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INTERNET PARSHA SHEET ON KI SAVO - 5771

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Rabbi Zvi Sobolofsky (The TorahWeb Foundation) Yiras Shomayim - The Secret of Tefillin

"V'ra'ooch kol amei ha'aretz ki shem Hashem nikra alecha v'ya'ooch mimeka - and the nations of the land will see that the Name of Hashem will be upon you and they will fear you." (Devraim 28:10). Chazal (Menachos 35b) interpret this passuk as referring to the tefillin shel rosh which contain the Name of Hashem. The Rambam (Hilchos Tefillin 4:25) writes that wearing tefillin enables a person to become a yarei Shomayim - one who fears Hashem. What is unique about this mitzva that it is a catalyst for yiras Shomayim for both the one who wears tefillin and for the one who sees the tefillin being worn?

There are several halachos that pertain to tefillin that may help us understand the relationship between tefillin and yiras Shomayim. Hilchos Tefillin contains details that resemble halachos relating to the Beis Hamikdash. Unlike other objects used for mitzva purposes such as tzitzis or a lulav, tefillin have kedusha similar to objects used in the Beis Hamikdash and cannot simply be discarded when no longer usable. Tefillin must be made from the parts of a kosher animal, and this halacha also governed the construction of the Mishkan (see Shabbos 28a), whereas concerning other mitzvos this may not apply (See Ran in Rosh Hashana 6a on the Rif for why shofar may also be included in this rule). The Rosh in (Hilchos Tefillin siman 18) derives the halacha that one cannot have a separation between one's body and the tefillin from the halacha that invalidates such a separation between the clothing worn

by the kohein in the Beis Hamikdash and the body of the kohein. The requirements to concentrate on tefillin while they are worn is derived from a similar obligation incumbent upon the kohein gadol when he wears the tzitz - the ornament worn by the kohein gadol which has Hashem's Name engraved on it (see Yoma 7b).

Even the shape of the tefillin indicates a connection to the Beis Hamikdash, as both Tefillin and the mizbeach in the Beis Hamikdash must be square. Not only do the halachos that govern tefillin highlight the similarities between tefillin and the Beis Hamikdash, but the very name given to part of the tefillin reinforces this connection. The box of the tefillin which enclose the parshiyos is called a bayis - a house. The imagery of a house built around the words of Torah is clearly reminiscent of the Mishkan and later the Beis Hamikdash constructed around the aron hakodesh which contained the words of Torah inscribed on the luchos.

It is this component of mikdash that endows the tefillin with the ability to instill yiras Shamayim. The Beis Hamikdash is a place of awe. Yaakov Avinu, upon realizing that he had slept in the makom hamikdash declared, "ma norah hamakom hazeh - How awe inspiring is this place." The halacha obligates us to be in a state of mora - awe upon entering the Beis Hamikdash. Similarly as we wear our bayis of kedusha - our tefillin - we and all those around us should be inspired by the awe of Hashem's words that we carry with us.

In the Parsha of "v'haya im shamo'ah" the mitzva of tefillin is written immediately following the pesukim that describe our being exiled from Eretz Yisrael. The Torah is teaching us that even in galus in the absence of the real Beis Hamikdash we still have our batim of tefillin. This special role tefillin have specifically at a time of churban is highlighted by our practice of wearing tefillin during Mincha on Tisha B'Av. After having spent the entire morning focusing on the destruction of the Beis Hamikdash, the first mitzvah that we perform to begin the process of comfort is putting on our tefillin. We realize that even in galus we can still attain yiras Shomayim by learning the lesson of tefillin. As we come close to the end of the seven weeks of comfort following Tisha B'Av, we turn to the parshiyos and the batim of our tefillin. May we merit attaining the yiras Shomayim they can induce, thereby meriting the construction of the ultimate bayis which will once again house the words of Hashem.

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from **Rabbi Yissocher Frand** ryfrand@torah.org reply-to ryfrand@torah.org, genesis@torah.org to ravfrand@torah.org date Thu, Sep 15, 2011 at 9:05 PM
subject Rabbi Frand on Parshas Ki Savo Rabbi Yissocher Frand on Parshas Ki Savo These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: CD #824 Hitting An Older Child. Good Shabbos!

Gratitude -- A Key Torah Principle

Ki Savo contains the mitzvah of bringing the First Fruits (Bikkurim) to the Bais HaMikdash. The fruits are brought to the Kohen and their presentation is accompanied by a declaration [Devorim 26:5-10] expressing one's gratitude to the Almighty in the context of a brief history of the Jewish people.

The Alshich is bothered by a Medrash in Parshas Bereshis. The Medrash (in a play on words of the opening words of the Torah) states that the world was created for the sake of that which is called "Reishis" [first]: The world was created for the sake of the nation of Israel who is called "Reishis". Likewise, the world was created for the sake of Torah, which is called "Reishis". Finally, the world was created for the sake of the Mitzvah of Bikkurim, which is called "Reishis".

The Alshich remarks that Bikkurim would not seem to be in anyone's list of the "top 3 mitzvos" and yet here this Medrash states that the world

was created for the sake of this mitzvah! What is the meaning of this Medrash?

The Alshich answers that the mitzvah of Bikkurim contains within it something that is fundamental to being a human being -- the obligation for people to express their gratitude and hakaras haTov. HaKaras haTov is so basic and primary that the whole world's creation was actualized just for this mitzvah, which teaches us and trains us in the attribute of gratitude.

The Pirkei D'Rabbi Eliezer [Chapter 7] writes, "There is nothing harder for the Almighty to live with (as it were) than an ungrateful person. The reason Adam was exiled from the Garden of Eden was due to his ingratitude. His sin was not merely eating from the Tree of Knowledge (Etz HaDaas). For that sin alone, perhaps he could have remained in Gan Eden. The straw that broke the camel's back, so to speak, was the fact that in response to G-d's question why he ate from the Etz HaDaas, Adam said, "The woman you gave me, she gave me the fruit and I ate it." As Rashi points out, Adam was being ungrateful. G-d presented him Chava as a gift and Adam complained that she caused him to sin.

The Medrash continues that our ancestors in the Wilderness also angered G-d with their failure to recognize His Goodness towards them. They bemoaned the loss of the "good old days" in Egypt when they had melons, cucumbers, and garlic, and complained about the Mann.

The Medrash equates the sin of ingratitude with fundamental theological denial (kefira b'Ikar) of the Almighty. One who is ungrateful towards his fellow man is ultimately ungrateful towards the Almighty as well. One who is an ingrate to his boss, his friends, his spouse, his parents, and his neighbor will eventually come to deny the favors of the Almighty.

There are many stories about Gedolim. There are stories about their diligence in study; there are stories about their fear of Heaven; there are stories about their interpersonal kindness; there are stories about their sterling human character traits. These stories are all true in general (although each story about each particular Gadol may or may not be 100 percent accurate). However, regarding one attribute, we hear repeatedly how particularly careful the great men of Israel were about the attribute of HaKaras haTov.

If I look back to my days in Yeshiva and would be asked to summarize the themes that Rav Ruderman zt"l emphasized the most, number one would certainly be Torah learning (limud haTorah) but number 2 or 3 would have to be showing proper gratitude (being a "makir tova").

Gedolim practiced what they preached. I recently read a story about Rav Yaakov Kamenetsky. There was a young man in Torah VoDaath Yeshiva who was not coming to minyan [prayers]. The faculty tried all kinds of threats to force him to come to minyan, but it was not helping. They finally went to the Rosh Yeshiva, Rav Yaakov Kamenetsky, and asked him whether they could expel the boy from the dormitory. Rav Yaakov gave them permission to throw him out. They told the boy that he was expelled from the dorm until he started to come to minyan. Then they told him that the Rosh Yeshiva wanted to see him. The boy figured "Now I am really in trouble."

When he appeared before Rav Yaakov Kamenetsky, the Rosh Yeshiva asked him: I understand that you have been thrown out of the dormitory. Where are you going to sleep? The boy told him that he did not have any alternate arrangements. Rav Yaakov told him, "I want you to sleep in my house." The boy was shocked and asked the Rosh Yeshiva to explain why on the one hand, he was throwing him out of the dormitory and on the other hand, he was inviting him to stay with him.

Rav Kamenetsky explained to the young man: "Your grandfather used to give money to the Kovno Kollel where I learned in Europe. Since I was a beneficiary of your grandfather's support to that Kollel, I owe you a favor and am glad I have the chance to pay it back in this fashion. True,

I cannot let you sleep in the dormitory because you refuse to come to minyan, but you can sleep in my house, out of appreciation for what your grandfather did for me.

A similar incident is told with Rav Moshe Feinstein. Many years ago, Rav Moshe went to a wedding and gave the Choson an envelope with a wedding present. After the Sheva Brochos, the Choson and Kallah were opening their envelopes and they found a check from Rabbi Moses Feinstein from FDR Drive in Manhattan for \$500 dollars. When this story took place, \$500 was an enormous amount for a wedding gift. The Choson told his father that he thought Rav Moshe must have added an extra zero on the check by mistake. The father, the choson, and the Kallah together went to Rav Moshe's apartment and asked the great Torah sage whether he in fact had made a mistake in writing the check. Rav Moshe said, "If I could, I would give you a check for \$5,000! Your grandfather was Rav Pessach Prushkin and I studied with your grandfather. I felt such gratitude to your zeida that I wanted to give you a big present; unfortunately I can't afford to give you more than \$500."

Rav Hutner used to conduct his Pessach Seder in a very serious mood. He treated it as a Divine Service and there was no levity or lightheadedness whatsoever. The atmosphere was like Yom Kippur. One year they had a guest who was somewhat of a jokester. He kibitzed, he joked around, and he acted more as if it was Purim than Yom KiPurim. Rav Shlomo Freifeld was a student of Rav Hutner and said that something had to be done about this fellow. He asked Rav Hutner for permission to throw the fellow out of the house. Rav Hutner said "No. This young man is a nephew of the Alter from Slabodka. If he wants to he can dance on the table, don't touch him!" (Rav Hutner in his youth had been a student of the Alter from Slabodka.) That is how fundamental Hakaras HaTov is. A person is only considered a "person" i.e. a mensch when he appreciates all the many favors that the Almighty does for each one of us. No matter what the state of our life is, we are so indebted to the Ribono shel Olam for life itself.

The Chofetz Chaim said at the end of his life "G-d, I wrote the Mishneh Berura, I wrote the classic volume on Lashon HaRah, I wrote this and I wrote that (the Chofetz Chaim was a prolific writer). However, the Chofetz Chaim was not bragging. He is not saying, "G-d look how much I've done for You." On the contrary, he said "You, G-d, have given me the opportunity and the privilege to do all these things that I have done, now what can I do for You in exchange for all these privileges that You have given me?" This is someone who is Makir Tov. He goes through life recognizing all that has been done for him. This is fundamental to being a human being and that is why Bikkurim, which is called 'Reishis', ranks up there with "for the sake of Torah, which is called 'Reishis' and for the sake of Israel, which is called 'Reishis'."

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info@jewishdestiny.com date Thu, Sep 15, 2011 at
11:53 AM

Weekly Parsha
from Rabbi Berel Wein
- Parshat Ki Tavo 5771

Jerusalem Post

BLESSINGS AND ...

Monday, September 12, 2011

This week's parsha emphasizes the subject of blessings and also of less pleasant predictions. The problem with blessings and seemingly negative statements and occurrences is that they are not readily or easily identifiable as being positive or negative. Many times in life what looked like a blessing at the time turned out to be really a very negative event in the long run and what looked like an unfortunate negative statement or occurrence eventually became a source of salvation and blessing. We are all familiar with the story of the man who cursed his luck at arriving too late to take up his cabin on the Titanic. His bad luck, so to speak, was truly what saved his life and his family's existence. Good times often lead to disastrous consequences later just as hardships and travail often produce most positive results and accomplishments in the fullness of time. We all cheered peace agreements that apparently were great and good but in actuality were only the precursor of later violence and wars. We reveled in obtaining free loan money only to have to pay the piper when the general economy, as a result of our previous apparent good fortune, collapsed and brought undue hardships. Since life is so unpredictable, it is obvious that quick judgments as to what is truly a blessing, personally or nationally, should be held in abeyance. Not always what we are convinced is going to be good for us turns out to be actually beneficial or positive. The Torah warns us not to be overly clever and sanguine about unfolding events. Human eyesight is very limited. For everything that occurs in life carries with it some ambiguity and uncertainty. Therefore the Torah insists that we be tamim – simple, whole, almost naïve – in our assessments of events. Faith in God is the only certainty that remains for humans to trust in. Even though there is strict separation of church and state in the United States, the dollar bill proclaims that "In God We Trust." Only the Lord truly knows what events will actually turn out to be blessings. Therefore the great Chasidic masters all proclaim that Jews should pray to the Lord and state that "what is good in Your eyes, so to speak, is what we wish to occur." Long ago, my teachers in yeshiva taught us to be careful what we pray for as the Lord may actually hear our request and grant it - and that what we pray for does not always turn out to be of true benefit to us. The great sage, Rabbi Yisrael Meir Kagan (Chafetz Chaim) stated that there are people who can handle great wealth and thus it can be a great blessing to them and yet there are others who are unable to deal with being very wealthy (especially if it happens suddenly to them) and thus the blessing eventually turns out to be a curse for them and their families. I know from my own personal experience in the rabbinate, that there were people who when they earned a middle class salary were wonderful, and when they had fortune seemingly smile upon them and they suddenly became very wealthy they became insufferable to others and eventually even to themselves. As the new year approaches we all pray for the blessings of a time of true peace and prosperity that we can handle, and family harmony and contentment. But the wise person will keep his or her laundry list of requests from Heaven short. Rather, we should submit ourselves to Heaven's wishes and accept that whatever is a good in the Lord's eyes, so to speak, is good for us as well. In a world of incessant and insatiable demands for more of everything that is material - and thus transient, it would be true to Jewish tradition for us to be more humble and sparing in our demands and requests. The truth is that there is very little that we actually need though there is much that we want. The

ability to deal with this contradiction in our lives between need and want is the key to spirituality and to contentment in this world. This idea is reinforced throughout the Torah and rabbinic writings. Judaism does not preach poverty or its virtues. But it certainly does preach moderation in all matters for only in moderation can true blessing be found and achieved. We wish to be blessed but we also wish to have blessings in a degree and kind that we can absorb and exploit correctly. And that is what our prayer should be. Shabat shalom. Berel Wein

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Weekly Parsha from Rabbi Berel Wein - Parshat Ki Tavo 5771

Rabbi Wein 16 Elul 5771 / 15 September 2011

Weekly Parsha

KI TAVO

Friday, September 16, 2011

The main part of the parsha is concerned with the description of the woes that will befall the Jewish people in their long years of exile and persecution. The Torah sees this as being a form of redemptive punishment for the Chosen People who chose to imitate the idolatrous and immoral ways of the general society. However, as the exile of Israel stretched into centuries and then into millennia, the Jews began to feel that somehow the punishment was rather excessive relative to the crime. Therefore other explanations for the length and bitterness of the exile of Israel were advanced. The Talmud itself, hundreds of years after the destruction of the Second Temple, offered that the scattering of the Jewish people throughout the world was to allow non-Jews who wished to convert to Judaism be afforded the opportunity to do so. Others suggested that the dispersal of the Jewish Diaspora was to allow Judaic values and attitudes to penetrate the non-Jewish world as well. It was through the bitter exile itself that the Jewish people would fulfill its mission of being a light unto the nations of the world. The survival of the Jewish people under the oppressive conditions of its exile also raised questions and problems for the Christian world. The concept of the "Witness People" gained currency in the Christian world – that somehow Jews had to survive to "witness" the eventual reappearance of the Christian savior and finally convert to Christianity. Thus the Church established the institution of the "Pope's Jews" who were protected from harm since they had to survive to be the "Witness People." Be all of this as it may, what is clear is that every word of the Torah regarding the fate of the Jews in exile has come true – true literally and not allegorically. As the Ramban phrased it, it is astounding that a book written thousands of years before the events occurred should record those events so truthfully and faithfully. It is of comfort that since the tragedies recited in the parsha that would befall Israel have all come true literally that we can be certain that the blessings and redemption similarly told to us in the parsha shall also undoubtedly be fulfilled literally. Some of them have already been realized in our time with the ingathering of the exiles of Israel to the nascent Jewish state. Others are still developing and coming. The Torah never placed any time limits either on Jewish exile or redemption. The Lord has His own reckoning that no human can be privy to. The rabbis, therefore, strongly discouraged prognostications of dates for the arrival of the redemption and the messianic era. Over the many centuries of Jewish exile, many dates were forecast to be the ones of redemption, but all of them have come and gone and the redemption is yet unfulfilled in actuality or completeness. Yet our hope and belief in our eventual redemption has never waned. "Next year in Jerusalem" has been fulfilled. Next year in a fully rebuilt and peaceful Jerusalem is in the wings of the drama that unfolds now before our very eyes. Shabat shalom.

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from Center for Return cfrweeklyparsha@centerforreturn.org
date Thu, Sep 15, 2011 at 3:02 PM
subject CFR Weekly Torah Portion: 'Ki Tavo' ~ Friday, September 16, 2011

CFR Weekly Torah Portion: 'Ki Tavo' ~ Friday,
Torah Thought from the Weekly Portion

By Rabbi Avrohom Dov Kahn

Ki Tavo "...because you did not serve the Lord, your God, with happiness and with gladness of heart, when [you had an] abundance of everything." Deuteronomy 28:47 In this week's portion, there are 55 verses describing the horrific punishments inflicted on the Jewish People if they fail to observe the Torah. The explanation given for this punishment is given in the above verse toward the end of the Tochecha (admonishment). It seems strange that the reason given for us being punished so severely is because of not being happy! Isn't the reason expressed clearly in the first verse of the tochecha? And it will be, if you do not obey the Lord, your God, to observe to fulfill all His commandments and statutes which I am commanding you this day, that all these curses will come upon you and overtake you. (28:15) Aren't these punishments a result of not fulfilling the commandments of G-d as given in the Torah? The answer is: not being happy is not the sin, but the cause of the sin. The reason we are punished is because we transgressed the commandments of the Torah as clearly stated in verse 28:15. The reason we transgressed, is because we did not see the beauty and happiness that results from keeping G-d's wonderful commandments. We took it as a chore and burden, not as a privilege and spiritual delight. Our job before Rosh Hashanah is to resolve to do everything in our power to sensitize ourselves to the delight and privilege of keeping the Torah. In that way we will merit to receive all the blessings of the coming New Year. Have a wonderful Shabbos!

From: Kol Torah [koltorah@koltorah.org] Kol Torah Webmaster to Kol, bcc: me show details 7:16 PM (4 hours ago) Parashat Ki Tavo 17 Elul 5771 September 17, 2011 Vol. 21 No.2

Flowing with Milk and Honey
by Rabbi Ezra Wiener

Ki Tavo begins with a description of the commandment of Bikurim and its accompanying confession, Viduy, which is recited in front of the Kohein at the time that one brings his first fruit to the Beit HaMikdash. The Viduy concludes with the Pasuk, "Hashkifah MiMe'on Kodshecha Min HaShamayim UVareich Et Amecha Et Yisrael VeEt HaAdamah Asher Natata Lanu KaAsher Nishba'ta LaAvoteinu Eretz Zavav Chalav UDevash," "Look down from Your holy place, and bless Bnei Yisrael, and the land You have given them, as You swore to our forefathers, a land of milk and honey" (Devarim 26:15).

The Meforshim are sensitive to the fact that the Pasuk mentions that Eretz Yisrael was promised to our forefathers as a "land flowing with milk and honey." The obvious question that they raise is that Eretz Yisrael was never promised to Avraham and Yaakov as an Eretz Zavav Chalav UDevash!

The first time we encounter this phrase is in Parashat Shemot, when Hashem speaks to Moshe at the Sneh. Hashem says "VaEireid LeHatzilo MiYad Mitzrayim, ULeHa'aloto Min HaAretz HaHi, El Eretz Tovah URechavah, El Eretz Zavav Chalav UDevash," "And I will come down to deliver them out of the hands of the Egyptians, and to bring them up out

of that land, into a good and large land, flowing with milk and honey" (Shemot 3:8).

Rashi comments that the confessor in Parashat Ki Tavo is making two separate statements: "Hashem, look down from Your heavenly abode and bless the land that was promised to Avraham, Yitzchak, and Yaakov," and "You, Hashem, have also fulfilled Your promise (not to the Avot, but to those who left Egypt) to deliver us to a land flowing with milk and honey." In fact, the Siftei Chachamim claims that the confessor is affirming that Hashem indeed provided us with even more blessings than He originally promised to our Avot.

Ibn Ezra suggests that "Eretz Zavav Chalav UDevash" is a Tefillah. The farmer who brings Bikurim to the Beit HaMikdash prays that Hashem continue to preserve the land of Israel as a land flowing with milk and honey.

Ramban maintains that the word "LaAvoteinu" in the Viduy can refer to those who left Egypt. It is not uncommon for the Torah to refer to previous generations as our forefathers. It is not a term exclusively reserved for Avraham, Yitzchak, and Yaakov. In addition, Ramban explains that even if we were to explain that "LaAvoteinu" refers to the Avot, it would not be incorrect for the Torah to state that "Eretz Zavav Chalav UDevash" was promised to them. After all, if they were promised Eretz Yisrael, and Eretz Yisrael is later described as a land flowing with milk and honey, it can be concluded that an "Eretz Zavav Chalav UDevash" was promised to our forefathers.

The Ketav Sofer wonders why Eretz Yisrael wasn't promised to Avraham, Yitzchak, and Yaakov as "Eretz Zavav Chalav UDevash." Why was this reserved for the Yotz'ei Mitzrayim?

He explains that the purpose of the Berachot for rains in the correct time and abundant produce in the land of Israel are not merely rewards for following Hashem's commandments. Rather, they are Hachanot LeAvodat Hashem – Hashem providing us with the capacity to continue serving Him. The challenge for one to serve Hashem when he can't provide for his family is often too great, leaving the person with a feeling of hopelessness that impedes his service of G-d.

There are certain unique individuals who are able to serve Hashem under the most trying of circumstances, but this doesn't represent the whole nation, nor is it Hashem's will to place all of Am Yisrael in such a predicament.

Our Avot did not need a guarantee of "Eretz Zavav Chalav UDevash" to ensure their commitment to Hashem. However, Bnei Yisrael, the Yotz'ei Mitzrayim, and those who entered Eretz Yisrael, did not possess the same devotion to the Ribono Shel Olam.

On a Midrashic level, this can furnish a new interpretation of the Pasuk in Shemot 3:8: in order for this nation to experience a Ha'alalah – an ascent in Avodat Hashem – they will need an Eretz Zavav Chalav UDevash. There is no mention in this Pasuk that Eretz Yisrael is the land promised to the Avot; on the contrary, the Pasuk concludes, "El Mekom HaKena'ani VeHaChiti VeHaEmori VeHaPerizi VeHaChivi VeHaYevusi," "The land of the Kena'anim, Chitim, Emorim, Perizim, Chivim, and Yevusim."

As we approach the Yemei HaDin and we focus our attention on Parnasah and good health for ourselves and our families, we mustn't lose sight of the reason we are asking for Hashem's Brachot. We wish to enhance our Avodat Hashem, and we are asking in order to realize that if there are obstacles in our life, we have a duty to turn those obstacles into opportunities for growth in Torah and Mitzvot.

From Rabbi Mordechai Kornfeld Kollel Iyun Hadaf
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Jul 02, 2008

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Sotah 36

1) AGADAH: THE ORDER OF THE CURSES AND BLESSINGS

The Gemara points out that the division of the Shevatim who stood on Har Gerizim and Har Eival resembled no other division in history in which the Shevatim were divided into two groups. Six tribes which descended from Yakov's primary wives (Rachel and Leah) stood upon Har Gerizim, while the four tribes which descended from Bilhah and Zilpah, along with the descendants of Leah's oldest and youngest sons, stood upon Har Eival, as follows: Shimon, Levi, Yehudah, Yisachar, Yosef, and Binyamin stood on Har Gerizim, while Reuven, Gad, Asher, Zevulun, Dan, and Naftali stood on Har Eival.

A careful examination reveals a direct correlation between the order in which the Shevatim were listed at Har Gerizim and Har Eival, and the Berachos and Kelalos which they accepted upon themselves there.

The Torah lists twelve curses to be pronounced during this ceremony (Devarim 27:15-26). The number twelve was chosen presumably because it corresponds to the number of the tribes of Yisrael (Ba'alei ha'Tosfos; Chizkuni). In truth, however, the first eleven curses are summarized by the twelfth, most general, curse: "Cursed be the one who does not accept upon himself to fulfill all of the commandments of the Torah." This curse, however, seems to render all of the preceding, more specific curses extraneous. Rashi (Devarim 27:24) explains that the preceding eleven curses were intended to correspond to eleven of the twelve tribes, while the twelfth curse was directed towards the entire nation. Which tribe was not relegated a curse? Rashi explains that it was the tribe of Shimon. Moshe Rabeinu did not want to direct a curse towards Shimon since he did not intend to direct a *blessing* towards that tribe before he passed away, as he did with the other tribes.

Rashi apparently means to explain simply why the number eleven was chosen for the number of curses. He does not seem to explain any direct correlation between each of the curses and a specific tribe. The ABARBANEL attempts to link each curse to a specific tribe, although he does so in no particular order. The PIRCHEI NISAN (by the author of KOHELES YITZCHAK) to Parshas Vayishlach suggests that each of the curses corresponds to a tribe in a very clear order; specifically, the order in which the tribes are listed in the section of the Torah which lists the eleven curses (Devarim 27:12-13). With the exception of Shimon, to whom no curse was directed according to Rashi, each of the eleven curses corresponds to a different tribe in the order in which they are listed in these verses. The Pirchei Nisan asserts that this order provides insight into a statement made by the Gemara in Shabbos. The Gemara in Shabbos (55b) states that "whoever says that Reuven sinned is mistaken.... What, then, does the verse mean when it says, 'Reuven slept with Bilhah, his father's concubine' (Bereishis 35:22)? Reuven moved his father's bed out of Bilhah's tent, and the Torah considered it as though he had slept with her." Rabbi Shimon ben Elazar there adds, "The righteous [Reuven] is absolved from sin in this matter. How could it be that Reuven's children would stand upon Har Eival and say, 'Cursed is the one who sleeps with his father's wife,' if Reuven had himself done so?"

Rebbi Shimon ben Elazar proves Reuven's innocence by showing that Reuven's descendants answered "Amen" on Har Eival. Hashem certainly was not asking them to accept a curse upon themselves. According to the Pirchei Nisan's assertion, however, the Gemara means much more than that.

"Cursed is the one who sleeps with his father's wife" is the sixth curse in the list. Excluding Shimon, Reuven is the sixth tribe mentioned in the list of the tribes which stood upon the two mountains. Rebbi Shimon ben Elazar, therefore, says that the curse for sleeping with the wife of one's father was addressed *specifically* towards Reuven. Since these curses were part of the establishment of a covenant, Hashem would not have directed this curse to a tribe which did not fulfill its directive. Rather, Hashem must have addressed that curse (and its corresponding blessing) towards the tribe of Reuven in order to make it clear that Reuven was free of condemnation for that incestuous act. Their forebear was hence vindicated from suspicion for such a transgression.

The Pirchei Nisan writes further that *each* of the eleven curses was appropriate to the particular tribe toward which it was directed. Although he explains only the first six of the curses, the TECHELES MORDECHAI (ha'Rav Mordechai Drucker of Strya, Hungary), Parshas Ki Savo, resolves all of them based on the Pirchei Nisan's approach. (The following summary includes some explanations suggested by Rabbis Gedalyah Press and M. Kornfeld. See also Mei ha'Shilo'ach (Izhbitz), vol. II, Parshas Ki Savo.)

The working assumption is that the Torah links a curse to a particular tribe either (a) to show that the sin mentioned in the curse *cannot* be attributed to that tribe, as mentioned above with regard to Reuven, (b) because that tribe was *outstanding* in that respect, or (c) because that tribe was more *susceptible* than the others to sin in such a manner, and thus needed a more direct warning.

1. LEVI. "Cursed is the one who makes idols." The tribe of Levi was the only tribe which did not serve the Egel ha'Zahav (see Rashi to Devarim 33:9). (Pirchei Nisan)

2. YEHUDAH. "Cursed is the one who shows disrespect to his parents." Yehudah promised his father that he would return Binyamin unscathed, and then he risked his life to fulfill his promise for the sake of his father (Bereishis 42:32). (Pirchei Nisan)

3. YISACHAR. "Cursed is the one who tries to take for himself his neighbor's property." Yisachar was conceived when Leah claimed Yakov for herself even though it was Rachel's night. However, she paid Rachel in full for the privilege (Bereishis 30:16). (Pirchei Nisan)

Moreover, Yisachar's leader brought his sacrifices (during the dedication ceremony of the Mishkan) before Reuven's leader. Reuven's leader complained that he rightfully should be first, since his tribal forebear was older, but Hashem supported Yisachar's leader, saying that it was rightfully Yisachar's turn after all (Rashi to Bamidbar 7:19). (Techeles Mordechai)

4. YOSEF. "Cursed is the one who misleads the blind on the road." When Yosef was on the road trying to locate his brothers, he "blindly" trusted that they would do him no harm. They, however, took advantage of him and harmed him. Thus, he was the only one of the brothers who did not mislead the blind. (Pirchei Nisan)

Alternatively, when Yosef was viceroy of Mitzrayim, his brothers "blindly" stumbled upon him. Although they did not know who he was, Yosef did not take advantage of that fact to take revenge. (M. Kornfeld)

5. BINYAMIN. "Cursed is the one who does injustice to a proselyte, orphan or widow." Binyamin was an orphan, and thus this curse protected him. (Pirchei Nisan)

6. REUVEN. "Cursed is the one who sleeps with his father's wife." As explained above, the Torah addressed this curse to the tribe of Reuven to make it clear beyond any doubt that Reuven was free of condemnation for that sin. Addressing this curse to the descendants of

Reuven officially vindicated Reuven from having committed such a transgression. (Pirchei Nisan)

7. GAD. "Cursed is the who cohabits with an animal." The people of Gad gave precedence to their animals even over their own children when they chose their portion of Eretz Yisrael based on where the best grazing grounds are located (Rashi, Bamidbar 32:16). It was therefore necessary to warn them of this transgression more than the other tribes. (M. Kornfeld)

8. ASHER. "Cursed is the one who cohabits with his sister." The women of the tribe of Asher were particularly beautiful (Rashi, Devarim 33:24), and thus Asher needed to be warned of this transgression more than the other tribes. (Techeles Mordechai)

9. ZEVULUN. "Cursed is the one who cohabits with his mother-in-law." The members of the tribe of Zevulun were merchants who sailed long distances to trade their goods with other nations (Rashi, Devarim 33:18). While they were away, their wives would move-in with their mothers so that the women could help each other while their husbands were away at sea. Special warning must be given to the man whose wife and mother-in-law live under the same roof, since a man might become fond of his mother-in-law (Bava Basra 98b; Pesachim 103a). (Rav G. Press)

10. DAN. "Cursed is the one who smites his friend secretly" (who slanders his friend; Rashi). Dan is compared to a "snake" who "bites the hooves of the horses" of his enemy (Bereishis 49:17). He must be warned to direct his destructive energies against the enemy and not to use the character of a snake to slyly hurt others from his own nation. (The Midrash associates the snake with slander. See, for example, Tanchuma, Metzora #2.) (M. Kornfeld)

11. NAFTALI. "Cursed is the one who accepts a bribe to kill the innocent." Naftali was so named because he was born after Rachel used every means at her disposal ("Naftulei... Niftalti") to beg Hashem to grant her children through her maidservant (Bereishis 30:8). Naftali, therefore, had a tendency to attempt to attain his will through any means, however illicit, and thus he in particular needed to be warned not to be involved with bribes. (Rav G. Press)

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PARASHAT KI TAVO SICHA OF HARAV YEHUDA AMITAL ZT"l

Gratitude and Repentance Translated by Kaeren Fish

And you shall come to the kohen who will be in the those days, and you shall say to him: My father was a wandering Aramean... (Devarim 26:3) Rashi (ad loc.): [To show] that you are not ungrateful. God, in His great mercy, permits man to be His partner in creation. After years of labor in the field – plowing, sowing, weeding, watering, and so on – a person goes to his field and sees the first fruit of his labors. He ties a string to the first fruit, indicating "This is bikkurim." This act, and the awareness behind it, demonstrate the person's gratitude to God for giving him the fruit. The midrash (Tanchuma, Ki Tavo 1) tells us that "Moshe saw with prophetic vision that the Temple would be destroyed and that bikkurim were destined to cease." Therefore, the midrash continues, "Moshe instituted that the Jewish people should pray three times each day." Corresponding to the annual experience (and demonstration) of gratitude, Moshe instituted daily prayer. That way, when a person needs wisdom – he prays for it; when he needs healing, he knows to Whom to turn. Thus a person comes to know his Creator; he knows the ultimate address for everything in the world. Bikkurim are

called "reshit" (the beginning or the first). When a person brings bikkurim, he recounts a brief history of Am Yisrael, going back to the beginning at the time of the Patriarchs: "My father was a wandering Aramean..." (Devarim 26:5). From this we learn that it is possible and desirable to go back to the beginning, which brings us to the concept of teshuva (repentance). Wisdom was asked: What is the punishment for a sinner? It replied: Evil pursues sinners. Prophecy was asked: What is the punishment for a sinner? It answered them: A soul that sins will die. Torah was asked:[1] What is the punishment for a sinner? It answered them: Let him bring a guilt offering and be atoned for. The Holy One, blessed be He, was asked: What is the punishment for a sinner? He said to them: Let him repent, and he will be atoned for. (Yerushalmi, Makkot 2:6) Wisdom and logic dictate that if a person sins, his sin should pursue him for the rest of his life and cause him continually to stumble and fail. As Chazal taught, "One transgression leads to another" (Avot 4:2) – because that is the nature of things. Even prophecy insists that a sinner must die; there is no possibility of turning back the wheel. The Torah speaks about atonement, with the bringing of a sacrifice and with suffering. Only God Himself introduces the concept of repentance. Atonement and repentance are two separate concepts. A person can achieve atonement without repenting, and the opposite is also true. The Gemara teaches that if a man betrothes a woman "on condition that I am completely righteous," then even if he is completely wicked, the betrothal is honored, for it is possible that he repented in his heart (Kiddushin 49b). One might ask, isn't it necessary, for the purposes of proper teshuva, that a person confess his sins verbally? This man made no mention of his sins! We must therefore conclude that teshuva is a different concept that operates according to different rules. For the purposes of atonement, it is necessary that there be a process of confession and all the required stages of the process; the Gemara (Yoma 86a) even enumerates four different types of atonement. But repentance is something unique; only God Himself can allow for it. It is above nature, because through teshuva a person returns to the beginning, the "reshit," to his situation prior to the sin, to a situation that allows him to start over and not to be swept away by the current of "one transgression leads to another." Who is able to repent? Only someone who recognizes God's gift of this "reshit." Only a person who is not ungrateful, and who recognizes the Source, the Giver, of this opportunity. Only someone who recognizes this can understand that the idea of teshuva is indeed possible – for without recognition of God's immanent presence and God's kindness, the concept of teshuva could not exist at all.

[1] The Yerushalmi here does not mention "the Torah," but the Maharal brings a different version of the text in his Netivot Olam, Netiv ha-Teshuva (chapter 1).

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Weekly Halacha

by **Rabbi Doniel Neustadt**

Tefillah b'Tzibbur

Question: What is the halachic definition of Tefillah b'tzibbur?

Discussion: Tefillah b'tzibbur means that ten adult men are davening Shemoneh Esreh together[1]. L'chatchilah, the ten men should begin reciting Shemoneh Esreh at the exact same moment[2], but b'diavad, even if all ten men did not begin the Shemoneh Esreh at the same time, it is still considered tefillah b'tzibbur[3].

Some poskim hold that if ten men are present but only six of them are davening Shemoneh Esreh, it is still considered tefillah b'tzibbur[4]. Many other poskim, however, disagree[5]. Some poskim hold that one who recites his own Shemoneh Esreh along with the sheliach tzibbur's chazaras ha-shatz also fulfills the obligation of tefillah b'tzibbur[6]. Most poskim, however, disagree[7].

Question: If one came late to shul for Shacharis, can he still manage to daven tefillah b'tzibbur?

Discussion: It depends on how late he came. Shulchan Aruch rules that it is more important to daven tefillah b'tzibbur than to recite the entire Pesukei d'zimrah. Therefore, one who came late should skip as much of Pesukei d'zimrah as necessary — except for Baruch she'amar, Ashrei (Nishmas on Shabbos) and Yishtabach — in order to be able to begin davening the Shemoneh Esreh with the rest of the congregation[8]. If one came so late that even if he would skip parts of Pesukei d'zimrah he would still be unable to begin Shemoneh Esreh with the entire congregation, he may still skip parts of Pesukei d'zimrah as long as he will be able to a) begin Shemoneh Esreh while there are still (at least) ten people davening[9]; and b) complete his entire Shemoneh Esreh before the sheliach tzibbur begins to recite Kedushah during chazaras ha-shatz[10]. If, however, he estimates that he does not have enough time to complete his Shemoneh Esreh before Kedushah will be recited, he should not daven Shemoneh Esreh with the tzibbur. Instead, he should wait and daven Shemoneh Esreh along with sheliach tzibbur's recitation of chazaras ha-shatz[11]. [Whether or not it is permitted to skip Pesukei d'zimrah in order to be able to recite Shemoneh Esreh along with the chazaras ha-shatz will depend on the dispute among the poskim mentioned earlier as to whether or not reciting Shemoneh Esreh along with chazaras ha-shatz is considered tefillah b'tzibbur.]

Question: Should a woman who comes late to shul for Shacharis skip parts of Pesukei d'zimrah in order to be able to recite Shemoneh Esreh with the congregation of men?

Discussion: Contemporary poskim are divided on this point: Some hold that since women are not considered as part of a tzibbur in any way, even if they pray at the same time that the tzibbur does, their tefillah is not considered tefillah b'tzibbur. They should not, therefore, skip any part of Pesukei d'zimrah — which, according to many poskim, they are obligated to recite[12] — in order to daven with the tzibbur[13]. Other poskim, however, disagree. In their opinion, a woman who recites Shemoneh Esreh while the tzibbur is reciting it is considered as if she davened tefillah b'tzibbur, and she is permitted, therefore, to skip parts of Pesukei d'zimrah in order to be part of the tefillah b'tzibbur[14].

Question: As mentioned, one should skip parts of Pesukei d'zimrah for the sake of tefillah b'tzibbur. Is it also permitted to temporarily skip Birchos ha-Shachar for the sake of tefillah b'tzibbur and recite them after davening, or must they be recited before davening?

Discussion: The answer depends on which of the Birchos ha-Shachar are in question: Al netilas yadayim—may not be skipped, since after davening one can no longer recite Al netilas yadayim[15].

Asher yatzar—may not be skipped, since it must be recited immediately after one has relieved himself[16]. Elokai neshamah—may not be skipped, since some poskim maintain that after one has recited the blessing of Mechayeh ha-meisim in Shemoneh Esrei, he may no longer recite Elokai neshamah (since their content is similar[17]). Birchos ha-Torah—may not be skipped, since many poskim maintain that Pesukei d'zimrah (or any other pesukim) should not be said unless they are preceded by Birchos ha-Torah[18]. Birchos ha-shachar—may be said after davening. Consequently, if saying them first would cause one to miss tefillah b'tzibbur, he should wait till after davening to recite them—provided that he is sure that he will not forget to say them after davening[19].

Question: Which is the better choice for one who must skip some part of davening to make tefillah b'tzibbur—to skip Birchos ha-shachar and recite them after davening or to skip parts of Pesukei d'zimrah?

Discussion: Chayei Adam[20] implies that reciting Pesukei d'Zimrah takes precedence over reciting Birchos ha-shachar before davening (except those mentioned earlier that may not be skipped), and some contemporary poskim rule in accordance with this view[21]. But several other poskim disagree and recommend not skipping any of the Birchos

ha-shachar even at the expense of omitting some parts of Pesukei d'zimrah. They argue that the obligation to recite Birchos ha-shachar is mentioned in the Talmud, while the obligation to recite the parts of Pesukei d'zimrah that one is allowed to omit if necessary, is not[22]. In addition, Birchos ha-shachar were originally supposed to be said immediately upon arising and getting dressed; nowadays, we say them in shul, but we should not further delay them[23]. The mekubalim, too, are strongly opposed to reciting Birchos ha-shachar after davening[24].

1. Mishnah Berurah 90:28, quoting Chayei Adam 19:1. 2. Mishnah Berurah 66:35. 3. See Igros Moshe, O.C. 3:4 and Halichos Shelomo 1:8-7. 4. See Eimek Berachah, Tefillah 6; Chelkas Yaakov 2:138 and Minchas Yitzchak 3:10 and 9:6-7. 5. Harav Y.Z. Soloveitchik, quoted in Teshuvos v'Hanhagos 1:104; Orchos Rabbeinu 1:160; Igros Moshe, O.C. 1:28-30; Halichos Shelomo 1:5-8. [All poskim agree that it is permitted to recite Kaddish or chazaras ha-shatz for only six mispalleim, as long as ten men are present; Mishnah Berurah 69:8.] 6. Eishel Avraham, O.C. 52; Chasam Sofer (Igros Sofrim 14). 7. Peri Megadim (Eishel) 52:1 and 109:4; Salmas Chayim 91; Igros Moshe, O.C. 3:9. 8. See Shulchan Aruch, O.C. 52:1, who lists the various parts of Pesukei d'zimrah in order of "importance." Certain parts of Pesukei d'zimrah take priority over others when time constraints prevent one from reciting all of Pesukei d'zimrah. 9. Halichos Shelomo 1:8-7 and Devar Halachah 8. 10. See Mishnah Berurah 109:2 and Beir Halachah, s.v. ha-nichnas. 11. Mishnah Berurah 109:14; Aruch ha-Shulchan 109:11-12. 12. See Mishnah Berurah 70:1 and Sha'ar ha-Tziyun 4. See also Aruch ha-Shulchan 47:25. 13. Harav S.Z. Auerbach (Avnei Yashfei, Tefillah 16 note 13 and Halichos Shelomo 1:5, Devar Halachah 4); Harav M. Shternbuch (Rigshei Lev, Hebrew edition, pg. 116). 14. Harav Y.S. Elyashiv and Harav S. Vosner (Avnei Yashfei, Tefillah 16 note 12); Harav C.P. Scheinberg and Harav M. Halberstam (Rigshei Lev, Hebrew edition, pgs. 115-116). 15. Mishnah Berurah 4:1. 16. Mishnah Berurah 7:5; 165:2. 17. Mishnah Berurah 52:9. 18. Rama, O.C. 46:9 and Mishnah Berurah 27-28. 19. Rama, O.C. 52:1. Although Aruch ha-Shulchan 52:8 rules that Lasechvi binah and Matir asurim may also not be recited after davening, most poskim disagree; see Igros Moshe, O.C. 5:20-12 and Yechaveh Da'as 4:5. 20. 19:4. 21. Rav C. P. Scheinberg (oral ruling, quoted in Tefillah K'hilchasah, pg. 192); Rav C. Kanievsky (Ishei Yisrael, pg. 151). See also Avnei Yashfei, Tefillah, pg. 121. 22. Rav Y.S. Elyashiv (oral ruling, quoted in Tefillah k'Hilchasah, pg. 192). 23. Rav S.Z. Auerbach (Halichos Shelomo 1:6-7 and Devar Halachah 10); Rav Y. Kamenetsky (oral ruling, quoted in Tefillah K'hilchasah, pg. 192). 24. See Kaf ha-Chayim 46:9, 32; 110:51.

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**Halachic History of Copyright
by Rabbi Yirmiyohu Kaganoff**

One of the curses recorded in this week's parsha, is against someone who moves the border. In halachic terms, hasagas gevul, moving borders also includes infringes on someone's property rights.

Does a publisher have rights protecting him so that he has the opportunity to recoup his investment? Assuming that such rights exist, do they apply in all cases, or only if it is a new publication? For how long are his rights protected?

Does the Torah have a concept of intellectual property rights, meaning that someone who creates or invents an item is owner of his invention? WHAT RIGHTS DOES THE PUBLISHER HAVE?

One of the earliest published responsa on this subject deals with a very interesting sixteenth century case. One of the gedolei Yisrael of the time, the Maharam of Padua, Italy, entered a partnership with a non-Jewish publisher in Venice to produce a new edition of Rambam. Maharam invested a huge amount of time checking and correcting the text for this edition, included notes of his own, and apparently also invested significant amounts of his own money in the undertaking. A competing publisher, also a non-Jew, produced an edition of Rambam (without Maharam's corrections and notes) at a greatly reduced price, apparently out of spite that Maharam had engaged his competitor. It appears that the second publisher might have been selling the set of Rambam at a loss with the intent to ruin the Maharam financially. The halachic question was whether an individual may purchase the less expensive edition of the second publisher.

The shaylah was referred to the Rama for decision, who ruled that the second publisher's actions constitute unfair trade practices. Rama prohibited purchasing or selling the competing edition, until the Maharam's edition was sold out. Realizing that the non-Jewish publisher would not obey his ruling, Rama reinforced his ruling by placing a cherem (decree of excommunication) on anyone selling, buying or abetting the sale of the competing edition (Shu"t Rama #10). This was an effective way of guaranteeing that Jews did not purchase the less expensive (but inferior) edition.

The Rama's ruling established a precedent. Subsequent to Rama's ruling, it became common practice for publishers to include in their works a cherem (plural: charamim) from a well-known posek banning the publishing of the same sefer, usually for a period of six to twenty-five years. As a matter of fact, these charamim were the main reason why publishers sought haskamos when they published seforim. The purpose of the haskamah was that they included charamim, to make it financially worthwhile for the publisher to invest the resources necessary to produce the sefer. Thus, these charamim encouraged publishing more seforim and the spread of Torah learning.

Generally, these charamim protecting the publisher's rights were accepted and obeyed. However, in the early nineteenth century, an interesting dispute arose between the Chasam Sofer, the Rav of Pressburg, and Rav Mordechai Benet, the Rav of Nikolsburg, germane to the production of the famous Roedelheim machzorim. Two competing editions of these machzorim were produced, the first by Wolf Heidenheim, who had invested much time and money gathering and comparing the texts in old editions and manuscripts. A Jewish publishing house located in a different city subsequently published a competing edition. Prior to Heidenheim's issuing the machzorim, several prominent rabbonim had issued a cherem banning other publishers from competing. The Chasam Sofer prohibited the second publisher from selling his machzorim and similarly banned people from purchasing them (Shu"t Chasam Sofer, Choshen Mishpat #41, #79). In his opinion, this case is halachically comparable to the edition of Rambam produced by the Maharam Padua.

Rav Benet disagreed, contending that there were several key differences between the cases. In his opinion, it is unnecessary to guarantee publication of machzorim by issuing charamim. Machzorim are a common item, and publishers know that they will profit from producing them. Thus, the entire purpose for which these charamim were created, to guarantee the production of seforim, does not apply. Furthermore, since non-Jewish publishers will certainly produce machzorim, issuing a cherem against competition will benefit the non-Jewish publishers, who will be faced with less competition, more than it will benefit a Jewish publisher, such as Wolf Heidenheim. In addition, Heidenheim's first edition had already sold out, and charamim traditionally ended when the

edition was sold out, assuming that one edition was sufficient to guarantee a publisher sufficient profit to make it worth his while. In addition, Rav Benet questioned whether the system of charamim was still appropriate, once the government had established its own rules and laws of copyright infringement (Shu"t Parashas Mordechai, Choshen Mishpat #7, 8).

The Chasam Sofer countered that since Heidenheim had invested time and money in checking and correcting texts, his business interest should be protected to a greater degree, and that Heidenheim should qualify under a special halachic dispensation allowed for those guaranteeing that Torah texts are accurate (see Kesubos 106a). As a result, the Chasam Sofer contended that Heidenheim's monopoly should be allowed for the entire twenty-five years decreed in the original cherem, even after he had sold out his first edition.

DOES HALACHA RECOGNIZE INTELLECTUAL PROPERTY AS OWNERSHIP?

This shaylah came to the forefront in the middle of the nineteenth century, also as a result of a din torah. Around 1850, a printer named Yosef Hirsch Balaban published a large-size edition of Shulchan Aruch with major commentaries, accompanied for the first time by the anthologized commentary, Pischei Tshuvah. Balaban was sued in beis din by a printer named Avraham Yosef Madfis who claimed to have purchased exclusive rights to Pischei Tshuvah from its author. (I am uncertain whether "Madfis" was indeed his family name, or whether this referred to his profession.) At the time, Pischei Tshuvah had been printed only once, in a small-size edition, including only the Shulchan Aruch and one other commentary, the Be'er Heiteiv. Madfis claimed that Balaban had violated his (Madfis's) exclusive ownership rights to Pischei Tshuvah.

The Rav who presided over the din torah, Rav Shmuel Valdberg of Zalkava, ruled in favor of Balaban for the following reason. The original edition of Pischei Tshuvah did not include any statement placing a cherem against someone printing a competing edition. Rav Valdberg contended that this voided any copyright on Pischei Tshuvah. Furthermore, Rav Valdberg included two more reasons to sustain his ruling. One, the original edition of Pischei Tshuvah was no longer available. Thus, even had a cherem banned a competing edition, it would have already expired once the first edition had sold out. Second, even if the first edition was still available for sale, Balaban's reproducing Pischei Tshuvah as part of a multi-volume set of Shulchan Aruch was not competition for the original edition, where Pischei Tshuvah had been published as a small, presumably inexpensive sefer. Rav Valdberg reasoned that no one interested in purchasing Pischei Tshuvah would likely purchase Balaban's edition of Shulchan Aruch just for that purpose; instead he would buy the small edition (assuming it was available). Thus, he did not consider Balaban's edition to be unfair competition for those looking to purchase Pischei Tshuvah.

According to Rav Valdberg's analysis, the author of Pischei Tshuvah has no greater ownership to his work than someone publishing a different person's work. His latter two arguments, that the first edition was already sold out and therefore the cherem expired, and that the multi-volume set does not compete with the one volume edition, would both be preempted if we assume that the author retains ownership over his work. Thus, Rav Valdberg did not believe that halacha recognizes intellectual property rights. The Sho'eil uMeishiv (1:44) took issue with this point. In a letter addressed to Rav Valdberg, which he subsequently published in his own responsa, he contended that the author of a work is its owner. Thus, Pischei Tshuvah retains his rights as author/owner whether or not a cherem was declared against competition. A cherem is to guarantee a publisher enough time to recoup his investment. An author is an owner, not an investor, and maintains ownership over the item produced, which he is entitled to sell, regulate, or contract. This is called intellectual property rights.

Upon reading the Sho'eil uMeishiv's ruling, Rav Yitzchok Shmelkes, wrote him that he disagreed with Sho'eil uMeishiv's reasoning (Shu"t Beis Yitzchok, Yoreh Deah 2:75). Beis Yitzchok contends that halacha does not recognize intellectual property rights as inherent ownership. In Beis Yitzchok's opinion, the author has a right of ownership, but only because it is accepted by government regulation, which is termed dina dimalchusa dina, literally, the law of the government is binding.

Although halacha does not usually accept non-Jewish legal regulations, a civil law established for the wellbeing of society is usually accepted. Since intellectual property rights encourage initiative and invention that are in society's best interests, halacha accepts these ownership rights to the extent that they are recognized by civil law.

There are several key differences between the position of Sho'eil uMeishiv and that of Beis Yitzchok. According to Sho'eil uMeishiv, the ownership of an author exists forever, just as any other property that he owns. Upon his passing, they are inherited by his heirs, just like his other property. However, in Beis Yitzchok's opinion, the ownership rights extend only according to what is established by government regulation and expire after a number of years. Moreover, in most countries, a copyright is valid only if registered, and it must also be indicated in the published work. Presumably this was not true in the Beis Yitzchok's place and time, since he applied civil copyright law to Pischei Tshuvah, even though the author had not indicated any copyright in the sefer. Thus, whether halacha recognizes intellectual property ownership is disputed.

Some authorities rally evidence that the Chofetz Chayim agreed with the Sho'eil uMeishiv's position. The Chofetz Chayim left specific instructions detailing who owns the publishing rights to his seforim after his passing. He instructed that his seforim on loshon hora could be freely republished, and that Mishnah Berurah may be published by anyone, provided that 4% of its volumes printed are donated to shullen and batei medrash. However, he stipulated that most of his seforim could not be republished without permission of his family members, and that the proceeds from such publication should succor his widow for the rest of her life. Chofetz Chayim's instructions imply that he considered his ownership to be in perpetuity. Furthermore, Chofetz Chayim did not publish any words of cherem or copyright inside his seforim. Thus, he seems to have presumed ownership over future editions of seforim on the basis of intellectual property (Shu"t Minchas Yitzchok 9:153), although it is possible that he based it on dina dimalchusa dina, following the opinion of Beis Yitzchok.

If one reads the askamos on sefarim, published from the time of the Rama until the close of the nineteenth century, one notices that this dispute between the Sho'eil uMeishiv and the Beis Yitzchok seems to have been fairly widespread. For example, when the Chavos Yair published his own responsa, all the askamos allow his copyright rights against someone else publishing his own responsa for a limited period of time. According to the Sho'eil uMeishiv's opinion, the Chavos Yair should have owned these rights forever!

On the other hand, when a new edition of Shu"t Rivash was published in the 1870's, it included a very extensive index that included all the places that the Rivash is quoted by the Beis Yosef and other halachic authorities. The edition contained three askamos: from the Netziv, from Rav Yitzchak Elchanan Spector and from the Malbim. All three include a cherem against anyone publishing the Shu"t Rivash for six years, but explicitly mention that the ownership of the newly created index is the property of the publisher forever and may not be reproduced without his permission. They clearly are recognizing intellectual property rights in halacha.

Thus, we see interesting historical precedent both in favor of and in opposition to whether halacha recognizes intellectual property. Some of these factors are included when debating the role of copyright violation in halacha today.