



BS"D

To: parsha@parsha.net
From: cshulman@gmail.com

INTERNET PARSHA SHEET
ON **MISHPATIM** - 5778

In our 23rd year! To receive this parsha sheet, go to <http://www.parsha.net> and click Subscribe or send a blank e-mail to parsha-subscribe@yahoo.com. Please also copy me at cshulman@gmail.com. A complete archive of previous issues is now available at <http://www.parsha.net>. It is also fully searchable.

Sponsored anonymously in memory of
Chaim Yissachar z"l ben Yechiel Zaydel Dov

To sponsor a parsha sheet (proceeds to tzedaka) contact
cshulman@parsha.net

from: Rabbi Yissocher Frand <ryfrand@torah.org>

to: ravfrand@torah.org

date: Thu, Feb 1, 2018 at 1:54 PM

subject: Rabbi Frand on Parsha

Rav Yissocher Frand - Parshas Mishpatim

Mesiras Nefesh, Bringing Peace, Gilgul and Pure Chessed

The Connection Between the Mizbayach and Mishpatim

Parshas Yisro ends with the laws of the construction of the "mizbayach of earth" for use in the offering of various animal sacrifices. Parshas Mishpatim begins, immediately thereafter, with the pasuk, "And these are the judgments that you shall place before them." [Shemos 21:1]. Rashi asks:

"Why was Mishpatim—the section that deals with judicial cases—juxtaposed with the preceding passage, which deals with the mizbayach? It is to tell you that you should place the Sanhedrin adjacent to the mizbayach."

The Maharal, in the sefer Gur Aryeh, asks the natural follow-up question:

So why is it that the Sanhedrin needs to be placed next to the mizbayach?

What is the significance of that? They would seem to be two different worlds. The mizbayach comes from the realm of Kedushah [sanctity], the Beis HaMikdash, and the Service in the Beis HaMikdash. The Sanhedrin has an entirely different function. There does not seem to be a connection between the Supreme Court and the mizbayach. Yet the halacha is that the Sanhedrin must be located in close proximity to the mizbayach. Why is that? I would like to offer two answers to this question—the first one is of a more homiletic nature (al pi derech ha'derush) from the sefer Yismach Yehudah, and then I would like to offer the Maharal's own answer, with some elucidation.

The Yismach Yehudah writes that the mizbayach symbolizes Mesiras Nefesh—the universal Jewish capacity of a person to give up his or her life for the Ribono shel Olam and His Torah. In fact, when a person brings an offering on the mizbayach, this is what he actually needs to have in mind—that "It should be as if I were sacrificed on this mizbayach." The mizbayach represents sacrifice, including self-sacrifice.

In the course of Jewish history, many Jews have been moser nefesh, but too often, unfortunately, they have been moser nefesh for the wrong things. We apparently have this capacity for self-sacrifice and focused dedication to a cause through yerusha [inheritance]. It is part of the spiritual DNA we

inherited from the Patriarch Avraham, who was willing to be moser nefesh several times—he was willing to jump into the fiery furnace; he was willing to sacrifice his own son; etc. Jews definitely manifest this capacity for mesiras nefesh.

However, a person should not be moser nefesh for just any cause. It is a historical fact that some misguided Jews were among those involved in the early days of the Communist movement. Jews obviously were in the forefront of the secular Zionist movement (a Zionism devoid of any relationship to G-d or Torah). There were people who gave their lives for the concept of creating "the New Jew."

While it is certainly an admirable quality that Jews are willing to sacrifice their lives for a cause they believe in, we must make sure that our mesiras nefesh is directed and channeled into the right causes. This is the job of the Sanhedrin. The Sanhedrin must be next to the mizbayach because the Sanhedrin needs to stand guard to make sure that the mesiras nefesh that is symbolized by the mizbayach is channeled into the right causes and not into some new-fangled movements.

Even in the United States, there are movements which are quite questionable to me, in which we see that Jews are in the forefront. I have always commented that it almost seems that to be a member of the ACLU (American Civil Liberties Union), a person needs to be Jewish, wear glasses, and have a beard. Without those three qualifications, they almost do not seem to accept a person into the ACLU. This is the same ACLU that defends the rights of Nazis to march in Skokie and other cities. This is not to say that everything the ACLU does is incorrect, but there are a lot of cases where the mesiras nefesh that Jewish people undertake is misdirected and misguided. It is the job of the Sanhedrin to monitor mesiras nefesh, and that is why they must be located in proximity to the sacrificial mizbayach.

The Maharal himself answers his question differently. The Maharal says that it is not even a question why the Sanhedrin should be located next to the mizbayach. "They are to be equated completely." The mizbayach restores peace between Israel and their Father in Heaven (by allowing for proper atonement of sins to be brought for both individuals and the nation). The Hebrew word for sacrifice is korban, from the root word k-r-v, meaning to come close, because the sacrifices bring the Jews close to their Father in Heaven. So too, the purpose of Torah Civil Law, i.e., Mishpatim, is to bring peace to people.

The Mechilta asks, why were the Civil Laws presented (here in Parshas Mishpatim, right after the Aseres Hadibros) before all of the other laws of the Torah? The Mechilta answers—it is because when people have arguments, fights and hatred between themselves, and then they resolve their dispute by means of a Din Torah [Torah judgement], the competition and the ill-feeling between the two parties is halted. Peace now reigns between them. Thus, the mizbayach and the Courts form a partnership to bring peace to the world. This is the obvious connection: The mizbayach brings peace between Klal Yisrael and their Father in Heaven; the Courts bring peace between man and his fellow man. They thus serve the same function, albeit in different directions.

The following may be going through our minds when we hear this explanation of the Maharal:

Yes, that is true perhaps in a perfect world. But all too often, when people have a dispute that leads to an argument that winds up in a beis din for adjudication, the result is quite different. Under normal circumstances, the court will rule in favor of one party over the other. One person will win, and the other person will lose. Maybe the winner will be happy with the result and ready to make peace. However, many times, the loser does not have such warm feelings—neither towards his litigant, nor towards the beis din. And yet, the purpose of beis din is to make peace between neighbors. How do we understand this? We are not talking about corrupt batei din. We are talking about batei din who ruled based on Torah law. However, sometimes the verdict does not go our way and we are upset with the beis din. How do we deal with that?

I saw a very interesting Nesivos Shalom (the Slonimer Rebbe), who cites a story involving the Baal Shem Tov.

A person came to the Baal Shem Tov after having lost a Din Torah [civil case decided by a Rabbinic court]. The person told the Baal Shem Tov, “I believe in the power of beis din and in the veracity of beis din, and I believe that the Almighty participates in the ruling of beis din when they judge a true ruling according to Torah law. However, they ruled against me and they were wrong, because their ruling contradicted the facts as I know them to have occurred. They paskened a Din Torah based on the facts they were presented by witnesses, but I know the facts were not true. How do I deal with this? How do I deal with the fact that I am now out thousands of dollars? I am not questioning the truthfulness of beis din or their halachic ability or their judicial authority — but I do know they issued an unjust and untrue ruling?”

The Baal Shem Tov told him about the concept of “gilgul.” This is a mystical idea involving the transmigration of souls. According to this concept, for most of us, this is not our “first trip” to this world. We have been here before in the body of other people, and because we did not complete the mission that we were sent here to complete, our souls have had to come down again (in a new body) to complete the mission. The Baal Shem Tov told him that in a previous gilgul, he owed this person money, and the reason he needed to come back to this world was to make restitution. Therefore, the reason he lost the Din Torah, even though the facts may have supported him, was because this is the way the Almighty wanted him to make restitution to the party to whom he owed the money. He would now be able to go back to the World of Truth, having completed his mission on earth.

The Nesivos Shalom cites a Zohar on the words, “And these are the statutes...” (v’Eleh HaMishpatim...) at the beginning of the parsha. The Zohar explicitly says on these words, “And this is the secret of gilgul.” In other words, the fact that sometimes we are unhappy with the verdict handed down in Jewish civil disputes, the fact that sometimes we cannot see the justice in the decision, and sometimes we, in fact, know the decision to be wrong based on our inside knowledge of the situation — all this can better be understood and more easily accepted by recognizing the concept of the secret of gilgul neshamos.

Many tragedies in life cannot be explained except through the secret of gilgul. The Zohar applies this principle to court judgements that we find displeasing. This is what the Baal Shem Tov told the person who sought his counsel.

In this context, the Nesivos Shalom explains the Talmudic passage [Shabbos 10a] “Whoever judges a true Torah judgment truthfully (Dun Din Emes l’Amito) even once in his life, the Torah considers it as if he became a partner with the Holy One Blessed be He.” The Nesivos Shalom points out that the expression Dun Din Emes l’Amito seems redundant. Truth is truth (Emes is Emes) — what is the implication of the added modifier “l’Amito” [truthfully]?

The Nesivos Shalom explains that “Dun Din Emes” [he judges a true judgement] means he ruled correctly based on the principles codified in Shulchan Aruch Choshen Mishpat. It was a correct Torah ruling. L’Amito refers to the Truth of the Almighty. The Almighty knows what needs to happen to rectify sometimes-ancient wrongs that were committed, so that this soul can successfully complete his mission in this world. By judging with this added element of the Almighty’s Truth (even though it might be unbeknownst to the judge), the judge has become a partner with the Holy One Blessed be He.

The Poor Donkey, the Poor Beggar, and the Pool of Vodka on the Innkeeper’s Floor

The pasuk in this week’s parsha says, “Perhaps you will see the donkey of someone you hate lying under its burden, will you refrain from helping him? — you shall surely help along with him (azov t’azov imo).” [Shmos 23:5].

Normally, the Hebrew word azov means to abandon or leave, which would be the exact opposite of the way the Rabbis interpret this mitzvah. Rashi points out here (and also in Parshas Teruma) that there are some words in Hebrew that can have opposite meanings, depending on the context. This is an example thereof. Since the expression is azov t’azov imo (with him), we understand that in this context, azov t’azov does not mean “to abandon,” but rather “to help.”

This is how Rashi understands the pasuk. Despite the fact that azov also means to leave or abandon, and despite the fact that the Torah could have picked a simpler and less ambiguous word to indicate helping, Rashi says that here the word azov does indicate helping.

Targum Onkelus interprets the pasuk somewhat differently: “When you see the donkey of a person you hate suffering under its burden, and you are tempted to let him and his donkey suffer. Abandon that which is in your heart regarding this person, and unload (the donkey) with him.” Thus, the way the Targum is learning is consistent with the traditional interpretation of the word azov. It means abandon. However, according to the Targum, it does not mean to abandon this person and his donkey. It means to abandon ill-feelings and animosity towards this person, and help him anyway.

This is what we sometimes need to do when we are called upon to do a chessed. For whatever reason, sometimes we may have reservations against doing a certain chessed, particularly when we need to do it for a specific individual for whom we may not have the warmest feelings. The mitzvah of gemillas chessed sometimes requires a person to overrule his evil inclination, to get rid of those resentful feelings, and to do the act of kindness for his fellow man anyway.

I once heard an incident — I believe it involved the Rebbe Reb Bunim. The Rebbe went to an inn on a very cold night. He walked into the inn, sat down, and while the innkeeper was providing food, he started telling the Rebbe his tale of woe: “Business is terrible, nobody comes by anymore. I am nearing bankruptcy because I am losing my customers. I do not know what it is. Nobody stops at my inn anymore.”

On this bitterly cold night, there is suddenly a knock on the door. “Ah! A customer!” The inn keeper goes to the door. “Who is it?” It is a shlepper — a beggar! The beggar said, “I have no money but I’m terribly cold. Can I please come in and warm myself up?” The innkeeper said, “Okay,” thinking to himself, “Just my mazal. Finally, a knock on the door, and it’s a beggar!” The beggar sat down in tattered clothes, and warmed himself up by the fire, and then said to the innkeeper, “I know this is a chutzpah, but could you give me a glass of vodka. I just cannot get the chill out of my bones. I need a strong shot of vodka to warm me up. I cannot pay for it, but please give me a shot of vodka. The innkeeper went to the barrel of vodka and poured the beggar a glass of vodka. He looked at the glass and spilled it on the floor. The Rebbe Reb Bunim is watching, and cannot get over it — the innkeeper spilled a glass of good vodka on the floor! The innkeeper again puts the glass by the spout of the vodka barrel, and once again fills it up. Again, he spills it on the floor. This happened two or three times, until finally he filled up the glass and gave it to the poor beggar.

The Rebbe Reb Bunim says to the innkeeper: I will tell you why your business is going down the drain. If you keep spilling good vodka on the floor, it is no wonder you are not making a living! Why are you spilling out the vodka? The innkeeper responded to the Rebbe as follows: I know I am not going to get any money out of this fellow. So what am I doing? I am doing a chessed. When I filled up the glass the first time, I said to myself, “Augh! Not only am I not making any money, I am wasting money on this beggar.” So, I said to myself, “I cannot give him the vodka like that. With such an attitude, I will not even fulfill the mitzvah of doing a chessed. I am giving it to him with the worst of feelings.” So, I poured it out. I tried again. No! I still did not feel good. The guy is taking my money, I cannot afford this. I knew it was a bad attitude in which to do a chessed, so I poured out the vodka again.”

The innkeeper did this three or four times, until he was able to reach the level of “azov t’azov imo” — until he was able to abandon his ill feelings and say, “Okay. I am not going to make any money on this guy, but at least let me do a chessed, and let me do it with a complete heart.” Finally, when he got to that level, he gave the vodka to the poor beggar.

Transcribed by David Twersky; Jerusalem DavidATwersky@gmail.com
Technical Assistance by Dovid Hoffman; Baltimore MD dhoffman@torah.org
Rav Frand © 2017 by Torah.org. This week’s write-up is adapted from the hashkafa portion of Rabbi Yissochar Frand’s Commuter Chavrusah Series on the weekly Torah portion. A listing of the halachic portions for Parshas Yisro is provided below: A complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyechiel.org or visit <http://www.yadyechiel.org/> for further information. Rav Frand © 2017 by Torah.org. Donate to Project Genesis - Torah.org Do you have a question or comment? Feel free to contact us on our website. Join the Jewish Learning Revolution! Torah.org: The Judaism Site brings this and a host of other classes to you every week. Visit <http://torah.org> to get your own free copy of this mailing or subscribe to the series of your choice. Need to change or stop your subscription? Please visit our subscription center, <http://torah.org/subscribe/> -- see the links on that page. Permission is granted to redistribute, but please give proper attribution and copyright to the author and Torah.org. Both the author and Torah.org reserve certain rights. Email copyrights@torah.org for full information. Torah.org: The Judaism Site Project Genesis, Inc. 2833 Smith Ave., Suite 225 Baltimore, MD 21209 <http://www.torah.org/learn@torah.org> (410) 602-1350

fw from hamelaket@gmail.com
from: Destiny Foundation/Rabbi Berel Wein <info@jewishdestiny.com>
reply-to: info@jewishdestiny.com
subject: Weekly Parsha from Rabbi Berel Wein

Home Weekly Parsha MISHPATIM
Rabbi Wein’s Weekly Blog

One of the many diverse and detailed subjects covered in this week’s Torah reading is that of the laws regarding lending money to a fellow Jew. And though the language of the verse is couched in a conditional manner – “if” or “when” you will lend money – the rabbis of the Talmud interpreted this as an imperative – a positive commandment requiring one to be open to lend money to those who are in need of temporary aid.

There are many laws, details and technicalities attached to this commandment and this short article is not the place to address them. But the overriding principle is clear. Lending money to others and helping them to extricate themselves from otherwise burdensome circumstances is a positive commandment of the Torah.

Though we all know and sense that lending money to someone goes against our emotional and rational sense of being. It is much easier for a person to donate money to another human being or to a cause than to lend that money. We are immediately beset by the problem that perhaps the person will never wish to or be able to repay that debt. If I gave him the money and that is that and I have erased the matter from my mind and consciousness. However when I lend money, that alone is omnipresent with me. The borrower will avert my gaze when I meet him on the street and the lender will feel just as uncomfortable as does the borrower. Lending money to an individual always causes an awkward interpersonal relationship.

Perhaps this may be the very reason why the Torah ordains a commandment to lend money to another individual. The Torah wishes to break down our selfish instincts and self-interest. Whether we wish to or not, we become invested in the life and activities of the one who borrowed the money. We have reason to pray for his success because only then will he somehow be able to discharge his obligation.

That is why the Torah states that the poor man, the borrower, is “with you.” The relationship of borrower and lender is not merely a financial arrangement but it is a deeply personal one that has many ramifications. As King Solomon pointed out, a borrower feels one’s self in bondage to the lender.

This is a psychological truism that also has practical halachic consequences. But it is incumbent upon the lender to mitigate such feelings to the extent possible. The lender cannot pursue repayment of his loan in a manner that is too intense. And this is especially true if the lender is aware that the borrower really does not have any extra funds with which to currently repay the loan.

Yet, the Torah does provide strong legal action on the part of the lender to recover his loan. He justifies this on the basis that if it becomes too difficult to collect on a loan then people will stop lending money and that will make for a very selfish and ultimately disastrous society.
Shabbat shalom Rabbi Berel Wein

from: torahweb@torahweb.org
date: Thu, Feb 8, 2018 at 6:11 PM

Rabbi Eliakim Koenigsberg
A Special Relationship

In Parshas Mishpatim the Torah presents a collection of various halachos. This in itself is noteworthy since we would imagine that after the dramatic description of ma’amad Har Sinai in Parshas Yisro the Torah would continue by discussing lofty principles, and yet the Torah seems to get “bogged down” with details. But what is even more puzzling is the fact that the parsha begins with the halachos of eved ivri, a Jewish slave. Why choose this topic as a starting point for the parsha?

The halacha is that if an eved ivri declares after six years of work that he loves his master and would like to remain his slave, then his ear is pierced and he works for the master until yoveil. Rashi (21:6) quotes the statement of Chazal (Kiddushin 22b), “Why is the ear pierced? The ear that heard on Har Sinai, ‘For Bnei Yisrael are my slaves,’ and he went and acquired another master for himself, let it be pierced.”

If the slave’s ear is pierced because he chose another master for himself, then why wait for six years until we pierce the ear? Why not pierce the ear when the person initially sells himself? After all, that is when he first acquires a new master. The Sefer HaMiknah (Kiddushin 22b) explains that someone who sells himself because he is unable to earn a livelihood is not held accountable for his actions. Since he sold himself under financial duress he is not viewed as one who chose to acquire a new master. But if after six years he refuses to start out again on his own, and instead he declares that he prefers to remain a slave to his master, then he is considered to have chosen a master for himself and he is punished for his decision.

Why is the eved ivri criticized for wanting to remain with his master? The fact is the life of an eved ivri is not overly burdensome. He may not be forced to do any hard labor (Vayikra, 25:43). His master must give him time off to perform mitzvos. Even his food, drink and bedding must be equal to that of his master (Kiddushin 22a). Chazal go so far as to say, “Whoever acquires a slave has acquired a master for himself (ibid.)” In such circumstances, it probably is easier for the slave to observe mitzvos. Why does the Torah fault the eved for wanting to continue such an arrangement? Perhaps the answer is that the longer the eved stays with his master, the less he feels dependent on Hakadosh Boruch Hu. With all his needs provided for him, he is comfortable and at ease with his situation. He does not feel the need to reach out to Hakadosh Boruch Hu for his livelihood. So even if he does continue to observe mitzvos as a slave, by staying with his master he will be missing that yearning for heavenly assistance that is so essential to a Jewish soul.

A Torah way of life is not just about mitzvah observance; it is about having a relationship with Hakadosh Boruch Hu and feeling dependent on Him. Chazal comment, “Why were our forefathers barren? Because Hakadosh Boruch Hu desires the tefillos of tzadikim” (Yevamos 64a.) Rav Eliyahu Dessler explains that Hashem certainly does not need the tefillos of tzadikim. Rather, he places tzadikim in challenging situations for their own benefit so that they will call out to Him in tefilla and develop a closer

connection to Him (see Michtav M'Elياهو, vol. 4 p. 63). Similarly, the Gemara says (Pesachim 118a), "Providing sustenance for a person is as difficult as the splitting of the sea." The Rashbam explains that although, in reality, it is not difficult for Hashem to provide for each individual, He makes it seem challenging to earn a living so that people will reach out to Him in tefilla and ask for mercy.

Having all of one's needs provided for him is not always a blessing. Sometimes it might even be a curse. The Chiddushei HaRim (cited in Pardes Yosef, Bereishis) understands that this was the curse that Hashem gave the snake after he caused the sin of the eitz hada'as. Hashem tells the snake, "And you shall eat dust (of the earth) all the days of your life. (Bereishis, 3:14)" This seems like a blessing because dust is always readily available for the snake. But the Chiddushei HaRim explains that in fact this is the greatest curse. Hashem provided the snake's food up front not because He wanted to make it easier for the snake, but because He did not want to have any ongoing relationship with him. And there is no greater curse than losing one's connection with Hakadosh Boruch Hu.

This can explain why the Torah criticizes the eved ivri for wanting to remain with his master after six years. The Torah understands that sometimes a person might feel the need to sell himself to ease his financial burdens. But that is not an appropriate long term solution because the slave's continued dependence on his master could undermine his relationship with Hakadosh Boruch Hu, and that is something the Torah is not willing to risk.

The lesson of the eved ivri is an appropriate sequel to Parshas Yisro because it highlights the deeper meaning of kabbolas haTorah. When Klal Yisrael received the Torah, they were not simply accepting to scrupulously observe all of the mitzvos of the Torah. They were agreeing to enter into a new relationship with Hakadosh Boruch Hu, one that should not be taken for granted or traded for financial independence.

Copyright © 2018 by TorahWeb.org. All rights reserved.

fw from hamelaket@gmail.com
from: Rabbi Chanan Morrison <chanan@ravkooktorah.org>
to: rav-kook-list@googlegroups.com
subject: [Rav Kook Torah]

Mishpatim: Permission for Doctors to Heal Rav Kook Torah

Medical Fees

Amongst the various laws in the parashah of Mishpatim - nearly all of which are of a societal or interpersonal nature - the Torah sets down the laws of compensation for physical damages. When one person injures another, he must compensate the other party with five payments. He must pay for (1) any permanent loss of income due to the injury, (2) embarrassment, (3) pain incurred, (4) loss of income while the victim was recovering, and (5) medical expenses.

This last payment, that he "provide for his complete healing" (Exod. 21:19), i.e., that he cover any medical fees incurred, is of particular interest. The word "to heal" appears 67 times in the Torah, almost always referring to God as the Healer. Only here, as an aside to the topic of damages, does the Torah indicate that we are expected to take active measures to heal ourselves, and not just leave the healing process to nature.

This detail did not escape the keen eyes of the Sages. "From here we see that the Torah gave permission to the doctor to heal" (Berachot 60a).

Yet we need to understand: why should the Torah need to explicitly grant such permission to doctors? If anything, we should expect all medical activity to be highly commended, as doctors ease pain and save lives.

Our Limited Medical Knowledge

The human being is an organic entity. The myriad functions of body and soul are intertwined and interdependent. Which person can claim that he thoroughly understands all of these functions, how they interrelate, and how they interact with the outside world? There is a danger that when we treat a

medical problem in one part of the body, we may cause harm to another part. Sometimes the side effects of a particular medical treatment are relatively mild and acceptable. And sometimes the results of treatment may be catastrophic, causing problems far worse than the initial issue.1

One could thus conclude that there may be all sorts of hidden side effects, unknown to the doctor, which are far worse than the ailment we are seeking to cure. Therefore, it would be best to let the body heal on its own, relying on its natural powers of recuperation.

Relying on Available Knowledge

The Torah, however, rejects this view. Such an approach could easily be expanded to include all aspects of life. Any effort on our part to improve our lives, to use science and technology to advance the world, could be rebuffed on the grounds that we lack knowledge of all consequences of the change.

The Sages taught: "The judge can only base his decision on what he is able to see" (Baba Batra 131a). If the judge or doctor or engineer is a competent professional, we rely on his expertise and grasp of all available knowledge to reach the best decision possible. We do not allow concern for unknown factors hinder our efforts to better our lives.

"The progress of human knowledge, and all of the results of human inventions - is all the work of God. These advances make their appearance in the world according to mankind's needs, in their time and generation."

(Sapphire from the Land of Israel. Adapted from Olat Re'iyah vol. I, p. 390)

1 The tragic example of birth defects as a result of treating morning sickness in pregnancy with thalidomide comes to mind.

fw from hamelaket@gmail.com
from: Shabbat Shalom shabbatshalom@ounetwork.org
subject: Shabbat Shalom from the OU
www.ou.org/torah/parsha/rabbi-sacks-on-parsha
Britain's Former Chief Rabbi Lord Jonathan Sacks

Covenant & Conversation 5778

The Power of Empathy - Mishpatim 5778

William Ury, founder of the Harvard Program of Negotiation, tells a marvellous story in one of his books.[1] A young American, living in Japan to study aikido, was sitting one afternoon in a train in the suburbs of Tokyo. The carriage was half empty. There were some mothers with children, and elderly people going shopping.

Then at one of the stations, the doors opened, and a man staggered into the carriage, shouting, drunk, dirty, and aggressive. He started cursing the people, and lunged at a woman holding a baby. The blow hit her and sent her into the lap of an elderly couple. They jumped up and ran to the other end of the carriage. This angered the drunk, who went after them, grabbing a metal pole and trying to wrench it out of its socket. It was a dangerous situation, and the young student readied himself for a fight.

Before he could do so, however, a small, elderly man in his seventies, dressed in a kimono, shouted "Hey" to the drunk in a friendly manner.

"Come here and talk to me." The drunk came over, as if in a trance. "Why should I talk to you?" he said. "What have you been drinking?" asked the old man. "Sake," he said, "and it's none of your business!"

"Oh that's wonderful," said the old man. "You see, I love sake too. Every night, me and my wife (she's 76, you know), we warm up a little bottle of sake and take it out into the garden and we sit on an old wooden bench. We watch the sun go down, and we look to see how our persimmon tree is doing. My great-grandfather planted that tree ..."

As he continued talking, gradually the drunk's face began to soften and his fists slowly unclenched. "Yes," he said, "I love persimmons too." "And I'm sure," said the old man, smiling, "you have a wonderful wife."

"No," replied the drunk. "My wife died." Gently, he began to sob. "I don't got no wife. I don't got no home. I don't got no job. I'm so ashamed of myself." Tears rolled down his cheeks.

As the train arrived at the student's stop and he was leaving the train, he heard the old man sighing sympathetically, "My, my. This is a difficult predicament indeed. Sit down here and tell me about it." In the last glimpse he saw of them, the drunk was sitting with his head in the old man's lap. The man was softly stroking his hair.

What he had sought to achieve by muscle, the old man had achieved with kind words.

A story like this illustrates the power of empathy, of seeing the world through someone else's eyes, entering into their feelings, and of acting in such a way as to let them know that they are understood, that they are heard, that they matter.[2]

If there is one command above all others that speaks of the power and significance of empathy it is the line in this week's parsha: "You shall not oppress a stranger, for you know the heart of a stranger: You were strangers in the land of Egypt" (Ex. 23:9).

Why this command? The need for empathy surely extends way beyond strangers. It applies to marriage partners, parents and children, neighbours, colleagues at work and so on. Empathy is essential to human interaction generally. Why then invoke it specifically about strangers?

The answer is that "empathy is strongest in groups where people identify with each other: family, friends, clubs, gangs, religions or races." [3] The corollary to this is that the stronger the bond within the group, the sharper the suspicion and fear of those outside the group. It is easy to "love your neighbour as yourself." It is very hard indeed to love, or even feel empathy for, a stranger. As primatologist Frans de Waal puts it:

We've evolved to hate our enemies, to ignore people we barely know, and to distrust anybody who doesn't look like us. Even if we are largely cooperative within our communities, we become almost a different animal in our treatment of strangers.[4]

Fear of the one-not-like-us is capable of disabling the empathy response. That is why this specific command is so life-changing. Not only does it tell us to empathise with the stranger because you know what it feels like to be in his or her place. It even hints that this was part of the purpose of the Israelites' exile in Egypt in the first place. It is as if God had said, your sufferings have taught you something of immense importance. You have been oppressed; therefore come to the rescue of the oppressed, whoever they are. You have suffered; therefore you shall become the people who are there to offer help when others are suffering.

And so it has proved to be. There were Jews helping Gandhi in his struggle for Indian independence; Martin Luther King in his efforts for civil rights for African Americans; Nelson Mandela in his campaign to end apartheid in South Africa. An Israeli medical team is usually one of the first to arrive whenever and wherever there is a natural disaster today. The religious response to suffering is to use it to enter into the mindset of others who suffer. That is why I found so often that it was the Holocaust survivors in our community who identified most strongly with the victims of ethnic war in Bosnia, Rwanda, Kosovo and Darfur.

I have argued, in Not in God's Name, that empathy is structured into the way the Torah tells certain stories – about Hagar and Ishmael when they are sent away into the desert, about Esau when he enters his father's presence to receive his blessing only to find that Jacob has taken it, and about Leah's feelings when she realises that Jacob loves Rachel more. These stories force us into recognising the humanity of the other, the seemingly unloved, unchosen, rejected.

Indeed, it may be that this is why the Torah tells us these stories in the first place. The Torah is essentially a book of law. Why then contain narrative at all? Because law without empathy equals justice without compassion. Rashi tells us that "Originally God planned to create the world through the attribute of justice but saw that it could not survive on that basis alone. Therefore He prefaced it with the attribute of compassion, joined with that of justice." [5] That is how God acts and how He wants us to act. Narrative is the most

powerful way in which we enter imaginatively into the inner world of other people.

Empathy is not a lightweight, touchy-feely, add-on extra to the moral life. It is an essential element in conflict resolution. People who have suffered pain often respond by inflicting pain on others. The result is violence, sometimes emotional, sometimes physical, at times directed against individuals, at others, against whole groups. The only genuine, non-violent alternative is to enter into the pain of the other in such a way as to ensure that the other knows that he, she or they have been understood, their humanity recognised and their dignity affirmed.

Not everyone can do what the elderly Japanese man did, and certainly not everyone should try disarming a potentially dangerous individual that way. But active empathy is life-changing, not only for you but for the people with whom you interact. Instead of responding with anger to someone else's anger, try to understand where the anger might be coming from. In general, if you seek to change anyone's behaviour, you have to enter into their mindset, see the world through their eyes and try to feel what they are feeling, and then say the word or do the deed that speaks to their emotions, not yours. It's not easy. Very few people do this. Those who do, change the world. Shabbat Shalom,

[1] Adapted from William Ury, *The Power of a Positive No*, Hodder Mobius, 2007, 77-80.

[2] Two good recent books on the subject are Roman Krznaric, *Empathy*, Rider Books, 2015, and Peter Bazalgette, *The Empathy Instinct*, John Murray, 2017. See also Simon Baron-Cohen's fascinating book, *The Essential Difference*, London, Penguin, 2004, on why women tend to be better at this than men. [3] Bazalgette, 7.

[4] Frans de Waal, 'The Evolution of Empathy,' in Keltner, Marsh and Smith (eds), *The Compassionate Instinct: the Science of Human Goodness*, New York, Norton, 2010, 23. Copyright © 2018 The Office of Rabbi Sacks

fw from hamelaket@gmail.com

from: Mordechai Tzion toratravaviner@yahoo.com

to: ravaviner@yahoo.com

http://www.ravaviner.com/

Yeshivat Ateret Yerushalayim

From the teachings of the Rosh Yeshiva

Ha-Rav Shlomo Aviner Shlit'a - Short & Sweet

Ha-Rav answers hundreds of text message questions a day. Here's a sample:

Who Created Hashem?

Q: My young daughter asked me who created Hashem. What should I answer?

A: That Hashem has always existed. Read her "Adon Olam".

Arizal - Ashkenazi or Sefardi

A: Was the Arizal Ashkenazi or Sefardi?

A: The Chatam Sofer writes in his Responsa (Orach Chaim #15) that the Arizal was originally Ashkenazi but decided to become Sefardi and to Daven according to the Sefardic custom. But the Chief Sefardic Rabbi, Ha-Rav Yitzchak Yosef, holds that the Arizal was Ashkenazi ('Beit Maran' Parashah Sheet #85). From my understanding, the Arizal's father was Ashkenazic and his mother was Sefardic. He was orphaned and raised by his uncle, who was Sefardic. If so, he was Sefardic in practice but from Ashkenazic lineage. He was therefore called "Ashkenazi Rabbi Yitzchak", the abbreviation being "AR" I. Who has the last name "Ashkenazi"? A Sefardic Jew from Ashkenazi extract. It seems that there is also a difference of opinion in Tzefat, where he lived 500 years ago, since there is an Arizal Ashkenazic Shul and an Arizal Sefardic Shul...

Danger in Yehudah and Shomron

Q: A great Rabbi said that it is forbidden to live in a certain city in Yehudah and Shomron on account of danger. How should we relate to this?

A: His words are not understandable. 1. The danger is minimal. 2. One must display self-sacrifice for Eretz Yisrael.

Tefilat Ha-Derech while Standing

Q: Is one obligated to stand for Tefilat Ha-Derech, or may one sit?

A: If possible, it is preferable for one to stand. Aruch Ha-Shulchan (Orach Chaim 110:11. And so too the Chazon Ish, brought in Maaseh Ish Volume 2, p. 11).

Medicine Trial

Q: Is it permissible to participate in a trial for medical research?

A: Yes, on condition that it is approved by the State. It is a Mitzvah.

Daf Yomi in Sweat Suit

Q: Is it permissible to learn Daf Yomi in a sweat suit, or it is a disgrace to the Torah?

A: It is permissible. They are respectable articles of clothing.

Sewing Shirt While Wearing It

Q: Is there a problem with sewing a shirt while wearing it?

A: The Kaf Ha-Chaim (Yoreh Deah 116:212) writes that one should refrain from doing so, since it causes forgetfulness, but there is no early source for this. And it is brought that the Chazon Ish was not particular about it (Ta'ama De-Kera of Ha-Rav Chaim Kanievsky, Hanhagot Ha-Chazon Ish #30).

Chevruta Who Comes Late

Q: I learn in Yeshiva and my Chevruta always comes late. What should I do?

A: 1. Speak to his heart. B. If it does not help, learn on your own until he arrives. 3. If it is not possible, talk directly with your Rav in Yeshiva.

"Oz Ve-Hadar" Publishers

Q: I heard that the Publishing House "Oz Ve-Hadar" is Satmar. Should one refrain from buying from them?

A: There is no problem to buy from them. The books are not Satmar. The Gemara is the same Gemara and the same with the other books.

Tefilat Ha-Derech from Another Person

Q: Is it possible to hear Tefilat Ha-Derech from another person or is one obligated to recite it on his own?

A: It is possible to hear it from another, but it is preferable to recite it himself since it is a request for mercy from Hashem (Ha-Rav Chaim Kanievski in the book "Ishei Yisrael Chapter 50 note #1).

Davening with Minyan or Working in Hostel

Q: I work on Shabbat in a hostel for mentally challenged adults, and am unable to get to a Minyan, so I Daven on my own. Should I leave the work?

A: No. It is a great Mitzvah, and one who is engaged in one Mitzvah is exempt from another Mitzvah.

Tefillin for a Movie

Q: Is it permissible to put on Tefillin a few times during the day for a movie we are making?

A: If it is done with an awe of holiness.

Special thank you to Orly Tzion for editing the Ateret Yerushalayim Parashah Sheet

fw from hamelaket@gmail.com
from: Ohr Somayach <ohr@ohr.edu>
to: weekly@ohr.edu
subject: Torah Weekly

Ohr Somayach :: Torah Weekly :: Parshat Mishpatim
For the week ending 10 February 2018 / 25 Shevat 5778
Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com
Insights

"Church and State"

"And these are the statutes..." (21:1)

The phrase "separation between Church and State" is generally traced to a January 1, 1802 letter by Thomas Jefferson, addressed to the Danbury

Baptist Association in Connecticut, and published in a Massachusetts newspaper. Jefferson wrote: "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."

Jefferson was echoing the language of the founder of the first Baptist church in America, Roger Williams, who had written in 1644: "A hedge or wall of separation between the garden of the church and the wilderness of the world."

Judaism has never had this problem. It has always seen its job as bringing "the wilderness of the world" into "the garden of the church" and not let the world wander into greater and deeper wilderness.

"And these are the statutes..."

Why are the laws of Judaism's social contract juxtaposed with those of the rites of the Holy Altar in the Beit Hamikdash?, asks Rashi. He answers that the Torah is teaching us that the Sanhedrin, the supreme legislative body, should occupy a chamber adjacent to the Holy Altar.

Judaism sees no dichotomy between Divine service and the legislation of social conduct. They are both within the purview of faith without the need for walls or hedges.

Jefferson's metaphor of a wall of separation has been cited repeatedly by the U.S. Supreme Court. In Reynolds v. United States (1879) the Court wrote that Jefferson's comments "may be accepted almost as an authoritative declaration of the scope and effect of the (First) Amendment." In Everson v. Board of Education (1947), Justice Hugo Black wrote: "In the words of Thomas Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state."

In contrast to separationism, the Supreme Court of the United States in Zorach v. Clauson upheld accommodationism, holding that the nation's "institutions presuppose a Supreme Being" and that government recognition of G-d does not constitute the establishment of a state church as the Constitution's authors intended to prohibit. As such, the Court has not always interpreted the constitutional principle as absolute, and the proper extent of separation between government and religion in the U.S. remains an ongoing subject of impassioned debate.

• Source: Based on the Avnei Ezel

© 2018 Ohr Somayach International

fw from hamelaket@gmail.com

http://www.ou.org/torah/author/Rabbi_Dr_Tzvi_Hersh_Weinreb

from: Shabbat Shalom <shabbatshalom@ounetwork.org>

reply-to: shabbatshalom@ounetwork.org

Rabbi Dr. Tzvi Hersh Weinreb

OU Torah

"The Many Lessons of 'Half'"

Rabbi Dr. Tzvi Hersh Weinreb

I was never very good at math. It all goes back to the fourth grade. I came down with a case of some ordinary childhood disease, probably chicken pox, at just the time that Mrs. Levine was teaching the class about the concept of percentages. I must've missed about a week of school, and when I returned to class, it seemed as if everyone was speaking Greek. Phrases like "50%" and "75%" and "a half" and "three-quarters" cut the air, and I simply did not know what these strange words meant. Mrs. Levine probably tried to catch me up with the rest of the class, but all I remember are feelings of frustration. It was my rebbe, the man who taught us religious studies in the mornings, who came to the rescue. He realized that I was beginning to think of myself as dumb, and he was concerned about my damaged self-esteem.

"You are far from the first person to be puzzled by percentages," he said comfortingly. "Moshe Rabbenu, Moses our teacher, also had his difficulties

with math, and it was the Master of the Universe Himself, the Ribbono Shel Olam, who helped him out.”

As a mere fourth-grader, I was in no position to question the good Rabbi, and I was ashamed to ask him where he found a biblical allusion to Moses’ incompetency in mathematics. But he soon filled in the gap.

“This week,” he told me, “we do not only read the Torah portion of Mishpatim (Exodus 21:1-24:18). This Sabbath is special because it is the last one before the month of Adar. It is Shabbat Shekalim. We will read a short additional paragraph, Exodus 13:11-16, in which we will learn how Moses was instructed to ask each Jew to donate a half-shekel toward the maintenance of the tabernacle. This donation was required throughout the history of the Holy Temple in Jerusalem. The funds were collected during the month of Adar. Now that the Temple has been destroyed, we commemorate the collection of the half-shekel by reading about it in the synagogue on the last Sabbath before Adar.”

I told him that I remembered learning all about this mitzvah last year but failed to see any evidence of Moses’ mathematical handicap in that passage. It was then that he shared with me the fascinating anecdote originating in the Midrash Tanchuma, and quoted in abbreviated form by Rashi in his remarks on verse 13. As an outstanding pedagogue, my Rebbe did not read the quotation to me verbatim, but elaborated upon it in a way he knew I would find interesting and relevant to my personal quandary.

“Moses had great difficulty with this commandment. There was something about the half-shekel that he simply couldn’t understand. We do not know precisely what he found so puzzling. But we are told that the Almighty sympathized with Moses and vividly demonstrated what the half-shekel was to look like by miraculously making a coin of fire appear in the heavens. So, you are not the only one who finds the concept of ‘half’ challenging. Moses too needed a little help with it.”

The Rebbe’s attempt at restoring my self-esteem was quite helpful. I did not get a visual demonstration from the Almighty, but I did get the courage to approach Mrs. Levine and asked her for an afterschool tutorial.

Ever since this little episode, which happened more years ago than I care to mention, I have sought out explanations of the significance of the half. Why were we not required to give a whole shekel, a complete coin, as our contribution? Was it simply because that would have been too great of an expense to require of each individual? I somehow don’t think so.

And so, over the years, I have amassed a collection of dozens of explanations on the symbolic meaning of half a coin. I can’t possibly share them all with you, dear reader, in this brief column. I’ll give you some samples instead.

One explanation, which makes for excellent sermonic material, is that none of us is a complete entity. No one is spiritually self-sufficient. We are all only half of the picture, and we all need each other. Hence, we contribute only half a shekel, to impress upon ourselves that we can’t go it alone but need another person in order to be complete.

Another approach is based upon that famous saying of Rabbi Tarfon, in Ethics of the Fathers, Pirkei Avot. “It is not incumbent upon you to complete the task, but nevertheless you are not permitted to exempt yourself from it entirely.” Being required to only give half a shekel drives home the point that total completion of the task is not expected of us. All we can each do is try our best and do our share.

Yet another approach is advanced by one of the classics of Jewish mysticism. The Zohar emphasizes that this world is a diminished one, in which there are broken vessels which need to be restored. We live in an imperfect world, and its imperfection is symbolized by being a broken shekel.

I encourage each of you to use the opportunity of this week’s supplemental Torah reading to meditate upon either the mundane half-shekel or the celestial fiery coin. I am quite certain that you will creatively find symbolic meanings of your own. And, if you wish, feel free to send them to me at execthw@ou.org. If any of your suggestions are really on the mark I will share them with the rest of my readership in a future Person in the Parsha.

fw from hamelaket@gmail.com

from: Torah in Action /Shema Yisrael <parsha@torahinaction.com>

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

Shema Yisrael Torah Network

Peninim on the Torah - פרשת משפטים

Rabbi A. Leib Scheinbaum

כל אלמנה ויתום לא תענון

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

The obligation to identify and care for the needs of the widow and orphan (and anyone who, likewise, has no one to care for him) extends beyond their physical and material needs. One must act toward them as a father acts toward his children, providing material, as well as spiritual, sustenance. We must endeavor to provide a Torah education for the orphaned child, just as we do for our own. This (I feel) applies as well (and possibly more so) to those children who can sadly be referred to as *lebedik yesomim*, living orphans, children whose parents are physically alive, but, for some reason, are unable or ill-prepared to care for them – or simply do not care. These children are no less orphans, since nobody is home for them. (Obviously, one must act diplomatically and with utmost subtlety; otherwise, one will create a situation that will only hurt the child.) To give a child a slice of bread without teaching him how to make a *brachah*, blessing, on the bread is performing half the job. How far does the responsibility to care for an orphan’s spiritual growth extend?

Horav Bentzion Yadler, zl, was called the *Maggid HaYerushalmi*. He was a well-known *Maggid* who mesmerized his listeners with his ethical discourses. He was very much involved in *kiruv*, outreach, attempting to inspire Jews from all walks of life throughout the Holy Land. He even organized a trip which included the most illustrious rabbinic personalities in Yerushalayim to travel to the *moshavim*, settlements, of the north to reach out to the settlers and teach them what it means to be a Jew. He established the Bais Yaakov HaYashan in the Old City, laying out his own money, so that he could provide a proper Torah *chinuch* for the girls of Yerushalayim. He rented an apartment whose rooms were converted into classrooms. He even took it upon himself to raise the necessary funds to provide salaries for teachers. It was a wonderful dream that lasted a few months, until his funds were depleted. He made every attempt to raise the money, to no avail. The parent body was unable to participate. These parents had enough difficulty putting food on the table. The school was on the brink of closing, unless an injection of funds could somehow make its way to the creditors.

Rav Bentzion decided to speak with his close friend, *Horav Yitzchak Yeruchem Diskin, zl*, son of the *Maharil Diskin*, the *Rav* of Brisk, who had guided the Yerushalayim community during the previous generation. *Rav Diskin* presently directed *Diskin Orphans’ Home*, a project founded by his father. It was the preeminent orphans’ home in the Holy Land. *Rav Yitzchak Yeruchem* offered to write a check from the orphans’ home account to tide the Bais Yaakov over for a while. *Rav Bentzion* was about to take the check when he suddenly stopped and said, “How can I take *tzedakah* money from one charity to another? This money was designated for the orphanage. It is improper to use it for another purpose. I cannot take it for the school.”

Rav Yitzchak Yeruchem saw the *Maggid’s* quandary and responded, “Let me share a story that occurred concerning my saintly father. Perhaps you will realize the appropriateness of using this money. Years ago my father engaged the services of two *talmidei chachamim*, who were experts in the laws of *mezuzah* and *safrus*, writing *ashuris* script, with the intent of having them go from door to door in Yerushalayim, checking the *mezuzos*, and, when necessary, replacing them with *mehudar mezuzos* whose script adhered to the stringencies of the law. My father was not a wealthy man. From where did he obtain the funds for this endeavor? The money came from the orphans’ home. My father determined the propriety of this decision based upon the following logic. The orphans’ home had limited funds. Every child added to the home’s roster placed an added toll on the account payables. Obviously,

the home's goal was to decrease its enrollment. What better way to decrease enrollment in an orphan's home than by having parents live a full, long life? The Torah gives us a prescription for longevity – *L'maan yirbu yemeichem*. When one is meticulous in observing the laws of *mezuzah*, he has earned a merit that will lengthen his life. Therefore, it was in the best interest of the orphans' home to check the *mezuzos* of Yerushalayim's residents.

"A similar idea applies with regard to providing the finest Torah education for the girls of our community. Every father who has a son that is G-d-fearing and erudite wants to find a proper wife for him. Thus, by seeing to it that our girls study well under the auspices and guidance of G-d-fearing teachers, we are also saving *bnei Torah*. Otherwise, whom will they marry? Therefore, I feel very comfortable supporting the Bais Yaakov with funds from the orphanage."

אם ענה תענה אתו כי אם צעק יצעק אלי שמע אשמע צעקתו

If you dare cause him pain...! – For if he shall cry out to Me, I shall surely hear his outcry. (22:22)

Causing pain to a person whose life is wretched, who stares misery in the face each and every day, is wrong – regardless of one's motivation. Sometimes, a person's intentions are noble. He is acutely aware that the individual who is suffering might well put his suffering behind him, if he would only pray with greater devotion. Some people need to be up against the wall, with little or no hope for salvation, before they pray like there is no tomorrow. They must feel that it is all over; there is no way out; there is no tomorrow. Only then do they pour out their heart in fervent prayer. This fellow, who is really a friend, sought a way to motivate prayer. He hurt the person, made him feel bad. Now, he will pay. Hashem says that although his intentions were positive, he caused pain for another Jew.

Peninah, wife of Elkana, was blessed with a large family, while her co-wife, Chanah, did not have even one child. Peninah realized that Chanah was not *davening* sufficiently, so she taunted her, hoping that it would engender within Chanah a deeper understanding of her troubles. She would now be spurred to *daven*. Peninah was punished for her actions. What about her desire for good? It was insufficient to transcend the pain that she felt as a result of her sister's taunts.

The *Gaon*, *zl*, *m'Vilna*, interprets this idea into the *pasuk*, "Even if you will cause him pain – so that he will cry out (your pain has a positive result, one in which father and children are able to sit together in familial conversation). Hashem says, 'Although you have good intentions, we should do nothing to motivate him,' I will, nonetheless, listen to his outcry."

In 1942, an elderly woman arrived in Eretz Yisrael and immediately proceeded to the home of the grandson of *Horav Avraham Shaag*, *zl*, who was the head of the rabbinical court of the city of Koibersdorf, himself a *talmid*, student, of the *K'sav Sofer*. Apparently, this woman came for a reason: she needed him to take her to *Rav Shaag's* grave. The man looked at the woman incredulously. Surely, she must have a good a good reason for this request. She related the following story:

Rav Shaag was the *Rav* of a large *kehillah*, congregation. His reputation for honesty was impeccable. He was, thus, often asked to hold money for people for safekeeping. When someone deposited money with him, he would place it in a special envelope for safekeeping. One day, a businessman came and asked if he could leave a sizable amount of money with the *Rav*. *Rav Shaag* agreed, but forgot to put it into the standard envelope, instead opting to place it between the pages of his *Gemorah*. When he concluded learning, he returned the *Gemorah* to its rightful place on the shelf and promptly forgot about it.

A few days later, the man who had deposited the money came to retrieve his deposit. *Rav Shaag* immediately went to the envelope and almost passed out when he saw that the money was not there. He had forgotten that this time he had put the money in a different place. In the back of his mind, he suspected the Jewish maid of "borrowing" the money. He would never dare to accuse her without proof, so he set about gathering funds to reimburse the man. He told him it would take a few days, during which he cleaned out his own bank

account and borrowed from members of the community. He had lost the money. He must pay it back.

The *Rav* could not figure out how he could have misplaced the money; thus, in the back of his mind, he had a gnawing feeling that the *meshareshes*, Jewish woman who served as maid and all-around help in the house, could have "borrowed" the money. From that day, however, he and his *rebbetzin* kept this terrible feeling in the back of their minds.

A number of months passed, and *Pesach* – with its cleaning and turning everything in the house asunder – loomed in the very near future. As might be expected, when they were clearing out the bookcase and then each individual volume, what was to fall out? The missing money! One can only begin to imagine the personal pain experienced by *Rav Shaag* knowing that he had (in his mind) wrongfully suspected a young Jewish woman. He was miserable and could not reconcile himself with it. Finally, in order to assuage his conscience and in some manner expiate himself personally, he called in the *meshareshes*, told her the story, and begged her forgiveness for wrongful suspicion. As a token of his profound shame and remorse, he offered to give this poor woman anything in his house. (We must remember that he had never in any way indicated to this woman the unfounded suspicion that was in his mind. Nonetheless, due to his extraordinary integrity and virtue, he wanted any vestige of personal ethical impropriety expunged.)

The woman replied, "*Chalilah*, Heaven Forbid, should I have any *taanos*, feelings of reprimand, against his honor. I was not hurt, because I did not know. However, since his honor insists on 'doing something' to ameliorate the incident, I actually do have a request. It has been fifteen years since my husband and I were married. We have yet to be blessed with a child. I ask that his honor bless me that I conceive and have a healthy child.

"*Rav Shaag* happily acquiesced to her request, and, one year later, she gave birth to a healthy little girl. I was that girl. My mother was the *meshareshes*. My mother, *aleha ha'shalom*, aspired her entire life to travel to Eretz Yisrael, to pray at the grave of the holy *Rav* who granted her the blessing of her life. Sadly, her dream was not realized. I have been blessed finally to come to the Holy Land. I now want to fulfill my mother's request."

ואנשי קדש תהיון לי

And men of a holy calling shall you be to Me. (22:30)

The Torah does not say *anashim kedoshim*, holy men; rather, it says *anshei kodesh*, men of a holy calling. Not all men can achieve the apex of *kedushah*, holiness, but all men can – and should – live as individuals who are charged with a Heavenly mission to achieve holiness. Our goal must be to become holy. *Kedoshim tiyehu*, "Be holy!" would then be interpreted as: strive for holiness; imbue your life with *kedushah*; attempt to reach the level whereby you are sanctified. Demanding personal holiness might be difficult for the individual. Expecting everyone to strive for holiness, to focus on a life of *kedushah*, should be standard fare for a Jew. This means that we must imbue every activity – no matter how mundane – with sanctity. We should not judge an individual's success at consecrating himself (since this is often a subjective opinion), but a standard of striving should be accessible across the board. A Jew strives for *Kedushah*. The question is: How do we define *kedushah*?

In an article on Orthodoxy in America, Rabbi Emanuel Feldman distinguishes between the Jew who is observant and his brother who is also religious. Wait – is that not the same thing? Absolutely not! A difference exists between going through the rote of observance and advancing to a level of spirituality plus being meticulous in observing the laws of *bein adam lachaveiro*, between man and his fellowman. There is also the attitude of *hatznea leches*, maintaining a modest lifestyle, which stands in stark contrast to the ostentatious and lavish parties many of our *simchos*, which at one time had been religious affairs, have now become.

One might be observant, but that is insufficient, since the Torah demands that we strive to become *anshei kodesh*. The *Navi Michah* (6:8) admonishes us to live a life of restrained modesty and understatement. This leads to *kedushah*. We should ask ourselves whether our lifestyle fits into these

guidelines. We judge *frumkeit* by the color of one's shirt, suit and *yarmulke*. It goes without saying that a hat is mandatory. *Lashon hora* classes and reminders are everywhere, but it seems that humility – quiet *chesed* for those who really are in need, giving *tzedakah* even if we are not honored or receive a spread in the paper – has fallen by the wayside. *Davening* with *kavanah*, not talking in *shul*, are other areas where observance and religion part ways. Certainly, these musings apply only to an insignificant minority who cannot be faulted for falling prey to physicality and materialism at the expense of spirituality. The *yetzer hora*, evil-inclination, is very powerful, and, while it cannot ensnare one to renege on his observance, he will suffice and call it a “win” if he can impugn one's commitment to religion.

I present here two vignettes which are meaningful to me. We live in a time when materialism plays a large role in everything we do – even in our religious endeavor. We celebrate with opulence; our *avodas Hashem*, religious service, is bolstered by a show of our material substance – all for a good reason, of course, but, nonetheless, the profusion of affluence is everywhere. The days of having a simple *Tallis*, a plain velvet *Tefillin* bag, are long gone. Variations of *Talleisim*, the thickness of the wool, the leather and suede *Tefillin* bags, are so in vogue that one feels sorry for the deprived *bar-mitzvah bachur* who does not have a leather *Tefillin* bag. Obviously, something is missing: our concern for *bona fide*, sincere observance of the *mitzvah*, without all of the accompanying accoutrements.

I remember years ago, my father had a plain weekday *Tallis*. My father's fifty-second *yahrzeit* is this week, which serves the reader with an idea of the time frame. It was in the mid-fifties, and my father had a white, thin, material (I think it was cotton) *Tallis* (of course, the *tzitzis* were wool), and this *Tallis* was his pride and joy. He probably could not have afforded to purchase another *Tallis*, but I always wondered why it was so special to him. I asked – he replied. When the American army liberated Auschwitz, the *Vaad Hatzalah* came in with them and sought to address not only the physical needs of the survivors, but also their spiritual needs. For many, it was not only six years of brutal unimaginable torture, but also six years of no *Tallis*, *Tefillin* and *sefarim* from which to learn. When my father was handed a *Tallis*, he felt as if his life had been returned to him. He treasured that *Tallis* and wore it until it fell apart. Cotton does not last as long as wool. He – like so many European Jews of “old” – had a different perspective on *tashmishi kedushah*. They felt the *kedushah* inherent in the religious articles.

Second, shortly after my wedding, I was walking down Sixteenth Avenue in Boro Park on my way to *shul*. I was carrying my large *Tallis* bag with *Tefillin* (two pair) and a *siddur* with me, holding the bag by its top. It was more convenient to carry it in such a manner. Suddenly, from behind me, I heard a voice. I turned around and saw an elderly *chassidische yid* (European) who called out to me, “*Yinger man, dos is nisht a zak potatoes!* Young man, you are not carrying a sack of potatoes!” He motioned for me to raise the *Tallis* bag and carry it next to my chest, giving it the respect it deserved. *Anshei kodesh*. To him, and so many like him, it was not just observance. It was religion.

These vignettes might come across as musings, but if one reader will fold his *Tallis* with greater respect, or carry his bag as if it were not a bag of potatoes, relaying these thoughts will be well worth it.

לא תשא שמע שוא

Do not accept a futile report. (23:1)

Growing up, one of the easiest types of tests to ace was the “true” or “false” quiz. After all, it was either true or false. Growing up, the distinction between true or false was perceived as quite simple: it was no different than yes or no. Moving on from there, we assume that something which has been proven correct or real is considered true, while something which has failed to be proven true is false. Obviously, there are areas in which this does not prove correct, since a claim that has not been credited as true does not necessarily mean that it is false. Truth is supposed to be an absolute which means that it is perfect or unlimited. If this is the case, who determines that the proof is sufficient or even valid enough to make it true?

In a recent article, a psychologist asked a pertinent question concerning perceptions and fact. A blind person who never saw light in his life would consider light a myth, while one who sees clearly considers light a fact. Perception can deceive. A schizophrenic patient has been proven by science to be delusional. They “interact” with “people” whom they consider real, and, therefore, true. We, on the other hand, know their existence to be false. Do we have the right to deny their existence, to consider them false?

I have written this preamble to demonstrate that variations and distinctions exist with regard to the definition of true and false. As Torah Jews, as believing, G-d-fearing Jews, our basis for defining true and false is the Torah as interpreted by our *gedolim* – nothing else matters.

Of the many *mitzvos bein adam l'chaveiro*, between man and his fellow, is the prohibition of believing *lashon hora*, slander. Regarding the admonition not to accept a futile report, *Rashi* comments that this means not to accept a false report (*Targum Onkeles*). It is forbidden to accept *lashon hora*. Additionally, a judge is warned not to listen to one party without the other party being present.

Horav Shlomo Wolbe, zl, observes that the commandment not to accept a false report does not refer to believing a lie; rather, it refers to believing *lashon hora*, which is generally true! What is false about *lashon hora*? It is slander; it is wrong, but who says it is false? Yet, the *Targum* and *Rashi* define *lashon hora* as *sheker*, falsehood, when, in fact, it is probably true.

Rav Wolbe teaches us a new perspective concerning the definition of truth. Truth is not measured by the spoken word, but by the intent behind it. (This has nothing to do with the end justifying the means; rather, in this instance, the end defines the means). Even if the statement is completely true, but was said with the express purpose of harming another person, it is considered a false statement, since the intention to harm another person is inherently false. Anything that causes harm, creates distress, makes a person feel bad, is considered “false.”

While people can accept this notion of falsehood, it comes with a flipside. A blatantly false statement, if expressed for the purpose of doing good, of creating harmony, at a time or circumstance that warrants it – is considered true. Hashem is G-d of truth. (*Chosamo shel Hakadosh Baruch Hu Emes*; G-d's seal is the truth.) Yet, upon repeating to Avraham *Avinu* what Sarah *Imeinu* had said concerning him: *va'adoni zakein, my husband* is old, Hashem changed the statement (*va'ani zakanti, I am* old), for the sake of *shalom bayis*, harmony between husband and wife. The intention was pure; thus, the statement was true.

This is, likewise, the rationale behind the second prohibition included in “Do not accept a futile report.” The fact that one has stated his version of the story not in the presence of the other litigant does not necessarily imply that the person is lying. His words, however, are labeled as false, because his intention is to sway the judge (who is supposed to be impartial) in his favor. Since this causes harm to his opponent, what he is doing is rendered as a falsehood.

Rav Wolbe sums it up with an observation that *sheker*, falsehood, is the only *middah*, character trait, from which the Torah enjoins us to distance ourselves: *Midvar sheker tirchak*, “Distance yourself from a falsehood” (*Shemos* 23:7). On the other hand, concerning illicit, immoral relations, the Torah admonishes us, *Lo sikrevu*, “Do not come close” (*Vayikra* 18:6). We must run from anything false – from false words and from true words that are accompanied with a negative or harmful intentions. How often do we hear someone say, “But it is true”? This does not validate harmful intent, because, in reality, no greater falsehood exists than a harmful intention obscured beneath the veil of a true statement.

fw from hamelaket@gmail.com
from: Rabbi Yirmiyohu Kaganoff <ykaganoff@gmail.com>
to: kaganoff-a@googlegroups.com

**The Halachos of Borrowing
By Rabbi Yirmiyohu Kaganoff**

Question: Shattered Shield

“A friend left for a few weeks, leaving me the keys for his car and permission to use it whenever I wanted. The first morning, when I went to get the car, I discovered that the windshield had been shattered by a stone or brick. Am I obligated to replace the windshield?”

Introduction:

Answering this question requires that we understand the legal responsibilities of someone who borrows an item. As always, the purpose of our article is not to offer a definitive halachic ruling, but to present background and knowledge. In this instance, as in all cases, a person should address any particular question to his rav or posek. And, since there are probably two parties involved, to resolve a matter amicably, I suggest that the two of you agree on a specific rav or dayan whose expertise you both recognize.

The Basics:

In parshas Mishpatim, the Torah presents three types of shomrim, people who assume responsibility for other people's property. The Torah shebe'al peh, our Oral Torah, explains that these are the three categories:

A. A shomer chinam takes care of someone else's property without any compensation and has no right to use the item. He is responsible to pay if the item was damaged due to his negligence, or if he used it without permission. If there are factual issues that are unresolved, such as determining whether the shomer was negligent, the owner may insist that the shomer swear a shevuah, an oath, to exonerate himself from liability. This last rule, that the owner is not required to accept the shomer's version of what happened without corroborating evidence, is true also in regard to the other shomrim that we will soon discuss.

In recent history, batei din have been reticent about requiring someone to swear an oath, and therefore a beis din might effect a financial compromise in lieu of an oath.

B. A shomer sachar is one who takes care of an item and receives financial benefit. He is liable if the item is lost or stolen, but he is not obligated if it became lost or damaged for some reason beyond his control, which includes, for example, armed robbery.

C. A sho'eil borrows an item, receiving benefit without providing the owner with any compensation. As stated in the Mishnah (Bava Metzia 93a), a sho'eil is obligated to pay for any damage that happens to the item, even if it is completely beyond his control. The obvious reason why this is so is that since the sho'eil received benefit from the item gratis, he must make sure that he returns what he received, paying its full value, if need be.

Notwithstanding this obligation on the part of the borrower, there are two exceptional situations where the item is damaged, stolen or destroyed and the sho'eil is not obligated to make compensation. These are:

1. Meisah machmas melacha, literally, the item or animal “died” or became damaged in some way as a result of the work for which it was borrowed. We will soon explain the rationale for this. In addition, the borrower is exempt only when he used the item without abusing it.

2. Be'alav imo, the owner of the borrowed item was in the employ of the borrower at the time of the loan (Mishnah, Bava Metzia 94a).

Verification

As noted above, should there be a question about verifying the facts, whether the circumstances were indeed a case of meisah machmas melacha, the lender may demand that the borrower swear an oath to verify them. Also, if the event occurred in a time and place that there should have been eyewitnesses, the lender may insist that the borrower produce witnesses to verify what happened, rather than be satisfied with an oath.

In this context, the Gemara records the following din Torah (Bava Metzia 97a): A man borrowed a bucket that broke while he was using it. The two parties appeared before Rav Papa to adjudicate whether the borrower was obligated to pay. Rav Papa ruled that this is considered meisah machmas melacha. However, he first asked the borrower to produce witnesses that he did not use the bucket in an unusual fashion, for if he used it in an unusual way, the exemption of meisah machmas melacha would not apply.

Kinyan There is a basic dispute among the rishonim concerning whether a shomer becomes liable as soon as he agrees to the arrangement (Rosh, Bava Metzia 8:15), or only when he makes a kinyan on the borrowed item (Raavad, quoted by Shitah Mekubetzes, Bava Metzia 98b). Kinyan refers to the act that effects loans, rentals, transfers of ownership of property and other legal agreements. In our situation, this question arises in the event that the borrowed item was left in the shomer's care, but he never lifted, moved or did anything else that would legally make the item “his.” Some rishonim hold that the shomer becomes responsible only when he performs a kinyan, whereas others hold that he becomes responsible even when no kinyan is performed.

Among the halachic authorities, this matter is disputed by the Shulchan Aruch and the Rema, the latter ruling that a shomer becomes legally responsible as soon as he agrees to the arrangement (Choshen Mishpat 340:4).

In the case of an automobile, driving the car off when someone borrowed it constitutes a kinyan. According to some rishonim, taking possession of the keys is also a kinyan,

but this is a minority opinion (see Rashi, Pesachim 4a, as explained by Korban Nesanel).

With this background, let us now examine our opening question:

Shattered Shield “A friend left for a few weeks, leaving me the keys for his car and permission to use it whenever I wanted. The first morning, when I went to get the car, I discovered that the windshield had been shattered by a stone or brick. Am I obligated to replace the windshield?”

The damage caused here had nothing to do with the sho'eil, but, as we explained before, he is obligated to make compensation even then. However, according to the opinion that a shomer is not obligated until he makes a kinyan on the item, if the borrower did not drive the car, he has not yet become obligated. Thus, he would be exempt from paying for the damages, according to that opinion, which is the way many halachic authorities rule.

Establishing a condition It is important to note that the system explained above regarding the responsibility of shomrim applies only when the two parties did not establish their own policy. However, if a sho'eil tells the owner that he is not assuming responsibility and the owner agrees, or if a shomer chinam assumes total responsibility, or if any other arrangement is made that both parties accept, that agreement will govern what liability exists (Mishnah, Bava Metzia 94a). Similarly, an agreement may also be made to eliminate any obligation on the shomer to swear an oath to verify the facts (ibid.).

Therefore, if a shomer chinam wants to avoid any potential liability, either to pay or to swear an oath, he should tell the owner that he will gladly watch the item, but that he is assuming no responsibility for the item, even should he be negligent, and that the owner must relinquish his right to have the shomer swear to prove his innocence. A sho'eil may make a similar condition before he borrows the item. However, bear in mind that if the sho'eil does make such a precondition, the owner may refuse to lend him the item. Since the sho'eil is aware of this, he is usually reluctant to make such a precondition. Our article is discussing the halacha that applies when they do not make their own arrangements.

Be'alav imo and Meisah machmas melacha

We mentioned above that a sho'eil is obligated to pay for all damages that happen to the item he borrowed, with the exception of two cases: meisah machmas melacha and be'alav imo. It is interesting to note that these two exemptions are, in one way, complete opposites. The exemption of be'alav imo is expressly mentioned in the Torah and thus fits the halachic category that we call gezeiras hakasuv. In this case, this means that attempts to explain the reason for this law will not affect the halacha. (Although the commentaries present many reasons for be'alav imo, these reasons will not change the halacha – they may qualify under the general heading of lo darshinan ta'ama dikra, we do not derive halachic conclusions based on reasons for mitzvos. Because of space considerations, we will not discuss in this article the topic of darshinan ta'ama dikra and how it relates to be'alav imo.)

On the other hand, since the exemption of meisah machmas melacha is never mentioned in the Torah shebiksav, we assume that the basis for this law is logic. Chazal understood that the sho'eil is not obligated to pay for an item that was damaged as a result of expected use.

The question is why this rule is true when the Torah obligates the borrower to replace the item, even should it be destroyed by a complete accident over which he had no control. The Gemara, when explaining this idea, states very succinctly that the animal was not borrowed for it to have a vacation. There are several ways to understand this statement of the Gemara. I will now present four of them.

Lender's negligence

Among the halachic authorities, we find several approaches to explain the phenomenon of meisah machmas melacha, and there are differences in practical halacha that result. The Ramban explains that the reason for meisah machmas melacha is because the lender is considered negligent. He should have realized that his object or animal could not withstand the work for which he was lending it! Since he did not check this out, he has no claim on the borrower to replace it (Ramban, Bava Metzia 96b, quoted by Beis Yosef, Choshen Mishpat 340). For ease of presentation, we will refer to this approach as lender's negligence.

Wear and tear

A second approach is that the person lending an item knows that there will be a certain amount of wear and tear, and he does not expect to be reimbursed for this (Nimukei Yosef, Rosh as explained by Machaneh Efrayim, Hilchos She'eilah Upikadon #4). If the animal or item could not withstand normal use, this is an extension of the wear-and-tear principle.

Mechilas hamash'il

A third reason is that when lending an item, one knows that the item can become damaged while it is being used, and this is included in the mechilah implied by the loan. This approach contends that a sho'eil is exempt when damage occurs as a result of the

loan, even when it cannot be attributed to wear and tear. For example, the borrower told the owner that his intent is to take a trip to a certain place, which he did, and while there the animal was stolen (see Ramah, quoted by Tur, Choshen Mishpat #340). Since the owner knew the animal was being borrowed to take it to a specific place, any damage that happens because of that place is included as meisah machmas melacha, according to this third opinion. I will henceforth refer to this approach as mechilas hamash'il, meaning that, in advance, the lender forgives damage that occurs while the item is being used.

Of the three opinions cited so far, only the third exempts the sho'eil from paying when an animal is stolen. The previous two opinions both contend that meisah machmas melacha can include only damage that was a result of normal, expected work.

According to the reason of lender's negligence, the owner was not negligent if the animal was stolen, and, according to the wear and tear reason, the loss from theft was not a result of use.

Mekach ta'us

A fourth approach, mentioned in acharonim, is that when someone borrows an item or animal, he accepts responsibility only because he assumes that it can withstand the work for which he borrowed it. If it is incapable of performing that task, then we assume the borrower never assumed responsibility (Machaneh Efrayim, Hilchos She'eilah Upikadon #4). I will call this approach mekach ta'us, that the implied "contract" of responsibility was never agreed to by both parties.

To simplify our four approaches, they are:

1. Lender's negligence: The lender was negligent in not checking the item's condition before lending it.
2. Wear and tear: Lending includes the assumption that a borrower is not responsible for normal use.
3. Mechilas hamash'il: The lender assumes responsibility for damage that resulted from the loan.
4. Mekach ta'us: The borrower never assumed this responsibility.

Practical differences

Are there practical differences that result from this dispute? Indeed, there are many.

Here is an early example: The Tur (Choshen Mishpat 340) quotes a dispute between the early rishonim, the Ramah (Rabbi Meir Abulafia, an early rishon living in Spain, not to be confused with Rabbi Moshe Isserlis, the Rema, who lived in Poland over three hundred years later, whose notes to the Shulchan Aruch we will be quoting shortly) and the Rosh, concerning the following case: Someone borrowed an animal for a specific trip, and the animal was stolen on the trip by armed robbers. The Ramah rules that this is considered meisah machmas melacha and the borrower is not obligated to pay, whereas the Rosh rules that it is not meisah machmas melacha and he is obligated to pay. A careful study of the way the Tur presents the dispute implies that the Ramah assumes that the lender was mocheil any damages expected to happen as part of the lending (approach #3 above, mechilas hamash'il), whereas the Rosh assumes that the lender is mocheil only on expected wear and tear (approach #2 above, wear and tear). The Ramah appears to understand that any damage that results from the loan is included under meisah machmas melacha. (The approach to explain this dispute is presented by the Machaneh Efrayim.)

How do we rule?

The Shulchan Aruch (Choshen Mishpat 340:3) rules according to the Ramah: When the animal was stolen by armed robbers during the time that it was borrowed, the borrower is exempt from making compensation, because it is considered a case of meisah machmas melacha.

On the other hand, the Rema cites the Rosh's opinion. The Shach agrees with the halachic conclusion of the Rema in this case, because he feels that the Ramban's approach (#1 above, which I called lender's negligence) should be followed, and this approach is in agreement with the Rema's position in this case.

Playing cat and mouse

The following interesting case is mentioned in the Gemara (Bava Metzia 97a): Someone's house was infested with mice, and the owner wanted to use an inexpensive, safe and environmentally-friendly way to eliminate the problem. He borrowed a neighbor's cat to "exterminate" the mice.

Strength in numbers

The Gemara tells us that a very unusual thing happened. The mice gathered together and launched a counterattack on the cat, killing it! The question now was whether the borrower was required to compensate the lender for the deceased cat, and the matter became the subject of one of the most famous dinei Torah in history, presided over by Rav Ashi. The conclusion was that the borrower was exempt from paying, because this is a case of meisah machmas melacha.

Contemporary case

In a contemporary work, I found discussion about the following case: Reuven borrowed a car for a day. While he was driving the car, a child darted into the street in front of the

car. Reuven braked, fortunately succeeding in avoiding striking the child. However, a truck behind him was following too closely. The truck hit the car, severely damaging it, and then escaped without providing any identifying information (hit and run) – leaving Reuven with a damaged, borrowed car. To complicate matters, the owner was not carrying collision insurance that would cover the damage. Is Reuven obligated to pay the owner for the damage?

According to the Ramban, approach #1, that meisah machmas melacha is exempt because the lender was negligent, Reuven is certainly obligated to pay. Although the damage was completely accidental, a sho'eil is obligated to compensate for accidental damage that happened while the item is in his care. Meisah machmas melacha does not apply, according to this approach, because the automobile was not deficient in any way. The same halacha is true according to the Rosh (approach #2), who contends that the law of meisah machmas melacha exempts only wear and tear, which was not the cause for the damage. Furthermore, according to the fourth approach (mekach ta'us) Reuven is obligated, again, because the automobile was in fine condition when he borrowed it. However, what is the law according to the third approach, that I called mechilas hamash'il? This approach contends that an owner is mocheil any damage that might result from the loan. A contemporary author that I saw ruled that, according to this opinion, the sho'eil would be exempt from paying in this instance, since the damage happened as a result of the loan (Mishpetei HaTorah 1:35).

Conclusion

As we can see, the laws regarding responsibility for items are very complex and sometimes lead to surprising conclusions. In general, we should be vigilant when we assume responsibility for items belonging to others. A Torah Jew observes his contractual commitments with trust and faith. He certainly realizes that Hashem's Torah is all-encompassing and directs every aspect of his life, certainly the details of his financial dealings.