

## Weekly Parsha MISHPATIM 5782 Rabbi Wein's Weekly Blog

The Torah presents us with great moral principles and a profoundly unique value system. These are meant to propel us through life and make us feel that we are members of a kingdom of priests and a holy nation. Yet, we are all aware that perhaps the most difficult challenge in life is translating our core beliefs and high moral aspirations into practical daily behavior.

In a world where there would be no desire for undue riches or the accumulation of vast property, it would be simple to understand that one should not steal, cheat, or covet. In the practical world that we live in, there exists the desire for acquisition of wealth and goods, power and influence, fame, and fortune, all built within our basic DNA structure.

Stealing, cheating, and coveting all require no specific legal definition to be of value in the practical world. And because of this element of human nature, there exist all the great moral values that are represented in the Ten Commandments, which should define our lives.

All sorts of questions arise as to what the true definition of theft is. How does advertising and persuasive sales techniques fit into the moral world that we are trying to construct and live in, and does this describe theft? What about stealing to be able to survive? And countless other questions that undoubtedly arise when we approach the problem of defining behavior that we wish to accompany our lofty moral goals.

All the laws that appear in this week's Torah reading are discussed at length (and width) with precise analysis in the tradition of the Oral Law that governs Jewish life. It is in those large volumes of scholarly research and opinion that the practical flesh and sinews of Jewish law are draped upon the skeleton of the moral world that we hope to attain.

We live in world where mistakes happen, whether they be the products of negligence or pure happenstance. How are we to judge liability and responsibility in that massive gray area where most human behavior finds itself? The Oral Law is a continuing process that deals not only with an ox that gores a cow, but also teaches us how to deal with issues in air travel and even ventures into space. Without clear definition of the original value system upon which the moral code of Judaism is based,

human behavior can be seen as merely a collection of good intentions and human platitudes.

The study of the Oral Law, beginning with the books of the Talmud and continuing through the latest works of Jewish legal scholarship of today, become the necessary foundation to creating a just and moral society that we all endeavor to live in.

I have always maintained that when we proclaim ourselves to be the people of the book, that book is not necessarily the Bible itself, but, rather, it is the Talmud, which makes the Bible alive, practical, relevant, and trustworthy throughout all generations. Shabbat Shalom Rabbi Berel Wein

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## Healing the Heart of Darkness Rabbi Jonathan Sacks

Jobbik, otherwise known as the Movement for a Better Hungary, is an ultra-nationalist Hungarian political party that has been described as fascist, neo-Nazi, racist, and antisemitic. It has accused Jews of being part of a "cabal of western economic interests" attempting to control the world: the libel otherwise known as the Protocols of the Elders of Zion, a fiction created by members of the Czarist secret service in Paris in the late 1890s and revealed as a forgery by The Times in 1921.[1] On one occasion the Jobbik party asked for a list of all the Jews in the Hungarian government. Disturbingly, in the Hungarian parliamentary elections in April 2014 it secured over 20 per cent of the votes, making it the third largest party.

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

Some of Jobbik's members had wanted to stop his progress and spent time investigating his background to see whether they could find anything that would do him damage. What they found was that his maternal grandmother was a Jewish survivor of Auschwitz. So was his maternal grandfather. Half of Szegedi's family were killed during the Holocaust.

Szegedi's opponents started sharing information about Jewish ancestry online. Soon Szegedi himself discovered what was being said and decided to check whether the claims were true. They were. After Auschwitz, his grandparents, once Orthodox Jews, had decided to hide their identity completely. When

his mother was 14, her father had told her the secret but ordered her not to reveal it to anyone. Szegedi now knew the truth about himself.

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

When he first admitted the truth about his Jewish ancestry, one of his friends in the Jobbik party said, “The best thing would be if we shoot you, so you can be buried as a pure Hungarian.” Another urged him to make a public apology. It was this comment, he says, that made him leave the party. “I thought, wait a minute, I am supposed to apologise for the fact that my family was killed at Auschwitz?”[2]

As the realisation that he was a Jew began to change his life, it also transformed his understanding of the world. Today, he says, his focus as a politician is to defend human rights for everyone. “I am aware of my responsibility, and I know I will have to make it right in the future.”[3]

Szegedi’s story is not just a curiosity. It takes us to the very heart of the strange, fraught nature of our existence as moral beings. What makes us human is the fact that we are rational, reflective, capable of thinking things through. We feel empathy and sympathy, and this begins early. Even newborn babies cry when they hear another child cry. We have mirror neurons in the brain that make us wince when we see someone else in pain. Homo sapiens is the moral animal.

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

The Greeks of antiquity, masters of art, architecture, drama, poetry, philosophy and science, wasted themselves on the internecine Peloponnesian War between Athens and Sparta in the last quarter of the fifth century BCE. They never fully recovered. It was the end of the golden age of Greece. Fin de siècle Paris and Vienna in the 1890s were the leading centres of European civilisation. Yet they were also

the world’s leaders in antisemitism, Paris with the Dreyfus Affair, Vienna with its antisemitic mayor, Karl Lueger, whom Hitler later cited as his inspiration.

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

Plato thought that virtue was knowledge. If we know something is wrong, we will not do it. All vice is the result of ignorance. Teach people the true, the good, and the beautiful and they will behave well. Aristotle held that virtue was habit, learned in childhood till it becomes part of our character.

David Hume and Adam Smith, two intellectual giants of the Scottish Enlightenment, thought that morality came from emotion, fellow feeling. Hume said the most remarkable feature of human nature is the “propensity we have to sympathise with others.”[4] Adam Smith began his Theory of Moral Sentiments with the words, “How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it.”[5] Immanuel Kant, the supreme rationalist, believed that rationality itself was the source of morality. A moral principle is one you are willing to prescribe for everyone. Therefore, for example, lying cannot be moral because you do not wish others to lie to you.

All five views have some truth to them, and we can find similar sentiments in the rabbinic literature. In the spirit of Plato, the Sages spoke of the tinok shenishba, someone who does wrong because he or she was not educated to know what is right.[6] Maimonides, like Aristotle, thought virtue came from repeated practice. Halachah creates habits of the heart. The Rabbis said that the angels of kindness and charity argued for the creation of man because we naturally feel for others, as Hume and Smith argued. Kant’s principle is similar to what the Sages called sevarah, “reason.”

But these insights only serve to deepen the question. If knowledge, emotion, and reason lead us to be moral, why is that that humans hate, harm and kill? A full answer would take longer than a lifetime, but the short answer is simple. We are tribal animals. We form ourselves into groups. Morality is both cause and consequence of this fact. Toward people with whom we are or feel ourselves to be related we are capable

of altruism. But toward strangers we feel fear, and that fear is capable of turning us into monsters.

Morality, in Jonathan Haidt's phrase, binds and blinds.[7] It binds us to others in a bond of reciprocal altruism. But it also blinds us to the humanity of those who stand outside that bond. It unites and divides. It divides because it unites. Morality turns the "I" of self interest into the "We" of the common good. But the very act of creating an "Us" simultaneously creates a "Them," the people not like us. Even the most universalistic of religions, founded on principles of love and compassion, have often viewed those outside the faith as Satan, the infidel, the antichrist, the child of darkness, the unredeemed. Large groups of their followers have committed unspeakable acts of brutality in the name of God.

Neither Platonic knowledge nor Adam Smith's moral sense nor Kantian reason has cured the heart of darkness in the human condition. That is why two sentences blaze through today's parsha like the sun emerging from behind thick clouds: You must not mistreat or oppress the stranger in any way. Remember, you yourselves were once strangers in the land of Egypt. Ex. 22:21 You must not oppress strangers. You know what it feels like to be a stranger, for you yourselves were once strangers in the land of Egypt.

Ex. 23:9 The great crimes of humanity have been committed against the stranger, the outsider, the one-not-like-us. Recognising the humanity of the stranger has been the historic weak point in most cultures. The Greeks saw non-Greeks as barbarians. Germans called Jews vermin, lice, a cancer in the body of the nation. In Rwanda, Hutus called Tutsis inyenzi, cockroaches. Dehumanise the other and all the moral forces in the world will not save us from evil. Knowledge is silenced, emotion anaesthetised and reason perverted. The Nazis convinced themselves (and others) that in exterminating the Jews they were performing a moral service for the Aryan race.[8] Suicide bombers are convinced that they are acting for the greater glory of God.[9] There is such a thing as altruistic evil.

That is what makes these two commands so significant. The Torah emphasises the point time and again: the Rabbis said that the command to love the stranger appears thirty-six times in the Torah. Jewish law is here confronting directly the fact that care for the stranger is not something for which we can rely on our normal moral resources of knowledge, empathy and rationality. Usually we can, but under situations

of high stress, when we feel our group threatened, we cannot. The very inclinations that bring out the best in us – our genetic inclination to make sacrifices for the sake of kith and kin – can also bring out the worst in us when we fear the stranger. We are tribal animals and we are easily threatened by the members of another tribe.

Note that these commands are given shortly after the Exodus. Implicit in them is a very radical idea indeed. Care for the stranger is why the Israelites had to experience exile and slavery before they could enter the Promised Land and build their own society and state. You will not succeed in caring for the stranger, implies God, until you yourselves know in your very bones and sinews what it feels like to be a stranger. And lest you forget, I have already commanded you to remind yourselves and your children of the taste of affliction and bitterness every year on Pesach. Those who forget what it feels like to be a stranger, eventually come to oppress strangers, and if the children of Abraham oppress strangers, why did I make them My covenantal partners?

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

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

The best way of curing antisemitism is to get people to experience what it feels like to be a Jew. The best way of curing hostility to strangers is to remember

that we too – from someone else’s perspective – are strangers. Memory and role-reversal are the most powerful resources we have to cure the darkness that can sometimes occlude the human soul.

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**Shabbat Shalom: Parshat Mishpatim (Exodus 21:1-24:18) Rabbi Shlomo Riskin**

Efrat, Israel –“And he took the Book of the Covenant, and read it into the ears of the nation, and they said, ‘Everything that the Lord has spoken we shall do and we shall understand’” (Exodus 23:7)

At Sinai, the Jewish nation entered into its second covenant with God, a pact based not on the family-nation of the descendants of Abraham (per Genesis 15) but rather on the common religious commitment of adherence to the word of God revealed at Sinai. My revered teacher and mentor, Rabbi Joseph B. Soloveitchik, z”l, taught that, in fact, the Torah contains two covenantal experiences: the former, our national covenant of fate; the latter, our religious covenant of destiny (“Kol Dodi Dofek”).

An individual is not asked whether they wish to be born into a specific family or nation-state; “accident” of birth is a matter of fate, and the fate of the Jewish nation has long been to suffer far more than its to-be-expected share of persecution, exile and suffering. To be Jewish was their fate, and their blood was too often shed as a consequence.

Not so the religious faith of the commandments of revelation. The Torah calls upon each Jew to make a choice: to sanctify the Sabbath or desecrate it; to honor one’s parents or disregard them. When the bedraggled ex-slaves who stood before Sinai and cried out “we shall do and we shall understand!” (Exodus 23:7), they were making the Jewish vision their national mission, defining themselves as a “kingdom of priest-teachers and a holy nation,” and turning their fate into destiny.

The covenant of fate is imposed; the covenant of faith is chosen. To be born into a particular family-nation is our fate; to choose an ideal and ideology as our life’s mission is our destiny. The infant about to be circumcised is an object upon whom a ritual is to be imposed; the bar/bat mitzva and bride/groom who have chosen a life dedicated to the ideals of Torah are subjects actualizing their deepest aspirations.

There are, however, special circumstances when fate and destiny become intertwined. One such moment was in September 1970 in Riga, Latvia, where I was on a special underground mission for the Lubavitcher

Rebbe, z”l. I was awakened at 2:30 a.m. with a daunting and marvelous request. Two brothers, one just eight days old and the other one week prior to his bar mitzva, were about to be circumcised. Since the Soviet regime severely punished those who participated in such religious rituals, the two “operations” were to take place in the dead of night at the Rombula cemetery outside Riga.

The ritual ceremony had been timed to coincide with my presence in Riga, since the Jewish doctor who had agreed to risk his license—and perhaps his life—was ignorant of Jewish law.

Words cannot describe the feelings of eeriness, queasiness, admiration and privilege that all converged within me while intoning the circumcision blessings that dark, freezing night in the cemetery. But the most poignant moment of all was yet to come.

After both circumcisions, I uttered the traditional phrase: “Just like [ke-shem] this child has entered the covenant, so may he enter Torah, the nuptial canopy and a life of good deeds.” Suddenly, from the depths of silence which one can only sense in a cemetery, the father of the boys emitted a strangled cry in Yiddish: “Nein ‘ke-shem’ [“Not ‘just like’”]! I do not want their britot, bar mitzvas and weddings to be just like this – in a cemetery, in hiding! I want them to be in the open, with pride, in our Jewish homeland, in Israel!”

Indeed, the two children I circumcised nearly five decades ago celebrated their weddings in Israel. Both of them, but particularly the young man just before bar mitzva, were expressing not only their Jewish fate but their Jewish destiny. To a certain extent, this is true of every parent who has their child circumcised. And I believe this is also true with regard to living in the Land of Israel.

On the one hand, every nation, and therefore any national covenant, is dependent upon a specific homeland, in which one is born and about which one generally has little choice. This is not the case, however, with regard to the Jews and the Land of Israel. Because we have been exiled to so many lands for so many generations, our return to Israel depends upon our choice to return to Israel, our willingness to fight for Israel, our understanding that only Israel is our promised land and ultimate home.

Thus, the destiny of the nation of Israel can only be fully realized in the Land of Israel dedicated to the Torah of Israel. The Land of Israel is an integral part of the destiny we accepted at Sinai. We may have

returned to Israel as a result of our determination and prayers, but we shall actualize our destiny in Israel only as a result of our efforts and actions. Shabbat Shalom!

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### **Rabbi Yochanan Zweig**

This week's Insights is dedicated in loving memory of R' Nosson Meir ben R' Yosef Yehoshua, Rabbi Nussie Zemel.

One and the Same If he shall come alone, he shall go out alone. If he is a husband of a (free) woman, his wife shall go out with him (21:3). The Torah here is discussing the laws of a "Jewish servant – eved Ivri." This refers to one who is sold into servitude to settle debts he incurred when he stole from others. During the years of servitude his wife is supported by his master; when he is freed from service, the financial responsibility for his wife now leaves the master and once again is upon him. Rashi (ad loc) points out that the Torah uses a very unusual word to describe someone as unmarried – "begapo." Rashi goes on to explain; "the word 'begapo' literally means coattail – that he came in as he was; single and unmarried, in his clothing, within the edge of his garment." This is a rather unusual way of saying "bachelor," what is the significance of using this word? The word bachelor was first used in the 1300's to describe young men (squires) who were beginning the path to knighthood. The word therefore implies someone young and without experience. In fact, even today it has some of the same implication; the first degree one achieves in college is referred to as a bachelor's degree. But the Torah uses a very specific term; what is the purpose of using the word coattails for bachelorhood? At first glance, one might think that it simply refers to something that is also similar to the English language expression "he came with nothing but the shirt on his back." But Rashi is very specific that it is referring to the "edge" of the garment. What does this really mean? In many Sephardic communities the custom when getting married is that under the chuppah the groom wraps himself and his new wife in a tallis. The intended message is that they are now bonded as one and that his tallis wraps the two of them together as if they were now a single entity. The Torah here, by using a word that means the edge of a garment, is describing what a marriage is. In a marriage, the edge of my garment no longer covers just me; it is covering my wife as well because we are now a single entity. If the edge of my garment only covers me then by

definition I am unmarried. Therefore, if the Jewish servant comes in with only himself at the edge of his garment – "begapo" – he must be unmarried. Kindness Optional? When you will lend money to My people, to the poor person who is with you, do not act towards him as a creditor; do not burden him with interest (22:24). In this week's parsha, the Torah discusses laws relating to lending money to another Jew: you cannot press him for repayment if you know he hasn't the wherewithal to pay you back; it is prohibited to charge interest; etc. The word the Torah uses in the possuk is "im – when." Rashi (ad loc) cites an enigmatic teaching from the Tanna R' Yishmael: "Every use of the word 'im' in the Torah implies a voluntary act (the word 'im' always means 'if'), except for three places in the Torah – this being one of those places." That is to say that while the word "im" usually means "if" implying that it is an optional act, here the word "im" means "when" because lending money is actually obligatory (see Rashi at the end of Parshas Yisro, 20:22 where Rashi shows that the Torah actually commands one to lend money). Obviously this teaching begs the following question: If the Torah actually meant "when" and not "if," then why not simply use the word "when"? Why should the Torah use a word that almost universally means "if"? There is a fascinating discussion among the codifiers of Jewish law as to why certain opportunities to do mitzvos require a blessing (e.g. blowing a shofar and putting on tefillin), while other opportunities do not require a blessing (e.g. honoring one's parents and acts of charity). According to Rashba (responsa 1:18) there are no blessings made when there is another person involved because the completion of the act depends on another person. In other words, if one were to make a blessing recognizing Hashem's mandate to give charity, what happens when the intended recipient refuses or is unable to accept the gift? There is no certainty in completing the act when its completion is also dependent on another individual. Another explanation given is that there is no bracha where it is a moral imperative and it is therefore done by both Jews and non-Jews. This is because in such a situation one is unable to say the words "Asher Kideshanu – that He sanctified us," which is a key component of blessings (Aruch Hashulchan YD 240:2). Maimonides (Hilchos Brachos 11:2) seems to say that we only make brachos on mitzvos that are between man and Hashem (Bein Adom Lamokom), thus exempting situations that included another

person. Perhaps we can explain this to mean that the reason we don't make a bracha when another person is involved is that we don't appear to be objectifying another person as an opportunity for one to fulfill a mitzvah. Imagine if someone is in a desperate situation and they approach us for help; how would that person feel if our first response was to make a blessing thanking Hashem for the opportunity to fulfill one of his commandments? The whole purpose of honoring one's parents, for example, is to show them appreciation for all that they have done. By making a blessing, one is introducing the element that the reason for honoring them is due to an obligation, not a personal desire to display gratitude. This would seriously impact the effectiveness of one's act as the parents would have a hard time sensing the appreciation behind the act. The same is true when someone really needs one's help. A major component of the mitzvos of gemilus chassadim (acts of kindness) is to be God-like (Sotah 5a). A fundamental principal of Jewish philosophy is that our world, and system of reward and punishment, was built on a system that would not embarrass the recipients of Hashem's kindness (Nahama Dekisufa). By using the word that usually means "if," the Torah here is teaching us a fundamental principal of helping others: Of course we have to lend money, but we should do it in a way that the recipient feels as if it is optional, and that helping them is something we want to do. Not something we have to do.

**Ask Rav Aviner:** [toratravaviner@yahoo.com](mailto:toratravaviner@yahoo.com) Ha-Rav answers hundreds of text message questions a day. Here's a sample:

Speaking to Deceased Q: Is it permissible to speak to the deceased? Does he know I am crying over him? A: Yes. Yes.

Electric Cigarette Q: I found an electric cigarette. Should I make an effort to return it? A: No. It does much damage.

Checking Out Band and Eating Q: If a couple goes to a wedding to check out the band, can they eat from the smorgasbord? A: No. The smorgasbord does not belong to the band, and they do not have permission to give out the food.

Breaking a Coconut Q: There is a custom to break a coconut on a child's feet when he begins to walk. Is it permissible? A: It is a superstition.

Talit as Israel Flag Q: Is it permissible to make a Talit in the form of an Israeli flag with a Magen David in the middle? A: Yes. As a matter of fact, the Israeli

flag is based on the Talit (see Hagadat Yom Ha-Atzmaut of Ha-Rav).

Learning Gemara Q: Which is preferable – completing the entire Gemara, or learning each Massechet slowly with greater understanding and reviewing it? A: Learning slowly in depth. It is more considered learning.

Lost Key Q: If someone lost his friend's key and the lock has to be changed, does the one who lost the key have to pay? A: Yes. The keys and the lock are considered one object and it is not an indirect damage.

Sefer Torah Written by Robot Q: Is a Sefer Torah written by a robot Kosher? A: No. It must be written by a Torah observant Jew.

Chasidim of Maran Ha-Rav Kook Q: Is it possible to say that we are Chasidim of Ha-Rav Kook? A: We are much more than this.

Human Flesh or Pig Q: If there is a situation of Pikuach Nefesh, is it better to eat human flesh or pig? A: The Torah says that the prohibition of eating human flesh is less severe.

**SEFER CHOFETZ CHAIM** As with loshon hora, one may not exaggerate rechilus even for a constructive purpose. If a person harmed, or is planning to harm, someone else and the victim must be informed, one may not give him an exaggerated account of what has transpired or is about to occur. This applies even if the person being warned does not take the danger of the situation seriously. Furthermore, one may relate only as much information as necessary for the purpose to be accomplished. To relate any additional information would be a transgression of the prohibition of rechilus.

**SEFER SHMIRAS HALOSHON** Sensitivity in Speech Even if one has become so accustomed to speaking loshon hora and so overcome by his evil inclination that forbidden talk pours from his lips without his even realizing what he is saying, nevertheless, he should not despair. Through proper study and review of the relevant laws, a dramatic change for the better will occur. His very nature will change, and he will find himself carefully weighing his own words as he speaks. Even if he will speak but avak loshon hora (words which can lead to loshon hara) he will take note of it, and will be careful not to repeat his mistake. Hashem has endowed man with sensitivity, especially with regard to matters of personal speech. This ability is a great asset in the study of Torah, for when a student enunciates his

thoughts, he can better perceive whether or not they are correct. As the Sages state, "For they [words of Torah] are life to those who express them with their mouths" (Eruvin 54a). This ability to discern is true regarding other areas of speech as well. However, such sensitivity is exceedingly weakened through habitual involvement in idle conversation and according little thought to what one is saying. However, when one studies the laws of proper speech and, as a result, becomes cognizant of his own verbal expression, this sensitivity returns little by little, until it attains its original strength

**Ohr**

**Somayach :: Torah Weekly :: Parsha Insights For the week ending 29 January 2022 / 27 Shvat 5782**

**Rabbi Yaakov Asher Sinclair -**

**www.seasonsofthemoon.com Parshat Mishpatim -**

**It Ain't Over 'Til It's Over "Everything that Hashem has said — we will do and we will obey." (19:8) The**

"Sunday Dollars" are a well-known piece of Jewish folklore. The Lubavitcher Rebbe zt"l used to give out thousands of dollar bills to those who came to meet him on Sundays. Once, a young boy and his father came to get a dollar bill from the Rebbe. The Rebbe placed a crisp dollar bill into the hands of the father and then the son. As they were walking away, the Rebbe called them back and asked the young boy if he liked sports. "Sure!" said the young boy. The Rebbe asked him which sport he liked. "Baseball," was the reply. The Rebbe asked him what team he followed and the boy said, "The Dodgers." The Rebbe asked him when the last time he saw his team was. "Oh, it was about a month ago, but we didn't stay to the end. It was the bottom of ninth, with two outs, and the pitcher was up to bat. We were seven runs behind. The pitcher is a weak hitter and it was clear what would happen, so we left and went home. "And what did the players do?" inquired the Rebbe. "Well, I guess they played on till the end of the game." "They didn't leave?" asked the Rebbe. "No, well, they couldn't leave, they are the players. I'm just a supporter." The Rebbe said, "A Jew always has to be a player, not a supporter." You can go through life in two ways: You can be a supporter, and when things aren't much fun you can quit, or you can go through life as a player and never give up until it's over, because "Everything Hashem has said, we will do and we will obey." © 2020 Ohr Somayach International

**www.ou.org Mishpatim: Deeds Done in Doubt Rabbi Dr. Tzvi Hersh Weinreb**

My wife and I moved to the Jewish community of Baltimore almost fifty years ago. The fond memories we have of the time we spent there begin with our first Shabbat in town. It was then that I met two special gentlemen. Like any newcomer to a new neighborhood, I sampled several of the nearby synagogues that Shabbat. I entered one of them late in the afternoon, just before the modest "third meal," seudah shlishit. Two older men, at least twice my own age, motioned to me that there was a vacant seat across the table from them. I sat down and they welcomed me very warmly. We exchanged introductions, and I learned that they were both Litvaks, Jews from Lithuania, who had had the good fortune to flee Eastern Europe in time. As devout Jews, they saw their good fortune as divine providence. They invited me to return the following week. They had discovered that I listened to the conversation, not out of mere courtesy, but as someone sincerely interested in their story. After that first Shabbat, I spent quite a few "third meals" in their company. I now wish that I had somehow kept a written record of all of those precious conversations. After they both passed on, I forced myself to record from memory at least some of the tales they had told. I occasionally peruse those notes with nostalgia, and with a tear or two. I remember the anecdotes they told me about their encounters with the great early twentieth century sage, Rabbi Yisrael Mayer Kagan, of blessed memory. Many today are not familiar with that name. That is because they know him as the author of his famous book, Chafetz Chaim. He is so identified with that masterpiece that he is referred to as "the Chafetz Chaim," as if he was his book! My two senior citizen friends adamantly insisted that that particular book was not his most important work. That book focuses on what its author saw as the dominant sin of his generation, namely malicious gossip, lashon hara. Personally, I have always felt that he was absolutely right. In fact, I think that with the advent of electronic communication, the problem of malicious gossip has been magnified and exacerbated far beyond what Rabbi Yisrael Mayer Kagan could have imagined almost a century ago. But my newfound friends disagreed with me. They made me aware of another work by the author of Chafetz Chaim. Their candidate for their mentor's masterpiece is entitled Ahavat Chesed, "Loving Kindness." Had they had

their way, Rabbi Kagan would not be known as "the Chafetz Chaim," but rather as "the Ahavat Chesed," the "Lover of Kindness." What, you ask, is the subject of this second book, the one preferred by my two elderly tablemates? The book is about the acts that one is commanded to perform in order to assist others who are in need. Charity, for example, is one such deed, and the laws of charity comprise a major section of Ahavat Chesed. Hospitality is another such deed, as is giving others helpful advice. But a major portion of the work is dedicated to a mitzvah which is less well known, but which is promulgated in this week's Torah portion, Parshat Mishpatim (Exodus 21:1-24:18). The following are the verses to which I refer: "If you lend money to My people, to the poor among you, do not act toward them as a creditor; exact no interest from them. If you take your neighbor's garment in pledge, you must return it to him before the sun sets; it is his only clothing, the sole covering for his skin. In what else shall he sleep? Therefore, if he cries out to Me, I will pay heed, for I am compassionate." (Exodus 22:24-26). This beautiful passage portrays an act of compassion. The image of a totally destitute person who has but one change of clothing is heartrending. The sensitivity to his sleeplessness is exquisite. We can ourselves hear his cries in the night to the Lord. But there is one word that the earliest commentators find absolutely puzzling. It is the first word in the passage, "If." If? If you lend money to my people? Shouldn't it read, "I command you to lend money to My people," or, "You must lend money to My people."? It is this question that leads Rashi to cite Rabbi Ishmael's teaching in the Talmudic tractate Bava Metziah: "Every 'if' in the Torah expresses an act which is optional, except for three instances in which 'if' expresses an act which is mandatory—compulsory—and this is one of the three." This "if" is to be translated as "you must." But the question remains. Why use the word "if" at all? Why does Torah not simply tell us that we must lend money to those who need it? Why the "if"? For one answer to this question, I draw upon the teaching of Rabbi Yechezkel of Kuzmir, a nineteenth century Hasidic master. He, in turn, asks a question upon the following Talmudic text: "Rabbi Pinchas ben Yair was on a mission to try to redeem several Jews who were held captive. His route was blocked by the river Ginai. He said to the river, 'Split your waters so that I might pass through!' The river refused, saying, 'You are on your way to do the will of your Maker, and I am on my

way to do the will of my Maker. You might succeed, but you might not succeed! But I will certainly succeed! I simply need to continue to flow.'" The river seems perfectly justified. All he has to do is follow nature's course and flow downstream as his Maker created him to do. But Rabbi Pinchas, for all of his good intentions, could not be certain of success. Indeed, the odds are that he would fail. Why should the river yield? But Rabbi Pinchas simply ignored the river's reasonable argument. Instead, he harshly threatened the river, saying, "If you don't split for me, I will decree that not a drop of water shall ever again flow down your riverbed for all eternity!" The question remains: what right did the rabbi have to ignore the river's convincing argument? Rabbi Yechezkel of Kuzmir answers: "The river's assumption is that a deed that is certain to be successful is more desirable to the Almighty than is a deed whose ultimate success is in doubt. But the spiritual insight of Rabbi Pinchas taught him otherwise. The Almighty cherishes the person who undertakes a mission which is risky and whose outcome is uncertain much more than the person who undertakes a mission which he knows will be blessed with success. This, I would suggest, is why lending money to someone in need is, at least in one way, more desirable to the Almighty than simply giving a handout to the poor. When one gives food, for example, to a hungry person, he knows immediately that he has done a good deed. There is no element of doubt. However, when one lends money to another, one never knows. Will the borrower postpone repayment? Will he default? Will the lender ever see his money back? Doing this kind of mitzvah comes with second thoughts and regrets. It is a mitzvah done in the throes of doubt and uncertainty. The lesson taught by Rabbi Pinchas teaches the lender that the mitzvah he did with so much doubt and uncertainty is all the more cherished by the Almighty. There are many mitzvah missions that we all undertake at great risks and with no guarantee that we will be successful in our efforts. Rabbi Pinchas ben Yair teaches us to deliberately pursue such mitzvot. Hence, the passage in this week's Torah portion begins with the big "if." Moral actions are often "iffy." But that's all the more reason to engage in them. The risks are real, but the rewards are eternal.

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***chiefrabbi.org Chief Rabbi Ephraim Mirvis Dvar Torah Mishpatim: Do your pets know when it is Shabbat?***

I find it fascinating how often over the years people have actually said to me that they genuinely believe that in one form or another their pets know when it is Shabbat. In fact our sages in the Psikta Rabbah tell us that on one occasion Rabbi Yochanan sold his ox to a non-Jewish farmer. After a while the farmer came to Rabbi Yochanan to complain to him: That ox which you sold me, he said, refuses to work on Saturdays! Such a phenomenon can be understood in the context of Parshat Mishpatim. In our parsha the Torah yet again gives us the mitzvah to keep Shabbat and this is how the mitzvah is worded (Shemot 23:12): “*Uvayom hashvii tishbot,*” – “*And on the seventh day you must have a sabbath,*” – “*Leman yanoach shurcha vechamorecha,*” – “*in order that your ox and your donkey should rest.*” Now surely the Torah should have said, every seventh day you, your ox and your donkey should rest? Why is it presented in this fashion? The Rebbe of Gur explains beautifully. He said, ‘*uvayom hashvii tishbot*’ – if every seventh day you have a true Shabbat, that is to say you don’t just keep the letter of the law but in addition you keep to the spirit of the day, if your day is filled with ruach, spiritually uplifting experiences, the result is that you will have a great impact on your surroundings so much so that even your ox and your donkey will know that this is a special day. I believe that this teaching is of enormous significance today at a time when there is so much out there competing with our requirement to keep Shabbat. And what applies to Shabbat applies to all of the mitzvot. The prophet Isaiah (58:13) declared, “*Vekarata l’Shabbat oneg*” – “*You will discover that the Sabbath is a day of true delight.*” If on this day you stop doing what we call ‘vochadig’ activities, weekday activities, and instead you add on to your ‘Shabbosdig’ activities the result is that you will discover what a delight Shabbat is. In fact it’s an extraordinary gift from Hashem that every seven days we can have an opportunity for a life shaping and life enhancing experience. But that only happens when we keep the spirit of the day. It’s so important that we should be enthusiastic and passionate about Shabbat and if we are, by keeping to the spirit of the day, we’ll have the capacity to pass on that enthusiasm through to the generations to come. It’s only when we keep to the spirit of Shabbat that it becomes what we describe in our zemirot, our songs of the day, a true ‘me’ein

olam haba’ – Shabbat can indeed be the closest thing to Heaven while still being here on earth. *Shabbat shalom. Rabbi Mirvis is the Chief Rabbi of the United Kingdom. He was formerly Chief Rabbi of Ireland.*

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***Drasha Parshas Mishpatim - Position Impositions Rabbi Mordechai Kamenetzky***

How would you feel? That is a question asked by a wide-ranging group of inquisitors ranging from kindergarten teachers chiding their immature charges, to philosophy professors lecturing to disciples about the worlds of the theoretical. Its validity sets the tone from issues that vary from the golden rule to admonitions at the supper table. And at first glance it seems that the Torah uses the maxim to mitigate a deficiency in our very own human nature. “Do not taunt or oppress a ger (newcomer) because you were strangers in the land of Egypt” (Exodus 22:20). According to most commentators, the verse refers to the ger — a convert to Judaism. Others comment however, that it also applies to any newcomer, be it to a neighborhood, a synagogue, or a school. Rashi explains that the Torah forewarns the Jewish nation from being cocky toward anyone who would join our people. “After all,” Rashi expounds, “the stranger can easily remind us of our since-forgotten experience in Egypt, where we, too, were strangers.” However, something bothers me. The Torah’s set of values is pure and unmitigated by personal partiality. So let us ask. Does it truly matter that we were once strangers? Is not it inherently wrong to taunt a newcomer? Shouldn’t the Torah just say, “Do not taunt a newcomer? It is morally wrong!” Why is there even a mention of our Egyptian experience? Had we gone directly from Jacob’s home to a settled life in the land of Israel, would we then be allowed to taunt newcomers? Of course not! Our years of servitude should not influence the morality of taunting others! So why does the Torah consider our bad experience a factor? Dr. Norman Blumenthal has published extensively about the unique experience of Holocaust survivors’ children. Without revealing actual details, he related a case history of a young man whose father had escaped from a Nazi concentration camp at the age of 16 years old. The fugitive did not hide in the forest or in a barn, rather he joined a group of gentile partisans. For the duration of the war, he lived with them, ate with them, and killed Nazis with them. Still, the courageous young man never gave up his convictions and feelings of Judaism. On that day his

father, by then a very successful executive who was very active in the American Jewish community, turned to him and said. “Son, now the easy life is over. Just like me, now you must learn what it takes to survive amongst the gentiles!” He sent the young teen to a university in the southern part of the United States where Jews were as rare as snow. Within months, the young man, mercilessly taunted in a foreign environment, suffered a nervous breakdown. It took years of therapy to undo the shambles. Perhaps we can understand the posuk in a new homiletic light. The sages declare that our experience in Egypt was very necessary, albeit uncomfortable, one to say the least. Under the duress of affliction we fortified our faith. Under the pressure of ridicule we cemented our resolve. Under the strain of duress we built families and sustained our identity. And perhaps it was that experience that laid the ability to endure far-reaching suffering, tests of faith that were only surpassed by the tests of time. And now enter the convert John Doe who hails from a corporate office in West Virginia and has made a conscious, comfortable decision to join the ranks of Moses’ men. Our first reaction may just be to have him bear the test of the Jew. Like bootcamp in Fort Bragg, or beasting at West Point, we may have the urge even a compulsion to put Mr. Doe through the rigors of our oppression. After all, that is the stuff of which we are made. We may want to taunt and tease because “we were slaves in a foreign land.” The Torah tells us not to do so. “Do not taunt or oppress a ger (newcomer) because you were strangers in a he land of Egypt.” Do not impose your difficult experiences in life on others that are newcomers to your present situation. It is easy to say, “such men are made from sterner stuff” and proceed to harangue those who would join us. That should not be. Life has a personal trainer for every individual, and each soul has a particular program mapped out by the Almighty. Jews from birth may have had to suffer in Egypt, while converts have other issues to deal with. One’s particular experience may not be fodder for the next person. Do not use your encounters as the standard for the entire world. One cannot view the world from the rear view mirror of his personal experience. *Good Shabbos Dedicited by Marcia Raicus in loving memory of her parents Eugene Raicus, M.D. Yehoshua ben Moshe Suzanne Raicus — Tzeitel bas Moshe* Copyright © 1999 by Rabbi M. Kamenetzky and Project Genesis, Inc. *Rabbi M. Kamenetzky is the*

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**Rabbi Yissocher Frand - Parshas Mishpatim**  
**The Thief Who Won't Climb Back Up** The beginning of Parshas Mishpatim contains the halachos of the Eved Ivri, the person who was sold into slavery (for lack of ability to make restitution for money or property he stole). The Eved Ivri remains a slave for six years, during which time his master is allowed to give him a shifcha Canaanis with whom he can produce avadim Canaanim, who will remain slaves of the master. We do not find such a phenomenon anywhere else in the Torah. After six years, however, this slave goes free. At that point, the pasuk says, “But if the slave shall say ‘I love my master, my wife, and my children – I shall not go free.’ Then the master shall bring him to the court and shall bring him to the door or to the doorpost and his master shall bore through his ear with the awl, and he shall serve him forever.” (Shemos 21:5-6) A famous Rashi here teaches in the name of Rav Yochanan ben Zakkai that the ear was chosen to be bored to teach a homiletic lesson: That ear which heard on Har Sinai “Thou shalt not steal” and he nevertheless stole—that ear shall be pierced. It is the ear that needs to pay the price for not listening to the commandments at Sinai. Rashi quotes this teaching in the name of the Mechilta. All the Meforshim ask – if by stealing, the person is guilty for not listening to what was commanded at Har Sinai, then why didn’t we pierce his ear right away when he stole? Why wait six years, and only do it in the case of someone who decides he does not want to go out to freedom? I heard an interesting approach to this question from the Anfei Erez, who was Rav Leib Gurvitz, the Rosh Yeshiva in Gateshead. One of the most well-known Haftorahs is the Haftorah of Parshas VaEschanan. This is the Haftorah of the Shabbos which follows Tisha B’Av, called Shabbos Nachamu. Everyone is familiar with the first pasuk: “Nachamu, Nachamu Ami Yomar Elokeichem.” – “Comfort, comfort My people, says your G-d” (Yeshaya 40:1). There is another pasuk in that chapter that is perhaps not as familiar: The Navi talks about a time in the future when the Ribono shel Olam will come to comfort us: “Every valley will be raised, and every mountain and hill will be lowered, the crooked will become straight, and heights will become valley.” (Yeshaya 40:4) The Almighty will literally move mountains for us. He will flatten out the earth –

lowering the mountains and raising up the valleys. Perhaps it is understandable that the Ribono shel Olam will flatten the mountains, because who wants to climb (or even drive over) mountains! But what is wrong with valleys? Valleys are beautiful. Who complains about the presence of a valley? The Yalkut Shimoni explains that these words are a metaphor. The Navi does not literally mean that the mountains will be flattened or that the valleys will be raised. The Medrash explains that the Navi is talking about the future, when Knesses Yisrael will say before the Almighty “Master of the Universe, I see the places where I have sinned, and I am embarrassed by them.” The pasuk is talking about the future time when Klal Yisrael will desire to do teshuva. Peaks and valleys represent “life”. There are times in life when we are on the peaks, but there are times in life when we are in the valleys. Valleys are a metaphor for the times in life when we don’t act as we should. When we have tzores, when we do aveiros, we fall into a valley. Klal Yisrael comes to the Almighty and confesses “I see the places where I have been corrupt. I pass by so many places that remind me of my sordid past. They remind me of the times in life that I fell down. It pains me. It bothers me. I remember what happened there and what I did there. I am embarrassed by it.” Hashem responds, “Don’t worry about the valleys. I am going to raise the valleys so that they will no longer be recognizable.” Hashem promises to remove all those places and all those incidents that embarrass us. I am going to wipe the slate clean and you will start fresh again. Klal Yisrael persists – but there are still witnesses around to testify about all the bad things that I did, as it is written “I proclaim the Heavens and the Earth to be witnesses against you” (Devorim 30:19). Hashem says, “Don’t worry about that. I will get rid of them as it is written “Behold I will create a new Heaven and a new Earth, the earlier ones will not be remembered, they will no longer come upon the heart.” (Yeshaya 65:17) Klal Yisrael still persists: “But my bad name will still be around.” Hashem puts Klal Yisrael’s mind to rest again: “I will call you a new name”, etc., etc. That is what this pasuk means. It is not talking about mountains and valleys. It is talking about a Klal Yisrael that wants to do teshuva but is pained by its visions of the past and the things and the places that remind it of a sinful past. The Ribono shel Olam consoles Klal Yisrael: “Don’t worry – I am going to get rid of all those places, you won’t have to look at them, you won’t have to think

about them, it will all be erased.” Such is the nature of a person who regrets what he did. I don’t want to walk by that place because it reminds me of what I did there. Rav Leib Gurvitz writes: “Truth be told, when this person stole, maybe he did not steal because he was a thief, but rather sometimes a person is in such dire straits that he steals because that is the only way he sees himself escaping from his predicament. We all have moments of weakness where we might do something which does not really reflect our true selves. Such may have been the situation of the slave who was sold into slavery because of his inability to make restitution for his theft. Consequently, when he originally stole, we could not have pierced his ear and told him “You are a thief! You have willfully violated what you heard at Sinai: ‘Do not steal!’” Maybe he was not a ganav but rather just a weak person who grabbed something in a moment of desperation. But now, six years later, this person has been in servitude for six years. He is married to a shifcha Canaanis. This is a stigma that yells loud and clear: You are a ganav because only in that situation can someone ever marry a shifcha Canaanis. The fact that his children are avadim Canaanim also proclaims loudly and clearly: You are a thief, because only in that situation does someone produce avadim Canaanim. His last six years have been shouting out at him that he has been a thief, and now after six years what does he say? “I love my wife. I do not care that my whole situation screams out that I am a ganav. After all, I am a ganav. It does not bother me.” If it doesn’t bother you, then we retroactively see that when you stole, it was not merely a momentarily lapse. If you are not embarrassed by these “valleys” in your life, you are not like Klal Yisrael, that doesn’t want to see the valleys any more. They don’t want to see all the places that remind them of their past. You are not like that. If you are not like that, then you are now going to get the punishment you really deserved all along. Six years ago, we reserved judgement because we did not know definitively what type of person you really were. Your acceptance and enjoyment of your current status indicates you are deserving of having a permanent marker bored into your ear that did not listen to the Voice that it heard on Sinai.

***One of Life’s Great Lessons: Strike While the Iron Is Hot*** The normal Haftorah for Parshas Mishpatim is usually pre-empted because we replace it with the Haftorah of Parshas Shekalim. However, the normal Haftorah for this week’s parsha (to be read in fact this

year – 5782) is from Chapter 34 of Sefer Yirmiyahu. The Haftorah says: “The word of Hashem then came to Yirmiyahu from Hashem saying: Thus said Hashem, G-d of Israel: “I sealed a covenant with your forefathers on the day I took them out of the land of Egypt, from the house of slaves, saying, ‘At the outset of the seventh year, each of you shall send forth his Hebrew brother who will have been sold to you; he shall serve you for six years and then you shall send him forth free from yourself’” (Yirmiyahu 34:12-14). This pasuk informs us that there was something everyone needed to hear on the very day of Yetzias Mitzrayim—that whenever you buy a Jewish slave, he leaves your service after six years. They needed to hear the parsha of Eved Ivri on the very day they left Mitzrayim!

We might wonder: Was there nothing more relevant to them on the day they left Mitzrayim than the parameters of Jewish slave ownership? This is something that would not be applicable until they came into Eretz Yisrael. Even if they had not spent forty years in the desert, the first thing they would think about when entering Eretz Yisrael would not have been “Okay. Let’s go to the slave market.” What lesson is being taught here? We may derive one of the great lessons of life from this teaching: Strike while the iron is hot! Seize the moment. There is no one who appreciates what it means to be a slave like a person who has just been a slave. Therefore, as you are just now coming out of slavery, you know what it is like. I am telling you right here and now: One day you may be slave owners. You need to treat your slaves properly and justly, and after six years, they go free. But hear this specifically now, because now you are sensitive to the subject. If you do not act on the moment, the moment will dissipate. That is the way people are. If something happens and you are in a situation where you are sensitive to what just happened, then do something with that recognition, because if not – it will pass, like it always does. There is a famous story about a bochur in the Volozhiner Yeshiva. In the Volozhiner Yeshiva, they learned all of Shas from the beginning of Tractate Berachos until the end of Tractate Niddah. The original Volozhiner Yeshiva was the granddaddy of all Lithuanian Yeshivas. Many great Torah luminaries learned there and emerged from there. This bochur knew Shas “forwards and backwards” and “backwards and forwards”. One day, this bochur was sitting at a table eating his meal with a group of other bochrin.

Another bochur entered and posed a question on the piece of Talmud he was studying. This bochur responded, “I don’t know the answer to your question.” Another young man at the table questioned him: “What do you mean you don’t know the answer? It is explicitly discussed by Tosfos in Maseches Gittin. When this bochur heard that he forgot a Tosfos, he was extremely shaken! How could I forget a Tosfos!?! Right then and there he got up and he said “That’s it! I am going to learn continuously for the next seven years. With the exception of eating and sleeping, I am not going to do anything else for the next seven years!” He ran out of the lunchroom, ran to the Beis Medrash, and he in fact learned for the next seven years, except for eating and sleeping. There is only one problem. He was in such a hurry to leave the lunchroom that he forgot to bentch. They asked Rav Chaim Volozhiner (the head and founder of the Yeshiva) – Did this bochur act properly or improperly? Rav Chaim Volozhiner said, “Of course he did not act properly. No one can sanction not bentching. But if he would have bentched, he never would have learned for the next seven years!” That moment of determination would have passed. If a person lets the moment pass, he can never recapture it. That is indeed the lesson of “On the day I took you out from Egypt, I told you about the laws of Jewish slavery.” That was the perfect “teachable moment”. They would never again be as receptive to this teaching as they were on that historic day. If a person does not seize the moment, it is gone forever.

**Who Did Whom the Favor?** Parshas Mishpatim contains the mitzvah of lending money to a fellow Jew. Even though the pasuk introducing this mitzvah (Shemos 22:24) begins with the words “Im Kesef Talveh...” which is normally translated “If you lend money...” this is one of the places in the Torah where the word “Im” does not mean “If”. It means “When”. There is, indeed, a positive Biblical mitzvah to lend money to your fellow Jew when he is in need. It is not always easy to lend money, because a person can “make money with money.” It is therefore often hard to part with our money. I recently heard the following amazing story: Reuven and Shimon are best friends, as close as brothers. Reuven went to Shimon and said “Shimon, I need to borrow \$250,000. I need this money urgently. Otherwise, my business will collapse.” Shimon hesitates. “Where am I supposed to get \$250,000?” Reuven tells Shimon, “But Shimon, you told me just a couple of weeks ago that you

finished paying off your house. Take out a new mortgage on your house.” Shimon hesitated, but Reuven begged and pressed him for the loan. Shimon went home and consulted with his wife. She advised, “Go ask the Rav.” The Rav told him, you are not actually obligated to do this, but if you trust the fellow then it would be a very big mitzvah to do it. Shimon went back to his friend and said, “Okay. I will do it.” He went to the bank and applied to take out a second mortgage on his house. Both these Jews live in Far Rockaway, N.Y. The bank processed the paperwork and agreed to give Shimon a second mortgage, but they warned him that he lived in a flood plain and would not be eligible for the loan unless he took out flood insurance. Shimon took out flood insurance and received the mortgage. He lent Reuven the \$250,000. Three weeks later, Shimon’s house was flooded by Hurricane Sandy... but he was covered because he took out the flood insurance. Who did whom the favor? *Transcribed by David Twersky; Jerusalem DavidATwersky@gmail.com Technical Assistance by Dovid Hoffman; Baltimore, MD [dhoffman@torah.org](mailto:dhoffman@torah.org) Rav Frand © 2020 by Torah.org.*

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***blogs.timesofisrael.com Tribal accountability (Mishpatim) Ben-Tzion Spitz***

*Action springs not from thought, but from a readiness for responsibility. - Dietrich Bonhoeffer*

At God’s Revelation at Mount Sinai which accompanied the giving of the Ten Commandments, the recently freed nation of Israel assembled at the foot of the mountain and heard both God and Moses. In their eagerness to take on God’s commandments the people of Israel loudly declare “we will do, and we will listen.” This declaration is considered a great merit to the Jewish people and implies that they committed themselves to keep the commandments, to perform the commandments, to “do” them even before they’ve fully studied them or understood them – the “listen” part. It’s considered a higher form of service, to commit oneself to undertake God’s instructions and only afterward to explore deeply and understand them. Hence, first to do and then to listen. The Talmud refers to this strategy as a secret previously only known to the angels (Tractate Shabbat 88). The Chidushei HaRim on Exodus 24:7 notes the plural form of the declaration. Each individual doesn’t say “I will do, and I will listen,” but rather they are inclusive of each other, “WE will do, and WE will listen.” He explains that their eagerness and enthusiasm regarding

the Torah was so great, and they understood it to be such a dear, sweet, divine gift, that not only was each individual more than ready to take on this commitment for themselves, but they were ready to make themselves accountable for their fellow Jew. Each member of the tribes of Israel stated that not only would they accept God’s commandments, but they would also be a guarantor for their brethren. They would be there for each other, for all of history. Hence the “we.” Each person would be accountable for the next. This would not be a solitary, individualized commitment, but rather a communal, tribal, and national commitment. Hence the ancient dictum “All of Israel are guarantors one for the other.” The physical, financial, emotional and spiritual well-being of our brothers is always our concern. We can never turn a blind eye and we are constantly enjoined to help, to support, to lend a hand. We are responsible, we are accountable, we are the guarantors of one another. May we always be able to assist those in need, on as many fronts as needed. *Dedication - To when snowfall is beautiful. Shabbat Shalom Ben-Tzion Spitz is a former Chief Rabbi of Uruguay. He is the author of three books of Biblical Fiction and over 600 articles and stories dealing with biblical themes.*

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***Rabbi Shmuel Rabinowitz Parashat Mishpatim – 5782 A Society in the Spirit of Justice and Humanity***

“Derech ertz (decency, kind behavior) precedes Torah.” This is a famous saying of Jewish sages. It is used in different contexts in Judaism, sometimes to encourage proper behavior as a condition of religious life. By examining the parashot we are currently reading, we can attain a profound and comprehensive grasp of this saying. Last week, we read Parashat Yitro with its description of the Revelation at Mount Sinai and the ten commandments given by G-d. The ten commandments are ten fundamental directives and principles in the Torah. But the way of life, the laws and individual regulations in the Torah are unmeasurably longer. Immediately after receiving the Torah, Moses began to expand on it and get into the details of G-d’s commandments. The order in which the Torah chooses to present things is fascinating and even a bit strange. First, in the last verses of Parashat Yitro, the Torah lays out some principles relating to building a temple and altar. Immediately afterwards, at the beginning of Parashat Mishpatim, the Torah suddenly presents an entire system of directives termed “mishpatim,” the laws of justice that must

guide society and which should be enforced through courts. These laws of justice get into the smallest of details in the interactions between people, and demand complete justice, along with attention paid to the needs of the weak. When Parashat Mishpatim ends, the Torah moves on to discussing the building of the Mishkan, the Tabernacle, that temporary temple that accompanied the children of Israel during their journeys in the desert, which was the prototype for the Temple established in Jerusalem centuries later. The question that arises is – Why does the Torah suddenly stop the flow of commandments relating to the temple, the altar, and worshipping G-d and move abruptly to a description of the justice and court system? This question was pondered by Rabbi Samson Raphael (RaSHaR) Hirsch, a rabbi and biblical commentator in 19th century Germany, known as the father of the “Torah with derech erez” method. He writes as follows: “And these are the laws” – in previous verses, the Torah wrote of the building of the altar, which symbolizes a basic principle: Our entire relationship with G-d must be understood as something that provides a strong and unshakable basis for building a society in the spirit of justice and humanity... This principle is connected with the word “and” to “these laws,” those same laws which will establish the building of a Jewish society on the basis of justice and humanity. By doing so, the sword will be distanced, meaning violence and cruelty, from the Jewish state, and only then will this society be worthy of establishing an altar to G-d within it. Therefore “these laws” precede the building of the Mishkan. (RaSHaR Hirsch, Exodus 21, 1) Rabbi Samson Raphael did not see this pause between directives relating to the building of the altar and of the Mishkan as coincidental. In his opinion, the Torah was trying to convey an important message: The purpose of our relationship with G-d is to provide a strong basis for the building of a society in the spirit of justice and humanity. The reward for establishing such a society is a closer relationship with G-d. This is the message our sages convey through the saying “Derech erez precedes Torah.” Moral interpersonal interactions precede the laws of G-d and are essential conditions for their existence. Divine laws are there to make basic human morality gentler and more precise. Parashat Mishpatim gives us the divine tools to sharpen our sense of righteousness and to connect it to gentleness, compassion and social responsibility,

and through them to reach connection with G-d. *The writer is rabbi of the Western Wall and Holy Sites.*

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***Rav Kook Torah      Rav Kook on Mishpatim:  
An Eye for an Eye Rabbi Chanan Morrison***

Azar’s Question During the years that Rav Kook served as chief rabbi of Jaffa, he met and befriended many of the Hebrew writers and intellectuals of the time. His initial contact in that circle was the ‘elder’ of the Hebrew writers, Alexander Ziskind Rabinowitz, better known by the abbreviation Azar. Azar was one of the leaders of Po’alei Tzion, an anti-religious, Marxist party; but over the years, Azar developed strong ties with traditional Judaism. He met with Rav Kook many times, and they became close friends. Azar once asked Rav Kook: How can the Sages interpret the verse “eye for an eye” (Exod. 21:24) as referring to monetary compensation? Does this explanation not contradict the peshat, the simple meaning of the verse? The Talmud (Baba Kamma 84a) brings a number of proofs that the phrase “eye for an eye” cannot be taken literally. How, for example, could justice be served if the person who poked out his neighbor’s eyes was himself blind? Or what if one of the parties had only one functioning eye before the incident? Clearly, there are many cases in which such a punishment would be neither equitable nor just. What bothered Azar was the blatant discrepancy between the simple reading of the verse and the Talmudic interpretation. If “eye for an eye” in fact means monetary compensation, why does the Torah not state that explicitly?

The Parable Rav Kook responded by way of a parable. The Kabbalists, he explained, compared the Written Torah to a father and the Oral Torah to a mother. When parents discover their son has committed a grave offense, how do they react? The father immediately raises his hand to punish his son. But the mother, full of compassion, rushes to stop him. “Please, not in anger!” she pleads, and she convinces the father to mete out a lighter punishment. An onlooker might conclude that all this drama was superfluous. In the end, the boy did not receive corporal punishment. Why make a big show of it? In fact, the scene provided an important educational lesson for the errant son. Even though he was only lightly disciplined, the son was made to understand that his actions deserved a much more severe punishment.

**A Fitting Punishment** This is exactly the case when one individual injures another. The offender needs to understand the gravity of his actions. In practice, he only pays monetary restitution, as the Oral Law rules. But he should not think that with money alone he can repair the damage he inflicted. As Maimonides explained, the Torah's intention is not that the court should actually injure him in the same way that he injured his neighbor, but rather "that it is fitting to amputate his limb or injure him, just as he did to the injured party" (Mishneh Torah, Laws of Personal Injuries 1:3). Maimonides more fully developed the idea that monetary restitution alone cannot atone for physical damages in chapter 5: "*Causing bodily injury is not like causing monetary loss. One who causes monetary loss is exonerated as soon as he repays the damages. But if one injured his neighbor, even though he paid all five categories of monetary restitution — even if he offered to God all the rams of Nevayot [see Isaiah 60:7] — he is not exonerated until he has asked the injured party for forgiveness, and he agrees to forgive him.*" (Personal Injuries, 5:9)

The Revealed and the Esoteric Afterwards, Azar commented: "Only Rav Kook could have given such an explanation, clarifying legal concepts in Jewish Law by way of Kabbalistic metaphors, for I once heard him say that the boundaries between Nigleh and Nistar, the exoteric and the esoteric areas of Torah, are not so rigid. For some people, Torah with Rashi's commentary is an esoteric study; while for others, even a chapter in the Kabbalistic work Eitz Chayim belongs to the revealed part of Torah." (*Sapphire from the Land of Israel. Adapted from Malachim Kivnei Adam by Simcha Raz, pp. 351, 360.*) Copyright © 2022 Rav Kook Torah

### **The Hoop and the Drum – How to be a Good Neighbor Rabbi Yirmiyohu Kaganoff**

Each of the following shaylos is an actual case of inter-neighbor altercations that I was asked about or over which I presided. All these cases deal with shaylos about neighbors' rights within the framework of halacha. What may I do or not do on my property that may infringe on my neighbor's right to gain full benefit and enjoyment from his property?

Question #1: After moving into a new apartment, my grandmother discovered that her next-door neighbor practices his drums every day. On some days he even has band practice in his house. When we asked the drummer to limit his hours or decrease the volume, he insisted that he has been doing this for years and that this is his livelihood.

Grandma finds the noise blasting through the walls highly distressing. Can we force the neighbor to drum elsewhere? Question #2: Yehudah and Tamar dwell in a semi-detached house. Levi purchased the other side of the house as an investment, and rented it out. A few weeks later, Tamar calls Levi to complain about the volume and late hours of noise emanating from the new tenants and asks Levi to have them shape up or ship out. Levi meets with his tenants, attempting to explain that their behavior is inappropriate for the neighborhood, but they insist that their behavior is normative. If this continues, do Yehudah and Tamar have the halachic right to insist that Levi terminate the tenants' lease? Question #3: There is always such a racket upstairs! I am certain that their kids are rollerblading or playing basketball right over my head, but their mother insists that they are just normal, active children. What may I do to improve the situation that is halachically acceptable and will not land me in jail? Question #4: Several years ago, Reuven (who lives on the ground floor) affixed a basketball hoop to the wall of the apartment building and laid out a regulation-sized half-court. Shimon, who now lives directly above Reuven, would like to hang a clothesline outside his window, but as any large item hanging from the clothesline will lie on the hoop and become dirty, he would like Reuven to remove the hoop to a different location. This, of course, will ruin the basketball court.

**BACKGROUND TO THE SHAYLOS** Unless local custom dictates otherwise (a concept I will explain shortly), one may use one's house for normal household use, provided that the activity does not damage my neighbor's person or property. "Typical domestic use" includes work done in one's house to earn a livelihood. For this reason, at the time of the Mishnah, one could use one's house for simple manufacturing, and a neighbor could not object to a residence being used as a bakery or to dye clothing, even if the neighbor's house became uncomfortably warm as a result (Mishnah Bava Basra 20b).

**AN EXCEPTION** There is an exception to this general principle: a neighbor may prevent a store from opening in a residential property. Why is a store different from other livelihoods? Because a store generates a lot of foot traffic, a neighbor has the halachic right to prevent the noise and bustle. But do people entering and leaving a small household store create more discomfort for the neighbor than the heat of a baker's oven or a dyeing operation? Why does the Mishnah rule that one can prevent the neighbor running a store, but not a bakery? The reason is that, although the discomfort generated by the store may sometimes be less than the heat of the oven, the Mishnah forbade the store because its proprietor can sell his wares in the marketplace, which, in that era, was the primary business location in town. Since it was unnecessary to sell



merchandise in one's house, insisting that a neighbor sell his wares elsewhere did not jeopardize his livelihood. Manufacturing, on the other hand, was generally done in people's homes (Shu't Chasam Sofer #92).

Two precluding uses Of course, we then need to clarify the next issue: What is the halacha when two permissible domestic uses preclude one another? For example, Upstairs wants to use his house as a warehouse to store grain, whereas Downstairs wants to use his house as a bakery. Both of these uses are considered "typical domestic use," since each is using his domicile as a means of earning his livelihood. However, the two uses are mutually exclusive, since the heat rising from the bakery will ruin the grain. May Upstairs prevent his neighbor from baking? The Mishnah rules that whoever began his operation first has the right to continue. If Upstairs began storing grain before Downstairs opened his bakery, the bakery may not be opened. However, if Upstairs has not yet begun to store grain, Downstairs may open a bakery in his house. Once one neighbor begins using his house for a certain purpose, a second neighbor using his part for an incompatible purpose is considered as creating damage.

**WHY DO WE CONSIDER BAKERIES AND DYE FACTORIES "NORMAL HOUSE USES"?** In earlier times, most people making a living from crafts, small manufacturing, other cottage industries or trading used their house as their base of operation. Thus, using your house as a bakery, factory, or warehouse was normal household use.

**DO LOCAL LAW AND CUSTOM AFFECT THESE HALACHOS?** Indeed they do. In general, halachos that involve financial arrangements between two parties are governed by the prevalent local practice. This is called, *hakol keminhag ha'medinah*, "everything follows local custom." The rationale is that the parties assume that local custom governs their relationships, and includes that people buy or rent a house or apartment assuming that they and the neighbors will follow the accepted local norm. Therefore, today one may not open a bakery or dyeing operation in a residential building since it violates common practice. Everything depends on contemporary local custom. Thus, examining the different responsa discussing these issues provides an interesting glimpse into our forebears' livelihoods and lives. For example, a nineteenth-century responsum discusses the following situation: A man passed on, leaving his large house to his three sons, who divided it into three apartments for themselves. One son opened a bar in his apartment, which was apparently an accepted practice in those days. However, the other brothers wanted him to close it because of the quantity and type of traffic it generated (Shu't Chasam Sofer, *Choshen Mishpat* #92). On the other hand, the bartender brother contended that this was his livelihood and as such he is permitted to operate his livelihood in his residence. When

the rav who was ruling this issue referred the shaylah to the Chasam Sofer, the rav discussed whether using your house as a tavern is considered a legitimate domestic use. Superficially, it would appear that it is not, just as one may not use one's house as a store, since it is not considered normal household use when many customers visit a residence. However, the rav who referred the shaylah noted that it was common practice (in those times) to sell sugar or coffee out of one's house because this was necessary for people's livelihood. Even though these situations should also be prohibited according to the Gemara, nonetheless, *minhag hamedinah* permitted it, and perhaps this same custom could justify opening a tavern in one's house. Furthermore, the rav contended that a tavern is not a business that one can carry out in the town's marketplace, because a bar has to be a place conducive for people to sit together and relax. The Chasam Sofer suggests a reason to require the closing of the tavern, based on the type of clientele it generates, but does not rule conclusively that this would provide a legitimate claim to close it. Thus, we see that what would seem highly obvious to us -- that it is forbidden to open a tavern in your residence against the wishes of your neighbors -- was not obvious to the great poskim who ruled on this issue two hundred years ago. This demonstrates how times change.

**THE DRUMMER** We can now try to apply the principles we have learned to the cases we mentioned at the beginning of the article. In our first shaylah, Grandma's neighbor practices his drums, thus disturbing her. Grandma would like him to limit his hours or decrease the sound, but he insists that he has been doing this for years and that this is his livelihood. Can we force the neighbor to drum elsewhere? Is drumming in your house an accepted practice? Can one claim that this is a permitted hobby in a residential neighborhood? In addition, can one claim that this is necessary for one's livelihood? This would primarily depend on the accepted local custom. If, indeed, drumming is permitted during daytime hours and the drummer's activities are legal and accepted according to local ordinance, then Grandma may have no right to prevent him from continuing his activity. However if local custom precludes this activity, one could prevent him from drumming even though it is his livelihood. Thus, if Grandma moved into a retirement community where one would assume that everything will be nice and quiet, she can certainly insist that her neighbor drum elsewhere.

**WHAT IS THE HALACHA IF THERE IS NO LOCAL CUSTOM?** In this particular case, the parties involved lived in an area where there is no established practice prohibiting drumming during daytime hours. Grandma's family wanted to know whether there were halachic grounds to prevent her neighbor from drumming when it greatly distressed her. From what we have mentioned above, it appears that the drummer has a legitimate claim



to use his home for his livelihood. However, this is not always the case, as the following 14th century responsum indicates: A weaver had a home-operated business, which utilized a large and noisy loom. Although he had been operating this business for a number of years, his neighbor sued him in beis din to remove the loom from the property because of two claims:

1. The loom was causing damage to their common wall.
2. The wife of the neighbor was ill, and the noise disturbed her.

The Rivash (Shu't #196) ruled that both claims were legitimate, and that the weaver must remove the loom even though it had been operating for years. He contended that, although most people can tolerate this amount of noise, someone who is highly sensitive or ill can legitimately claim that noise injures them, thereby requiring the neighbor to cease the operation (Rama, Choshen Mishpat 156:2; see also Rama, Choshen Mishpat 155:39). It is historically noteworthy that the Rivash did not prohibit having a large loom operating in one's house under all circumstances. On the contrary, the Rivash implies that one could operate such a loom if it did not damage the property nor injure one's neighbor. Thus according to the Rivash's psak, in the case of Grandma's neighborly drummer, if her health is fragile and she would be ill-effected by the drumming, one could prevent him from drumming.

**NOISY NEIGHBORS** We can now examine the background behind Questions #2 and #3 above: In question #3, the downstairs neighbor finds the noise from the active family above them to be quite intolerable. The upstairs neighbor insists that this is the standard noise of normal, active children. Can downstairs ask beis din to force upstairs to relocate? Aside from the questions of local custom (minhag ha'medinah) discussed above, we need to clarify something else in this case: Is the upstairs noise unusual, or is it simply the usual bustle produced by a large household, particularly one with children, but the downstairs neighbor is extremely sensitive to noise? Does the downstairs neighbor have a valid claim that the upstairs neighbor should be quieter, and if he does, must the upstairs neighbor relocate? Similarly, question #2 also hinges on whether the neighbor's noise is abnormal, regardless of who lives next door. If the neighbor is a bit noisy, and the complaining neighbor is merely more sensitive than most people, there are no grounds to require the termination of the lease. On the other hand, if the neighbor is really objectionable, the landlord should terminate their lease on this basis. The Chazon Ish (Bava Basra 13:11) points out that the Rivash's case involved use of a loom, which, although suited to household use according to Chazal's definition, is not a typical household use. He contends that one may not prevent someone from using his house for a typical household use, even if a neighbor finds the noise level distressful. Thus, someone

whose family makes a great deal of noise may continue to do so. Even if a neighbor becomes ill and is intolerable of such noise, he still cannot force the noisy neighbor to move. Therefore, one cannot force a neighbor whose children cry in the middle of the night to move, even if you lived there first. However, you can prevent them from having the kids play ball or rollerblading in the house since these are not typical household uses when you live above someone else. Rav Tzvi Spitz, a dayan in Yerushalayim, discusses the following case: A family adopted a foster child, and the neighbors complain that the child makes loud noises at all hours of the night, disturbing their rest. The neighbors contend that, although it is a mitzvah to take care of a foster child, the foster parents have no right to perform their mitzvah at the neighbors' expense. The neighbors contend that they have a right to enjoy peace and quiet in their apartments. Can the neighbors force the foster parents to relinquish the foster child or move? Rav Spitz ruled that since taking care of children is considered the major purpose of a house, the neighbors cannot claim that their rights preclude the rights of someone to raise a child in their house, and furthermore, one cannot distinguish between raising one's own child or raising someone else's (Minchas Tzvi 1:10).

**HOOP VERSUS CLOTHESLINE** In many places it is standard domestic use to have a clothesline hanging outside your window. In these locations, one has a right to hang a clothesline. On the other hand, is it normal domestic use to hang a basketball hoop? If this is a location where both uses are considered normal, then whoever was there first would have the claim, similar to the Gemara's case of the bakery and the storage area. If the right to a laundry line is considered normal house use, and the basketball hoop is not, one could argue that the hoop should be taken down to make way for the laundry line. With a healthy dose of mutual good will, most people should manage to live with their neighbors in peace and tranquility. And in cases of conflict, we must not hesitate to use halacha as our guide, just as we do in all other aspects of our lives.

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*Ohr Somayach :: Insights into Halacha For the week ending 29 January 2022 / 27 Shvat 5782 Snowballs on Shabbos? Rabbi Yehuda Spitz*

**Let it Snow!!** With the raging "Elpis" Storm currently blanketing Yerushalayim with snow, meteorologists predicting (and children hoping!) that the accumulated snowfall will reach 20 centimeters, and the memory of Yerushalayim's 2014 Asarah B'Teves / Erev Shabbos[1] "Blizzard"[2] [seemingly the worst since 5547 (1787),[3] or at least 5717 (1957)][4] still lingering,[5] there is one specific halachic sheilah that readily comes to mind.[6] This is the very same question that this author was asked several times over that snowed-in Yerushalayim Shabbos and ultimately ended up addressing in a Shabbos shiur:

Is making snowballs permitted on Shabbos? And if not, why not?

Truthfully, the question is far more complex than one might think, and quite interestingly, no clear-cut consensus as to the proper rationales and reasons, even among those poskim who deem it prohibited.

Hotza'ah Yet, one very important fact is clear. If the Eruv is down, or in a locale that does not have an Eruv, outdoor snowball fights (unless in an enclosed Reshus HaYachid) would certainly be forbidden, as throwing snowballs would transgress the prohibition of "Hotza'ah, Carrying."<sup>[7]</sup> The question would not even start unless referring to a place with a reliable Eruv. However, to define which actions or set of actions define snowball making, and whether or not it is prohibited is not so simple. Let us explore these issues further.

Muktzeh First of all, is snow actually Muktzeh? Is one allowed to move it? The common halachic consensus is that rain is not Muktzeh, even if it fell on Shabbos, as proven by Tosafos,<sup>[8]</sup> based on the Gemara in Eruvin,<sup>[9]</sup> as the moisture existed beforehand in the form of clouds. This is the halacha pesuka.<sup>[10]</sup> Would the same categorization apply to snow? Many Acharonim, including the Chavos Yair, Even HaOzer, Maamar Mordechai, and the Butchatcher Rav,<sup>[11]</sup> as well as many contemporary authorities including the Minchas Shabbos, Rav Tzvi Pesach Frank, Rav Shlomo Zalman Auerbach, Rav Yosef Shalom Elyashiv, the Debreciner Rav, the She'arim Metzuyanim B'Halacha, Rav Ovadia Yosef, Rav Chaim Kanievsky, the Rivevos Efraim, the Nishmas Shabbos, and Rav Pesach Eliyahu Falk,<sup>[12]</sup> do define snow similarly to rain, maintaining that the same rationale permitting utilizing rain on Shabbos applies to snow as well, and it is therefore not Muktza. However, Rav Moshe Feinstein held that snow is indeed considered Muktzeh, as nowadays people generally do not have a real use for it, and is akin to gravel, that its main use is simply to walk on it.<sup>[13]</sup> Additionally, he held that snow would be prohibited due to another concern as well. In Rav Feinstein's assessment, snow would be considered Nolad (came into existence on Shabbos) if it fell on Shabbos,<sup>[14]</sup> since, as opposed to rain, true as it might be, nevertheless people do not associate snow with being carried in the clouds. An interesting upshot of this shitta is that although he held snow is Muktzeh, Rav Moshe did not ascribe any other prohibition to making snowballs. Accordingly, it seems that Rav Moshe would hold that if one gathered snow on Erev Shabbos and set it aside for a snowball fight on Shabbos (within a proper Erev, of course) then one may make and throw those snowballs on Shabbos.<sup>[15]</sup>

Boneh On the other hand, many other authorities, although maintaining that snow itself is not Muktzeh, nevertheless held that making snowballs on Shabbos is problematic for other reasons, chief among them "Boneh, Building." The

Rambam, cited as halacha by the Mishnah Berurah, discussing cheese-making, rules that anytime one takes separate parts of an item and joins them together to make a new item, is 'similar to Boneh' and therefore prohibited on Shabbos.<sup>[16]</sup> Rav Yair Chaim Bachrach (1639-1702) – the renowned Chavos Yair, and on a more contemporary note, Rav Shlomo Zalman Auerbach, and Rav Chaim Kanievsky, as well as others, apply this rule to the formation of snowballs, prohibiting it.<sup>[17]</sup> Although by making snowballs one is not actually creating something new, he is still giving form to something that was previously not extant, which gives the appearance of and is akin to the halachic definition of building. Yet, other poskim, including Rav Moshe Feinstein, the Debreciner Rav, and the Nishmas Shabbos disagree,<sup>[18]</sup> maintaining that the prohibition of Boneh can only apply when one builds something which has at least a minimal semblance of permanence. On the other hand, snowballs, they argue, which have a transient and ephemeral existence lasting a grand total of several seconds from time of throwing, should not be including in the 'building' category. Nonetheless, they concede that when it comes to building snowmen, which generally are meant to stick around until they melt several days later, this would be proscribed due to Boneh.

Risuk Another potential prohibition involved with making snowballs on Shabbos is "Risuk, Crushing" (or mashing), related to the prohibition of "Sechita, Squeezing" (as in squeezing out juice from a fruit). The Shulchan Aruch regarding washing one's hands on Shabbos with icy or snowy water, rules that one should be careful not to rub his hands together with the ice as it may crush the ice, causing it to melt and him to unwittingly transgress the prohibition of Risuk.<sup>[19]</sup> Several authorities, including the Chavos Yair, and much later, the Debreciner Rav apply this ruling to making snowballs.<sup>[20]</sup> In the formation of a snowball by applying direct pressure to it, one cannot avoid crushing the snow, causing a bit of it to melt. In scientific terms, this process of applying pressure is referred to as regelation, where the compression causes a melt and then the release causes freezing of that melt. This is what holds a well-made snowball together.<sup>[21]</sup> Interestingly, the discoverer of regelation, British scientist Michael Faraday, was born 100 years after the Chavos Yair first discussed this phenomenon regarding the halachic implications of snowball making. Either way, these Poskim explain, snowball making would be prohibited on Shabbos due to this reason. On the other hand, Rav Moshe Feinstein and the Nishmas Shabbos disagree.<sup>[22]</sup> They assert that any minuscule amount of water that is possibly melted while forming a snowball outdoors in the freezing cold is definitely not noticeable, and in no way would this constitute crushing or squeezing out a liquid.

More Melachos? Other potential prohibitions in the formation of snowballs mentioned by several authorities and rejected by others include: Ma'mar, gathering (i.e. gathering the snow to make the snowballs),[23] Uvda D'Chol, weekday activities,[24] and Soser, destroying (i.e. when the thrown snowball hits its target and consequently falls apart).[25]

So... Can We Build a Shabbos Snowman? In the final analysis, although there are poskim who give a dispensation to allow young children to make and throw snowballs on Shabbos,[26] nevertheless, the majority of authorities rule that it is assur, period. In fact, and unknown to most, this contemporary sheilah is not as current as many suspect, as already in the 1690s (!) the Chavos Yair exhorted that if one sees children throwing snowballs at each other on Shabbos, one should attempt to stop them. The reason why the Chavos Yair's shitta on this topic is mostly unknown is that his full Mekor Chaim on Orach Chaim was only first published in 1982, quite posthumously, by Machon Yerushalayim, even though it was written over 300 years prior (!). It is said that this work was originally intended as a principal commentary to Shulchan Aruch but was withdrawn by the author when he discovered that other commentaries, most notably the Taz and the Magen Avraham, had already been published. Back to snowballs and snowmen, practically speaking, although they do not necessarily see eye to eye in their rationales, and there is no clear cut consensus as to the singular reason why it should be prohibited, all the same, the hachra'as haposkim, is indeed that making snowballs, and certainly making snowmen, is assur on Shabbos.[27] Just another reason to play inside on Shabbos when a 'White Winter Wonderland' beckons from the great outdoors or a 'Polar Vortex' comes a-knocking.

[1] For more on the topic of Asarah B'Teves falling out on Erev Shabbos, see recent article titled 'The Many Facets of Asarah B'Teves'. [2] Yes, this author is familiar with the 'Coincidences' involved with that memorable Yerushalayim snowstorm. According to the Targum (Rav Yosef) to Divrei Hayamim, 'Yom Hasheleg' - 'The Day of Snow' that Binayahu ben Yehoyada 'smote the lion in the pit' (Shmuel II, Ch. 23: verse 20 and Divrei Hayamim I, Ch. 11: verse 22; see also Gemara Brachos 18a), is none other than Asarah B'Teves! Additionally, since it was a fast, the Haftara read by Mincha included the apropos verse (Yeshaya Ch. 55: verse 10) referring to 'Ka'asher Yai'rade Hageshem Vehasheleg Min Hashamayin', 'when the rain and snow fall from the heavens'. Furthermore, that day's Daf Yomi was Yoma 35, which includes the famous account of Hillel almost freezing to death on the roof of Shmaya and Avtalyon's Beis Midrash, while trying to listen to their teaching 'Divrei Elokim Chaim', when he could not afford the admission fee. That day was described by the Gemara as an Erev Shabbos in Teves, that a tremendous amount of snow (3 amos) fell upon him from the heavens. Moreover, this incident ostensibly occurred in Yerushalayim, as it is well known that Shmaya and Avtalyon, the Gedolei HaDor, lived in Yerushalayim. [See Mishnayos Ediyus (Ch. 1: 3 & Ch. 5: 6), Gemara Brachos (19a), Shabbos (15a), and Yoma (71b).] Thanks are due to Rabbi Dovid Alexander for his paper on these 'Coincidences'. [3] See Yalkut Yosef (Kitzur Shulchan Aruch, Orach Chaim, 143: 6), who relates a historical sheilah from a snowstorm on Shabbos in Yerushalayim in 1787 when the shul's entrance was covered with so much snow that it was impossible for anyone to have possibly attended. Therefore, would the tzibbur have to lein a double parsha the next week? [4] See Shu"t Har Tzvi (Orach Chaim, Ta"l Harim, Soser 1), who mentions a Shabbos snowstorm in Yerushalayim in 1957 that was so bad, that people asked if they may hack and/or shovel the snow and ice off their roofs on Shabbos. On this important topic there are several other contemporary

authorities who later addressed this issue. See Shu"t Lev Avraham (49), Shu"t Ba'er Moshe (vol. 1: 28), Shu"t Mishnah Halachos (vol. 4: 45), Shu"t Machazeh Elyahu (vol. 1: 67), Shu"t Nishmas Shabbos (vol. 4: 247 and 248), Shemiras Shabbos Khilchasah (Ch. 25: 11), Mesores Moshe (vol. 1, pg. 67: 147), and Kuntress Gevuros Akiva (L'fanos Sheleg Beshabbos). [5] Many children in Yerushalayim and its environs felt gypped from 2019's much hyped "snowstorm," as it was, in a word, 'underwhelming.' Although Israel's North got squarely blanketed, on the other hand, Yerushalayim received maximum a few inches of mostly slush, which melted by morning. Hardly enough for even a snowball fight; a far cry from 2014's culmination of several feet (in some areas) of snow. At press time, the jury was still out on the currently thundering and bombarding "Elpis Storm." [6] For a fascinating exposition on the various and varied roles snow plays in halacha, see Rav Shlomo Yosef Zevin's Le'ohr Hahalacha (Chapter 'Hasheleg', ppg. 232 - 239). Thanks are due to Rabbi Eliezer Brodt, author of Bein Kesseh Le'Esor and Likutei Eliezer, for providing this author with this invaluable source. [7] This topic was covered at length in a previous article titled 'The Curious Case of the Karpef'. [8] Tosafos (Beitzah 2a s.v. ka and Eruvin 46a s.v. kol). [9] Eruvin (45b - 46a). [10] See for example Meiri (Eruvin 45b s.v. me'achar), Teshuvos Hagaonim (242), Beis Yosef (Orach Chaim end 310; citing the Shibolei Haleket (85) and Rav Tzemach Gaon (Halachos Pesukos 146), Magen Avraham (Orach Chaim 397: 13), Maharsham (Daas Torah, Orach Chaim 340: end 1), Mishnah Berurah (338: 30; citing the Zechor L'Avraham), and Kaf Hachaim (Orach Chaim 310: 52 and 397: 56), and many later authorities. Although the Pri Megadim (Pesicha Koleles to Hilchos Yom Tov, Ch. 3: 2, Dinei Muktzeh 29) implies that rain is muktzeh, this is not the normative halacha and many 'answer up' his shitta explaining that he was simply referring to the hava amina of the Gemara to prove a point about Nolad [See Nezer Yisrael (38: 3, 28), Minchas Shabbos (on Kitzur Shulchan Aruch, 80: 56 & Shiyurei Hamincha ad loc. 19), Toldos Shmuel (pg. 197b), Shu"t Har Tzvi (ibid.), Shu"t Ba'er Moshe (vol. 1: 20), and Shu"t Nishmas Shabbos (vol. 4: 249 s.v. u'mitzad).] Although, the Mishnah Berurah (310: 32) rules like the Chayei Adam (vol. 2, 65: 63, Pen 8), that water that drips from trees on Shabbos during Nissan (possibly sap) is Nolad and therefore Muktzeh, this does not affect his ruling regarding rain, which is not considered Nolad, nor Muktzeh, as one does not associate water with coming from trees, and thus in that specific scenario is akin to a new creation on Shabbos, as opposed to rain. [11] Chavos Yair (Mekor Chaim, Orach Chaim 320: 11), Even HaOzer (Orach Chaim 363), Maamar Mordechai (Shu"t 2), and the Butchatcher Rav (Eshel Avrohom, Orach Chaim 312: Tinyana). Although the words of the Chasam Sofer (Shu"t Orach Chaim 89) regarding broken pieces of ice that one does not need (i.e. he only needed the water underneath) might imply the opposite, nevertheless, see She'arim Metzuyanim B'Halacha (80: 19) based on the Maharsham (Daas Torah, Orach Chaim 320: 10), Shu"t Machazeh Elyahu (vol. 1: 68, end 1, in the brackets), and Sefer Hanosein Sheleg (Kuntress Hashu"t: footnote 8), who explain that this does not apply to snow, nor to our ubiquitous ice cubes, and maintain that even according to the Chasam Sofer neither would be considered Muktzeh. [12] Minchas Shabbos (on Kitzur Shulchan Aruch 80: 56), Rav Tzvi Pesach Frank (Shu"t Har Tzvi ibid.), Rav Shlomo Zalman Auerbach (as per Shemiras Shabbos Kehilchasah Ch. 16: 45, Shulchan Shlomo 310: 26, 2, and Sefer Tiltulei Shabbos pg. 165, footnote 10), Rav Yosef Shalom Elyashiv (as per Shalmei Yehuda Ch. 13: 19, pg. 203 and Orchos Shabbos vol. 2, Ch. 19: footnote 259), the Debreciner Rav (Shu"t Ba'er Moshe vol. 1: 20), She'arim Metzuyanim B'Halacha (80: 19), Rav Ovadia Yosef (cited in Yalkut Yosef, Shabbos vol. 2, pg. 498: footnote s.v. ul'inyan), Rav Chaim Kanievsky (cited in Sefer Hanosein Sheleg, Kuntress Hashu"t 7; and not as cited in Shu"t Alei Siach pg. 134: 51; however it is possible that was simply referring to making snowballs as assur), the Rivevos Efraim (Shu"t vol. 1: 223, 1), the Nishmas Shabbos (Shu"t vol. 4: 247 and 249), and Rav Pesach Elyahu Falk (Shu"t Machzeh Elyahu vol. 1: 68). However, see Sefer Tiltulei Shabbos (pg. 13: 13) [as well as Orchos Shabbos vol. 2, Ch. 19: footnote 259, which only quotes the Teshuva from Sefer Tiltulei Shabbos pg. 13: 13, and not the psak that appears later in the sefer] who cites a Teshuva from Rav Shlomo Zalman Auerbach, where he held that it is 'not pashut to be lenient' with the issur of nolad regarding snow that actually fell on Shabbos and Yom Tov. The Shulchan Shlomo (ibid.) cites both psakim lemaaseh in his understanding of Rav Shlomo Zalman's opinion, and distinguishes between snow that fell on Shabbos which is muktzah, and snow that fell prior to the onset of Shabbos, which is not. [13] Shu"t Igros Moshe (Orach Chaim vol. 5, 22: 37), Sefer Tiltulei Shabbos (pg. 165: footnote 10; even referring to snow that fell before Shabbos), and Orchos Shabbos (vol. 2, Ch. 19: footnote 259), and not as quoted in Sefer Hilchos Shabbos of Rav Shimon Eider (pg. 120: footnote 331). On the other hand, Rav Moshe's son Rav Dovid Feinstein is quoted (Shu"t Videbarta Bam vol. 2: 147 s.v. v'shamaati) as maintaining a more nuanced position. He explains that there is no 'mesorah' as to whether snow is truly Muktzah, and as there are dogs nowadays that would eat / drink snow, perhaps it may be considered 'fit for animals.' He concludes that "b'makom hatzorech yeish

lomar" that snow is not Muktzah pertaining to Tiltul. [14] The issue of Nolad on Shabbos is complicated. This is actually one notable inyan which is stricter on Yom Tov than Shabbos. Although in the Gemaras dealing with this topic [Beitzah and Eruvin (ibid.), as well as Shabbos (29a)] the level of 'Nolad' necessary to prohibit something that came into existence on Shabbos (a real existential quandary, you might say) is a machlokes R' Shimon and R' Yehuda, the halachic bottom line is that in needs to be classified as a 'Nolad Gamur' to be proscribed on Shabbos. See Rashi and Tosafos (Beitzah 2a s.v. ka), Rambam (Hilchos Shvisas Yom Tov, Ch. 1: 19), and Rema (Orach Chaim 495: 4). See also Shemiras Shabbos Kehilchasah (vol. 1, pg. 359, footnote 159 and further) who breaks this topic down and categorizes the different types of Nolad and their applications. On the other hand, in a fascinating counter-point and novel approach, the Ohr Somayach (Hilchos Yom Tov, Ch. 2, Halacha 3 s.v. lachein) opines that if one would be able to create something out of thin air on Shabbos, it would be permitted and not Muktzah, as this 'Super Nolad Gamur' could not have possibly been considered "in this world at all" to possess the status of Muktzah. [15] See Mesores Moshe (vol. 1, pg. 68: 148). [16] Rambam (Hilchos Shabbos, Ch. 7: 6), cited as halacha by the Mishnah Berurah (319: 63). [17] See Mekor Chaim (Orach Chaim 320: 11), Rav Shlomo Zalman Auerbach (cited in Shemiras Shabbos Kehilchasah and Shulchan Shlomo ibid.), Rav Chaim Kanievsky (cited in Sefer Hanosein Sheleg, Kuntress Hashu"t: 6 and 27), and Shu"t Rivevos Efraim (ibid., who writes, quoting the Menucha Nechona, that 'issuro hu meshum etzem ha'asiyah', implying that the issue is Boneh). Although they acknowledge the differences between cheese-making and snowball forming and agree that making snowballs can't be considered actual building and one would not violate Boneh on a Deoraysa level [see Shemiras Shabbos Kehilchasah (Ch. 16: footnote 117)], nevertheless, Rav Shlomo Zalman referred to making snowballs as 'an issur lechatchilla (of Boneh) since snow is not food,' and Rav Chaim Kanievsky wrote 'ra'ui l'hizaher d'mechitz k'Boneh.' [18] Rav Moshe Feinstein (Mesores Moshe ibid.), the Debreciner Rav (Shu"t Ba'er Moshe vol. 6: 30) and Shu"t Nishmas Shabbos (ibid.). See also the Ba'er Moshe's teshuva printed in Sefer Piskei Hilchos Shabbos (vol. 2, pg. 59, Question 6) who concludes that there is no hetter to allow building a snowman on Shabbos. [19] Shulchan Aruch (Orach Chaim 320: 11). Although there are poskim who do permit this, [see Magen Avrohom (ad loc. 16), Ba'er Heitev (ad loc. 15), and Aruch Hashulchan (ad loc. 25; who concludes 'tzarich iyun l'dina'), nevertheless, the Kitzur Shulchan Aruch (80: 14), Ben Ish Chai (Year 2: Parshas Yisro 9), and Mishnah Berurah (Biur Halacha ad loc. s.v. yzaher) conclude 'ain lehakelb'zeh,' as 'many many Rishonim' cite this as well. Regarding the issue of crushing and melting ice on Shabbos ('merazkin es hasheleg') in order to make its water flow, which the Gemara (Shabbos 51b) states is prohibited on Shabbos, there is much debate among the Rishonim and Acharonim whether this proscription is due to 'Nolad' or to 'Sechita.' See Rashi, Tosafos, Rashba, Rosh (all ad loc.), Ran (ad loc. 23b in the Rif's pagination), Shibolei Haleket (Shabbos 85), Rambam (Hilchos Shabbos Ch. 21: 13; and Maggid Mishnah ad loc.), Sefer HaTerumah (235), Beis Yosef (Orach Chaim 318: 16 and 320: 9), Shu"t Panim Meiros (vol. 1: 84 s.v. v'attah), Tur, Shulchan Aruch, Rema, and main commentaries to Orach Chaim 318:16 and 320:9, Shulchan Aruch Harav (Orach Chaim 320: 16), Chayei Adam (vol. 2, 14: 11 and 20: 7 and 20), Ben Ish Chai (ibid.), Eglei Tal (Maleches Dush 18: 36, 19 and 25 – 27; and ad loc. 37, 3), Shvisas HaShabbos (Maleches Dush 19 and 20), Mishnah Berurah (320: 35), Aruch Hashulchan (ad loc. 21 – 25), and Kaf Hachaim (ad loc. 63). Perhaps this topic will be addressed in a more comprehensive manner in a future article. [20] Mekor Chaim (ibid.) and Shu"t Ba'er Moshe (ibid.). Actually, the Chavos Yair refers to it as "Dush, Threshing." However, as the Nishmas Shabbos (ibid.) and Me'ohr Hashabbos (vol. 3: Ch. 13, 59, and extensive footnote) explain, he could not have meant threshing, which does not seem to apply to snowballs [as the Shemiras Shabbos Kehilchasah (Ch. 16: footnote 117) points out and concludes 'tzarich iyun']. Rather, they maintain he was referring to Risuk, which is a type of Sechita, which in itself is a Toldah of

שרה מושא בת ר' יעקב אליעזר ע"ה ביילא בת (אריה) לייב ע"ה אנא מלכה בת ישראל ע"ה

'Dush' [see Rambam (Hilchos Shabbos Ch. 8: 10) and Aruch Hashulchan (Orach Chaim 320: 3)]. [21] Thanks are due to David Lederman for pointing this out to me. [22] Mesores Moshe (vol. 1, pg. 67: 147 s.v. ulgabei) and Shu"t Nishmas Shabbos (ibid.). [23] See Minchas Ish (Ch. 11: 23, footnote 38). However, the Ba'er Moshe (Shu"t ibid.) rejects this out of hand as this only applies to 'Gidulei Karka', or at least 'Makom Gidulo,' neither of which seem to apply to snow [see Daas Torah (Orach Chaim 340: 9) and Mishnah Berurah (340: 35 and 36)]. [24] See Rabbi Shimon Eider's Sefer Hilchos Shabbos (pg. 120: footnote 331) who posits that making snowballs should be 'Uvda D'Chol'. However, in this author's estimation, as no one else seems to cite such logic, it seems that this would be a novel approach. Additionally, we find that when something is prohibited for this reason or a similar one, nevertheless, if it is something that is an 'oneg' or 'hana'as guf' for the one performing the action, it is permitted. For example, although running and jumping are technically prohibited on Shabbos, they are both nonetheless fully permitted for children to do, as that is their 'oneg Shabbos' [see Shulchan Aruch (Orach Chaim 301: 1 and 2), Aruch Hashulchan (ad loc. 44), and Mishnah Berurah (ad loc. 5 and 6 and Shaar Hatziyun 3, 6, and 7); Rav Yaakov Kamenetsky (Emes L'Yaakov on Tur and Shulchan Aruch, Orach Chaim 328: footnote 377) even applied this distinction to one who is sunbathing simply for 'Hana'as Gufo']. The same would seemingly pertain to children and their snowball fights. What greater fun do children have on a Snow Day? [25] See Shemiras Shabbos Kehilchasah (Ch. 16: footnote 117) who raises this issue, but cites Rav Shlomo Zalman Auerbach as ruling that it is not applicable, as once one throws a snowball he does not care about it breaking apart. Furthermore, even when thrown, it is not one's kavanna to davka destroy the snowball. The Nishmas Shabbos (ibid.) expresses similar sentiments. Additionally, as making snowballs is not considered 'Binyan Gamur,' even according to those who consider it a type of Boneh, it would seem difficult to label a snowball's falling apart as Soser, as by definition, that Melacha can only apply (as a reverse Malacha of sorts) when Boneh does. [26] See Shu"t Ba'er Moshe (vol. 6: 30) and Shu"t Nishmas Shabbos (vol. 4: 249). However, see the Ba'er Moshe's teshuva printed in Sefer Piskei Hilchos Shabbos (vol. 2, pg. 59, Question 6) where he writes a stronger lashon, that certainly it is 'assur behechlet' for one who is 13 to make snowballs on Shabbos, and that one should certainly be machmir from age 9 or 10 to be properly mechanech the children so there should not come to be 'zilzul' of Shabbos. This author has also recently seen printed that Rav Dovid Feinstein allows children to make snowballs as well. However, he qualifies his hetter, as only allowing children shelo higiya l'chinuch to play in the snow on Shabbos (see Rabbi Yitzchok Frankel's Kuntress Yad Dodi, Hilchos Shabbos, Muktzeh, Question 10). [27] Aside for the teshuvos previously mentioned, this is how many contemporary sefarim on Hilchos Shabbos conclude, regardless of the reason presented, including Shemiras Shabbos Kehilchasah (Ch. 16: 45), Me'ohr Hashabbos (vol. 3, Ch. 13: 59), Orchos Shabbos (vol. 1, Ch. 8: 39), Sefer Hilchos Shabbos (pg. 120: 14), The 39 Melachos (vol. 4, pg. 1092), Shabbos Kehalacha (Tza'atzuim 51), and Uveyom HaShabbos (Ch. 10: 16).

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

This article was written L'iluy Nishmas this author's beloved grandmother, Chana Rus bas Rav Yissachar Dov, R' Chaim Baruch Yehuda ben Dovid Tzvi, L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, and l'zechus Shira Yaffa bas Rochel Miriam v'chol yotzei chalatzeha for a yeshua sheleimah teikif u'miyad!

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