

This week we conclude our series on financial litigation in Beit Din. We have highlighted some basic points about Beit Din that every Jew should find helpful. In an effort to enhance comprehension, last week we introduced a fictional case and this week we will explain how a Beit Din could resolve this situation.

In order to make matters simpler, we will forego our usual copious citations to the sources of the issues we discuss. Many sources for these issues appear in the second volume of Gray Matter where commercial litigation in Beit Din is discussed at great length. We will continue our presentation of seven introductory concepts that are essential for understanding how contemporary Batei Din function.

Our Fictional Case

The following dispute was brought to a Beit Din in Northern California in the winter of 2012. A musician hired a website designer (both of whom live in San Francisco) to help sell twelve of his recordings on the internet. The musician engaged the website designer to perform three tasks – edit the recordings, post them to his website, and add e-commerce capability to his website. In testimony before the Beit Din, the musician and website designer had no disagreement about this point.

They did, however, sharply disagree about the terms of payment. The plaintiff (the website designer) claimed he was hired to work for \$120 per hour and that he worked for 200 hours to complete the assigned tasks. Thus, he claimed that he was owed \$24,000. The defendant (the musician) claimed that the agreement was to pay 25% of the proceeds from the sale of the recordings. The defendant stated that he received a total of \$400 for the recordings. Thus, he claimed that he owed only \$100. The terms of payment were not recorded in a document nor were there any witnesses to testify what the parties agreed to pay.

Resolution According to Pure Din

If this case were to be resolved according to pure Din, strict Halachah, a Beit Din would obligate the musician to pay only \$100. Beit Din would not obligate him to pay any more money, since there is no evidence that he owes anything above this amount. However, Beit Din would require the musician to take an oath that he owes no more than \$100 (a Shevu'at Modeh BeMiktzat, as explained in last week's issue). Nonetheless, as we noted in our previous issue, pure Din is rarely applied in contemporary Batei Din.

Resolution According to Pesharah Kerovah LeDin

We also noted last week that Pesharah Kerovah LeDin, a blend of pure Pesharah and Din, is the preferred method of conflict-resolution in Beit Din. In our fictional case, the litigants signed a Shetar Beirurin (binding arbitration agreement) in which they agreed that the Beit Din should adjudicate their dispute in a manner of Pesharah Kerovah LeDin.

Many Batei Din follow Rav Kook's recommended course of how to arrive at a ruling in the manner of Pesharah Kerovah LeDin. The Beit Din first determines how to resolve the matter in accordance with pure Halachah. Then it considers the equities of the situation. In this situation, the website designer performed a considerable amount of work for the musician and thus fairness would dictate that he be paid considerably more than \$100 for his efforts. We reemphasize that which we noted last week, that when Dayanim apply Pesharah Kerovah LeDin or Pesharah, they are acting well within their Torah mandate and not outside the boundaries of Halachic dispute resolution.

In this case a Beit Din could apply the Halachic manner of resolving of a somewhat similar, albeit not identical, situation. The Shach (Choshen Mishpat 333:44) and Ketzot HaChoshen (331:3) address a situation in which one hired a professional to perform a task related to his profession but did not specify the wages. Halachah assumes that professionals do not work for free unless they explicitly state that they are doing so and thus in the usual situation the professional must be compensated. However, since a wage was not specified the Shach and Ketzot rule that the employer pays only the lowest amount paid for such work in the locale in which it was performed. We cannot assume that the employer would have hired someone to work for more than the lowest rate in his area.

We must stress that the case of the Shach and Ketzot is not identical to the fictional case we are presenting. In our case the parties specified a wage but disagreed as to what was agreed to. Nonetheless, a Beit Din could apply this somewhat analogous case, since when there is a dispute as to the agreed wage it is as if no wage was agreed upon. Moreover, compensating the musician in accordance with the lowest amount paid for such work in his area is far more equitable than giving him only \$100 for his time, efforts, and talent.

A Beit Din would have to consider in such a case as to what is the “locale” in such a situation. Such work could have been farmed out to anywhere in the world. For example, the musician could have hired people in parts of the world such as India, where they receive far lower wages than what is paid in the United States for performance of such tasks. A Beit Din would have to decide whether the payment should be the minimum paid for such work in Northern California or anywhere in the world.

A Beit Din would rule that the wage is determined by the lowest fee charged in Northern California since it is clear that the musician was interested in hiring someone who resides locally and not someone who lives on the other side of the globe. There are distinct advantages to working with someone who lives nearby and it is obvious that the

musician was interested in these advantages since he in fact hired someone who lives close to him.

The Beit Din in our fictional case consulted with five experts and each reported that \$5,000 was the minimal amount paid for such work in Northern California in 2012. Thus, the Beit Din obligated the musician to pay \$5,000 in accordance with a blend of Pesharah and Din. In addition, the Shevu'at Modeh BeMiktzat which he was obligated to take according to strict Din was redeemed in a reasonable and fair manner in accordance with the contemporary Beit Din practice of Pidyon Shevu'ah (discussed last week).

Interestingly, in our fictional situation, the musician insisted on taking a Shevu'ah (oath) to bolster his claim and excuse him from paying more than \$100. The Beit Din, however, declined to administer a Shevu'ah in accordance with contemporary practice.

Resolution According to Pure Pesharah

If the Beit Din were to have decided this issue based on pure Pesharah the Beit Din might have awarded compensation to the website designer in accordance with the average wage paid in Northern California. Thus, had the parties agreed to Pesharah, the website designer would have been granted another \$1,000. Pesharah Kerovah LeDin, however, demands the Beit Din to remain near the bounds of Din which calls for paying only the lowest wage, in a somewhat similar situation.

Lessons to Learn from the Fictional Case

Had the parties to our fictional Din Torah committed their agreement to writing, the dispute would not have emerged from their interaction. In fact, the Gemara (Bava Metz'a 75b) urges loans to be issued in writing and before witnesses to avoid problems. Interestingly, a very experienced Dayan, Rav Chaim Cohen, once commented that Dinei Torah usually arise amongst people who are not organized in their affairs and expose to themselves ambiguity created by a lack of clarity in their business dealings. Carefully clarifying the terms of a business interaction greatly reduces the likelihood of dispute and the need for litigation.

Another lesson is that the litigants in our case should have settled their dispute amongst themselves without resorting to Beit Din resolution. The parties in our fictional case were fighting bitterly over this matter and each side hired attorneys to represent them in Beit Din. In addition, a full Beit Din of three Dayanim was absolutely necessary in this hotly contested situation. Had the musician offered to give the website designer \$7,500 and had the website designer agreed to accept payment of even \$2,500, they would have each saved money considering the costs of their lawyers and the costs of the Dayanim.

One wonders what psychological forces drive people to pursue litigation even though they would save money if they compromise. It is possible that the mistake is the pursuit of victory rather than fairness. However, this is usually a counterproductive activity since in most situations it is in the interest of both parties to settle their differences amongst themselves without having to pay lawyers and Dayanim. One should also consider the psychological costs of the stress and time that is expended in the course of the pursuit of an intense litigation. The health benefits of settling a dispute should not be dismissed as trivial.

Conclusion

In our fictional case, the plaintiff acted correctly and went to civil court to confirm the Beit Din's award. The civil court, seeing the reasoned decision offered by the Beit Din (see our discussion of this issue in Gray Matter volume three) and recognizing its fairness, upheld the rabbinic court award. The parties learned their lessons and took care to record their business transactions in writing and sought to settle any disputes they had without resorting to litigation.

Thanks to hamelaket@gmail.com for collecting the following items:

from: Destiny Foundation/Rabbi Berel Wein <info@jewishdestiny.com>

reply-to: info@jewishdestiny.com

subject: Weekly Parsha from Rabbi Berel Wein

Weekly Blog :: Rabbi Berel Wein

Expectations

A great deal of our reactions to events is dependent upon what our previous expectations regarding those events or personalities were. If we have very high expectations of success, morality or altruistic behavior from our individual leaders, be they political or religious, national or personal, we are invariably doomed to disappointment - the higher the expectation, the more bruising the disappointment. Much of this disappointment is engendered by our heroes engaging in normal human behavior in circumstances when somehow we expect super human behavior from them. Our expectations are fed by the public image and persona of those leaders who invariably portray themselves as being all-wise, selfless and beyond pettiness and human foibles.

Since they have portrayed themselves in such a fashion, the rule of society – the bigger they are the harder they fall – invariably is invoked. We are witness to this on a national scale regarding the attitude of much of European political leadership, academia and intelligentsia towards the state of Israel.

Not long ago one of the foreign ministers of a Scandinavian country openly stated: “We expect much more from Israel than we do from the Palestinians or the Arabs. Therefore, it is true that we do have a double standard when it comes to events and policies regarding the Middle East.” This revealing statement emphasizes the truth that throughout history Jews were expected to be more Christian than the Christians, more liberal than the liberals and certainly more pacifist and peace-loving than anyone else. This expectation, unfair and unrealistic as it may be, was somehow fostered by the Jewish self-image. This attitude has been carried over today by the unrealistic and unfair expectations that many Jews have today of Israel. When Charles de Gaulle called us an “elitist” people he was reflecting the attitude that many Jews have about themselves. So, when Jews do not behave in an “elitist” fashion, the disappointment of the world and of the Jewish people is truly magnified.

The Jewish world, especially the observant Orthodox section of it, is currently reeling from a number of scandalous incidents involving yeshivot, Chasidic courts, Kabbalistic savants, differing ideologies, corruption and criminal charges against revered rabbis, powerful political leaders and public representatives of our faith. Great people and seemingly holy institutions have been brought low by sad and unworthy incidents loudly trumpeted by the press and the media both here and in the United States.

What makes all of these incidents so much more painful is that we were led to expect more. If rioting factions in one of the greatest yeshivot in the world can break up a prayer service for the sake of turf and self interest, it is difficult to see how Torah and meaningful prayer can be advanced amongst the masses of the Jewish people. And this is simply because the antagonists themselves have portrayed themselves as the paragons of virtue and see themselves as being the true owners of the tents of Jacob.

We expect better from them. We expect restraint and holiness, tolerance and peace and the willingness to abide with agreed-upon settlements crafted by the religious court system. When these expectations are dashed by what unfortunately can be called “normal” human behavior – selfishness, self-interest, turf and greed – the despair and hardship of the observer is compounded.

There are apparently only two possible antidotes to this disease of scandal and dispute. One is to simply lower our own expectations of our leaders and institutions - to admit that they are not infallible; they are not necessarily as holy as they portray themselves to be and that in their human errors – even shameful ones - can and will occur.

Apparently this is the way that the Bible and the Talmud chose in discussing the lives and events of the great leaders of the Jewish people in First and Second Temple times and thereafter. No one gets a free pass. Paradoxically, this does not seem to diminish anyone's greatness or heroic stature in the eyes of the Jewish people. Rather, it enhances their humanity and our ability to identify with them and learn from their challenges and circumstances of life. In effect, we are taught to have realistic expectations of humans and thus minimize the angst and despair that unrealistic expectations will always bring upon us.

A second path in this area is to truly demand high achievements from our leadership, that they truly live up to their public persona and press clippings. Covering up faults and ignoring the obvious circumstance that the emperor has no clothes can only lead to public shame and private disaster. I think that perhaps both of these attitudes can be pursued simultaneously and that Jewish society will strengthen and enhance it. Shabbat shalom

from: Destiny Foundation/Rabbi Berel Wein <info@jewishdestiny.com>

reply-to: info@jewishdestiny.com

subject: Weekly Parsha from Rabbi Berel Wein

Weekly Parsha Blog:: Rabbi Berel

Mishpatim

One of the most puzzling, if not even disturbing subjects, discussed in biblical and halachic detail, appears in this week's Torah reading. That subject matter concerns itself with the institution of slavery – of literally owning another human being and defining them as human chattel. Certainly, the entire subject matter grates on the ears and sensibilities of Western citizens in our current twenty-first century.

We remember the words of Abraham Lincoln that if there is any wrong in human society, slavery is certainly that wrong. Yet, as a matter of cold hard fact and reality, slavery still exists in a large part of human society today and was certainly the norm in all human societies for many millennia. Only in the

eighteenth and nineteenth centuries did Western societies begin the slow, painful and always violent change of mindset and practice and legally abolish slavery.

Large parts of the Moslem world today still incorporate slavery as part of their social and economic fabric of life. So, we moderns ask the question, certainly to ourselves if not publicly, why does it seem that the Torah accepts and even condones the practice of slavery? It devotes a great deal of space and thought to regulating it, limiting it, and making it more humane and less brutal.

Yet, in the final analysis it does not speak out against the practice nor does it forbid it as being a moral and legal wrong. To the true believer, this question like all questions regarding religion and faith, has really no validity. To the nonbeliever, there never is an acceptable answer to any of one's doubts and questions regarding faith and revelation.

To many if not most of us who, though believing are nevertheless troubled by seeming moral inconsistencies and who search for Torah relevance in our everyday lives, this type of question gnaws at us.

The Talmud many centuries ago pointed out the inefficiencies and economic backwardness that slavery inflicts upon society. Its famous statement was:

"One who purchases a slave to serve one's self is in reality acquiring a master over one's self." Yet, even here it is the impracticality of slavery that is being attacked and not the immorality of the institution itself.

Many of the great Torah commentators, especially of the last few centuries, have attempted to deal with this issue. They saw in it – in this Jewish attitude toward slavery - an institution that could rehabilitate the criminal, give opportunity to the helpless poor, educate the ignorant and bring the pagan to monotheistic society and its enlightened practices and attitudes.

As true and high sounding as these goals are at best, they still do not sound a ringing condemnation of the institution of slavery itself. I think that we are forced to say that since the Torah was given to all societies and all times – an idea emphasized by Maimonides throughout his works – the Torah, as was its wont in many cases, spoke to a current and long-lasting society that could not imagine a world where slavery should no longer exist.

It regulated the institution and look forward to a time such as ours where, in most human societies, that institution would no longer exist. The Torah never commanded the acquisition of slaves. It tempered the practice, waiting for the time when it would cease to be an issue.

Shabbat shalom

from: Ohr Somayach ohr@ohr.edu to: weekly@ohr.edu subject: Torah Weekly **Ohr Somayach :: Torah Weekly :: Parshat Mishpatim**
For the week ending 14 February 2015 / 25 Shevat 5775
by Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com
Insights

Getting Rid Of The Donkey Work

"And on the seventh day you shall rest, in order that your ox and your donkey should rest." (23:12)

"I'll never forget the first time I kept Shabbat. I woke up on Sunday morning and thought it was Monday..."

"It was almost like an out-of-body experience..."

"I felt this tremendous closeness to the whole creation; as if everything was in its place..."

Ask anyone who became observant what it was that turned them on to Judaism and you'll probably find that it was Shabbat.

Shabbat is "the source of blessing".

Shabbat is the most distant whisper of the World-to-Come, a glimpse into a world beyond time and space that we connect to by refraining from actions that connect us to time and space.

G-d gave the Jewish People an awesome power: the ability to infuse the physical world with the spiritual; to elevate the physical world so that it speaks the language of the soul.

"And on the seventh day you shall rest, in order that your ox and your donkey should rest." (23:12).

Why is it important that "my ox and my donkey" should rest on Shabbat? Are they going to go to shul as well? Wasn't Shabbat given to man and man alone?

The Torah is telling us here that our Shabbat rest should be such that it creates ripples of spiritual energy that elevate the entire world and felt even by the animals.

The Midrash describes how one of our Sages sold an ox to a non-Jew and it refused to work for its new owner on Shabbat because resting on Shabbat had become second-nature to it.

When we keep the mitzvot properly — and especially Shabbat — the whole world feels the difference.

Sources: based on Rabbi Avraham Mordechai of Gur, zatzal; Midrash Pesikta Rabbati 14

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from: Shema Yisrael Torah Network <shemalist@shemayisrael.com>

to: Peninim <peninim@shemayisrael.com>

subject: Peninim on the Torah by Rabbi A. Leib Scheinbaum

Peninim on the Torah by Rabbi A. Leib Scheinbaum
Parshas Mishpotim

You shall not cause any pain to any widow or orphan. (22:21)

It takes a truly reprehensible person to take advantage of a widow or orphan. These are individuals who are alone against the world. Why make life even more difficult for them? At first glance, we may even wonder why the admonishment against afflicting the almanah, widow, or yasom, orphan, is even included with the many laws that are mentioned in this parsha. Quite possibly, Hashem wants to put everyone on notice: He takes a special interest in the plight of these lonely people. He will listen to their pleas when they cry out to Him in pain. Anyone who causes them harm will have to answer to Hashem.

Another - perhaps deeper - lesson can be derived from here. Although many laws can be found in the Torah, the Jewish Code of Law, other equally important laws may not be written explicitly in the Torah. These are the laws that are written on the Sefer ha'lev, book of the heart. While the laws of the Torah are written on parchment, the laws concerning the widow or orphan - or anyone like them - are written on the walls of one's heart. Only someone whose heart is made of cold stone turns a deaf ear to the pleas of the widow and orphan. The following story, which took place with Horav (Dayan) Yechezkel Abramsky, zl, demonstrates this concept.

In England, where Rav Abramsky was Head Dayan of the Bais Din, full-time yeshivah students who were registered in a bona-fide yeshivah were exempt from military duty. Her Majesty's royal army respected Torah study. England is very meticulous in its adherence to the letter of the law. Thus, a student was required to produce papers that were filled out by the yeshivah and had proper signatures affixed, before he would be freed from military duty. The exemption was renewed annually. The signature of the Chief Judge of the Rabbinical court had to be affixed to the paperwork, or it would be rejected. One day, just before the deadline for submitting the exemption requests, a woman visited Rav Abramsky with a tale of woe. She was a widow, the mother of a ben yachid, an only son. He was a special young man whose commitment to Torah study and mitzvah observance was unquestionable. He spent every waking hour immersed in Torah. The problem was that since his father had passed away, he felt that his mother should not be left alone. He, therefore, had left the yeshivah and was studying the entire day and most of the night in the local shul. While this was acceptable to his mother, she could hardly expect him to receive a military deferment based on shul attendance. The government demanded organized institutional learning; studying in shul did not qualify for an exemption.

The anxious mother reported to Rav Abramsky, "I spoke to the administration of the yeshivah and asked them if they could still keep my son on their list of students. After all, he is studying full-time. They replied that rules are rules; if a student does not actually attend the yeshivah, he may not be included on their roster of students. I have come to the Rosh Bais Din, Head Dayan, of England, to help me in my plight. I cannot allow my son to be drafted."

Rav Abramsky replied, "Now look, according to natural law, there is no way around this rule. One is either registered in yeshivah - or he is not. There is, however, a different "code of law", that to which we Jews adhere: supernatural law, l'maalah min ha'teva. Hashem is the Father of widows and orphans. His Divine compassion overrides all laws. I will immediately go to the clerk in charge of deferments and appeal to him. You should supplicate Hashem for rachmanus, mercy. I will do mine. You will do yours. Together, we will hopefully succeed in saving your son."

And so it was. The widow sat down with her Sefer Tehillim and poured out her heart to her Father in Heaven. The tears flowed freely. When a child appeals to a father, no holds are barred. One says what one feels. Rav Abramsky wasted no time. He immediately took a taxi to the Ministry of Defense and presented himself before the individual in charge of deferments. Rav Abramsky was a well-known, highly respected figure in England. When he personally came to the ministry, it was understood that it was not a social call. It was a matter of the greatest importance.

Rav Abramsky was immediately ushered into the clerk's office. "How can I help you, Rabbi?" the clerk asked. Rav Abramsky related the entire story, saying how he had prepared the list of all yeshivah students who were up for deferments. He explained that a widow had appealed to him to help her son. Her story was sad, her circumstances certainly extenuating. Could he help? The man gave the usual response, that he would love to help, but his hands were tied. Rules were rules.

Rav Abramsky now began his plea. "My good young man, I am already an old man, while you still have a long life ahead of you. With old age comes life experience of which I have plenty. You live by and adhere to your codex of written laws. I am aware of another book of law, one which is of greater value and significance than your codex. I refer to the Book of the Heart. In the Book of the Heart, it is inscribed that whoever acts kindly towards a widow or an orphan will be greatly rewarded by the Almighty Himself. Indeed, this reward will continue on for generations. Anyone who helps G-d's children will be the beneficiary of the Almighty's enduring kindness. I reiterate to you. Think twice about what I am asking you. Let the Book of the Heart be your guide. The heart implores you to act kindly towards this widow and her only son."

Rav Abramsky returned home and waited. Three days later, a letter came from the Ministry of Defense exempting the young man from military service. The clerk had listened to his heart.

And six years you shall sow your land... but the seventh year you should let it rest and life fallow... six days you should do your work, but on the seventh day you should rest. (23:10,11,12)

The Torah juxtaposes the laws of Shemittah, the Sabbatical year, upon the weekly Shabbos, simply because both attest to the handiwork of the Creator which took place during the Six Days of Creation. Following these "working" days, Hashem rested, which was the first Shabbos. This seventh day of rest is commemorated both weekly on Shabbos and every seventh year, in the form of Shemittah. In his Pri Tzaddik, Horav Tzadok HaKohen, zl, cites the Mechilta 20, that tells us that the Torah cautions us not to neglect the weekly Shabbos during the Shemittah year. This statement begs elucidation. Why would we think that the prohibitions associated with Shabbos Kodesh are relaxed during the Shemittah year? In what way is the Shemittah year different from all other years?

Rav Tzadok explains that the Torah is alluding to a misguided presumption that we might make. There are those who err, thinking that Shabbos was

given to us as a day of rest from the difficult work in the fields, so that we can focus on our Torah studies. The Shemittah year was a time when physical work in the fields was suspended, allowing for sufficient time for studying Torah during the course of the entire year. Since one might speculate that Shabbos observance was not compulsory during the Shemittah year, the Torah makes a point of underscoring the requirement to observe Shabbos day during Shemittah.

Rav Tzadok wonders what is really wrong with the premise that the Shemittah year be a time for relaxed Shabbos observance. After all, it makes sense that, if one is constantly free to study Torah, it would not be necessary to set aside a specific day for rest. If we have all of the time in the world to study Torah, why assign a special day of rest for the purpose of studying Torah? Rav Tzadok explains that such a question indicates that one does not understand one of the founding principles upon which Shabbos is established.

When we observe Shabbos, Hashem bestows upon us an elevated level of kedushah. A Shabbos-observant Jew is a new being. He is endowed with greater kedushah, sanctity. "Verily you shall observe My Shabbos, for it is a sign between Me and you throughout your generations, that you may know that I am Hashem, Who sanctifies you" (Shemos 31:13).

Indeed, although we have sufficient time during the Shemittah year to study Torah, the reward of increased levels of kedushah are available only to those who observe Shabbos Kodesh. Hashem designated us as a holy nation.

Kedushah is the purpose of our lives, and Shabbos is the time for renewing and increasing our capacity for it. Rav Tzadok observes that the Torah often prefaces the mitzvah of Shabbos with instructions concerning the days preceding Shabbos, such as, "Six days you should work." Is it not obvious that one may work on the days leading up to Shabbos? Why does the Torah specifically address working on the days preceding Shabbos?

Rav Tzadok explains that herein the Torah is teaching us an important principle concerning Shabbos. To get the most out of Shabbos, one must prepare during the six days preceding it. On a spiritual plane, this means that Shabbos is inherently linked to the weekdays that precede it. The preparation of "Six days you should work" is a reference to the spiritual "work" of Torah-study and mitzvah observance.

One does not just become holy. It is a mindset that he achieves through plumbing the depths of Torah, by developing a strict code of ethical behavior, and by understanding that "we" are not like everyone else. Hashem wants us to strive for holiness. Kedushah is a state of being that applies to the entire Jew; it does not just address basic halachos. I recently came across an article decrying the fact that ethical behavior, which used to be the measure of a Jew, no longer seems to play much of a role. There are written rules, and there are written rules and behaviors that obligate a ben Torah to act in a demeanor which reflects kedushas Yisrael.

The author quotes Horav Dov Katz, zl, author of the Tenuas HaMussar, a close talmid, student, of Horav Reuven Dov Dessler, zl, and the Alter of Slabodka, Horav Nosson Tzvi Finkel, zl. He writes: "It is obvious that all contemporary dealings concerning religious issues revolve around the commonly known mitzvos, such as Shabbos, kashrus, shul worship, etc. It is almost as if the entire Torah consists only of these few principles and in them lies the salvation of Judaism in its entirety. No one seems to protest against heretical views and false conceptions disseminated among the masses... No one cries out against the breakdown of modesty and purity, both abroad and at home, against the desecration of the sanctity of Jewish family life, against the permissiveness that has become rife and that has exceeded all limits (the author passed away in 1979). No protests are raised against lying, cheating, deceit and forgery prevalent in business, against theft and violence, usury, the withholding of wages and exploitation that fill every corner of the land. No one decries the hatred toward man, the widespread corruption of virtuous conduct, the foolishness (in the way people act) and ignorance (which by their actions they manifest). No one deplores the dissolution of every vestige of the image of G-d from the human personality... These matters, it seems,

are not the function of Orthodoxy. They do not enter into the purview of Judaism."

These are powerful words which can be summed up simply as: We do not reflect a presence of kedushah in our lives. We live by what is permissible and what is not. Apparently, everything in between and above - what is proper and correct, and what is inappropriate and should be frowned upon - does not seem to affect us.

Returning to Rav Tzadok's thesis, we must bear in mind that what we do in the "six work days" is critically relevant to the creation and success of our Shabbos experience. The level of kedushah that we achieve on Shabbos is greatly determined by the scope of our spiritual preparations for Shabbos. Thus, after Shabbos passes and we have risen to new heights, we once again commence our journey of preparation for the upcoming Shabbos.

Rav Tzadok delves deeper into the important aspect of Shabbos preparations. We often think that we function in two disparate arenas of activity: physical and spiritual. On one side of the spectrum stands the Torah, with its positive and prohibitive commandments. On the opposite side of the spectrum are the physical activities of life, the mundane acts eating, sleeping, working, etc. We view some of these activities as necessary, while others are viewed as neutral activities, which, if a person desires, he will carry out. We certainly do not view them as necessities.

The Ramban says that there is no such thing as a neutral activity. Rather, we should elevate our actions: sleeping, so that one is not tired when he learns Torah; eating, so that one has sufficient strength for Torah-study. In such a manner his "mundane" activities achieve mitzvah status. They are no longer in the realm of physicality. If, however, his intentions remain purely physical, he has obviated their ability to achieve kedushah, relegating them to the dimension of physicality.

The lesson to be derived herein is significant and profound. We need not disavow our involvement in legitimate physical activity. It is just that when we carry out these legitimate activities, we do not execute them simply in accordance with the "dos" and "do nots" of halachah. Our eating should contain sublime thoughts concerning the origin of all food and the true purpose of life. Thus, we accord our gratitude to the Almighty for enabling us to serve Him, and for giving us the food which will energize us to carry out our mission in this world. As such, the mundane act of eating takes on a new perspective. Animals eat and humans eat, but only a fool is unable to discern the difference between these two legitimate physical activities. When we "plant" spirituality - we reap spirituality

Likewise, our Shabbos is reflective of our work week. When the primary focus of the mundane is physical in nature, we cannot expect much more from our Shabbos. The more sanctity we inject into our daily mundane lives, the greater will be Hashem's bestowal of holiness from Above.

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

Orthodox Union / www.ou.org

Britain's Former Chief Rabbi Lord Jonathan Sacks
Healing the Heart of Darkness

Jobbik, otherwise known as the Movement for a Better Hungary, is an ultra-nationalist Hungarian political party that has been described as fascist, neo-Nazi, racist, and anti-semitic. It has accused Jews of being part of a "cabal of western economic interests" attempting to control the world: the libel otherwise known as the Protocols of the Elders of Zion, a fiction created by members of the Czarist secret service in Paris in the late 1890s and revealed as a forgery by The Times in 1921.

On one occasion the Jobbik party asked for a list of all the Jews in the Hungarian government. Disturbingly, in the Hungarian parliamentary elections in April 2014 it secured over 20 per cent of the votes, making it the third largest party.

Until 2012 one of its leading members was a politician in his late 20s, Csanad Szegedi. Szegedi was a rising star in the movement, widely spoken of as its future leader. Until one day in 2012. That was the day Szegedi discovered he was a Jew.

Some of the members of the party had wanted to stop his progress and spent time investigating his background to see whether they could find anything that would do him damage. What they found was that his maternal grandmother was a Jewish survivor of Auschwitz. So was his maternal grandfather. Half of Szegedi's family were killed during the Holocaust. Szegedi's opponents started spreading rumours about his Jewish ancestry on the internet. Soon Szegedi himself discovered what was being said and decided to check whether the claims were true. They were. After Auschwitz his grandparents, once Orthodox Jews, decided to hide their identity completely. When his mother was 14, her father told her the secret but ordered her not to reveal it to anyone. Szegedi now knew the truth about himself.

He decided to resign from the party and find out more about Judaism. He went to a local Chabad Rabbi, Slomó Köves, who at first thought he was joking. Nonetheless he arranged for Szegedi to attend classes on Judaism and to come to the synagogue. At first, Szegedi says, people were shocked. He was treated by some as "a leper." But he persisted. Today he attends synagogue, keeps Shabbat, has learned Hebrew, calls himself Dovid, and in 2013 underwent circumcision.

When he first admitted the truth about his Jewish ancestry, one of his friends in the Jobbik party said, "The best thing would be if we shoot you so you can be buried as a pure Hungarian." Another urged him to make a public apology. It was this comment, he says, that made him leave the party. "I thought, wait a minute, I am supposed to apologize for the fact that my family was killed at Auschwitz?"

As the realization that he was a Jew began to change his life, it also transformed his understanding of the world. Today, he says, his focus as a politician is to defend human rights for everyone. "I am aware of my responsibility and I know I will have to make it right in the future." Szegedi's story is not just a curiosity. It takes us to the very heart of the strange, fraught nature of our existence as moral beings.

What makes us human is the fact that we are rational, reflective, capable of thinking things through. We feel empathy and sympathy, and this begins early. Even newborn babies cry when they hear another child cry. We have mirror neurons in the brain that make us wince when we see someone else in pain. Homo sapiens is the moral animal.

Yet much of human history has been a story of violence, oppression, injustice, corruption, aggression and war. Nor, historically, has it made a significant difference whether the actors in this story have been barbarians or citizens of a high civilization.

The Greeks of antiquity, masters of art, architecture, drama, poetry, philosophy and science, wasted themselves on the internecine Peloponnesian War between Athens and Sparta in the last quarter of the fifth century BCE.

They never fully recovered. It was the end of the golden age of Greece.

Fin de siècle Paris and Vienna in the 1890s were the leading centres of European civilization. Yet they were also the world's leaders in antisemitism, Paris with the Dreyfus Affair, Vienna with its antisemitic mayor, Karl Lueger, whom Hitler later cited as his inspiration.

When we are good we are little lower than the angels. When we are bad we are lower than the beasts. What makes us moral? And what, despite it all, makes humanity capable of being so inhumane?

Plato thought that virtue was knowledge. If we know something is wrong, we will not do it. Aristotle thought that virtue was habit, learned in childhood till it becomes part of our character.

David Hume and Adam Smith, two intellectual giants of the Scottish Enlightenment, thought that morality came from emotion, fellow feeling. Immanuel Kant believed that it came through rationality. A moral principle

is one you are willing to prescribe for everyone. Therefore, for example, lying cannot be moral because you do not wish others to lie to you. All four views have some truth to them, and we can find similar sentiments in the rabbinic literature. In the spirit of Plato, the sages spoke of the tinok shenishba, someone who does wrong because he or she was not educated to know what is right.[1] Maimonides, like Aristotle, thought virtue came from repeated practice. Halakhah creates habits of the heart. The rabbis said that the angels of kindness and charity argued for the creation of man because we naturally feel for others, as Hume and Smith argued. Kant's principle is similar to what the sages called sevarah, "reason."

But these insights only serve to deepen the question. If knowledge, emotion and reason lead us to be moral, why is that that humans hate, harm and kill? A full answer would take longer than a lifetime, but the short answer is simple. We are tribal animals. We form ourselves into groups. Morality is both cause and consequence of this fact. Toward people with whom we are or feel ourselves to be related we are capable of altruism. But toward strangers we feel fear, and that fear is capable of turning us into monsters. Morality, in Jonathan Haidt's phrase, binds and blinds.[2] It binds us to others in a bond of reciprocal altruism. But it also blinds us to the humanity of those who stand outside that bond. It unites and divides. It divides because it unites. Morality turns the "I" of self interest into the "We" of the common good. But the very act of creating an "Us" simultaneously creates a "Them," the people not like us. Even the most universalistic of religions, founded on principles of love and compassion, have often seen those outside the faith as Satan, the infidel, the antichrist, the child of darkness, the unredeemed. They have committed unspeakable acts of brutality in the name of God.

Neither Platonic knowledge nor Adam Smith's moral sense nor Kantian reason has cured the heart of darkness in the human condition. That is why two sentences blaze through today's parsha like the sun emerging from behind thick clouds:

You must not mistreat or oppress the stranger in any way. Remember, you yourselves were once strangers in the land of Egypt. (Ex. 22: 21)
You must not oppress strangers. You know what it feels like to be a stranger, for you yourselves were once strangers in the land of Egypt. (Ex. 22: 21)
The great crimes of humanity have been committed against the stranger, the outsider, the one-not-like-us. Recognising the humanity of the stranger has been the historic weak point in most cultures. The Greeks saw non-Greeks as barbarians. Germans called Jews vermin, lice, a cancer in the body of the nation. In Rwanda, Hutus called Tutsis inyenzi, cockroaches. Dehumanize the other and all the moral forces in the world will not save us from evil. Knowledge is silenced, emotion anaesthetized and reason perverted. The Nazis convinced themselves (and others) that in exterminating the Jews they were performing a moral service for the Aryan race.[3] Suicide bombers are convinced that they are acting for the greater glory of God.[4] There is such a thing as altruistic evil.

That is what makes these two commands so significant. The Torah emphasizes the point time and again: the rabbis said that the command to love the stranger appears 36 times in the Torah. Jewish law is here confronting directly the fact that care for the stranger is not something for which we can rely on our normal moral resources of knowledge, empathy and rationality. Usually we can, but under situations of high stress, when we feel our group threatened, we cannot. The very inclinations that bring out the best in us – our genetic inclination to make sacrifices for the sake of kith and kin – can also bring out the worst in us when we fear the stranger. We are tribal animals and we are easily threatened by the members of another tribe. Note that these commands are given shortly after the exodus. Implicit in them is a very radical idea indeed. Care for the stranger is why the Israelites had to experience exile and slavery before they could enter the Promised Land and build their own society and state. You will not succeed in caring for the stranger, implies God, until you yourselves know in your very bones and sinews what it feels like to be a stranger. And lest you forget, I have

already commanded you to remind yourselves and your children of the taste of affliction and bitterness every year on Pesach. Those who forget what it feels like to be a stranger, eventually come to oppress strangers, and if the children of Abraham oppress strangers, why did I make them My covenantal partners?

Empathy, sympathy, knowledge and rationality are usually enough to let us live at peace with others. But not in hard times. Serbs, Croats and Muslims lived peaceably together in Bosnia for years. So did Hutus and Tutsis in Rwanda. The problem arises at times of change and disruption when people are anxious and afraid. That is why exceptional defences are necessary, which is why the Torah speaks of memory and history – things that go to the very heart of our identity. We have to remember that we were once on the other side of the equation. We were once strangers: the oppressed, the victims. Remembering the Jewish past forces us to undergo role reversal. In the midst of freedom we have to remind ourselves of what it feels like to be a slave.

What happened to Csanad, now Dovid, Szegedi, was exactly that: role reversal. He was a hater who discovered that he belonged among the hated. What cured him of antisemitism was his role-reversing discovery that he was a Jew. That, for him, was a life-changing discovery. The Torah tells us that the experience of our ancestors in Egypt was meant to be life-changing as well. Having lived and suffered as strangers, we became the people commanded to care for strangers.

The best way of curing antisemitism is to get people to experience what it feels like to be a Jew. The best way of curing hostility to strangers is to remember that we too, from someone else's perspective, are strangers. Memory and role-reversal are the most powerful resources we have to cure the darkness that can sometimes occlude the human soul.

[1] See Shabbat 68b; Maimonides Hilkhot Mamrim 3: 3. This certainly applies to ritual laws, whether it applies to moral ones also may be a moot point.

[2] Haidt, Jonathan. *The Righteous Mind: Why Good People Are Divided by Politics and Religion*. New York: Pantheon, 2012.

[3] See Claudia Koonz, *The Nazi Conscience*. Cambridge, MA: Belknap, 2003.

[4] See Scott Atran, *Talking to the Enemy: Faith, Brotherhood, and the (un)making of Terrorists*. New York: Ecco, 2010. The classic text is Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements*. New York: Harper and Row, 1951. 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.

from: Rabbi Chanan Morrison <ravkooklist@gmail.com>

to: Rav Kook List <Rav-Kook-List@googlegroups.com>

subject: [Rav Kook List]

mailing list: rav-kook-list@googlegroups.com

Rav Kook List

Rav Kook on the Torah Portion

Mishpatim: Accepting Two Torahs

A careful reading of the Torah's account of Matan Torah indicates that the Jewish people accepted the Torah not once but twice. First it "Moses came and told the people all of God's words and all of the laws. The entire people responded with a single voice, 'All the words that God spoke - we will do (Na'aseh).'" (Ex. 24:3)

Immediately afterward, we read:

"Moses wrote down all of God's words.... He took the book of the covenant and read it to the people. They responded, 'All that God said, we will do and we will understand (Na'aseh VeNishma).'" (Ex. 24:4,7)

These two passages cannot refer to the same event. In the first account, Moses communicated God's words orally, while in the second account he read to the people from sefer habrit, the written record of God's word.

This corresponds to the teaching of the Sages that not one but two Torahs were given at Mount Sinai - the Oral Law and the Written Law. The Jewish

people first accepted upon themselves the Oral Torah, and afterward, the Written Torah.

Why Two Torahs?

Why was it necessary for the Torah to be given both orally and in writing? And why did the people accept the Oral Torah with the words, "We will do," but when accepting the Written Torah they added, "and we will understand"? There are two aspects to Torah study. The primary goal of Torah is to know how we should conduct ourselves. This is the function of the Oral Law - the Mishnah and the Talmud - which discusses in detail how to apply God's laws to the diverse situations of life.

The second goal of Torah study is to know the Torah for its own sake, without practical applications. This goal is particularly relevant to the Written Torah. Even if we do not fully understand the words and intent, we still fulfill the mitzvah of Torah study when we read the Written Torah. As the Sages taught: "One should first learn superficially, and later analyze [the material]... even if one does not [initially] understand what one has read" (Avodah Zarah 19a).

There is no value, however, in studying the Oral Torah if it is not understood properly. On the contrary, misreading the Oral Law will lead to errors in Halachic rulings and faulty conduct.

Attaining accurate insight into the practical application of Torah principles requires a breadth and depth of Torah scholarship. It is unreasonable to expect the entire people to reach such a level of erudition. For this reason, the practical side of Torah was transmitted orally. Only those who labor diligently in its study, receiving the traditions from the great scholars of the previous generation, will truly merit this knowledge. If this part of Torah had been committed to writing, many unlearned individuals would be falsely confident in rendering legal decisions, despite not having studied all of the relevant issues.

One might argue that perhaps the entire Torah should have been transmitted orally. But then Torah knowledge would be limited to only a select few. The Written Torah enables all to be exposed to Torah, on whatever level they are capable of comprehending.

Now we can better understand the Torah's account of Mount Sinai. When they first accepted the Oral Law, the people promised, 'Na'aseh.' This aspect of Torah related to the entire people only in terms of its practical application - "We will do." It was with regard to the Written Torah, which is intellectually accessible to all, that the people added, 'VeNishma' - "and we will understand."

First - "We Will Do"

It is natural to want to understand as much as possible and to act according to our understanding. The spiritual greatness of the Jewish people at Mount Sinai was their recognition of the benefit of not committing the Oral Law to writing so that their actions would best fulfill God's Will. This is the significance of their response, "We will do": we accept upon ourselves to follow the practical teachings of the scholars and teachers of the Oral Law. Since this acceptance was equally relevant to all, regardless of intellectual capabilities, the verse emphasizes that "the entire people responded with a single voice."

After they had accepted upon themselves to observe the Torah according to the teachings of the rabbis, Moses then presented them with the Written Torah. We would have expected that the people would have shown particular love for the Written Law, since they could approach this Torah directly. But in an act of spiritual nobility, the Jewish people demonstrated their desire to first obey and observe the applied rulings of the Oral Law. Thus they announced: "We will do," and only afterward, "we will understand."

In summary: the Jewish people received two Torahs at Sinai. Moses first gave them the Oral Law, so they could fulfill the Torah's principle goal - proper conduct in this world. Then Moses transmitted the Written Law, enabling each individual to access Torah at his level, and preparing the people to receive the practical teachings of the Oral Law.

(Silver from the Land of Israel. Adapted from Midbar Shur, pp. 160-165.)

Comments and inquiries may be sent to: mailto:RavKookList@gmail.com

The Halachic Power of a Diyuk

Ohr Somayach :: Insights into Halacha

For the week ending 18 February 2012 / 24 Shevat 5772

By Rabbi Yehuda Spitz

Many people, when learning a shtikel Torah or a geshmake sugya, will inevitably make some sort of diyuk in their learning, whether in the words of the Tannaim and Amoraim, the Rishonim, or even in the Acharonim, in order to "come out with pshat". This is basically an inference to understand the intent of the text, based on the precise choice of words used. These diyukim are usually in the realm of pilpul or lomdus, and sometimes "pashut pshat", but every now and then an innocuous looking line might have actual halachic ramifications.

I would like to cite two prime examples of this based this week's parsha, Parshas Mishpatim, where we find the first time the Torah mentions the prohibition of Bassar B'Chalav - mixing milk and meat. The Torah actually mentions this three times[1], to teach us that there are three separate prohibitions[2] involved: cooking, eating, and deriving benefit from this forbidden mixture[3]. Rabbinnically, even eating chicken and milk together is prohibited[4]. Due to the nature and potential for possible mix ups, Chazal made several other takkanos[5] to make sure that "ne'er the twain shall meet", including not having people eating both meat and milk at the same time at the same table[6], the waiting period mandated after eating meat and the rinsing, washing and palate cleansing required after eating milk products[7].

The first Mishna in the Chapter in Maseches Chullin[8] dealing with the laws of Milk and Meat begins: "Kol HaBassar Assur Lvashel BeChalav...V'assur L'haalos Im HaGvina al HaShulchan". "All meat (except for fish and grasshopper) is forbidden to cook in milk... and it's forbidden to place (this meat together) with cheese on the table". The famed Rashash (Rabbi Shmuel Schtrashoun of Vilna)[9] notes that when it comes to the prohibition of cooking milk and meat, the Mishna used the same words as the Torah, meat and milk. Yet, when it came to the Rabbinical injunction of not placing them both on the same table, instead of milk, the Mishna switched to the word cheese. To explain the Mishna's choice of words, the Rashash makes an incredible three halachic diyukim in three separate aspects of this law, just from this one line of Mishna! The halacha mandates that one who has partaken of milk products must do a three step process: kinuach - palate cleansing by eating a hard food item (ex. cracker), rechitza - hand washing, and hadacha - rinsing out of the mouth, before being able to have a meat meal[10]. The Rashash infers from our Mishna's switching to the word cheese that it is emphasizing that this 3-step halacha only applies to eating actual cheese, since it is likely to leave some residue in the mouth. However, drinking good ol' fashioned plain liquid milk, which does not, would only require a mouth rinsing (hadacha). Most authorities follow the Rashash's diyuk and rule this way as well[11].

As mentioned above, one of the steps needed after eating a milk meal before eating something meaty is rechitza - washing hands to make sure no residue remains. The Rashash is medayek again from the Mishna's stressing of the word cheese that this hand washing is only necessary if one ate cheese - a milky food that was held in one's hands. This would exclude actual milk, since it cannot be held in one's hands, but rather requires a container or cup to be able to drink it. Furthermore, in view of the fact that one's hands remain clean after drinking some milk (chocolate or otherwise), he opines that rechitza is not halachically required, similar to the Pri Chadash's ruling that one who eats cheese with a fork (and thereby keeping his hands clean) does not have to wash his hands afterward. Although the basic halacha seems to follow the Rashash's diyuk on this also[12], many feel that nevertheless one should still wash his hands after drinking a milk product, as hand washing does not usually entail too much effort[13]. It is well known[14] that if two people are eating together at a table, one eating meat and the other dairy, that a hekker, or something used to show that there is something different here (i.e. separate placemats, or putting something distinctive down), is required to highlight the fact that one is eating meat and the other dairy, and in order to serve as a constant reminder not to chas v'shalom possibly eat from each other's plates and stumble in the prohibition of eating milk and meat together. The Rashash feels that the Mishna's emphasis on the word "cheese" impacts this area as well. He maintains that the requirement of a hekker is dependant on the possibility of the food getting mixed up, and the one eating cheese might end up eating meat, and vice versa. Therefore, if one is merely drinking milk from a cup, there already is a built in hekker: the cup itself! Without the aid of the cup, the milk would not even be able to be drunk, let alone be possibly mixed up with the meat on the table. Therefore, he posits, if one is drinking milk at the same table with someone eating meat, no further hekker is required. The basic halacha seems to follow the Rashash's diyuk on this as well[15], though several contemporary authorities feel that it is worthwhile to be stringent, based on people's propensity to "dunk" their biscuits into their coffee[16], and the common occurrence of an open cup of coffee spilling[17].

Another excellent example of a related diyuk which has great halachic relevance is based on the wording of the Rema. The Shulchan Aruch rules that after eating meat one must wait six hours before eating milk[18]. He then adds, based on the Rambam[19], that this waiting period even applies to one who merely chewed meat without actually swallowing it. The Rema, in his glosses to this halacha, writes with a slight variation, that it is proper to wait six hours after eating meat before cheese.

The illustrious Rabbi Akiva Eiger[20], infers from the Rema's choice of words "after eating meat", that he meant to dispute the Shulchan Aruch's ruling on chewing. He maintains that the Rema's intent was to rule that after merely chewing meat, one would not have to wait the full six hours, rather the "ikar din" of only one hour before being allowed to eat milk products.

Even though many authorities do not agree with this inference, and rule that even by chewing meat one has to wait the "full count"[21], nevertheless several authorities do rule like Rabbi Akiva Eiger's understanding of the Rema's position, and allowing for leniency for one who simply chewed[22].

In conclusion, as the Chofetz Chaim was wont to stress (albeit by the issues of lashon hara), we should never underestimate the (halachic) importance of even just one word.

[1]"Lo Sevashel Gedi B'Chaleiv Imo". Parshas Mishpatim (Shmos Ch.23, 19), Parshas Ki Sisa (Shmos Ch.34, 26), and Parshas Re'eh (Devarim Ch.14, 21).

[2]There is, however, some debate as to how many of the 613 mitzvos this prohibition counts as. The Rambam (Sefer HaMitzvos, Lo Sa'aseh 186 & 187) and the Sefer HaChinuch (Mitzva 92 & 113) count it only as two mitzvos. The Tashbatz (Zohar Rakia, Azharos HaRashbag 197 - 200), however, counts it as the full three mitzvos, while the BeHa"G (Lavin 58) counts it as only one mitzvah. See Rabbi Yitzchak Aharon Kramer's recent Arichas HaDaas (on Hilchos Basar B'Chalav and Taaruvos, Ch. 1, footnote 4).

[3]Chullin 115b - Tanna D'bei Rabbi Yishmael - as the Biblical source for this prohibition. See Rashi's commentary to Mishpatim ibid. (end s.v. lo sevashel) and Tur / Shulchan Aruch Y" D 87, 1. The Baal HaTurim, in his commentary to Devarim ibid (s.v. lo sevashel) brings 'proof' to this source, as the Gematria of the words "lo sevashel" (do not cook) equals that of the words "Issur achila u'bishul v'hanaah" (prohibited for eating and cooking and deriving benefit) = 763.

[4]Tur / Shulchan Aruch ibid; Rambam (Hilchos Mamrim Ch.2, 9) goes as far as to say that anyone who claims that a chicken and milk mixture is Biblically prohibited violates the Biblical commandment of "Bal Tosif". This is the halacha, (following the Rambam, Rifand Rosh's understanding of the Mishna in Chullin 113a) and not like Rashal (Yam Shel Shlomo Chullin Ch. 8, 100) and Bach (ad loc 2) who hold like Tosafos' (Chullin 113a s.v. basar) understanding of the Mishna - see Shach (ad loc 4).

[5]Gemara Chullin 114b. Rashi (ad loc s.v. aval hacha) understands this to mean that it is all considered one gezaira; however the Taz (Y" D 88, 1) seemingly understands that this case is an exception and Chazal made a gezaira l'gezaira. See Pri Megadim (ad loc M.Z. 1, based on Lechem Mishna - Hilchos Maachalos Asuros Ch. 9, 20 and Kenesses HaGedolah - Y" D 88 haghos HaTur 3), Chochmas Adam (40, 11), Yad Avraham (ad loc) and Aruch Hashulchan (ad loc 3).

[6]Tur/ Shulchan Aruch Y" D 88, 1 & 2, based on Mishna & Gemara Chullin 103b - 104a and 107b.

[7]Tur/ Shulchan Aruch Y" D 89, based on Gemara Chullin 105.

[8]Chullin 103b - 104a.

[9]In his commentary to the above-mentioned Mishna 103b.

[10]Y" D 89, 2.

[11]Including Rav Chaim Falag'i (Yafeh Lev vol. 8), and the Darchei Teshuva (Y" D 89, 2).

Although the Badei Hashulchan (Y" D 89, 43) feels that one should be stringent with this, based on the words of the Issur V'Hetter (40, 8), see the Zair Hashulchan (Y" D 89, Pnei Hashulchan 78) who refutes this. Similarly, even though the Divrei Malkiel (Shu"t vol. 5, 47) opines not to rely on this (for a different reason), Rav Ovadia Yosef (Shu"t Yabia Omer vol. 6, Y" D 7 end 1 and Shu"t Yechaveh Daas vol. 3, 58, in the footnote) disproves his reasoning and concludes that the ikar follows the Rashash on this. Rav Moshe Sternbuch (Shu"t Teshuvos V'Hanhagos vol. 2, 390) and the Yalkut Yosef (IV" H vol. 3, 89, end 46, & 56) also rule this way.

[12]Including the Pri Chadash (Y" D 89, 20), Shulchan Gavoaah (ad loc, 8), Ba'er Heitiv (ad loc end 13) and Aruch Hashulchan (ad loc, 8).

[13]Including the Pri Megadim (Y" D 89 S" D 20), Chida (Shiyurei Bracha ad loc 15), Atzei Ha'Olah (Hilchos BB" C 3, 12 & Chukey Chaim 9; he maintains that a fork is actually worse than a cup, as one might use his hands to push the food onto the fork) [Darchei Teshuva (above) implies this way as well], Ben Ish Chai (Year 2, Parshas Shlach 14), and Kaf HaChaim (Y" D 89, 34).

[14]Tur/ Shulchan Aruch Y" D 88, 2; based on Gemara Chullin 104b. See earlier article "Ma'aseh Avos = Halacha L'Ma'aseh".

[15]Aruch Hashulchan (Y" D 88, 6).

[16]Shu"t Maadanei Melachim (77), explaining his reasoning why he wrote to be machmir lchachila in Maadanei Hashulchan (88, 3). IY" H the halachic issues of "coffee-dipping" will be further explored in a future article.

[17]Rav Y.S. Elyashiv in Ha'aros B'Maseches Chullin (103b s.v. v'asur); Shaarei Shalom (on Piskei HaBen Ish Chai Y" D 88, 1, 1), based on the Maleches Shlomo (in his commentary to Mishnayos Chullin ad loc); similar to the Yad Avraham's (ad loc) shitta, that open containers of milk or meat require extra vigilance due to their propensity to spill. An interesting minority opinion on this is the Badei Hashulchan's (Y" D 88, 6 & Biurim s.v. al), who feels that one must be stringent with this, based on the opinion of the Ran, that the problem is that we are worried that one might even eat whatever is on the table, and rules that it forbidden to have even a sealed bag of milk on a table while eating meat. However, aside for the fact that the Aruch Hashulchan ruled explicitly like the Rashash, the other machmirim did also, and only said to be stringent lchachila based on the tendency of an open cup to spill. See also Rabbi Yaakov Scozylas's recent Ohel Yaakov (on Issur

V'Hetter pg. 139, footnote 6) who cites Rav Chaim Kanievsky's ruling, that there is no halachic issue with having a meat meal with a sealed bag of milk on the table.

[18]Y" D 89, 1.

[19]Rambam (Hilchos Maachalos Asuros Ch.9, 28). This ruling is also cited by the Tur (Y" D 89, 1). See Taz (Y" D 89, 1) and Pri Megadim (ad loc, M.Z. 89, 1).

[20]Y" D 89, 2.

[21] Including the Pri Toar (Y" D 89, 3), Pri Megadim (ad loc M.Z. 1, lo plug), Pischei Teshuva (ad loc, 1), Shiyurei Bracha (ad loc, 12), Atzei Ha'Olah (Hilchos BB" C 3, 2), Zivchei Tzedek (Y" D 89, 4), Ben Ish Chai (Year 2, Parshas Shlach 19), Yalkut Me'am Loez (Parshas Mishpatim, pg. 890), Shu"t Kapei Aharon (30), Kitzur Shulchan Aruch (46, 9) and Kaf Hachaim (Y" D 89, 4).

[22]Including the Yad Yehuda (Y" D 89, Pih" a 1 & Pih" k 3), Aruch Hashulchan (ad loc, 4), and Badei Hashulchan (ad loc 38). See also Maadanei Hashulchan (ad loc 4), who concludes that in a case of need, an Ashkenazi definitely has what to rely upon.

For any questions, comments or for the full Mareh Mekomos / sources, please email the author: yspitz@ohr.edu

Disclaimer: These are just a few basic guidelines and overview of the Halacha discussed in this article. This is by no means a complete comprehensive authoritative guide, but rather a brief summary to raise awareness of the issue. One should not compare similar cases in order to rules in any real case, but should refer his questions to a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda, and l'zchus for Shira Yaffa bas Rochel Miriam and her children for a yeshua teikef u'miyad!
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By Rabbi Yirmiyohu Kaganoff

The Lost Gift

By Rabbi Yirmiyohu Kaganoff

In this *parshas Mishpatim*, the Torah discuss the responsibility that a *shomer* assumes for someone else's property. Does a *shomer* always assume this much responsibility? Stay tuned and find out!!!

While learning in my study one day, I was greeted by a knock at the door. I opened the door to find two women, Rivkah and Leah, standing in the doorway.

"Rabbi," Rivka began somewhat apprehensively, "We have a *shaylah* that we need to ask you. I was supposed to bring a present to Lakewood for Leah's daughter, but somehow, it got along the way. I feel responsible. Leah feels that I am not responsible and I should not feel any obligation to compensate her daughter, but I feel that I should." "If anyone is responsible it is I," replied Leah. "I keep insisting that Rivka should not pay, and she keeps insisting that she should. We decided that we would refer this to the Rav to decide."

The case turned out to be a very interesting *halachic shaylah*.

A family member bought a very expensive wedding gift for Leah's recently married daughter, who now lives in Lakewood. Leah heard that Rivka's husband was driving to Lakewood, so she called to ask if he could bring the gift with him. Rivka suggested that Leah drop by and put the gift in the trunk of the car, so that they wouldn't misplace it. Upon reaching Lakewood, Leah's daughter arrives to pick up the package. Rivka's husband checks the trunk of the car, but the gift is not there!! He calls Rivka, who in turn calls Leah, who says that she definitely placed the gift in the trunk. The gift seems to have inexplicably disappeared!

Who, if anyone, is responsible to replace the gift?

I asked for some time to think about the *shaylah*. In the interim, I needed to address some pertinent questions, which provides an opportunity to review the relevant *halachos*.

There are several *halachic* areas we need to clarify:

1. To what extent are you responsible for replacing an item that you were watching without remuneration?
2. If you permit someone to place an item in your house or car, does that mean that you are now responsible if the item is damaged, lost or stolen?
3. If you agree to transport an item as a favor, is there an assumption of responsibility, and if so, to what extent?

What Is A Shomer Chinam And To What Extent Is He Responsible?

Someone who assumes responsibility to take care of an item, but receives no benefit for doing so, is called a *shomer chinam*. He is responsible if the item becomes damaged, stolen, or lost because of his negligence, but not if he took proper care of the item.

EXAMPLE: Binyomin entrusted money to a *shomer* for safekeeping. When he came to collect his money, the *shomer* replied that he does not remember where he put it. Rava ruled that not knowing where you put something is negligent and the *shomer* must pay (*Bava Metzia* 42a).

What If He Did Not Expressly Assume Responsibility?

A *shomer* may specify that he assumes no responsibility for an item (*Mishnah, Bava Metz'ia* 94a). Furthermore, if he clearly did not assume responsibility, he is also not obligated to pay.

EXAMPLE: While fleeing from the Napoleonic wars, Naftali buried valuables in a pit in his backyard, and offered Asher to hide his valuables there, too. The two of them fled to a safer area, hoping to return one day to unearth their valuables. Fortunately, the war ended, and they were able to return. Naftali was eager to unearth the valuables and give Asher back his money, but Asher was busy taking care of other matters. Naftali sent Asher a message that he was unearthing the valuables, but Asher did not arrive immediately. By the time Asher arrived, his valuables had disappeared. Does Naftali bear responsibility?

Naftali and Asher addressed the question to Rav Yaakov of Lisa, the author of *Nesivos Hamishpat* (291:2). The *rav* ruled that Naftali is not obligated to pay any damages, since he never assumed any responsibility for Asher's valuables but merely made his hiding place available.

Thus, we have established that if a *shomer* assumes responsibility, he will have to pay for damage caused by his negligence, but if he does not assume responsibility, he does not have to pay.

However, our case is somewhat different from the case of the *Nesivos*. In his case, Asher knows that Naftali will not be around to supervise his property. In our case, Leah had accepted the gift on behalf of her daughter and Rivka suggested that it be placed in her car. Does that make Rivka responsible to replace it if it is lost?

Or, as we phrased our second question above: If you permit someone to place an item in your house or car, does that mean that you are now responsible if the item gets damaged, lost or stolen?

The *Gemara* raises the following *shaylah* which affects our question:

Daniel asked Shlomo if he could leave his sheep and some equipment in Shlomo's yard. Subsequently, Shlomo's dog, Fido, bit Daniel's sheep; the next day, someone stole the equipment. Assuming that Shlomo was negligent, must he pay for the damages?

The question is whether Shlomo ever assumed responsibility for Daniel's property. If he permitted Daniel to place the sheep and the equipment in his yard, does that mean that he assumed responsibility for this property? The *Mishnah (Bava Kamma* 47a) quotes a dispute between Rebbe and the *Chachomim* as to whether we assume that Shlomo took responsibility.

How Do We Paskin?

There are three opinions:

1. Some rule that Shlomo is responsible for the damage. They contend that when someone grants permission to place items on his property, he assumes responsibility to look out for the items.
2. Others contend that Shlomo is not responsible for the stolen equipment, but he is responsible for Fido biting the sheep (*Shach* 291:9). Permitting someone to place items on his property doesn't mean that he assumes responsibility. However, Shlomo is liable if his animal caused damage to property that he allowed onto his premises.
3. Shlomo does not need to pay at all since he never accepted responsibility (*Shulchan Aruch, Choshen Mishpat* 291:3). (According to this opinion, even though Shlomo's dog bit Daniel's sheep, Shlomo is not responsible for damage done by his own animal on his own property.)

The *Shulchan Aruch* rules like the third opinion that Shlomo is not responsible, although other *poskim* disagree. Thus, we see that although someone permits you to put something in his house or car, you cannot assume that this means he is taking responsibility for it. Thus, placing the gift in Rivka's car does not, necessarily, mean that either Rivka or her husband is responsible for the gift.

However, there is a difference between Leah's gift and Daniel's sheep, other than the fact that one of them bleats. I am going to use another *din Torah* to demonstrate the difference between the two.

While Levi was packing his donkey to travel to the next city, Yehuda asked if he could send his shoes along. Levi responded, "You can put them on top of the donkey." Yehuda complied, and Levi rode off without tying the shoes adequately to the donkey. Subsequently, when the shoes were lost, Levi claimed that he never assumed any responsibility for Yehuda's shoes.

Is Levi responsible to pay Yehuda for his shoes? After all, he never told Yehuda that he was assuming responsibility; he simply allowed Yehuda to place his shoes on the donkey.

The *Rosh* (quoted by *Tur Choshen Mishpat* Chapter 291) ruled that Levi is indeed responsible, even though he never told Yehuda that he was assuming responsibility. Why are Yehuda's shoes different from Daniel's sheep, where we assumed that Shlomo took no responsibility? The difference is that when Levi transports the shoes with him, Yehuda will no longer be able to watch them. Under these circumstances, we assume that Levi accepted responsibility, unless he specifically stated at the time that he did not. However, when Daniel puts his sheep into Shlomo's yard, there is no reason why

Daniel cannot continue to be responsible to take care of his sheep. Thus, there is nothing in Shlomo's action that implies that he is assuming responsibility. Based on the above analysis, it would seem that Rivka is indeed responsible since she made Leah the offer of placing the gift in her car. This implies that Rivka assumed responsibility.

However, Rivka's gift is different from Yehuda's shoes for two reasons:

1. Rivka's gift was not put into a place that requires any type of supervision. The locked trunk of a car is a secure place to leave items. Thus, it is less certain that we can assume that Rivka accepted responsibility.

2. More importantly, Rivka told Leah to put the gift in the car, but also told her that her husband, not she, was going to Lakewood. Thus, Rivka certainly was not assuming responsibility for bringing the gift to Lakewood. We also cannot say that her husband assumed responsibility, when he never agreed expressly to take the package. Thus, it would seem that neither Rivka nor her husband is responsible. However, if her husband agreed to take the package, he would be responsible if, indeed, he had been negligent. Since we do not know where the package went, we would probably assume that the package disappeared because of some negligence on his part.

Does This Mean That Leah Is Responsible To Pay Her Daughter For The Gift?

Indeed it might. When Leah accepted the gift on her daughter's behalf, she assumed responsibility as a *shomer chinam*. We now have a new *shaylah*: Did she discharge this responsibility when she placed the gift in Rivka's car for the trip to Lakewood?

The *Gemara* records an interesting parallel to this case.

At the time of the *Gemara*, houses were not particularly secure places to leave valuables. For this reason, the proper place to store money and non-perishable valuables was to bury them in the ground. A *shomer chinam* who received money but did not bury the money would be ruled negligent, if the money was subsequently stolen (*Bava Metz'ia* 42a).

The *Gemara* mentions a case when this rule was not applied:

Someone entrusted money to a *shomer* who gave it to his mother to put away. His mother assumed that it was her son's own money, not money that he was safekeeping for someone else, and therefore placed it in his wallet rather than burying it. Subsequently, the money was stolen and all three of them ended up appearing before Rava to *paskin* the *shaylah*.

Rava analyzed the case as follows: The *shomer* is entitled to say that he has a right to give something entrusted to him to a different member of his family for safekeeping. Furthermore, there is no claim against him for not telling his mother that the money was not his, because she will take better care of it assuming that it was his. Therefore, the *shomer* did not act negligently. The mother also did not act negligently – based on the information she had, she acted responsibly. Thus, neither one of them is obligated to pay (*Bava Metz'ia* 42b).

The principles of this last *Gemara* can be applied to our case. Neither Leah, nor Rivka, nor Rivka's husband acted negligently in our case. Leah gave the gift to someone in a responsible way to get it to Lakewood. We have already pointed out that neither Rivka nor her husband ever assumed responsibility for the gift. Furthermore, neither one of them acted irresponsibly. Thus, it seems to me that none of the parties involved is *halachically* obligated to make restitution.

There is actually a slight additional angle to this story. Leah is, technically, obligated in an oath (a *shevua*) to her own daughter to verify that she indeed placed the gift in the car. However, since it is unlikely that Leah's daughter will demand an oath from her, she is not obligated to pay.

Needless to say, Leah will apologize to her daughter even if she has no technical responsibility, and will probably offer her daughter a replacement gift. Hopefully her daughter will accept the loss of a gift as a minor mishap, and put it out of her mind. In general, we should be careful when we assume responsibility for items belonging to others, to take good care of them and not leave them around irresponsibly or near young children. We should pray to be successful messengers when entrusted with other people's property.